

REQUEST FOR QUALIFICATIONS
For
Architecture and Engineering
And Construction Oversight Services
Milwaukee Intermodal Station Rehabilitation

Issue Date: **5/2/2018**
Title: A&E/Oversight - MIS Rehabilitation 2018

Issuing and Using Agency: Wisconsin Department of Transportation
4822 Madison Yards Way
Madison, WI 53705

Submissions in response to the Request for Qualifications must be received no later than: 2:00 p.m. CST on 6/7/2018.
There will not be a public opening for this RFQ.

All questions and inquiries for information MUST be submitted in writing to: Danette Tessmann, Procurement Manager, danette.tessmann@dot.wi.gov by 1:00 p.m. CST, 5/22/2018. Phone calls will not be accepted. Responses to questions will be posted on 5/29/2018.

WisDOT is the sole point of contact during the selection process. The person responsible for managing the procurement process is Danette Tessmann, Procurement Manager, danette.tessmann@dot.wi.gov. Contact with anyone else involved with this process without the prior authorization of WisDOT Transit may result in the disqualification of your proposal.

In Compliance With This Request for Qualifications And To All Conditions Imposed Therein and Hereby Incorporated By Reference, The Undersigned Offers And Agrees To Furnish The Goods/Services Described Herein In Accordance With The Attached Signed Proposal Or As Mutually Agreed Upon By Subsequent Negotiation.

Name and Address of Firm:

Date: _____

By: _____
(Signature in Ink)

_____ Zip Code: _____

Name: _____
(Please Print)

Telephone: () _____

Title: _____

Fax Number: () _____

FEI/FIN Number: _____

Email Address: _____

TABLE OF CONTENTS

<u>Section</u>	<u>Subject</u>	<u>Page</u>
1.	GENERAL INFORMATION.....	4
1.1.	Proposal for Services Synopsis.....	4
1.2.	Definitions.....	4
1.3.	Special Notification Requirements for States.....	4
1.4.	Scope of Work	5
1.4.1.	Project Location.....	5
1.4.2.	Project Description.....	5
1.4.3.	Project Background.....	7
1.4.4.	Existing Conditions.....	7
1.5.	Site Visit of Project Location.....	11
1.6.	Reasonable Accommodations.....	11
1.7.	Procurement Schedule.....	12
1.8.	Contract Term.....	12
1.9.	Addenda.....	12
1.10.	Postponement or Cancellation of Request for Qualifications.....	12
2.	SERVICE CONTRACT REQUIREMENTS.....	12
3.	PROPOSER SOLUTIONS.....	15
4.	PROPOSAL FORMAT AND SUBMISSION.....	16
4.1.	General.....	16
4.2.	Format.....	17
4.3.	Submission.....	18
4.4.	Questions and Requests for Clarification.....	19
4.5.	Interpretation of RFQ and Contract Documents.....	19
4.6.	Modification or Withdrawal of Proposals Prior to Submittal Date and Late Proposals.	19
4.7.	Errors and Administrative Corrections.....	19
5.	PROPOSAL EVALUATION AND AWARD PROCESS.....	20
5.1.	General.....	20
5.2.	Eligibility for Award.....	20
5.3.	Evaluation Committee.....	20
5.4.	Evaluation Criteria.....	20
5.5.	Negotiations and Award Process.....	22
5.6.	Notification of Intent to Award.....	22
5.7.	Protest Procedures.....	22
6.	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF PROPOSER.....	22
6.1.	Contract.....	22
6.2.	Conflicts of Interest and Non-Competitive Practices.....	22
6.3.	Legal Requirements.....	23
6.4.	Registration and Licenses.....	23
6.5.	Force Majeure.....	23
6.6.	Hold Harmless/Indemnification.....	23

6.7.	Payment Terms.....	24
6.8.	Reference to Contract.....	24
6.9.	Shipping.....	24
6.10.	Assignment, Transfer and Subcontracting.....	24
6.11.	Conformance with Contract.....	24
6.12.	Termination of Contract.....	24
6.13.	Ownership of Documents.....	24
6.14.	Insurance Requirements.....	24
6.15.	Warranty.....	25

1. GENERAL INFORMATION

1.1. Proposal for Services Synopsis

The Wisconsin Department of Transportation (WisDOT), through the Transit section of the Bureau of Transit, Local Roads, Railroads and Harbors, is seeking consultant services for the design through construction oversight phases for select mechanical component rehabilitation projects at the Milwaukee Intermodal Station (MIS) in Milwaukee, WI. The MIS is a 61,500 square-foot facility with three floors above ground and one below ground level. The MIS is open 24 hours a day, every day of the year. WisDOT intends to use the results of this RFQ to evaluate and select a firm in order to negotiate a contract for the listed Architectural/Engineering and Oversight Services.

1.2. Definitions

The following is a list of definitions and acronyms used throughout the request for qualifications document.

ADA: American's with Disabilities Act of 1990.

Agency: Wisconsin Department of Transportation (WisDOT)

Consultant/Contractor: proposer awarded the contract

DBE: Disadvantaged Business Enterprise certified by the Wisconsin Unified Certification Program

Department: the Wisconsin Department of Transportation

DOT/WISDOT: the Wisconsin Department of Transportation

FTA: Federal Transit Administration

MIP: Milwaukee Intermodal Partners LLC, a Delaware limited liability company

MIS: Milwaukee Intermodal Station

Procurement Manager: the individual responsible for managing the procurement process

Proposer: a company or individual submitting a proposal in response to this RFQ

WisDOT Consultant Notices: internet webpage utilized by WisDOT to post notices for Engineering and Consultant procurements. See <http://wisconsindot.gov/Pages/doing-bus/eng-consultants/notices/default.aspx>

Recipient or Purchaser: Wisconsin Department of Transportation

RFQ: Request for Qualifications

Shall: means that a requirement is mandatory

State: The State of Wisconsin

Sub consultant/subcontractor: a firm which the consultant/contractor is utilizing to perform part of the contract

1.3. Special Notification Requirements for States

This procurement is subsidized, in part, with federal transit capital funds. Federal grant monies (approximately \$715,000.00) fund this contract, in whole or in part (Section 5309 – CFDA 20.500). Applicable Federal clauses are set forth in Attachment H of the solicitation. As such, agencies receiving such funds and contractors awarded contracts that use such funds must comply with certain Federal certifications and clause requirements. It is the contractor's responsibility to be aware of the pertinent certifications and contract clauses, as identified by the Issuing Agency for the instant procurement and ensure compliance with such requirements prior to award and throughout the term of any resultant contract.

1.4. Scope of Work

1.4.1. Project Location

Milwaukee Intermodal Station (MIS)
433 West St. Paul Avenue
Milwaukee, Wisconsin



The Milwaukee Intermodal Station (MIS) is a common point for Amtrak passengers, regional and local buses and taxi service. The facility consists of two separate but adjacent buildings; the rail station, commonly called the MIS, and the Concourse, where the train platforms are located. MIS was built in 1964 and a new front atrium was added in 2007. The original Concourse was replaced in June 2016.

WisDOT owns the MIS, the Concourse and the land under the MIS. The Canadian Pacific Railroad (CP Rail) owns the land under the Concourse. Operation of the rail station is via a public-private partnership with the Milwaukee Intermodal Partners (MIP). MIP's responsibilities do not include the Concourse. A DOT facility manager and DOT technician manage maintenance activities within the Concourse. All work on the site will need to be coordinated with key stakeholders, including but not limited to WisDOT, MIP and their contractors, Concourse management contractors, tenants in the MIS facility, Amtrak, Canadian Pacific Railroad, and the U.S. Post Office (our adjacent neighbor). The MIS periodically hosts special events.

There are several tenants in MIS. On the first floor (ground level) tenants include food service vendors, and Amtrak and bus service desks. The second floor is largely unfinished with some small office areas for Amtrak and Greyhound bus employees. The third floor contains WisDOT's 24/7 Traffic Management Center. There are no tenants on the below ground level.

The Concourse is Milwaukee's portal for many guests coming to the city. 110 passenger trains stop at the Concourse weekly, bringing with them about 600,000 visitors each year. 70-100 freight trains pass through the Concourse weekly. The MIS rail station also handles about 340 buses per week. All totaled, the MIS facility handles about 800,000 passenger guests per year. The MIS is open 24 hours a day, every day of the year. **Customer service and visitor safety are critical functions of the Concourse and MIS rail station.**

1.4.2. Project Description

This project delivers design, documentation, and construction oversight of mechanical component improvements for the MIS facility. The property is made available as-is, where-is, with all faults and with no representations from WisDOT and MIP. This project is funded by the Federal Transit Administration (FTA) and local match totaling \$969,000.00. The project budget (i.e., all costs inclusive) must not exceed \$969,000.00.

A list of components/projects that need replacement consideration include (but not limited to):

- Steam heat exchanger (where MIS takes heat from local steam utility) – basement
- Cooling tower – roof
- Chiller (there are two) – penthouse
- Air handler and associated return and exhaust fans – penthouse
- Complete reconstruction of two restrooms on the second floor for ADA compliance/use (all finishes, stalls, plumbing and light fixtures, water and sanitary piping, power wiring, etc.)
- Upgrade elevator mechanical and controls for the east MIS building elevator
- Second floor core and shell build-out

NOTE: The A & E consultant is expected to prioritize the project list to fit the budget.

