

**Craven County**



# **CRAVEN COUNTY GOVERNMENT**

**CRAVEN AREA RURAL TRANSIT SYSTEM**

**REQUEST FOR PROPOSAL (RFP)**

**FOR**

**TRANSIT DEVELOPMENT PLAN**

**ISSUED BY:**

Craven County Government  
Craven Area Rural Transit System (CARTS)  
2822 Neuse Blvd.  
New Bern, NC 28560  
Phone: 252.636.4917  
Facsimile: 252.636.4919  
[www.cravencountync.gov/departments/trn.cfm](http://www.cravencountync.gov/departments/trn.cfm)  
November 2014  
Due Date: 1 December, 2014  
Due Time: 4:00 pm EST

**RFP CONTENTS**

Scope of Service ..... 4

    Introduction ..... 4

    Background ..... 4

    Funding ..... 4

RFP Information ..... 5

    RFP Timetable ..... 5

    RFP Registration ..... 5

    Communication Protocol ..... 5

    Submission Information Requirements ..... 6

    Proprietary Information ..... 6

    Pre-Proposal Conference ..... 6

    Disadvantaged Business Enterprise (DBE) Participation ..... 6

Protest Procedures ..... 7

    General ..... 7

    Protests Before Proposal Opening ..... 7

    Protests After Proposal Opening/Prior to Award ..... 8

    Protests After Award ..... 8

    Decision ..... 8

    Protests to Federal Transit Administration (FTA) ..... 8

    Submission of Protest to FTA ..... 9

Statement of Work ..... 9

    Objective ..... 9

    Work Plan/Tasks ..... 9

    Deliverables ..... 11

Proposal Requirements ..... 12

    Company Background ..... 12

    Experience ..... 12

    References ..... 13

    Proposal Elements ..... 15

    Cost Proposal ..... 15

    Required Certifications ..... 15

General Information ..... 15

Project Award ..... 16

Written Contract ..... 17

    Contract Obligations & Requirements ..... 17

    Single Proposal Response ..... 17

Changes to RFP ..... 17

Proposal Evaluation Procedures ..... 18  
    Evaluation Criteria ..... 18  
FTA Definitions..... 19  
APPENDIX A – Federally Mandated Clauses for all Contracts..... 22  
APPENDIX B – Federal Highway (NBAMPO) Title VI Compliance ..... 37  
ATTACHMENT 1: Certification Regarding Debarment, etc. .... 39  
ATTACHMENT 2: Proposer Checklist..... 42  
ATTACHMENT 3: W9 Form..... 43

## **SCOPE OF SERVICE**

### **INTRODUCTION**

A qualified firm is sought by Craven County Government (North Carolina), to prepare a Transit Development Plan (TDP) that will provide guidance for Craven Area Rural Transit System (CARTS) to utilize through the transition from a rural to a mixed rural-small urban transit system for the now designated urbanized area as determined by the Federal Transportation Administration (FTA).

### **BACKGROUND**

Craven Area Rural Transit System (CARTS) located in New Bern, NC, functions as a department of the Craven County Government, and has operated as a regional transit system since 1980. Operating Monday-Friday, CARTS operates regionalized demand response public transit services in Craven, Jones and Pamlico Counties during the hours of 4:30 a.m. to 7:00 p.m., with two deviated fixed routes operating within the city of New Bern, from 7:00 a.m. – 5:00 p.m.

Operating and capital funding for the support of CARTS services has been primarily North Carolina Department of Transportation (NCDOT) financial assistance, comprised of Community Transportation Program (CTP) funds (FTA § 5311 Urbanized Area Program) and NCDOT Rural Operating Assistance Program (ROAP) funds, supported by contracting and advertising revenues as local matching funds. CARTS operates 32 (28 at peak) revenue vehicles, employs 28 operators (2 full time and 26 part time), and provided 95,852 passenger trips in 2014-15, with 791,093 revenue miles and 46,648 revenue hours. The population for the entire regional service area is 127,657, and the population for the urbanized area is 50,503 (2010 Census data). Noted pertinent demographics for the area include an overall minority population of 33%, 38%, 26% and a population for individuals 65 years and older of 16.6%, 20.9% and 25.1%, for Craven, Jones and Pamlico Counties, respectively. This data compares to an overall minority population of 36% and an elderly population of 14.3% for the state of North Carolina.

As a result of 2010 U.S. Census data, identified demographic changes prompted FTA to designate a portion of the CARTS service area as urbanized. This designation requires a transition from a rural system to a mixed urban-rural system. Funding for the urbanized area (including New Bern and surrounding communities) will be FTA 5307 Urbanized Area Formula Program, supported by contracting, advertising and yet to be determined local matching funds.

A TDP, outlining recommendations derived from appropriate needs analyses, will provide guidance to CARTS in system design changes as well as to ensure eligibility for FTA § 5307 Urbanized Area Formula Program Funds for services within the newly designated urbanized area.

### **FUNDING**

Funding for the procurement of services as outlined in this Request for Proposal (RFP) will be FTA § 5303 Metropolitan Transportation Planning Program and Federal Highway Administration § 104(f) funds, both facilitated through the New Bern Area Metropolitan Planning Organization, 248 Craven St., P.O. Box 1129, New Bern, NC 28563, <http://www.nbampo.org/>.

## RFP INFORMATION

### RFP TIMETABLE

Date	Action
Wednesday, 5 November 2014	Date RFP Issued
Friday, 14 November 2014	Last Date to Register for RFP
Friday, 21 November 2014, 4:00 p.m.	Deadline for Submitting Questions
<b>Monday, 1 December 2014, 4:00 p.m.</b>	<b>Deadline for Submitting Proposals</b>
Friday, 12 December 2014	Contractor Notification

Note: Dates are subject to change. Any changes to the proposal due date, shall be issued by Addendum to all registered proposers. Questions or qualifications will also be responded to by Addendum to all registered proposers.

### RFP REGISTRATION

#### Instructions to Proposers

Proposers must be registered in order to submit questions regarding the RFP. Questions must be submitted exclusively by email. It is the responsibility of each interested respondent to register by e-mail upon receipt of this RFP, and to provide an e-mail address so that an appropriate and timely response to inquiries may be supplied. In order to register for the RFP, Contractors must contact Ms. Kelly Walker via email at [carts@cravencountync.gov](mailto:carts@cravencountync.gov), no later than Friday, 14 November, 2014 with the following information:

- Company name
- Contact person's name
- Contact person's title
- Company address
- Telephone number, e-mail address and fax number

Only Contractors who register for the RFP will receive copies of any questions, answers and/or any subsequent RFP Addenda.