Project considerations include, but are not limited to:

- Removal/installation of equipment through constrained interior spaces and openings.
- Crane use and placement to minimize impact on parking and MIS access
- Management of asbestos materials that may be related key components
- Completing work without disrupting high volumes of travelers/guests
- Construction cannot interfere with train and bus operations
- WisDOT Traffic Management Center must remain fully operational 24/7
- Coordination with MIP and other MIS/Concourse stakeholders
- Minimizing disruptions for MIS first floor business tenants
- Coordinating with local utilities (e.g., steam, electric, water, sewer, etc.)
- Restoration of interior and exterior finishes/surfaces/spaces following construction
- Ensuring that all work and components are code compliant
- Re-balancing air and water systems following equipment installations
- Ensuring train engine exhaust is not drawn into the building fresh air intake
- Making sure that new components are easily accessible for repair and maintenance
- Ensuring that new components are heavy duty commercial grade suited for demanding use
- Retain emergency vehicle access to site
- Retain loading dock access during construction
- Verification of proper operation of steam traps and condensate return

The A/E contractor shall assess the condition and functionality of ancillary components to determine whether they need to be replaced/repaired/modified at this time. Ancillary components could include, but are not limited to, related pumps, hydronic specialties, gauges, piping, insulation, wiring, sensors, controllers, etc. These ancillary components shall be included in the A/E's project plan and budget estimate. Any recommendations that are made shall include an analysis of the problem or anticipated concerns, methods for repair or prevention, plans, drawings, and cost estimates for the recommendation. For example, is it appropriate to replace/repair/modify at this time the gauges, regulators, and related-pumps of the heat exchanger?

The A/E contractor shall assess and recommend options for replacement technologies for components along with first and life cycle cost comparisons. For example, is there a more appropriate kind of air handler or chiller for the MIS environment?

Proposed Budget	\$
A/E Design/Oversight	125,000
Hazardous Abatement	35,000
Construction	759,000
Contingency (Design and Construction)	48,000
Other Fees (permits)	2,000
Project Total	\$ 969,000

1.4.3. Project Background

In 2015, WisDOT conducted an initial facility condition assessment of the MIS, which included a review of key mechanical components. This assessment was then revisited in 2017 to ascertain the most current condition of components. Most of the mechanicals are original equipment from the 1964 construction and are currently beyond their expected useful life. Information about each of the key components being considered for replacement are listed in the next section. The Federal Transit Administration grant funds are limited to making improvements specifically at the MIS facility.

1.4.4. Existing Conditions

The structure was originally built in 1964 and received a major renovation in 2007. The building is three stories above ground with a penthouse on the roof and a mechanical area below ground. The building is steel framed with cast-in-place concrete and glazed curtain wall exterior walls. The first floor serves as a stop for Amtrak, a railroad passenger service and a bus depot. The second and third floors are mixed use office space. The second floor is largely vacant and unfinished. The MIS has a backup generator (Cummins, model DFEH5872934, serial G070087401, 400KW).

The 2007 renovation included the expansion of the first floor and exterior walls. An atrium style addition was added to the building. The atrium is used as the waiting area for passengers. The security area, guest services and amenities were also renovated at that time. The building and site were updated to 2007 ADA standards. Lead based paint and asbestos were discovered during the renovation. The materials were removed, covered or identified during the addition process. The renovation process did not include updates to the major mechanical systems. Asbestos was identified and is present on the HVAC piping system elbows and the shell of the air handler as well as other locations. Key component information includes the following.

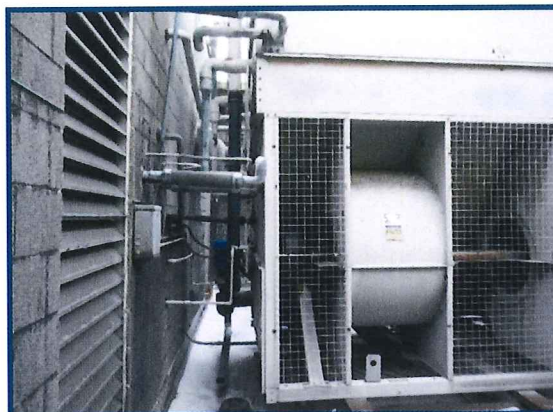
Steam Heat Exchanger (a.k.a. water heater) information:

Asset Class	Asset Name	Mfg	Model #	Serial #	Description	In-Svc Date
Water heater	DHW boiler	Patterson	Series 500	173860	Steam, 340 GPM, 460 Gal	1/1/1964



HVAC Cooling Tower information:

Asset Class	Asset Name	Mfg	Model #	Serial #	Description	In-Svc Date
Cooling tower	Evaporative	B.A.C.	CMA225A	n/a	223 Ton	1/1/1964



HVAC Chiller information (there are two):

Asset Class	Asset Name	Mfg	Model #	Serial #	Description	In-Svc Date
Chiller	COMP	Trane	HE2100	n/a	112 Ton, Screw	1/1/1964
Chiller	COMP	Trane	HE2100	n/a	112 Ton, Screw	1/1/1964



HVAC Air Handler information:

Asset Class	Asset Name	Mfg	Model #	Serial #	Description	In-Svc Date
Air handler	AHU1	Trane	F	CC-1	55,000 CFM	1/1/1964
Control air	RTU	Buffalo	60	n/a	37,700 CFM, 10hp, in-line	1/1/1964



Elevator information (east elevator) (no photo available):

Asset Class	Asset Name	Mfg	Model #	Serial #	Description	In-Svc Date
Elevator	EL2	Ottis	265962	221205	3 Stop, #2500	1/1/1964

Other MIS photos:



Building Ventilation



Building Ventilation



Building Ventilation



Return Air Fan



Condensate pump



HVAC piping with asbestos warning label



2nd floor
East Wall

Second floor office suite
Suite 210: 8,023 square feet



2nd floor
West Wall

1.5. Site Visit of Project Location

Interested proposers may attend a tour of the project site. All proposers will tour the site at the same time. No questions will be taken at this visit. No other site visits will be scheduled for this project. This site visit is scheduled for May 17, 2018 at 10:00 a.m. CST. Prospective proposers shall meet in the lobby of the Milwaukee Intermodal Station, 433 W St. Paul Avenue, Milwaukee, WI 53203.

It is the proposer's responsibility to completely inspect the premises prior to submitting a proposal to determine all requirements associated with the contract. Failure to do so will in no way relieve the successful proposer from providing, with additional cost to WisDOT, all necessary services that may be required to carry out the intent of the resulting contract. Site visits are not required.

If you plan to attend the site visit, please email Danette Tessmann, danette.tessmann@dot.wi.gov, no later than 2:00 p.m. CST, May 16, 2018 and indicate the number of individuals attending.

1.6. Reasonable Accommodations

WisDOT will provide reasonable accommodations, including the provision of informational material in alternative format, for qualified individuals with disabilities upon request. If you need accommodations contact Wisconsin Telecommunications Relay System (TTY) at 1-800-947-3529.

1.7. Procurement Schedule

The projected schedule for this procurement is:

Request for Qualifications available:	5/2/2018
Proposer questions due by 1:00 p.m. CST:	5/22/2018
WisDOT's Response to Questions:	5/29/2018
Proposals due by 2:00 p.m. CST:	6/7/2018
Negotiations	est 6/25/2018
Notification of intent to award	est 7/2/2018

1.8. Contract Term

The contract shall be effective on the date indicated on the contract and shall continue approximately 9-12 months; depending on the length of the project. Time is of the essence. It is expected that the selected consultant will begin work immediately upon award of the contract.

Schedule	Dates
A/E Selection	Est 7/2018
Design Report	Est 11/2018
Bid Date	Est 12/2018
Start Construction	Est 2/2019
Substantial Completion	Est 6/2019
Final Completion	Est 7/2019

1.9. Addenda

Proposers are responsible for monitoring the WisDOT Consultant Notices webpage on a regular basis. Any modification to the RFQ requirements will be by written Addenda only. Receipt and review of each Addenda must be acknowledged by proposer through signing and returning with proposer's proposal. All requests for clarifications along with the question responses will be posted as an addendum on the WisDOT Consultant Notices webpage.

1.10. Postponement or Cancellation of Request for Qualifications

WisDOT reserves the right to cancel this RFQ at any time or change the date and time for submitting proposals by announcing same prior to the date and time established for proposal submittal. WisDOT reserves the right to reject any or all offers. WisDOT shall not be liable for any pre-contract costs incurred by interested firms participating in the selection process.

2. SERVICE CONTRACT REQUIREMENTS

The consultant selected as a result of this RFQ process will not be allowed to compete for the follow up construction project as a prime or subcontractor.

The consultant shall provide all architectural services, engineering services, site plans, cost estimation and analysis, and construction plans and specifications required to enable WisDOT to advertise for bids for the rehabilitation of the MIS. The services shall comply with applicable laws and regulations consistent with the funding for this project. The consultant has a design to cost requirement as the total project costs must not exceed the budget.

The consultant shall have at least one (1) or more architects or engineers on staff licensed in the State of Wisconsin. The consultant shall have an office in the State of Wisconsin.