### COMMUNICATION PROTOCOL

All questions related to the RFP and the proposal process must be written and submitted by e-mail prior to 4:00 p.m. EST Friday, 21 November, 2014, directed to Ms. Rosann Christian at [carts@cravencountync.gov](mailto:carts@cravencountync.gov). This is the only acceptable method of communication during the course of this RFP. *No telephone or facsimile proposals inquiries will be considered.* Questions received will be responded to by e-mail and will be shared with all registered interested parties. Any revisions or additions to this RFP will be provided to all registered respondents. Please do not solicit any information requests or questions from any other person(s) at CARTS. Requests for technical assistance will not be available by phone. Questions, answers, and any ensuing Addenda will be distributed in writing to all Contractors registered on the RFP distribution list.

## **SUBMISSION INFORMATION REQUIREMENTS**

Sealed proposals shall be submitted to CARTS in person, by agent or certified mail, return receipt requested by 4:00 pm EST on **Monday, 1 December, 2014**.

Packages should be clearly marked "**RFP: TRANSIT DEVELOPMENT PLAN PROPOSAL**". Proposals without this project title will be subject to disqualification and non-consideration. ***It is the responsibility of the proposer to ensure proposals arrive before the deadline.*** Failure of the U.S. Postal Service, or any other delivery service, to deliver proposal packages on time shall result in the proposal not being considered and returned unopened.

A proposal may be withdrawn in person or their authorized representative, provided their identity is made known and a receipt is signed for the proposal, but only if the withdrawal is made prior to the exact time set for receipt of proposals.

Submission of Facsimile and E-Mail submissions will not be accepted. All submittals must be professionally organized. [One original copy, signed by the individual authorized to legally enter into contractual obligations, and [six (6)] additional copies of the proposal must be included.]

Mail proposals to:

Craven Area Rural Transit System (CARTS)  
2822 Neuse Blvd.  
New Bern, NC 28560  
**ATTN: "RFP: TRANSIT DEVELOPMENT PLAN"**

Proposals received after the date and time for closing will not be considered and will be returned to the proposer unopened. CARTS reserves the right to accept or reject any or all proposals or any part of a proposal and to waive any informality and accept the most favorable proposal to meet the best interest of CARTS. CARTS reserves the right to cancel this procurement at any time without cause or obligation to any proposers.

## **PROPRIETARY INFORMATION**

Any information contained in the proposal that the proposer considers proprietary must be clearly identified as such. CARTS will respect requests for non-disclosure of proprietary information to the extent that information so restricted conforms to the Freedom of Information Act and any court rulings.

## **PRE-BID/PROPOSAL CONFERENCE**

No pre-bid/proposal conference will be held for this procurement.

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION**

CARTS and the New Bern Metropolitan Planning Organization, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notify all prospective respondents that it will affirmatively insure that in any contract entered into

pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

## **PROTEST PROCEDURES**

### **GENERAL**

Protests may be made by prospective proposers whose direct economic interest would be affected by award of a contract or by failure to award a contract. CARTS will consider all protests requested in a timely manner regarding the award of a contract, whether submitted before or after an award.

All protests are to be submitted in writing to:

**Craven Area Rural Transit System**  
2822 Neuse Blvd.  
New Bern, NC 28560

Protest submissions should be concise, logically arranged, and clearly state the grounds for protest. A protest must include at least the following information:

- (a) Name, address, and telephone number of protestor,
- (b) Identification of contract solicitation number,
- (c) A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents, and
- (d) A statement as to what relief is requested.

Protests must be submitted to CARTS in accordance with these procedures and time requirements, must be complete and contain all issues that the protestor believes relevant.

### **PRE-PROPOSAL CONFERENCE**

No pre-bid conference will be held for this procurement.

### **PROTESTS BEFORE PROPOSAL OPENING**

Protests alleging restrictive specifications or improprieties which are apparent prior to proposal opening or receipt of proposals must be submitted in writing at the address above and must be received at least seven (7) days prior to proposal opening or closing date for receipt of proposals or proposals. If the written protest is not received by the time specified, proposals or proposals may be received and an award made in the normal manner unless CARTS determines that remedial action is required. Oral protests not followed up by a written protest will be disregarded. CARTS may request additional information from the appealing party and information or response from other proposers, which shall be submitted to CARTS not less than ten (10) days after the date of the request made by CARTS. So far as practicable, appeals will be decided based on the written appeal, information and written response submitted by the appealing party and other proposers. Failure of any party to timely respond to a request for information, may be deemed by CARTS that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response,

and in such a case, the protest will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent evaluation that CARTS deems appropriate, CARTS shall either:

- a) Render a final decision, or
- b) At the sole election of CARTS, conduct an informal hearing at which the interested parties will be afforded opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following the informal hearing, if one is held, CARTS will render a decision, which shall be final, and notify all interested parties thereof in writing but no later than ten (10) days from the date of informal hearing.

#### **PROTESTS AFTER PROPOSAL OPENING/PRIOR TO AWARD**

Protests against the making of an award by CARTS must be submitted in writing to CARTS and received within seven (7) days of the award by CARTS. Notice of the protest and the basis therefore will be given to all proposers. In addition, when a protest against the making of an award by CARTS is received and it is determined to withhold the award pending disposition of the protest, the proposers whose proposals might become eligible for award shall be requested, before expiration of the time for acceptance, to extend or to withdraw the proposal. Where a written protest against the making of an award is received in the time period specified, award will not be made prior to seven (7) days after resolution of the protest unless CARTS determines that:

- a) The items to be purchased are urgently required;
- b) Delivery or performance will be unduly delayed by failure to make award promptly; or,
- c) Failure to make award will otherwise cause undue harm to CARTS or the federal government.

#### **PROTESTS AFTER AWARD**

In instances where the award has been made, the proposer shall be furnished with the notice of protest and the basis therefore. If the proposer has not executed the contract as of the date the protest is received by CARTS, the execution of the contract will not be made prior to seven (7) days after resolution of the protest unless CARTS determines that:

- a) The items to be purchased are urgently required;
- b) Delivery or performance will be unduly delayed by failure to make award promptly; or,
- c) Failure to make award will otherwise cause undue harm to CARTS or the federal government.

#### **DECISION**

Any decision pertaining to a protest following the guidelines contained in this section is final.