Scope of Services – The scope of service shall include, but not be limited to, the following technical requirements and tasks. Consultant shall provide assistance in the following areas and develop a detailed work program outlining

the cost and time required to complete each proposed task:

- Recommendations on prioritizing repairs
- Create detailed project design and layout
- Develop project cost report
- Develop installed equipment assessments
- Acquire State and Local permits
- Monitoring and Coordinating Project Schedules
- Assistance in Construction Contractor Selection
- Construction Oversight
- Compliance with certified payrolls and prompt payment
- Programming, Budgeting and Scheduling
- Dispute Resolution including wage complaints
- Construction Closeout
- Other activities relevant to successful project delivery as requested by WisDOT

Design and Construction Activities:

- Develop construction bid ready plans and specifications for contractors for WisDOT approval
- Prepare bid ready plans and specifications for construction contractors. The Consultant will be responsible for the preparation of plans and specifications through either hard copy documents or through electronic media. It is the responsibility of the Consultant to provide copies of all project documents to all parties involved in the project. Cost for additional copies must be specified in the contract.
- Specifications shall be prepared to include: Bidding and Contract Documents, Insurance and Liability Requirements, Instructions to Bidders, General Specifications, Equal Employment Opportunity, Labor Standards, Detailed Specifications and Special Provisions, including required Federal construction clauses.
- Consultant is required to submit and obtain a prevailing wage determination for this project and detailed specifications and special provisions, including required Federal construction clauses. Bidding document will include all required Federal Transit Administration clauses for construction projects. Required clause information can be found at: <http://wisconsin.gov/Documents/doing-bus/local-gov/astnce-pgms/transit/procurement/smr-clause.pdf>
- Acquire State and Local permits for construction, including any reporting requirements. Permit requirements include, but are not limited to City of Milwaukee zoning and permitting, Building Permit, State Plan Review
- Consultant shall supply options for environmental / ecological energy savings for heating / cooling, insulating, plumbing fixtures, etc. for the facility project.
- Plans will comply with all applicable State and Federal mandatory energy efficiency standards and the State of Wisconsin's Energy Conservation Plan issued in accordance with the Energy Policy and Conservation Act, as amended 42 USC 6321.
- Schedule regular meetings/and/or progress report submissions with WisDOT. Minimum meeting schedule shall include a kick-off meeting and meetings scheduled at 30%, 60%, 90%, and 100% of project design
 - At 30%: project conceptual layout design and design alternatives. Preliminary cost estimates, survey work.
 - At 60%: project preliminary design (plans, and specifications), and preliminary construction schedule and revised cost estimates.
 - At 90%: project final design (plans, and specifications) and revised cost estimates. A final construction bid ready package will also be required at this stage.
 - At 100%: project final design incorporates review comments into 100% final design documents, obtain prevailing wage rate determinations for the project, distribute final construction documents to WisDOT
- Identify and evaluate the feasibility of all design options. Provide cost estimates of HVAC, mechanical systems, elevator improvement and office buildout and any other costs affiliated with each element of the design.

- Life cycle cost analysis of replacement equipment and system options
- Develop a detailed schedule outlining the time required to complete each proposed task as specified in the Scope of Service.
- Completion of record drawings in AutoCAD format and record specifications in Microsoft Word format for turnover to WisDOT.

Construction Administration Services (with consultation and approval from WisDOT) :

- Attend a pre-construction conference
- Verify shop drawing process is being met satisfactorily
- Attend regular (e.g. weekly or monthly) construction meetings
- Assist responding to questions during construction effort
- Provide clarification as necessary and prepare all necessary construction bulletins
- Provide minimum weekly site visits
- Require and monitor written Requests for Information, construction bulletins and will review and recommend to WisDOT for approval.
- Verify logs of construction activity, inspection reports and safety reports are being kept and in compliance
- Verify contractors are submitting certified payroll reports in timely and accurate manner
- Verify accurate logs are being kept of hours billed to project in compliance with FTA standards
- Serve as primary point of coordination among local officials, WisDOT transit staff, WisDOT labor compliance staff, design consultants and prime contractor
- Verify that construction meets the solicitation, specification and contract documents
- Record keeping of project materials
- Communicate and manage issues related to project cost and schedule
- Site surveys, acquiring field data, and verifying as-built conditions to assure accurate development and production of design and bidding documents
- Program and scope review and confirmation
- Analysis of heating, cooling and ventilation loads
- Inspection and analysis of mechanical systems including HVAC
- Review and analysis of impact of proposed upgrades on associated building systems including general construction, plumbing, fire suppression, electrical power (including emergency backup) and lighting, fire alarm, security, communications and site civil (including environmental impact/WEPA)
- Attendance, participation and publishing meeting minutes for design phase and construction review meetings
- Submission of construction documents to all regulatory authorities having jurisdiction for review and approval
- Periodic inspections for compliance with construction documents and publishing field reports and deficiency reports
- Commissioning of systems and equipment affected by construction.

Additional information on each of the key contractor services is provided below.

Monitoring and Coordinating Project Schedules:

- Continually monitor and coordinate facility construction schedules, including non-financial milestones with construction contractor(s), and appropriate WisDOT staff.

Assistance in Construction Contractor Selection:

- Assist in solicitation process of a construction firm(s) in compliance with FTA regulations including responding to questions
- Review and recommend approval award decision of construction firm(s) to WisDOT
- Assist in negotiation of the contract with the construction firm(s)

Construction Oversight:

- Coordinate, review and make recommendations for FTA compliant construction contract change order management, which includes; independent cost analysis, price negotiation memorandum and change orders

Programming, Budgeting and Scheduling:

- Monitor scheduling of key project elements to ensure construction is completed in a timely fashion
- Provide updates on project milestones.
- Alert WisDOT if cost changes are expected
- Review construction firm invoices, pay applications and progress reports for eligibility and recommended payment. Forward construction firm invoices to WisDOT for review and payment.
- Inform WisDOT that construction activities have been completed within 60 days of actual completion of the activity.

Dispute Resolution:

- Assist in resolution of construction disputes and contract interpretation with design firm, construction firm, and WisDOT.
- Forward claims to WisDOT with a recommendation of approval / disapproval by WisDOT and appropriate measures for resolution.
- Be available for resolution of claims upon request of WisDOT.
- Work with WisDOT to resolve any potential wage complaints.

Construction Closeout:

- Require construction firm to submit all construction "finals" (computations, quantities, materials records, as-built plans and documents), complete to the extent possible to WisDOT and contractor within thirty (30) days of completion of the project.
- Provide final closeout documents to WisDOT for compliance with WisDOT's procedures.
- Ensure all payrolls have been submitted and any payroll issues or wage complaints have been resolved.
- Review and approval of Operating and Maintenance manuals, final inspection, punch list documentation and approval of completed construction

Subcontractors:

The Contractor shall be responsible for contract performance when subcontractors are used. Subcontractors must abide by all terms and conditions of the contract.

It is WisDOT's expectation that the Contractor will provide personnel to execute the design and monitor the construction of the project. The personnel will be under the direction of either a Professional Architect or Engineer registered in the State of Wisconsin. WisDOT also expects the Contractor to work in the best interest of Wisconsin Department of Transportation. The Contractor shall be available to meet with WisDOT, the public, the design firm, and the construction firm. The Contractor shall have appropriate administrative capacity, experience and safety procedures to fulfill the scope of services established herein.

3. PROPOSER SOLUTIONS

Proposers shall respond to the following items and include with their proposal submission.

A. Key Personnel/Capacity

- Provide a concise statement covering the history of your company under current and any prior names (include number of years in business under each name), your major projects or activities both in general and projects similar to the subject of the proposal, the populations you have served, the relationship of this project to your corporate purpose, and why you feel that your company is best suited to fulfill the requirements of the proposal. Include your firm's current workload and the firm's capacity to meet the proposed work schedule.
- Describe the firm's proposed project organizational structure. Include a brief description of the credentials (including applicable professional licenses), qualifications, and experience of the proposed key staff members assigned to this project and what percentage of their time will be devoted to the project. Identify key staff your organization/company will assign to fulfill the contract requirements. Detail who would be contract manager, etc. Show the function in the project for each person. Additionally, the proposer must specify where the staff will be located.

- c. Description of work to be performed outside of the firm, including a listing of subcontractor names, description of work to be performed by the subcontractor, and description of subcontractor's qualifications.
- d. A statement as to any judgments, litigations, licensing violations, or other violations, outstanding or resolved, associated with your company.
- e. Description of firm's Quality Assurance/Quality Control plan.

B. Past Performance/Experiences

- a. This section of the proposal should establish the ability of the proposer to satisfactorily provide the required product by demonstrating competence in the performance of services to be provided; including a record of satisfactory performance on similar contracts; and supportive client references. Describe the organization/company's experience and capabilities providing similar services in planning, programming, rehabilitation design, and construction management that the proposer has undertaken. Be specific and detail no more than three projects/contracts: description of work, dates, locations, challenges, corrective measures taken, cost savings achieved, and results. For each reference cited as related experience, furnish the name, title, address, email, and telephone number of the person(s) at the purchaser's organization who is the most knowledgeable about the work performed.

C. Understanding the Project Description and Scope of Services

- a. Provide a clear and concise description of the services that address the technical criteria and tasks as listed in the scope of services. Provide a concise narrative of proposed services and deliverables associated with each task. Include the major tasks that will be required, staffing plan, operations and management plan, and a proposed timeline for successfully completing each of those tasks.
- b. Describe your firm's method of quality control, verification that any construction or repairs meet specifications, and process to identify deficiencies in the work.
- c. Detail your firm's understanding of the challenges and barriers of the project and the proposed approach to overcoming these barriers.

D. Specialized Criteria

- a. This section should describe the proposer's knowledge and experience with FTA regulations, ADA requirements, and the Davis Bacon Act. Include a description of previous experience with federally-funded projects of similar size and service.
- b. Address any concerns or issues regarding the contract. Attachment J is an example of a template that will be used when developing the A&E/Oversight contract.

4. PROPOSAL FORMAT AND SUBMISSION

4.1. General

The evaluation and selection of a consultant will be based on the information submitted in the proposal plus references. Proposers should respond clearly and completely to all requirements. Failure to respond to each of the requirements in the RFQ may be the basis for rejecting a proposal.

Each proposal shall include the RFQ Cover Page signed by a person authorized to bind the proposing firm to the terms of the Contract including cost and pricing. Proposals signed by an agent are to be accompanied by evidence of that person's authority. Each proposal shall stipulate that it is predicated upon the requirements, terms, and conditions of this RFQ and any addendums/amendments thereof.

Elaborate proposals (e.g. expensive artwork), beyond that sufficient to present a complete and effective proposal are not necessary or desired. WisDOT is not liable for any costs incurred by proposers in the preparation, presentation, testing, or negotiation of Proposals submitted in response to this solicitation.

4.2. Format

Proposals shall contain the following items and follow the exact sequence outlined below:

Proposal should be typed and submitted on 8.5 by 11- inch paper and bound securely with page numbers clearly indicated.