#### **PROTESTS TO FEDERAL TRANSIT ADMINISTRATION (FTA)**

Under certain limited circumstances, an interested party may protest to the FTA the award of a contract pursuant to an FTA grant. FTA's review of any such protest will be limited to:

- a) Alleged failure by CARTS to have written protest procedures or alleged failure to follow such procedures; or,

- b) Alleged violations of specific federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that federal regulation.

In such cases, protestors shall file a protest with FTA not later than five (5) Federal working days after CARTS renders a final decision under CARTS protest procedure. In instances where the protestor alleges that CARTS failed to make a final determination on the protest, the protestor shall file a complaint with FTA no later than five (5) Federal working days after the protestor knew or should have known of CARTS's failure to render a final determination in the protest.

#### **SUBMISSION OF PROTEST TO FTA**

Protests submitted to FTA, with a concurrent copy to CARTS, should be submitted to:

**FTA Region 4**  
230 Peachtree, NW  
Atlanta, GA 30303

The protest filed with FTA shall:

- a) Include the name and address of the protestor;
- b) Identify the CARTS project number and the number of the contract solicitation;
- c) Contain a statement of the grounds for protest and any supporting documentation, that details the alleged failure to follow CARTS's protest procedures, or the alleged failure to have procedures, and be fully supported to the extent possible; and,
- d) Include a copy of the local protest filed with CARTS and a copy of the CARTS decision, if any.

#### **STATEMENT OF WORK**

##### **OBJECTIVE:**

**Identify system design modifications to best facilitate the transportation needs of the New Bern Metropolitan area.**

Rationale for system design modifications may include, but are not limited to:

- Constraints of the existing modes of service provided by CARTS (i.e., hours of operations, days of service, service mode, efficacy of routes, etc.)
- Barriers in providing services (i.e., fiscal, facilities, fleet, staffing, accessibility, etc.)
- Unidentified unmet transportation needs (i.e., work, educational, medical, quality of life, etc.)
- Demographic changes (i.e., population, employment, etc.)
- Organizational structure, oversight and local support (i.e., limited local governmental resources, etc.)

##### **WORK PLAN/TASKS:**

**Perform a Comprehensive Needs Analysis**

- **Analyze existing data and information for effectiveness, efficiency and capacity:**

Perform a summary review of the agency to include *performance* (agency staffing, customer service, etc.), *service delivery* (practices, operating performance, etc.), and *asset management* (fleet, facilities, etc.).

- **Examine existing fiscal data and asset information for sustainability and capacity:**

Perform a summary review of current operating expenditures, revenues and assets to evaluate capacity to support system changes, growth or expansion.

- **Review other relevant existing data and information for coordination:**

Perform a summary review of other documents and data, to include the Locally Coordinated Public Transportation and Human Services Transportation Plan, existing trip data, and relevant demographics of the urbanized area.

#### **Evaluate governance and oversight capacity:**

Perform an analysis of the existing governance and oversight systems and structures to evaluate capacity to support system changes, growth or expansion.

#### **Perform Fact Gathering Tasks**

- Perform passenger surveys to identify gaps in existing service and unmet needs.
- Perform a direct mail survey, sampling 20% of the urbanized area, for input from riders and non-riders to identify gaps in existing service and unmet needs.
- Perform a passenger trip analysis to identify trip generators, originations and destinations, and trip purpose.
- Schedule and facilitate two (2) meetings to involve the public (one held during daytime hours, one held in the evening hours) to identify gaps in existing service and unmet needs.
- Schedule and facilitate one (1) stakeholder meeting to identify gaps in existing service and unmet needs.

#### **Prepare Written Report**

Develop two alternatives (not including status quo) for system design changes, including projections, strategies and solutions, with justification (including but not limited to: opportunities, advantages, disadvantages, barriers to and/or financial impacts of providing a seamless regional rural and urban transit system) for any recommended changes, to guide CARTS and NBAMPO through a five (5) year plan of incremental system growth. In order to remedy the identified gaps in service and system capacity, each alternative must address the following:

- Outline needed changes in mode of delivery of service (including recommended route designs for fixed route services and management of para-transit services) to address community transportation needs.

- Outline needed changes in services offered (such as increased service hours and/or days, etc.), including justification for needed service changes, providing a projected estimated cost for proposed increased services, and correlate the needed service changes in conjunction with incremental changes outlined within the proposed alternatives.
- Outline needed changes in asset management (modification, procurements, etc.), including justification for needed asset changes, providing a projected estimated cost for proposed assets, and correlate the proposed asset changes in conjunction with incremental changes outlined within the proposed alternatives.
- Outline needed changes in staffing (positions and duties), including justification for needed staffing changes, providing a projected estimated cost for proposed staffing, and correlate the proposed staffing changes in conjunction with incremental changes outlined within the proposed alternatives.
- Outline any proposed organizational structure changes, with detailed explanation to summarize any recommended changes, including options for governance changes and any legislative actions needed to facilitate the coordination and consolidation of services at the regional level.
- Outline projections for needed local funding and identify options for local support to enable CARTS to navigate through the proposed changes.
- Maintain consideration for local coordination efforts and impacts to local stakeholders.
- Ensure compliance with local, state and federal regulations.
- Final project, including all required reports and all final presentations, must be completed no later than May 30, 2015.

## **DELIVERABLES**

### **Reports and Documentation**

1. Two (2) summary status reports, including any and all data, tables, analyses, spreadsheets, maps, graphics, etc., to be provided during milestone presentations to Craven County Management and others (such as the CARTS Director and staff, NBAMPO Director, and Transit Advisory Board), as deemed necessary; one (1) at the midway point during the needs analysis (upon completion of analyses and review of existing data) and one (1) at the conclusion of the needs analysis (upon completion of fact gathering activities).
2. One (1) final report [one (1) electronic copy and twenty (20) printed/bound copies], including any and all data, tables, analyses, spreadsheets, maps, graphics, etc., along with any interim reports, briefings, etc., utilized in the preparation of the final report to be included in digital format, to be presented during the final presentation made to Craven County Commissioners during a public meeting.

Final report must include a detailed Project Schedule outlining a detailed Implementation Timeline for each alternative (including all correlating elements within the Work Plan).