Proposers responding to this RFQ must comply with the following format requirements:

a) Tab 1 –

- a. Cover Letter - must be appropriately signed and specifically state that the information contained in the proposer's proposal is accurate and complete as of the date of submission; that the information is true and reasonably verifiable as of the date of submission; and that the proposer is willing to comply with all stated contractual requirements. The cover letter must include:
 1. The solicitation number;
 2. Identification of Respondent and General Information including:
 - d. Identification of Respondent;
 - e. Name of Organization;
 - f. Business Address, Telephone, Email Address, Website address
 - g. Legal Status of Organization (Choose one)
 - ☐ Sole proprietor
 - ☐ For-profit Corporation or joint venture Corporation
 - ☐ For-profit partnership
 - ☐ Non-profit Corporation
 - ☐ Public agency
 - ☐ Other (identify):
 - h. Name of Chief Executive Officer (or Administrator) of Organization
 - i. Name of individual designated to represent organization in subsequent discussions or negotiations related to this solicitation - including the name, title, telephone number and email address.
 - j. Name, title, and signature of person authorized to sign the proposal. Signature must be in ink. Proposals signed by an agent shall be accompanied by evidence of that agent's authority.
 - k. Business Function-Describe the major business functions or activities of your organization, including work history and size.
- b. Proposer Checklist
- c. RFQ Signature Page (Use provided form found in front of RFQ)
- d. Any/All addendums or amendment signature pages (posted on the WisDOT Consultant Notices webpage as needed)
- e. **Attachment A – Proposal Affidavit**
- f. **Attachment B - Proposer Information**
- g. **Attachment C – Debarred or Suspension Certification**
- h. **Attachment D – Affidavit of Non-Collusion**
- i. **Attachment E – Site Visit Verification**
- j. **Attachment F – References**
- k. **Attachment G – Bidder Opportunity List**
- l. **Attachment H – Federal Clauses**
- m. **Attachment I – Designation of Confidential and Proprietary Information**

b) Tab 2 – Response to Proposer Solutions: Responses to the requirements of proposer solutions must be in the same sequence and numbered as they appear in this RFQ.

c) Tab 3-

- a. Description of the proposer's current General Liability as well as Errors and Omissions insurance coverage. Address insurance limit and any self-insurance.

Provide a copy of the Certificate of Professional Liability insurance.

- b. WisDOT's DBE transit goal for FFY 2017-2019 is 1.1 %. A separate contract specific goal has not been established for this procurement. Proposers that have DBE firms participating on this contract should provide the following information:
1. The names and address of DBE that will participate in this contract
 2. A description of the work each DBE will perform
 3. The dollar amount of the participation of each DBE firm participating
 4. Written documentation of the proposer's commitment to use a DBE subcontractor
 5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment
 6. The successful contractor will be required to report its DBE participation obtained throughout the period of performance. More information on required documentation is available in Attachment H – Federal Clauses.

Separate Envelope - FINANCIAL STABILITY DOCUMENTATION: Proposers responding to this RFQ must be able to substantiate their financial stability and capability by submitting either a letter from proposer's bank or auditor verifying financial stability and capability. Also address any liens against property owned by the proposer or any existing/pending legal suits that may potentially impact the capability of carrying out the required services of this RFQ. The State may request additional reports on financial stability from an independent financial rating service in order to further substantiate stability.

- d) **Pocketed Divider - One electronic device** containing identical copies of the submitted proposal documents found behind tabs 1 through 3. The documents must be in MS Word format or PDF. The device must also contain the language of the narrative proposal, included with the original proposal. The following are acceptable electronic devices: CD ROM, DVD ROM, flash drive or memory stick.

Proprietary and Confidential Information: If the proposer designates any information in the proposal as proprietary and confidential, the proposer must submit, in addition to the copies listed above, one electronic copy of the proposal with all proprietary and confidential information redacted. This copy should be clearly marked "REDACTED COPY" and submitted in the package containing the original proposal.

4.3. Submission

Proposer shall submit a total of one original and five hard copies plus one electronic.pdf copy on an electronic device of their proposal by the date and time listed on the RFQ cover page. Any proposals received after the stated date and time will be rejected. Receipt of a proposal by the State mail system does not constitute receipt of a proposal by the WisDOT Transit Section. All proposals must be time-stamped by the WisDOT Transit Section by the stated date and time. Proposals not so stamped will not be accepted. WisDOT does not accept faxed or email submitted proposals. Submit proposals to:

Danette Tessmann
Procurement Manager
WI Department of Transportation
4822 Madison Yards Way
6th floor South, #S625.07
Madison, WI 53705

All proposals must be packaged, sealed, and clearly show the following information on the **outside of the package**:

- Proposer's Name and Address
- Request for Qualifications Title: "RFQ-A&E/Oversight-MIS Rehabilitation 2018"
- Proposal Due Date: June 7, 2018 @ 2:00 pm CST

Because of increased building security, access to the WisDOT Transit section is restricted and may cause delay if hand delivering your proposal. Allow ample time for security clearance to the Transit section. If hand delivering a proposal, a vendor must notify Danette Tessmann, Procurement Manager, at least 24 hours prior to delivery.

This RFQ does not commit WisDOT to award a Contract or to pay any costs incurred in the preparation of proposals drafted in response to this request. WisDOT does retain the right to negotiate with any qualified individual or firm, or to modify or cancel in part or in it's entirely this RFQ if it is in the best interest of the WisDOT to do so.

4.4. Questions and Requests for Clarification

Any questions concerning this RFQ must be submitted in writing on or before 1:00 pm CST on 5/22/2018, to: Danette Tessmann, WisDOT Transit Procurement Manager. Email: danette.tessmann@dot.wi.gov

Suppliers are expected to raise any questions, exceptions, or additions they have concerning the RFQ document at this point in the RFQ process. If a supplier discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in this RFP, the supplier should notify immediately the above named individual of such error and request modification or clarification of the RFQ.

In the event that it becomes necessary to provide additional clarifying data or information, or to revise any part of this RFQ, revisions/amendments and/or supplements will be posted on the WisDOT Consultant Notices webpage.

Each proposal shall stipulate that it is predicated upon the requirements, terms, and conditions of this RFQ and any supplements or revisions thereof.

Any contact with State employees concerning this RFQ is prohibited, except as authorized by the RFQ manager during the period from date of release of the RFQ until the notice of intent to contract is released.

4.5. Interpretation of RFQ and Contract Documents

No oral interpretations as to the meaning of the RFQ will be made to any proposer. Any explanation desired by a proposer regarding the meaning or interpretation of the RFQ, specifications, etc., must be requested in writing by the clarifications due date in section 1.7 of this RFQ document. Any interpretation or change made will be in the form of an addendum to the RFQ, specifications, etc., as appropriate, and will be furnished per section 1.9. All addenda will become part of the RFQ and any subsequently awarded Contract.

4.6. Modification or Withdrawal of Proposals Prior to Submittal Date and Late Proposals

At any time before the time and date set for submittal of qualifications, a proposer may request to withdraw or modify its proposal. Such a request must be made in writing by a person with authority as identified on the RFQ Cover Page, provided their identity is made known and a receipt is signed for the proposal. All proposal modifications shall be made in writing executed and submitted in the same form and manner as the original proposal. Any proposal or modification of proposal received at WisDOT's office designated in the solicitation after the exact time specified for proposal receipt will not be considered. Proposals will not be publicly opened.

4.7. Errors and Administrative Corrections

WisDOT will not be responsible for any errors in proposals. Proposers will only be allowed to alter proposals after the submittal deadline in response to requests for clarifications or Best and Final Offers by WisDOT. WisDOT reserves the right to request an extension of the proposal period from a Proposer or Proposers.

WisDOT reserves the right to allow corrections or amendments to be made that are due to minor administrative errors or irregularities, such as errors in typing, transposition or similar administrative errors. Erasures or other changes on

entries made by the proposer must be initialed by the person signing the proposal.

5. PROPOSAL EVALUATION AND AWARD PROCESS

5.1. General

This procurement will follow the qualifications-based competitive proposal procedures of the Brooks Act. As such, price will be excluded as an evaluation factor and proposer's qualifications will be evaluated against the stated criteria. Any contract resulting from this solicitation will be between WisDOT, and the Contractor for providing the goods and/or performing the services described herein. WisDOT is not party to defining the division of work between the Contractor and its Subcontractors, if any, and the Specifications and/or Scope of Services have not been written with this intent.

5.2. Eligibility for Award

To be eligible for award, proposers must be responsive and responsible.

5.2.1. Responsive proposals

5.2.1.1. Comply in all material aspects of the solicitation, both as to the method and timeliness of submission.

5.2.1.2. Proposals that do not comply with all the terms and conditions of the solicitation may be rejected as non-responsive.

5.2.2. Responsible proposers are those prospective Proposers or firms who, at a minimum, must:

5.2.2.1. Have adequate financial resources, as required during performance of the Contract.

5.2.2.2. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.

5.2.2.3. Have necessary technical capability to perform.

5.2.2.4. Certify that they are not on the U.S. Comptroller General's list of ineligible Proposers or firms.

5.2.2.5. Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

5.3. Evaluation Committee

WisDOT's evaluation committee will consist of members who have been selected because of their expertise and knowledge of the service(s) and/or product(s) that are the subject of this RFQ. Proposers may not contact members of the evaluation committee except at WisDOT's request.

5.4. Evaluation Criteria

Proposals will be scored using the following criteria:

Description	Points
Key Personnel/Capacity - the extent to which the firm has personnel, equipment, capacity, and the necessary experience and training to perform the work.	25
Past Performance/Experiences – the extent to which the firm has demonstrated competence in performing similar work and/or the extent of former client satisfaction.	30
Understanding the Scope of Services – the extent to which the firm's proposal addresses the key technical areas of importance and tasks as listed in the scope of services and demonstrates a thorough understanding of the scope.	35
Specialized Criteria – the extent to which the firm demonstrates its knowledge and experience with FTA-funded projects.	10
TOTAL	100

RATINGS FOR EACH TECHNICAL EVALUATION FACTOR - Each evaluator will rate each evaluation factor for each proposal. This is done by first determining the rating that the evaluator will assign for the factor being rated. Second, by multiplying the numerical percentage value assigned to that value by the weight (points) assigned to that evaluation factor to arrive at the individual factor's computed numerical value. The total of all such computed values (sum value of

all factors) will equal 100 points or less.

RATING DESCRIPTIONS

Excellent – Outstanding level of quality; the proposal indicates an exceptional approach and understanding of the requirement; significantly exceeds the minimum requirements in all respects; has a high probability of success (low risk of unsuccessful performance); no significant weaknesses. Past performance is highly relevant to this procurement. Excellent level of customer satisfaction and no performance complaints. **Value is 100 percent of total point score available for the evaluation factor.**

Good – Substantial response; proposal meets requirements and indicates a thorough approach and understanding of the requirements; good probability of success (low risk of unsuccessful performance); strengths outweigh weaknesses. Past performance is relevant to this procurement. High level of customer satisfaction and minimal performance complaints. **Value is 80 percent of total point score available for the evaluation factor.**

Acceptable – The proposal meets requirements and indicates an adequate approach and understanding of the requirements; strengths and weaknesses are offsetting or will have little or no impact on contract performance. Risk of unsuccessful performance is no worse than moderate. Past performance is relevant to this procurement. Satisfactory level of customer satisfaction and few performance complaints. **Value is 50 percent of total point score available for the evaluation factor.**

Marginal – The proposal lacks essential information and does not demonstrate an adequate approach or understanding of the requirements. Proposal has one or more weaknesses that are not offset by strengths. Risk of unsuccessful performance is high. Past performance is somewhat relevant to this procurement. Low level of customer satisfaction and moderate level of performance complaints. **Value is 20 percent of the total point score available for the evaluation factor.**

Unacceptable – The proposal fails to meet minimum requirements; there is little likelihood of success; needs major revision to be made acceptable. Past performance is not relevant to this procurement. Low level of customer satisfaction and high level of performance complaints. **Value is zero percent of the total point score available for the evaluation factor.**

SAMPLE SCORING SCENARIO (following consensus scoring)

Proposer A

Key Personnel	Good	25 points x .80 = 20 points
Past Performance	Good	30 points x .80 = 24 points
Professional Competence	Excellent	35 points x 1.0 = 35 points
Specialized Criteria	Excellent	10 points x 1.0 = <u>10 points</u>
Total Technical Evaluation Score Equals		89 points

Total Evaluated Score for Proposer A – **89 points**

Proposer Ranking – **First**

Proposer B

Key Personnel	Good	25 points x .80 = 20 points
Past Performance	Excellent	30 points x 1.0 = 30 points
Professional Competence	Good	35 points x .80 = 28 points
Specialized Criteria	Good	10 points x .80 = <u>8 points</u>
Total Technical Evaluation Score Equals		86 points

Total Evaluated Score for Proposer B – **86 points**

Proposer Ranking – **Second**

5.5. Negotiations and Award Process

Negotiations will be conducted with only the most qualified (highest ranking responsive and responsible) proposer. Failing an agreement on price, negotiations with the next most qualified proposer will be conducted until a contract award can be made to the most qualified proposer whose price is fair and reasonable to WisDOT. If contract negotiations cannot be concluded successfully with the highest scoring proposer, the agency may negotiate a contract with the next highest scoring proposer.

WisDOT reserves the right to negotiate the terms of the contract, including the award amount, with the selected proposer prior to entering into a contract. Any component of the price, except the indirect cost rate, may be negotiated.

In negotiating a contract price, WisDOT must (as a general rule) accept undisputed audits that have been conducted by any Federal or State agency of the consultant's indirect cost rate if the audit report has been developed in accordance with the cost principles contained in the FAR Part 31. If a proposer has not been audited by any Federal or State government agency, WisDOT will conduct an audit. WisDOT may not require or impose a cap or ceiling on an A&E consultant's overhead rates even if the consultant agrees to such a cap by contract. In addition, WisDOT may not negotiate an overhead rate that is fixed for the entire contract, or for any particular fiscal year, and not subject to adjustment based on an audit of actual costs incurred. WisDOT may, however, use provisional billing rates where a billing rate is established for a particular contract period and is subject to adjustment based on an audit of actual costs incurred for that period.

5.6. Notification of Intent to Award

All respondents who respond to this RFQ will be notified in writing of the intent to award a contract(s) as a result of the selection process described in this RFQ.

5.7. Protest Procedures

The appeals process applies only to those requests for qualifications for services that result in a contract greater than \$50,000. Notices of intent to protest and protests must be made in writing. Protestors should make their protests as specific as possible and should identify Wisconsin Statutes and Wisconsin Administrative Code provisions that are alleged to have been violated.

The written notice of intent to protest the intent to award a contract must be filed with Dave Ross, Secretary, Wisconsin Dept. of Transportation, 4822 Madison Yards Way, Madison, WI 53707, and received in his office no later than five (5) working days after the notice of intent to award is issued. The written protest must be received in his office no later than ten (10) working days after the notice of intent to award is issued.

The decision may be appealed to the Secretary of the Wisconsin Dept. of Administration within five (5) working days of issuance, with a copy of such appeal filed with the procuring agency. The appeal must allege a violation of a Wisconsin Statute or a provision of the Wisconsin Administrative Code.

Subsequent protests can be submitted to: Federal Transit Administration, Region V Office, 200 West Adams Street, Suite 320, Chicago, Illinois 60606.

6. REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF PROPOSER

6.1. Contract

The Contractor selected will be required to execute a contract with WisDOT which describes the Scope of Work to be performed, the schedule for completion of work, compensation, insurance requirements, and other pertinent provisions.

6.2. Conflicts of Interest and Non-Competitive Practices

6.2.1. Conflict of Interest— The Contractor by submitting a proposal to WisDOT to perform or provide work, services, or materials, has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest, which conflicts in any manner or degree with the work,

services, or materials required to be performed and/or provided under this Contract and that it shall not employ any person or agent having any such interest. In the event that Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to WisDOT and take action immediately to eliminate the conflict or to withdraw from this Contract, as WisDOT may require.

6.2.2. Contingent Fees and Gratuities.— The Contractor by submitting a proposal to WisDOT to perform or provide work, services, or materials, has thereby covenanted:

- 6.1.2.1. No person or selling agency except bona fide employees or designated agents or representatives of Contractor has been or will be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
- 6.1.2.2. No gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by Contractor or any of its agents, employees, or representatives, to any official, member or employee of WisDOT or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

6.3 Legal Requirements

The Contractor shall comply with all applicable federal, state and local regulations. These shall include but not be limited to ADA, as well as state and local accessibility, safety and security requirements. Local regulations are defined as those below the state level.

In the event of any conflict between the requirements of these specifications and any applicable legal requirement, the legal requirement shall prevail. Technical requirements that exceed the legal requirements are not considered to conflict.

6.4 Registration and Licenses

The contractor certifies, by submitting this bid or proposal, that it is properly registered and licensed to conduct business within the State of Wisconsin and the local jurisdiction in which this solicitation is issued and any resultant contract awarded. The contractor certifies that it will maintain any such certification and licensing requirement for the duration of any resultant contract. In addition, if the solicitation and contract requires the use of appropriately certified and/or licensed employees in the execution of the contract, (e.g., skilled trades such as electricians, etc.), the contractor certifies that it will ensure that such employees are and will remain properly registered and/or licensed for the term on any resultant contract.

6.5 Force Majeure

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party is using its best efforts to remedy such failure or delays.

6.6 Hold Harmless/Indemnification

The contractor agrees to protect, defend, and save the Issuing Agency, its elected and appointed officials, agents, and employees, and MIP, its contractors, tenants, licensees, and invitees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the Issuing Agency, under this agreement.

6.7 Payment Terms

The A&E/Oversight Consultant contract will be a lump sum/fixed price contract. The consultant will be paid by WisDOT for the completed and approved services rendered under this contract. Compensation in excess of the total contract amount will not be allowed unless justified and authorized by an approved written contract.

amendment. Payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the Issuing Agency is allowed 30 days to pay such invoices. The consultant shall pay subcontract within ten (10) business days of receipt of a payment from WisDOT for services performed within the scope of this contract.

6.8 Reference to Contract

The contract or purchase order number MUST appear on all invoices in order for the invoice to be considered a properly executed invoice. The contract number must also be identified on all packing lists, packages, and correspondence pertaining to the contract.

6.9 Shipping

Supplies shipped prepaid, F.O.B. Destination, to the location shown below, unless the contract specifies otherwise. The term "F.O.B. Destination" as used in this clause, means free of expense to the Issuing Agency and delivered to the location specified. Delivery shall be made between 8:00 a.m. and 3:00 p.m., Monday through Friday, except holidays observed by the State of Wisconsin. Items shall be delivered to: Wisconsin Department of Transportation, Transit Section, 48822 Madison Yards Way, 6th floor South, Madison, WI 53705.

6.10 Assignment, Transfer and Subcontracting

The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the Issuing Agency.

6.11 Conformance with Contract

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract will be granted without prior written consent of the authorized individual in the Issuing Agency. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

6.12 Termination of Contract

Unless otherwise stated, the Issuing Agency may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract. The Agency may also terminate this contract if funds are not appropriated or otherwise made available to support the Agency's continuation of performance of this contract in a subsequent fiscal period.

6.13 Ownership of Documents

All materials, guides, written instructions, plans, documents, correspondence, forms, computer files, databases, electronic mail messages, work product or other information of any type created by Consultant under this contract are works created for hire and are the property of WisDOT. All project documents provided to the Consultant by WisDOT or by any third party which pertains to this contract are property of WisDOT. WisDOT has all rights to copyright project documents which are the property of WisDOT.