### **Project Presentations**

Prepare five (5) presentations on the progress of the project:

1. A total of three (3) milestone presentations will be made to the Craven County Management and others (such as the CARTS Director and staff, NBAMPO Director, and Transit Advisory Board), as deemed necessary.
  - One (1) presentation\* is to be made midway (as instructed in the Work Plan/Tasks 'Deliverables' section of this RFP);
  - One (1) presentation\* is to be made after completion of the needs analysis (as instructed in the Work Plan/Tasks 'Deliverables' section of this RFP).
  - One (1) presentation\* of the completed project will be made no later than **May 8, 2015**, prior the final presentations.

\*These presentations may be facilitated through the use of an internet/telephone conferencing platform, provided relevant reports and other visuals are made available to attendees.

2. Two (2) final presentations will be made in person; one (1) to the Craven County Commissioners during a public meeting on **May 18, 2015**, (in which all relevant boards, committees, stakeholders, etc., in addition to the general public, are all offered accessibility, ample opportunity, and adequate advance notice to be present during the presentation), and one (1) to the Transportation Advisory Committee (TAC) at NBAMPO on **May 28, 2015**.

### **PROPOSAL REQUIREMENTS**

Proposals shall conform to the following general format:

#### **COMPANY BACKGROUND**

This section should describe the qualifications of the firm. At a minimum, this section should contain:

1. The legal name of the firm, and if 'doing business as' (DBA), the name of the parent or controlling firm
2. Location of home or headquarters office, including parent or controlling firm location, if applicable
3. Location of office to service this account
4. Description of the firm's history
5. Organizational chart of the firm
6. Length of time in public transportation related business
7. Listing of subcontractors or other firms proposed to be utilized in the performance of this work
8. Evidence of financial stability and solvency satisfactory to CARTS
9. A statement regarding why the company would be most qualified to perform this project

#### **EXPERIENCE**

This section should describe the experience of the firm and key personnel, and must clearly demonstrate that the proposer(s) understands the requirements and intent of this RFP.

At a minimum, this section should contain:

1. Job descriptions of key individuals assigned to the project. Job descriptions should be specific to the project.
2. Experience and qualifications of the firm, direct experience on projects of similar size, scope and complexity completed in the past five years, and resumes for each Project participant.
3. Experience and qualifications of all other firms proposed to be utilized in the performance of the work, if joint venture partners are proposed or if subcontractors are to be used for substantial portions of the work, and resumes for each Project participant.
4. Experience and qualifications of the project manager including the direct qualifications and experience of the project manager as he or she relates to this project and include at least two references with name, address, telephone number and contact person.
5. Experience and qualifications of the individuals directly involved in the study, their responsibilities in the project, involvement in similar studies and the time available for this project.

**REFERENCES**

This section should include business references of at least four (4) clients for which the consultant has performed similar work. The following information shall be provided for each reference:

*(Note: The proposer authorizes CARTS to contact any person listed on this form for the purpose of investigating responsibility. Failure to provide complete information can be grounds for proposal rejection.)*

<b>PROPOSER INFORMATION:</b>	
a. Business Name:	
b. Owner Name:	
c. Business Address:	
d. Business Phone:	
Daytime:	Evening/Weekend:
Web address:	Email address:
e. Number of Employees:	Annual Sales \$:
f. Date Business Established:	
<b>FOR THIS PROJECT ONLY:</b>	
a. Name of Project Manager:	
b. Business Phone:	
Daytime:	Evening/Weekend:
c. Business Address:	

<b>d. Email Address:</b>
<b>COMPARABLE PROJECTS IN SIZE AND SCOPE:</b>
<b>a. Name of Project:</b>
Project Location and Project Contact Person:
Dates:
<b>b. Name of Project:</b>
Project Location and Project Contact Person:
Dates:
<b>c. Name of Project:</b>
Project Location and Project Contact Person:
Dates:
<b>d. Name of Project:</b>
Project Location and Project Contact Person:
Dates:

<b>REFERENCES:</b>
<b>a. Firm Name:</b>
Address:
Name of Reference:
Position Title:
Telephone and Email:
<b>b. Firm Name:</b>
Address:
Name of Reference:
Position Title:
Telephone and Email:
<b>c. Firm Name:</b>
Address:
Name of Reference:
Position Title:
Telephone and Email:

## **PROPOSAL ELEMENTS**

All work described in the Scope of Work, Statement of Work, Proposal Requirements, required signature pages, and any required forms and certifications. Failure to comply with all requirements may result in the proposal being rejected as non-responsive.

## **COST PROPOSAL**

Each proposal shall include a detailed cost budget for the project, including, but not limited to the following:

- Estimated hours, role and labor rate for each participant in the project
- Estimated contracted or sub-contracted service expenses (including purpose of contracted or sub-contracted services)
- Estimated travel expenses for each participant (identified per trip and trip purpose)
- Estimated material expenses (including printing, postage, etc.)

## **REQUIRED CERTIFICATIONS**

Each proposal shall include the following certifications

- Completed Certificate Regarding Debarment and Suspension (see **ATTACHMENT 1: Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions**)
- Completed W9 Form (see **ATTACHMENT 3: W9 - Request for Taxpayer Identification Number and Certification**)

All proposers are also required to provide a **Certificates of Insurance**. A copy of certificate(s) of insurance shall be submitted with this proposal or prior to the commencement of the agreement providing the following assurances:

- Worker's Compensation Insurance required by North Carolina law and any other state in which work will be performed, or letter of exemptions (submit with proposal).

Compliance with the foregoing requirements as to the carrying of insurance shall not relieve the proposer from his liability under any other portion of the contract.

## **GENERAL INFORMATION**

1. Proposers must employ sound technical analysis and industry best practices, as well as coordinate and seek concurrence in each step of the project with CARTS staff and the NBAMPO.
2. Proposers are cautioned to verify their proposals before submission as request for amendments to proposals submitted, if received after such time specified for submission, will not be considered.
3. The successful proposal shall maintain all books, documents, accounting records and other evidence pertaining to the goods and services provided under this contract and make such materials available at its office and all responsible times during the contract period, and for five

years (and as required by federal law and/or regulations) from the date of the completed project.

4. This RFP does not commit Craven County, CARTS or NBAMPO to any costs incurred in the preparation of a proposal or the negotiations for the contract with any proposer. Further Craven County does not commit to a contract with any proposer and Craven County may cancel this solicitation at any time.
5. Proposals submitted for funding consideration must be consistent with and, if funded, conducted according to all applicable federal and state regulations, and CARTS policies and procedures.
6. The award of a contract resulting from the RFP is subject to a financial assistance contract between CARTS, NBAMPO, NCDOT and the FTA. The successful proposal will be required to comply with all terms and conditions prescribed for third party contracts in a grant agreement with FTA. Craven County reserves the right to reject any and all proposals.