6.14 Insurance Requirements

The consultant shall maintain for the life of the contract the following types and amounts of insurance from an insurance company(ies) authorized to do business in the State of Wisconsin. The insurance requirements shall apply with equal force whether the services under this contract is performed by the consultant, a subcontractor of the consultant, or by any entity employed directly or indirectly by either party. Required named insured parties are WisDOT and MIP.

Type of Insurance	Minimum Limits required *
(a) Commercial General Liability Insurance; shall be endorsed to include completed operations and blanket contractual liability coverage.	\$1 Million Combined Single Limits per Occurrence, may be subject to an Annual Aggregate Limit of not less than \$2 Million.

(b) Worker's Compensation and Employer's Liability Insurance	Worker's Compensation: Statutory Limits Employer's Liability: Bodily Injury by Accident - \$100,000 Each Accident Bodily Injury by Disease \$500,000 Each Accident \$100,000 Each Employee
(c) Commercial Automobile Liability Insurance; shall cover all CONSULTANT owned, non-owned and hired vehicles used in carrying out the contract.	\$1 Million - Combined Single Limits per occurrence
(d) Architect [sic] and Engineer [sic] Professional Liability Insurance **	\$1 Million - Each Claim, may be subject to an Annual Aggregate Limit of \$1 Million

* These requirements may be satisfied either through primary insurance coverage or through excess/umbrella insurance policies.

**This insurance requirement applies only to engineering services and is waived for non-engineering services. Engineering services are defined as project management, construction management and inspection, feasibility studies, preliminary engineering, design engineering, surveying mapping and architectural related services.

6.15 Warranty

The Contractor shall warrant to WisDOT and MIP, its successors and assigns, that the title to the material, supplies or equipment covered by the Contract, when delivered to WisDOT or MIP or to its successor or assigns, is free from all liens and encumbrances. The Contractor guarantees and warrants that all work performed and items supplied under this Contract shall (1) conform to the requirements of this RFQ; (2) fulfill its design functions and be fit for both its ordinary and intended purposes; (3) be free of all patent and latent defects in design, materials and workmanship; and (4) perform satisfactorily.

It is understood and agreed that by acceptance of this warranty and the acceptance of materials or supplies to be manufactured or assembled pursuant to these specifications, WisDOT and MIP does not waive any warranty, either expressed or implied, any product liability of the Contractor as determined by any applicable decisions of a court of the State of Wisconsin or of the United States.

PROPOSER CHECKLIST

(To verify that all necessary documents are included)

This form must be completed and returned with the supplier proposal. Failure to return this form may be cause for considering your proposal non-responsive.

Document	Proposer Check	WisDOT Check
Cover Letter		
Proposer Checklist		
RFQ Signature Page		
Addendum Signature Pages		
Attachment A – Proposal Affidavit		
Attachment B- Proposer Information		
Attachment C- Debarred or Suspension		
Attachment D – Affidavit of Non-Collusion		
Attachment E – Site Visit Verification (if applicable)		
Attachment F - References		
Attachment G – Bidder Opportunity List		
Attachment H – Federal Clauses		
Attachment I – Designation of Confidential and Proprietary Information		
Insurance Certificate/DBE Documents/Financial Stability Documents		
One (1) original plus five (5) hard copies of proposal		
Electronic copy of proposal		
Redacted electronic copy of proposal (if applicable)		

ATTACHMENT A
PROPOSAL
AFFIDAVIT

The undersigned hereby declares that he/she has carefully read and examined the Request for Qualifications, the Scope and Terms, the Specifications, and Warranty Requirements with all supporting certificates and affidavits for the provision of services specified.

SIGN : _____

TITLE: _____

FIRM NAME: _____

Subscribed and sworn to before me this day of _____, 20____ Notary Public

My Commission Expires: _____

ATTACHMENT B - PROPOSER INFORMATION

1. PROPOSING COMPANY/ORGANIZATION NAME

FEIN (Federal Employer ID Number) _____ OR SOCIAL SECURITY NUMBER (if sole proprietorship) _____
Phone () _____ Toll Free Phone () _____
FAX () _____ Email Address _____
Address _____
City _____ State _____ Zip + 4 _____

2. Name the person to contact for questions concerning this proposal.

Name _____ Title _____
Phone () _____ Toll Free Phone () _____
FAX () _____ Email Address _____
Address _____
City _____ State _____ Zip + 4 _____

3. Any vendor awarded over \$25,000 on this contract must submit affirmative action information to the department. Please name the Personnel/Human Resource and Development or other person responsible for affirmative action in the company to contact about this plan.

Name _____ Title _____
Phone () _____ Toll Free Phone () _____
FAX () _____ Email Address _____
Address _____
City _____ State _____ Zip + 4 _____

4. Mailing address to which state purchase orders are mailed and person the department may contact concerning orders and billings.

Name _____ Title _____
Phone () _____ Toll Free Phone () _____
FAX () _____ Email Address _____
Address _____
City _____ State _____ Zip + 4 _____

ATTACHMENT C
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
INELIGIBILITY AND VOLUNTARY EXCLUSION

The prospective lower tier participant (Offeror) certifies, by submission of this Offer, that neither it nor its "principals" as defined at 49 C.F.R. § 29.105(p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

If the prospective lower tier participant (Offeror) is unable to certify to the statement above, it shall attach an explanation, and indicate that it has done so, by placing an "X" in the following space

_____.

THE CONTRACTOR, _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND EXPLANATION, IF ANY. IN ADDITION, THE PROPOSER OR OFFEROR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C. §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND EXPLANATION, IF ANY.

_____ Signature of the Proposer or Offeror's Authorized Official

_____ Name and Title of the Proposer or Offeror's Authorized Official

_____ Date

Attachment D
AFFIDAVIT OF NON-COLLUSION
(This affidavit must be submitted with the proposal)

Solicitation Number: _____

I hereby swear (or affirm) under the penalty of perjury:

1. That I am the responder (if the responder is an individual), a partner in the company (if the responder is a company) or an officer or employee of the responding corporation having the authority to sign on its behalf (if the responder is a corporation);
2. That the attached offer (proposal) has been arrived at by the responder (Offeror) independently and has been submitted without collusion with and without any agreement, understanding, or planned common course of action with any other firm or entity designed to limit fair and open competition;
3. That the contents of the solicitation response (the Offeror's proposal) have not been communicated by the responder or its employees or agents to any person not an employee or agent of the responder and will not be communicated to any such persons prior to the official opening of the solicitation responses (Offers); and
4. I certify that the statements in this affidavit are true and accurate.

Authorized Signature: _____

Date: _____

Name of Firm or Entity: _____

Subscribed and sworn to me this ____ date of _____

Signed Notary Public: _____

My Commission Expires: _____

ATTACHMENT E

PRE-PROPOSAL VENDOR SITE VISIT VERIFICATION

THIS IS TO CERTIFY THAT

Company/Organization Name

HAS VISITED THE SITE

Signed by: _____

(Vendor Signature)

Printed Name & Position Title:

Date: _____

Signature of authorized Representative:

Printed Name: _____

Date: _____

ATTACHMENT F - REFERENCES

PROPOSER: _____

Provide company name, address, contact person, telephone number, and appropriate information on the product(s) provided to customers similar to those requested in this solicitation document. Potential subcontractors cannot be references. Any subcontractor arrangement for the completion of this work shall be listed on a separate proposal page.

Company Name: _____
Address (include Zip + 4) _____
Contact Person _____ Phone No. _____
Email Address: _____
Product(s) Used and/or Service(s) Provided: _____

Company Name: _____
Address (include Zip + 4) _____
Contact Person _____ Phone No. _____
Email Address: _____
Product(s) Used and/or Service(s) Provided: _____

Company Name: _____
Address (include Zip + 4) _____
Contact Person _____ Phone No. _____
Email Address: _____
Product(s) Used and/or Service(s) Provided: _____

Bid Opportunity List

Attachment G

Instructions

49 Code of Federal Regulations Part 26.11 requires the Wisconsin Department of Transportation to develop and maintain a "bid opportunity list." The list is intended to show all firms that are participating, or attempting to participate on DOT-assisted contracts. The list must include all firms that bid on prime contracts, or bid or quote subcontracts and materials and supplies on DOT-assisted projects, including DBEs and non-DBEs. For consulting companies, this list must include all subconsultants contacting you and expressing an interest in teaming with you on a specific DOT assisted project.

Vendors must complete and submit this form with all bids and/or proposals.

Prime Contractors and Consultants (complete all columns)

1. Name of Bidder	2. Bidder's Contact Information (address, phone, email)	3. DBE Status	4. Age of Firm	5. Type of work	6. Annual Gross Receipts
					<input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1 million <input type="checkbox"/> \$1 million - \$2 million <input type="checkbox"/> \$2 million - \$5 million <input type="checkbox"/> \$5 million and above

Subcontractors and subconsultants (primes to complete columns 1 and 2, plus any information available on the last four columns)

1. Name of Bidder	2. Bidder's Contact Information (address, phone, email)	3. DBE Status	4. Age of Firm	5. Type of work	6. Annual Gross Receipts
					<input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1 million <input type="checkbox"/> \$1 million - \$2 million <input type="checkbox"/> \$2 million - \$5 million <input type="checkbox"/> \$5 million and above
					<input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1 million <input type="checkbox"/> \$1 million - \$2 million <input type="checkbox"/> \$2 million - \$5 million <input type="checkbox"/> \$5 million and above
					<input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1 million <input type="checkbox"/> \$1 million - \$2 million <input type="checkbox"/> \$2 million - \$5 million <input type="checkbox"/> \$5 million and above
					<input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1 million <input type="checkbox"/> \$1 million - \$2 million <input type="checkbox"/> \$2 million - \$5 million <input type="checkbox"/> \$5 million and above
					<input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1 million <input type="checkbox"/> \$1 million - \$2 million <input type="checkbox"/> \$2 million - \$5 million <input type="checkbox"/> \$5 million and above
					<input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1 million <input type="checkbox"/> \$1 million - \$2 million <input type="checkbox"/> \$2 million - \$5 million <input type="checkbox"/> \$5 million and above

Attachment H
FEDERAL CLAUSES

** updated 09/2017

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

FTA Master Agreement

Federal grant monies (\$715,000.00) fund this contract, in whole or in part (Section 5309 – CFDA 20.500). As such, agencies receiving such funds and contractors awarded contracts that use such funds must comply with certain Federal certifications and clause requirements. This includes, for purchases of rolling stock over \$100,000, compliance with Buy America Act requirements, including pre-award and post-delivery audit requirements and certifications, as well as requirements and certifications applicable under the Federal Motor Vehicle Safety Standard (FMVSS). It is the contractor's responsibility to be aware of the pertinent certifications and contract clauses, as identified by the Issuing Agency for the instant procurement and ensure compliance with such requirements prior to award and throughout the term of any resultant contract. The full text of these clauses is available at the National Rural Transit Assistance Program (RTAP) website under "ProcurementPro." The website address is: <http://www.nationalrtap.org/home.aspx>.

FLY AMERICA REQUIREMENTS

49 U.S.C. §40118
41 CFR Part 301-10

Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirements: The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Model Clause/Language: The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

Fly America Requirements - The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The

Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.- The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j) 49 CFR Part 661

Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

Flow Down Requirements: The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

Mandatory Clause/Language: The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

CARGO PREFERENCE REQUIREMENTS

**46 U.S.C. 1241
46 CFR Part 381**

Applicability to Contracts: The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirements: The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language: The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

SEISMIC SAFETY REQUIREMENTS

42 U.S.C. 7701 et seq. 49 CFR Part 41

Applicability to Contracts: The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirements: The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

Model Clauses/Language: The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.

Seismic Safety - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

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.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirements: 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.

CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Applicability to Contracts: The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down Requirements: The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Model Clause/Language: While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements.

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

LOBBYING

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Applicability to Contracts: The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$100,000.

Flow Down Requirement: The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language: Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A. Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the

Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

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"

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: 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 ¹ non-competitive award	Those imposed on state pass thru to Contract or	None Yes, if non-competitive award or if funded thru ² 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 ³ Yes ³	Those imposed on non-state Grantee pass thru to Contract or	Yes Yes	Yes Yes	Yes Yes	Yes Yes

Sources of Authority: 49 USC 5325 (a), 49 CFR 633.17, 18 CFR 18.36 (i)

FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts: The Federal Changes requirement applies to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: 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.

BONDING REQUIREMENTS

Applicability to Contracts: For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

(1) 50% of the contract price if the contract price is not more than \$1 million;

(2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million;
or

(3) \$2.5 million if the contract price is more than \$5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Flow Down Requirement: Bonding requirements flow down to the first tier contractors.

Model Clauses/Language: FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

Bid Bond Requirements (Construction)

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit

his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

(a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million;

(ii) Forty percent of the contract price if the contract price is more than \$1 million

but not more than \$5 million; or

(iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

CLEAN AIR

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

Applicability to Contracts: The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down Requirement: The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Model Clauses/Language: No specific language is required. FTA has proposed the following language.

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

Applicability to Contracts: The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases.

Flow Down Requirement: These requirements flow down to all to all contractor and subcontractor tiers.

Model Clause/Language: No specific clause is mandated, but FTA has developed the following language.

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

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

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer

the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The WisDOT 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 the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the WisDOT may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the WisDOT for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of

the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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 therefor 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** - The (write in the name of the grantee) 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.

EQUAL EMPLOYMENT OPPORTUNITY

Master Agreement §13.c(3)

Applicability to Contracts: Construction contracts over \$10,000.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases.

Flow Down Requirement: 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: Federal Requirements and Guidance. The Recipient agrees to prohibit, and assures that each Third Party Participant will prohibit, discrimination on the basis of race, color, religion, sex, or national origin, and:

- (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*,
- (b) Facilitate compliance with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and as further amended by Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," July 21, 2014,
- (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 13.a of this Master Agreement, and
- (d) Follow Federal guidance pertaining to Equal Employment Opportunity laws and regulations, and prohibitions against discrimination on the basis of disability,

Specifics. The Recipient agrees:

- (a) Prohibited Discrimination. As provided by Executive Order 11246, as amended, and as specified by U.S. Department of Labor regulations, to ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their:
 - 1. Race,
 - 2. Color,
 - 3. Religion,
 - 4. National origin,
 - 5. Disability,
 - 6. Age,
 - 7. Sexual origin,
 - 8. Gender identity, or
 - 9. Status as a parent, and
- (b) Affirmative Action. Take affirmative action that includes, but is not limited to:
 - 1. Recruitment advertising, recruitment, and employment,
 - 2. Rates of pay and other forms of compensation,
 - 3. Selection for training, including apprenticeship, and upgrading, and
 - 4. Transfers, demotions, layoffs, and terminations, but
- (c) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer," and

Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures that each Third Party Participant will comply, with:

- (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and
- (b) Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts Applicable to all contracts

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: 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.

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.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: 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.

TERMINATION

49 U.S.C. Part 18 FTA Circular 4220.1F

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 Requirement: 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) The (Recipient) 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 (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) 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, the (Recipient) 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 (Recipient) 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, the (Recipient), 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) The (Recipient) 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 (Recipient)'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 (Recipient) setting forth the nature of said breach or default, (Recipient) 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 (Recipient) 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 (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'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) The (Recipient), 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 (Recipient) may terminate this contract for default. The (Recipient) 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, the (Recipient) may terminate this contract for default. The (Recipient) 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 the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) 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 the (Recipient).

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, the (Recipient) may terminate this contract for default. The (Recipient) 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 the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for

completing the work shall be extended. The judgment of the (Recipient) 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) The (Recipient) 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. The (Recipient) 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) The (Recipient) 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 the (Recipient) 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 the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) 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 the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), 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, the (Recipient) 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, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

2 CFR part 180

2 CFR part 1200

2 CFR § 200.213

2 CFR part 200 Appendix II (I)

Executive Order 12549

Executive Order 12689

Background and Applicability

A contract award (of any tier) in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties

listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Recipients, 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) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.

Flow Down

Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

Debarment, Suspension, Ineligibility and Voluntary Exclusion

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

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 the WisDOT. If it is later determined by the WisDOT that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the WisDOT, 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 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, 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.

Date: _____

Signature: _____

Company Name: _____

Title: _____

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.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: 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.

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.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: 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 shorten the lengthy text.

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

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.

BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18 **FTA Circular 4220.1F**

Applicability to Contracts: All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down: The Breaches and Dispute Resolutions requirements flow down to all tiers.

Model Clauses/Language: FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of WisDOT. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to WisDOT. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position.

The decision of the WisDOT shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

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 WisDOT's DBE transit goal for FFY 2017-2019 is **1.1%**. A separate contract goal 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 **WisDOT** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. Proposers that have DBE firms participating on this contract should provide the following:

1. The names and address of DBE that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the proposer's commitment to use a DBE subcontractor;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and

The successful proposer will be required to report its DBE participation obtained throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 10 calendar days after the contractor's receipt of payment for that work from the **WisDOT**. In addition, is required to return any retainage payments to those subcontractors within 10 calendar days after incremental acceptance of the subcontractor's work by the WisDOT and contractor's receipt of the partial retainage payment related to the subcontractor's work.

e. The contractor must promptly notify **WisDOT**, 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 **WisDOT**.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

Applicability to Contracts: The incorporation of FTA terms applies to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: 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 4220.1F 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 (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

ADA ACCESS

49 USC 531 (d)

Applicability to Contracts: The ADA Access Requirements apply to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: The ADA Access Requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language: ADA Access. The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination and ensures equal opportunity and access for persons with disabilities.

Access Requirements for Persons with Disabilities

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

VETERANS EMPLOYMENT

FTA Circular 4220.1F Chapter IV

Applicability to Contracts: The Veterans Employment provisions apply to all construction contracts.

Veterans Employment. Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

Attachment I

The attached material submitted in response to the above indicated Request for Qualifications, includes proprietary and confidential information which qualifies as a trade secret, as provided in section 19.36(5) Wis. Stat., or is otherwise material that can be kept confidential under the Wisconsin Open Records Law. As such, we ask that certain pages, as indicated below, of this proposal are treated as confidential material and not be released without our written approval.

Prices always become public information when bids/proposals are opened, and therefore cannot be kept confidential.

Other information cannot be kept confidential unless it is a trade secret. Trade secret is defined in s.134.90(1)(c), Wis. Stats. as follows: “Trade Secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process to which all of the following apply:

1. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, or persons who can obtain economic value from its disclosure or use.
2. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

We request that the following pages not be released:

[illegible]

In the event the designation of confidentiality of this information is challenged, the undersigned agrees to provide legal counsel or other necessary assistance to defend the designation of confidentiality and agrees to hold the state harmless for any costs or damages arising out of the state's agreement to withhold the materials.

Failure to include this form in the proposal response may mean that all information provided as part of the proposal response will be open to examination and copying. The State considers other markings of "confidential" in the proposal response to be insufficient. The undersigned agrees to hold the State harmless for any damages arising out of the release of any materials unless they are specifically identified above.