### **PROJECT AWARD**

CARTS will make a selection of the most qualified firm based on how well the firm's submittal conforms to the solicitation and represents the best value to CARTS. If CARTS does not choose to make a selection based on initial submittals, CARTS may conduct discussions with those firms it determines to be within the competitive range, and to allow all such firms to submit submittal revisions

1. The evaluation Committee shall be composed of County Manager's designee, CARTS Director and staff, NBAMPO Director, and others requested as by the CARTS Director.
2. Preliminary review will include consideration of responsiveness to the RFP and shall be based solely on the written responses. Responsive proposers considered to be within the competitive range by the Evaluation Committee, will be notified of a time and place to make further presentation, if deemed necessary. Any presentation or interview by the proposers shall be at the sole expense of the proposers. Negotiations will take place after which the proposers will present their Final Proposal Revision (i.e., best and final offer).
3. In establishing scores for Final Proposal Revisions, CARTS may take into consideration information provided during interviews with proposers. CARTS reserves the right to award the contract based on the initial proposal without further discussions.
4. Negotiations will be in conformance with applicable federal, state and local laws, regulations and procedures
5. Contractor agrees to acknowledge that CARTS is an FTA grant recipient and the Contractor agrees to adhere to any and all terms and conditions of such a grant agreement as they relate to obligations the proposers would assume under this contract.
6. A proposer shall supply and/or execute such documents as CARTS may reasonably need to affect the purposes of this contract or to comply with federal applicable regulations.
7. If the successful proposer refuses or fails to execute the contract, CARTS may award the contract to another proposer whose proposals comply with all the requirements of the RFP and any addenda thereto. CARTS reserves the right to cancel an award immediately if new state or federal regulations or policy make it necessary to change the service purpose or content

substantially or to prohibit any such goods and services. In the event of such change, CARTS will compensate for completed work at the time of change.

8. The objective of the negotiations will be to reach agreement on all provisions of the proposed contract, including contract price. CARTS also reserves the right to request documentation supporting the proposed contract price, including overhead rates for the firm and subcontractors.

### **WRITTEN CONTRACT**

Any contract resulting from this Request for Proposal shall be evidenced by a written document fully executed with funding committed, prior to any work commencing. No contract activity may begin prior to the execution of a contractual agreement between the successful proposer and Craven County.

The contract shall contain, at a minimum, the following items;

1. Standard clauses and FTA assurances (See APPENDIX A)
2. Scope of work and nature of services to be provided
3. Timeline of all work completed and completion date
4. Responsibilities of both parties
5. Total amount of payment to be paid by Craven County
6. Method of billing and payment
7. A clause for inclusion by reference of the submitted proposal into contract

### **CONTRACT OBLIGATIONS & REQUIREMENTS**

The contents of the RFP and the commitments set forth in the selected proposals shall be considered contractual obligations, if a contract ensues. Failure to accept these obligations may result in cancellation of the award. The contract will bind the proposer to furnish and deliver at the proposed price, and in accordance with conditions of said accepted proposal and specifications, for no more than **one hundred fifty (150) calendar days** after the opening of the proposal, with products and presentations completed by May **31, 2015**.

### **SINGLE PROPOSAL RESPONSE**

1. If only one proposal is received in response to the Request for Proposal, a detailed cost proposal may be requested of the single proposer. A cost/price analysis and evaluation and/or audit may be performed of the cost proposal in order to determine if the price is fair and reasonable.

### **CHANGES TO RFP**

If a respondent discovers any mistakes or omissions in the RFP, please notify Rosann Christian of CARTS by e-mail. Clarifications and corrections will be sent to all registered, interested respondents.

**PROPOSAL EVALUATION PROCEDURES**

An Evaluation Team will review and analyze each proposal. Proposals will be evaluated and scored according to the following criteria: Max points (X) Quality Level = Score. The following criteria will be used in the evaluation of the proposals:

**EVALUATION CRITERIA:**

<b>Evaluation Factors</b>	<b>Max Points</b>	<b>Quality Level</b>	<b>Score</b>
<b>Understanding of Project Parameters</b> Understanding work to be performed (including knowledge of coordinated transportation, system design, metropolitan planning, rural and small urban transit agency participation and input) and the ability to perform within the expected time frame.	20		
<b>Experience</b> Experience of respondent including qualifications (education, experience and training), experience with similar planning efforts and meeting facilitation, etc.)	20		
<b>Product – Work plan</b> Proposer will provide a Transit Development Plan, compliant with all the specifications outlined in the RFP (complete with two alternatives), that will provide guidance for incremental growth with reasonable milestones and timelines, and solutions for unmet transportation needs within the urbanized service area.	30		
<b>Presentation &amp; Proposal</b> Proposal is organized and responsive to all areas contained in the RFP; Proposer exhibits confidence and knowledge regarding the proposed products and services.	15		
<b>Price/Cost</b> Proposed price appears to be a reasonable, cost effective and detailed cost estimate. Total price represents value.	15		
<b>TOTAL POSSIBLE</b>			<b>100</b>

The Quality Level will be based on the following scoring method:

<b>Quality Level</b>	<b>Points</b>	<b>Description</b>
Excellent	100%	Meets all requirements; reflects significant enhancements or strengths as compared to minimum levels of acceptability; no offsetting weaknesses
Very Good	85%	Meets all requirements; reflects some enhancements or strengths; few if any offsetting weaknesses.
Good	75%	Meets all requirements; strengths and weaknesses, if any, tend to offset one another equally.
Fair	60%	May contain significant weaknesses only partially offset by less pronounced strengths; should meet all minimum requirements, but some areas of doubt may exist.
Poor	35%	Serious doubt exists about ability to meet minimum needs but may be sufficient; significant weaknesses without offsetting strengths.
Deficient	0%	Will not meet minimum needs.

## **FTA DEFINITIONS**

### **DEFINITIONS**

**Third Party Procurement Helpline** - This Helpline at the FTA Web site provides a resource through which you may submit your third party contracting questions to FTA. To do so, access the FTA Web site: [http://www.fta.dot.gov/funding/thirdpartyprocurement/grants\\_financing\\_6040.html](http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6040.html).

To assist any eligible firm interested in responding to this RFP, the following definitions are provided:

**Audits** FTA may perform, contract for, or instruct the recipient to obtain specific audits of particular third party contracts to determine whether payments were made in conformance with the terms of the contract, or for other purposes.

**Best Value** describes a competitive, negotiated procurement process in which the recipient reserves the right to select the most advantageous offer by evaluating and comparing factors in addition to cost or price such that a recipient may acquire technical superiority even if it must pay a premium price. A “premium” is the difference between the price of the lowest priced proposal and the one that the recipient believes offers the best value. The term “best value” also means the expected outcome of an acquisition that, in the recipient’s estimation, provides the greatest overall benefit in response to its material requirements. To achieve best value in the context of acquisitions for public transportation purposes, the evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important to the recipient. While FTA does not mandate any specific evaluation factors, the recipient must disclose those factors in its solicitation. Evaluation factors may include, but are not limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. This definition is intended neither to limit nor to dictate qualitative measures a recipient may employ, except that those qualitative measures must support the purposes of the Federal public transportation program.

**Change Order** means an order authorized by the recipient directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor. e. Common Grant Rules, for purposes of this circular, means: (1) DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 49 CFR Part 18, which apply to Federal grants and cooperative agreements with governmental recipients of Federal assistance including Indian tribal governments, and (2) DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” 49 CFR Part 19, which apply to Federal grants and cooperative agreements with non-governmental recipients of Federal assistance.

**Contract** means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the recipient to expenditure and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, *et seq.*

**Cooperative Agreement** means an instrument by which FTA awards Federal assistance to a specific recipient to support a particular project in which FTA takes an active role or retains substantial control, as described in 31 U.S.C. § 6305.

**FTA'S ROLE** Consistent with the Common Grant Rules' directions to Federal agencies not to substitute their judgment for that of their recipients, FTA does not substitute its judgment for that of its recipients by making third party contract decisions for its recipients. FTA's role in third party procurements complies with the principles of Executive Order No. 13132, "Federalism," August 4, 1999, 5 U.S.C. § 601 note. The Executive Order directs Federal agencies to refrain from substituting their judgment for that of their State recipients unless the matter is primarily a Federal concern and, to the maximum extent feasible, to permit the States to establish their own standards rather than impose national standards.

Accordingly, FTA will perform procurement system reviews as part of its on-going project oversight responsibilities and will perform procurement system reviews for Urbanized Area Formula Program recipients that self-certify their procurement systems. To assist the recipient in improving its procurement practices, FTA may recommend certain "best practices." In those situations, FTA will identify its recommendations as "advisory." For more information, see FTA's "Procurement Reviews," guidance at the FTA Web site:

[http://www.fta.dot.gov/funding/oversight/grants\\_financing\\_100.html](http://www.fta.dot.gov/funding/oversight/grants_financing_100.html). FTA C 4220.1F Page 13  
11/01/2008 Rev. 1, 04/14/2009 Rev. 2, 07/01/2010 Rev. 3, 02/15/2011 Rev. 4, 03/18/2013

**Force Account** means the recipient's own labor forces and equipment, as discussed in this circular in the context of performing project work.

**FTA** means the Federal Transit Administration.

**Full and Open Competition** means that all responsible sources are permitted to compete.

**Governmental Recipient** means a recipient that must comply with the Common Grant Rule at 49 CFR Part 18. This includes a State or local government or a federally recognized Indian tribal government, as defined in this section of this Chapter.

**Grant** means the instrument by which FTA awards Federal assistance to a specific recipient to support a particular project in which FTA does not take an active role or retain substantial control, as described in 31 U.S.C. § 6304.

**Local Government** means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government. This term does not include a local public institution of higher education.

**Master Agreement** From the inception of its electronic award system in Fiscal Year 1995, FTA has incorporated by reference and made part of each FTA grant and FTA cooperative agreement a Master Agreement that FTA issues annually. Along with the standard terms and conditions governing an FTA

assisted project, the most recent FTA Master Agreement, typically issued at the beginning of each Federal fiscal year, contains references to substantially all FTA and other cross-cutting Federal laws and regulations that may apply to a federally assisted project. Several of these Federal requirements must be included in third party contracts to the lowest tier necessary, and others will have a direct or indirect effect on the recipient's third party contracts, and therefore should be included in those third party contracts.

**Modification** means any written change to the terms of a contract organization such as, but not limited to, a community action agency, research institute, educational association, and health center. FTA reserves the right to apply the requirements of 49 CFR Part 19 to a commercial organization, a for-profit organization, a foreign or international organization (such as an agency of the United Nations), and an individual. The term does not include a government-owned contractor-operated facility or research center providing continued support for mission-oriented, large-scale programs that is government-owned or controlled, or is designated as a federally funded research and development center.

**Public Transportation** means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, sightseeing, or intercity bus transportation, or intercity passenger rail transportation provided by the entity described in 49 U.S.C. Chapter 243, AMTRAK, (or a successor to such entity).

**Recipient** means the public or private entity to which FTA awards Federal assistance through a grant, cooperative agreement, or other agreement. The recipient is the entire legal entity even if only a particular component of the entity is designated in the document through which FTA has awarded the Federal assistance. The term "recipient" includes "grantee," which is a "recipient" of Federal grant assistance. The term "recipient" also includes each member of a consortium, joint venture, team, or partnership awarded FTA assistance through a grant, cooperative agreement, or other agreement.

**State** means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands, or any agency or instrumentality of a State exclusive of local governments. "State" does not include any public and Indian housing agency under the United States Housing Act.

**Third Party Contract** refers to a recipient's contract with a vendor or contractor, including procurement by purchase order or purchase by credit card, which is financed with Federal assistance awarded by FTA.

**Training and Technical Assistance** FTA provides procurement training and technical assistance at both regional and national levels by offering various instructional courses, by conducting regional technical assistance conferences, and by providing assistance by a contractor as needed.

## APPENDIX A

### FEDERAL TRANSIT ADMINISTRATION (FTA) MANDATED CLAUSES FOR ALL CONTRACTS

The following clauses shall be incorporated into any contract that results from the RFP. These clauses are required by federal, state or local regulations, and are not subject to negotiation.

#### FEDERAL TRANSIT ADMINISTRATION

#### BEST PRACTICES PROCUREMENT MANUAL

#### TABLE OF CONTENTS (Appendix A - Governing Documents)

##### A.1 - Federally Required and Other Model Contract Clauses

- ~~1. Fly America Requirements (Not applicable)~~
- ~~2. Buy America Requirements~~
- ~~3. Charter Bus and School Bus Requirements (Not applicable)~~
- ~~4. Cargo Preference Requirements (Not applicable)~~
- ~~5. Seismic Safety Requirements (Not applicable)~~
6. Energy Conservation Requirements
- ~~7. Clean Water Requirements~~
- ~~8. Bus Testing (Not applicable)~~
- ~~9. Pre-Award and Post-Delivery Audit Requirements (Not applicable)~~
- ~~10. Lobbying~~
11. Access to Records and Reports
12. Federal Changes
- ~~13. Bonding Requirements (Not applicable)~~
- ~~14. Clean Air~~
- ~~15. Recycled Products~~
- ~~16. Davis Bacon and Copeland Anti Kickback Acts (Not applicable)~~
17. Contract Work Hours and Safety Standards Act
18. [Reserved]
19. No Government Obligation to Third Parties
20. Program Fraud and False or Fraudulent Statements and Related Acts
21. Termination
22. Government-wide Debarment and Suspension (Non-procurement)
23. Privacy Act
24. Civil Rights Requirements
- ~~25. Breaches and Dispute Resolution~~
- ~~26. Patent and Rights in Data~~
- ~~27. Transit Employee Protective Agreements~~
28. Disadvantaged Business Enterprises (DBE)
29. [Reserved]
30. Incorporation of Federal Transit Administration (FTA) Terms
- ~~31. Drug and Alcohol Testing (Not applicable)~~

## **6. ENERGY CONSERVATION REQUIREMENTS**

**42 U.S.C. 6321 et seq.  
49 CFR Part 18**

### **Applicability to Contracts**

The Energy Conservation requirements are applicable to all contracts.

### **Flow Down**

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

### **Model Clause/Language**

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA:

**Energy Conservation** - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## **11. ACCESS TO RECORDS AND REPORTS**

**49 U.S.C. 5325  
18 CFR 18.36 (i)  
49 CFR 633.17**

### **Applicability to Contracts**

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

### **Flow Down**

FTA does not require the inclusion of these requirements in subcontracts.

### **Model Clause/Language**

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

**Access to Records** - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)1, which is receiving federal financial assistance through the programs described at

49 U.S.C. § 5307, § 5309 or § 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. § 5307, 5309 or § 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. § 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. § 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

**Requirements for Access to Records and Reports by Types of Contract**

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
--------------------------	------------------------------	---------	--------------	---------------------------	------------------------------	-----------------------

<u>I State Grantees</u>  a. Contracts below SAT (\$100,000)  b. Contracts above \$100,000/Capital Projects		None  None unless <sup>1</sup> non-competitive award	Those imposed on state pass thru to Contract or	None  Yes, if non-competitive award or if funded thru <sup>2</sup> 5307/5309 /5311	None  None unless non-competitive award	None  None unless non-competitive award	None  None unless non-competitive award
<u>II Non State Grantees</u>  a. Contracts below SAT (\$100,000)  b. Contracts above \$100,000/Capital Projects		Yes <sup>3</sup>  Yes <sup>3</sup>	Those imposed on non-state Grantee pass thru to Contract or	Yes  Yes	Yes  Yes	Yes  Yes	Yes  Yes

Sources of Authority:

<sup>1</sup> 49 USC § 5325 (a)

<sup>2</sup> 49 CFR 633.17

<sup>3</sup> 18 CFR 18.36 (i)

**12. FEDERAL CHANGES**

**49 CFR Part 18**

**Applicability to Contracts**

The Federal Changes requirement applies to all contracts.

**Flow Down**

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

**Model Clause/Language**

No specific language is mandated. The following language has been developed by FTA.

**Federal Changes** - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time

to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## **17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

### **Background and Application**

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any “contract in an amount that is not greater than \$100,000.” 40 USC 3701(b)(3) (A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work.” These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act’s requirements are satisfied.

### **Clause Language**

#### Contract Work Hours and Safety Standards

- (1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) **Withholding for unpaid wages and liquidated damages** – **Craven County** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor

or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- (4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

#### **19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

Applicable to all contracts.

##### **Flow Down**

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

##### **Model Clause/Language**

While no specific language is required, FTA has developed the following language.

##### **No Obligation by the Federal Government.**

- (1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- 2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

**31 U.S.C. § 3801 et seq.**

**49 CFR Part 31 18 U.S.C. 1001**

**49 U.S.C. § 5307**

##### **Applicability to Contracts**

These requirements are applicable to all contracts.

##### **Flow Down**

These requirements flow down to contractors and subcontractors who make, present, or submit

covered claims and statements.

**Model Clause/Language**

These requirements have no specified language, so FTA proffers the following language.

**Program Fraud and False or Fraudulent Statements or Related Acts.**

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**21. TERMINATION**

**49 U.S.C. Part 18  
FTA Circular 4220.1E**

**Applicability to Contracts**

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

**Flow Down**

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

**Model Clause/Language**

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

- a. **Termination for Convenience (General Provision) Craven County** may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to **Craven Area Rural Transit System** to be paid the Contractor. If the Contractor has any property in its possession belonging to the **Craven Area Rural Transit System**, the Contractor will account for the same, and dispose of it in the manner the **Craven Area Rural Transit System** directs.
- b. **Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, **Craven County** may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the **Craven County** that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, **Craven County**, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

- c. **Opportunity to Cure (General Provision) Craven County** in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to **Craven County's** satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from **Craven County** setting forth the nature of said breach or default, **Craven County** shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude **Craven County** from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- d. **Waiver of Remedies for any Breach** In the event that **Craven County** elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by **Craven County** shall not limit **Craven County's** remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. **Termination for Convenience (Professional or Transit Service Contracts) Craven County**, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

- f. **Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to

perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the **Craven County** may terminate this contract for default. **Craven County** shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

**g. Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, **Craven County** may terminate this contract for default. **Craven County** shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of **Craven County**, protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and **Craven County** shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of **Craven County**.

**h. Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, **Craven County** may terminate this contract for default. **Craven County** shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated, nor the Contractor charged with damages under this clause, if-

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. The contractor, within [10] days from the beginning of any delay, notifies **Craven County** in writing of the causes of delay. If in the judgment of **Craven County**, the delay is excusable, the time for completing the work shall be extended. The judgment of **Craven County** shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

**i. Termination for Convenience or Default (Architect and Engineering) Craven County** may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. **Craven County** shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

**j. Termination for Convenience or Default (Cost-Type Contracts) Craven County** may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of **Craven County** or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from **Craven County**, or property supplied to the Contractor by the **Craven Area Rural Transit System**. If the termination is for default, **Craven County** may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to **Craven County** and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of **Craven County**, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, **Craven County** determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, **Craven County**, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for

convenience.

## **22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

**(See ATTACHMENT 1: Certification Regarding Debarment)**

### **Background and Applicability**

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. § 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

### **Clause Language**

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

### **Suspension and Debarment**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by **Craven County**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to by **Craven County**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the

period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **23. PRIVACY ACT**

#### **5 U.S.C. 552**

##### **Applicability to Contracts**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

##### **Flow Down**

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

##### **Model Clause/Language**

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

**Contracts Involving Federal Privacy Act Requirements** - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

### **24. CIVIL RIGHTS REQUIREMENTS**

**29 U.S.C. § 623, 42 U.S.C. § 2000**

**42 U.S.C. § 6102, 42 U.S.C. § 12112**

**42 U.S.C. § 12132, 49 U.S.C. § 5332**

**29 CFR Part 1630, 41 CFR Parts 60 et seq.**

##### **Applicability to Contracts**

The Civil Rights Requirements apply to all contracts.

##### **Flow Down**

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

### **Model Clause/Language**

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

**Civil Rights** - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

### **49 CFR Part 26**

#### **Background and Applicability**

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage), applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

#### **Clause Language**

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

#### **Disadvantaged Business Enterprises**

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE has not been established for this procurement.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **Craven County** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from **Craven County**.
- e. The contractor must promptly notify **Craven County**, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith

efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of **Craven County**.

### **30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

#### **FTA Circular 4220.1E**

#### **Applicability to Contracts**

The incorporation of FTA terms applies to all contracts.

#### **Flow Down**

The incorporation of FTA terms has unlimited flow down.

#### **Model Clause/Language**

FTA has developed the following incorporation of terms language:

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any **Craven County** requests which would cause **Craven County** to be in violation of the FTA terms and conditions.

## APPENDIX B

### Federal Highway and NCDOT (NBAMPO) Mandated Clauses

During the Performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

- (1) **Compliance with Regulations:** The Contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter, “DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, age, sex, color, disability, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the contractor’s obligations under this contract and the Regulations relative to nondiscrimination on grounds of race, color or national origin.
- (4) **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other source information, and its facilities as may be determined by the North Carolina Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the North Carolina Department of Transportation, or the Federal Highway Administration as appropriate, and shall set for the what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the Contractor’s noncompliance with nondiscrimination provisions of this contract, the North Carolina Department of Transportation shall impose contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a) Withholding of payments to the Contractor under the contract until the contractor complies, and/or
  - b) Cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The Contractor shall include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless

exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurements as the North Carolina Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the North Carolina Department of Transportation to enter into such litigation to protect the interests of North Carolina Department of Transportation, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**ATTACHMENT 1**

**Certification Regarding  
Debarment, Suspension, and Other Responsibility Matters  
Primary Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211).

**(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON FOLLOWING PAGE)**

- (1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
- (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

Business Name: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Authorized Representative)

## INSTRUCTIONS FOR COMPLETION OF CERTIFICATION FORM

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the ineligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**ATTACHMENT 2**

**PROPOSER CHECKLIST**

Responses to the RFP must correlate with the alpha numeric characters and order of items in the Proposer Checklist. Each Response to this RFP must contain a table of contents. Each item in the RFP should be addressed in the proposal.

A. TABLE OF CONTENTS WITH PAGE NUMBERS	
B. Transmittal Letter	
C. Executive Summary (proposer must include a brief executive summary to summarize the highlights of the proposal.)	
D. Complete Proposer Checklist (proposer must include this completed checklist.)	
E. Proposer Information	
F. Project Information	
G. Comparable Projects in Size & Scope	
H. References	
I. Company Detail & Questions	
J. Certificates of Insurance	
K. BWC Certificate	
L. Certification Regarding Suspension & Debarment (See Attachment 1)	
M. Acknowledgement of Addenda: Should addenda relative to this RFP be released by CARTS, proposer must include a signed acknowledgment of receipt for each addendum	
N. Executed Contract Signature Page	
O. Completed W9 Form (See Attachment 3)	

Form W-9 – Request for Taxpayer Identification and Certification

<p>Form <b>W-9</b> (Rev. August 2013) Department of the Treasury Internal Revenue Service</p>	<p><b>Request for Taxpayer Identification Number and Certification</b></p>	<p><b>Give Form to the requester. Do not send to the IRS.</b></p>
<p>Print or type See Specific Instructions on page 2.</p>	Name (as shown on your income tax return)	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Other (see instructions) ▶ _____	
	Exemptions (see instructions): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code		
List account number(s) here (optional)		
<p><b>Part I Taxpayer Identification Number (TIN)</b></p> Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3.		
		Social security number [ ] [ ] [ ] - [ ] [ ] [ ] - [ ] [ ] [ ] [ ]
<p><b>Note.</b> If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.</p>		Employer identification number [ ] [ ] [ ] [ ] - [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]
<p><b>Part II Certification</b></p> Under penalties of perjury, I certify that:		
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3. I am a U.S. citizen or other U.S. person (defined below), and 4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.		
<p><b>Certification instructions.</b> You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.</p>		
<p><b>Sign Here</b></p>	Signature of U.S. person ▶	Date ▶
<p><b>General Instructions</b></p> Section references are to the Internal Revenue Code unless otherwise noted.		
<p><b>Future developments.</b> The IRS has created a page on IRS.gov for information about Form W-9, at <a href="http://www.irs.gov/w9">www.irs.gov/w9</a>. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.</p>		
<p><b>Purpose of Form</b></p> A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.		
Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:		
1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued). 2. Certify that you are not subject to backup withholding, or 3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the		
withholding tax on foreign partners' share of effectively connected income, and 4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.		
<p><b>Note.</b> If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.</p>		
<p><b>Definition of a U.S. person.</b> For federal tax purposes, you are considered a U.S. person if you are:</p> <ul style="list-style-type: none"> <li>• An individual who is a U.S. citizen or U.S. resident alien,</li> <li>• A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,</li> <li>• An estate (other than a foreign estate), or</li> <li>• A domestic trust (as defined in Regulations section 301.7701-7).</li> </ul>		
<p><b>Special rules for partnerships.</b> Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.</p>		
Cat. No. 10231X		Form <b>W-9</b> (Rev. 8-2013)