(Company Name)

(Signature) _____ (Date) _____

(Area Code-Telephone Number)

(Name – Type or Print)

Attachment J
SPECIALTY SERVICES CONTRACT
STANDARD PROVISIONS

	Page
I. DEFINITIONS.....	2
II. SCOPE OF SERVICES	3
A. General.....	3
B. Control and Authority	4
C. Services to be Performed by the CONSULTANT	4
D. Agency Coordination	4
III. PROSECUTION AND PROGRESS.....	4
A. Start of SERVICES.....	4
B. Progress.....	4
C. Completion of SERVICES.....	4
D. Delays and Extensions	4
E. Termination of CONTRACT	4
F. Subletting or Assignment of CONTRACT	5
IV. BASIS OF PAYMENT.....	6
A. General.....	6
B. SERVICE Orders, Extra SERVICES, or Decreased SERVICES	6
C. Errors and Omissions.....	6
V. MISCELLANEOUS PROVISIONS	6
A. Professional Practice	6
B. Ownership of Document	6
C. Legal Relations.....	7
D. Prevailing Wage Rate.....	7
E. Nondiscrimination in Employment.....	7
F. Federal Requirements for Disadvantaged Business Program	8
G. Equal Opportunity Employment	8
H. Implementation of Clean Air and Clean Water Act.....	9
I. Conflict of Interest.....	9
J. Certification Regarding Lobbying	10
K. Contingent Fees.....	10
L. Certification Regarding Debarment, Suspension, and Other Responsibility Matters – All Covered Transactions	10
M. Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions.....	11
N. Insurance Requirements	11
O. Choice of Law	12
P. Choice of Forum	12
Q. Entire Agreement.....	12
R. Severability	12
VI. Attachments	13
A. Insurance Table	13
B. Special Provisions	13

Attachment J
SPECIALTY SERVICES CONTRACT
STANDARD PROVISIONS

I. DEFINITIONS

- A. AUTHORIZATION: written direction from the DEPARTMENT to the CONSULTANT to proceed; it references this CONTRACT, the specific SERVICES to be performed and the DEPARTMENT PROJECT ID to which costs will be charged.
- B. CONSTRUCTION CONTRACT: agreement between the DEPARTMENT and a CONTRACTOR setting forth the obligations of the parties to the CONSTRUCTION CONTRACT, including, but not limited to, performance of the WORK, furnishing of labor and materials and basis of payment.
- C. CONSULTANT: individual, partnership, joint venture, corporation or agency undertaking the performance of the SERVICES designated under the terms of the CONTRACT and acting directly or through a duly authorized representative.
- D. CONSULTANT REPRESENTATIVE: employee designated by the CONSULTANT to act as liaison between the CONSULTANT and the DEPARTMENT
- E. CONTRACT: agreement between the DEPARTMENT and a CONSULTANT setting forth the obligations of the parties to the CONTRACT, including, but not limited to, these standard provisions, performance of the SERVICES, furnishing of labor and materials and basis of payment. The CONTRACT type may be a MASTER CONTRACT, which will include SERVICES to be provided under a WORK ORDER.
- F. CONTRACT AMENDMENT: agreement between the DEPARTMENT and a CONSULTANT setting forth the change in SERVICES from the original contract. The change in compensation, fixed fee and completion date, if any, shall be agreed upon by the DEPARTMENT and the CONSULTANT.
- G. CONTRACTOR: individual, partnership, joint venture, corporation or agency undertaking the performance of the WORK designated under the terms of a CONSTRUCTION CONTRACT and acting directly or through a duly authorized representative.
- H. DEPARTMENT: Wisconsin Department of Transportation.
- I. DEPARTMENT REPRESENTATIVE: employee of the DEPARTMENT in immediate charge of this CONTRACT and designated to act as liaison between the DEPARTMENT and the CONSULTANT
- J. FHWA: Federal Highway Administration.
- K. MANUALS: DEPARTMENT'S Construction and Materials Manual (CMM); Finals Process for Let Project Closeout; Facilities Development Manual (FDM); LRFD Bridge Manual (BM); and Standard Specifications for Highway and Structure Construction (Standard Specifications,) and materials referenced in those manuals.
- L. MASTER CONTRACT: a type of CONTRACT under which WORK ORDERS are issued.
- M. MUNICIPALITY: city, village, town, or county.
- N. MUNICIPALITY REPRESENTATIVE: employee of the MUNICIPALITY in immediate charge of this CONTRACT and designated to act as liaison between the MUNICIPALITY and the CONSULTANT.
- O. PROJECT: specific section of highway proposed for improvement by the DEPARTMENT in this CONTRACT. Each PROJECT or other described activity has a unique project ID.
- P. PROJECT DOCUMENTS: all materials, guides, written instructions, plans, documents, correspondence, forms, computer files, databases, electronic mail messages, work product or other information of any type created by the CONSULTANT for the DEPARTMENT under this CONTRACT.
- Q. SERVICES: engineering or other services, labor, equipment, and materials furnished by the CONSULTANT in accordance with this CONTRACT.
- R. WORK: The furnishing of all labor, materials, equipment, and incidentals and the performing of all tasks needed to complete the project or a specific part of the project as specified in the CONSTRUCTION CONTRACT, together with the fulfillment of all associated obligations and duties required under the CONSTRUCTION CONTRACT.
- S. WORK ORDER: a type of CONTRACT issued under the terms of a MASTER CONTRACT.

SPECIALTY SERVICES CONTRACT
STANDARD PROVISIONS

II. SCOPE OF SERVICES

A. General

1. Active Voice

- a. The DEPARTMENT defines the CONSULTANT and DEPARTMENT responsibilities within the contract documents in one of the following ways:
 - (1) Taken in context, the contract language makes the responsible party clear.
 - (2) Direct commands are written to the CONSULTANT in the active voice-imperative mood.
 - b. If the CONSULTANT thinks the responsibility for an action under the CONTRACT is unclear or given to the wrong party, the CONSULTANT will seek clarification from the DEPARTMENT.
 - c. Sentences directing the CONSULTANT to perform SERVICES are written in the active voice-imperative mood. These CONSULTANT directions are written as commands. For example, the basic requirement to perform the CONTRACT SERVICES would be expressed as, "Furnish all SERVICES to accomplish this CONTRACT," rather than "The CONSULTANT shall furnish all SERVICES to accomplish this CONTRACT". In the imperative mood, the subject "the CONSULTANT" is understood.
 - d. Requirements to be performed by others are written in the active voice. Sentences written in the active voice identify the party responsible for performing the action. For example, "The DEPARTMENT will provide manuals, guides, written instructions and other information and data necessary to enable the CONSULTANT to perform the SERVICES to the same standards required of the DEPARTMENT'S personnel." Certain requirements of the CONSULTANT may also be written in the active voice, rather than the active voice-imperative mood, if the sentence includes requirements for others in addition to the CONSULTANT. For example, a sentence that involves action by both the CONSULTANT and the DEPARTMENT would be expressed, "At the request of the DEPARTMENT, the CONSULTANT shall furnish maps, portions of plans, supplemental reports or other information relating to the SERVICES."
 - e. Sentences that define terms, describe a product or desired result, or describe a condition that may exist are written in neither the active voice nor the imperative mood. These types of sentences that describe a condition use verbs requiring no action. For example, "The DEPARTMENT REPRESENTATIVE is identified in the CONTRACT."
2. Perform all SERVICES consistent with applicable standards and requirements contained in the MANUALS. Revisions to the MANUALS made subsequent to the execution of this CONTRACT will be considered as orders defined in (IV)(B)(1.)
 3. Furnish all SERVICES, materials, equipment, supplies, and incidentals other than those designated in writing to be furnished by the DEPARTMENT and check or test them prior to use.
 4. The DEPARTMENT may participate in all conferences and reviews.
 5. Confer with the DEPARTMENT and prepare and present such information and studies pertinent or requested by the DEPARTMENT to enable it to reasonably pass judgment on the features of the SERVICES. The CONSULTANT shall make such changes or revisions to the SERVICES required by the DEPARTMENT.
 6. The DEPARTMENT reserves the right to select the alternative to be used and may request additional alternatives be studied.
 7. At the request of the DEPARTMENT furnish maps, portions of plans, supplemental reports or other information relating to the SERVICES.
 8. This CONTRACT serves as a permit under sec. 86.07(2), Wis. Stats., for the CONSULTANT to perform the SERVICES on property under the jurisdiction of the, unless a separate permit is

SPECIALTY SERVICES CONTRACT
STANDARD PROVISIONS

required by the DEPARTMENT REPRESENTATIVE. The CONSULTANT is an authorized representative of the DEPARTMENT for purposes of the right of entry under sec. 84.01(10), Wis. Stats., to enter private lands to perform the SERVICES.

9. The SERVICES under this CONTRACT are subject to review and approval by the DEPARTMENT at those appropriate steps defined in detail in the MANUALS.

B. Control and Authority

1. DEPARTMENT

- (1) The DEPARTMENT REPRESENTATIVE is identified in this CONTRACT and will monitor CONSULTANT compliance with the CONTRACT.

C. SERVICES to be Performed by the CONSULTANT

1. Perform field operations in accordance with Occupational Safety and Health Administration (OSHA) regulations and accepted professional practice.
2. Public Involvement
 - a. Maintain a log of public and agency involvement activities.
 - b. Assist the DEPARTMENT in answering all questions received from the general public.
3. Schedule and attend meetings and conferences as required in the Special Provisions.
4. Unless terminated, the CONTRACT is in full force and effect for the purposes of requiring changes or revisions in accepted SERVICES.

D. Agency Coordination

1. Prepare necessary permit applications according to the MANUALS.

III. PROSECUTION AND PROGRESS

A. Start of Services

1. Commence SERVICES upon AUTHORIZATION from the DEPARTMENT.
2. The DEPARTMENT will not be liable for payment for SERVICES performed without AUTHORIZATION.

B. Progress

1. Prepare progress reports documenting the SERVICES performed to date.

C. Completion of Services

1. Notify the DEPARTMENT when the SERVICES have been completed.
2. The DEPARTMENT will notify the CONSULTANT of the formal acceptance of the completed SERVICES.

D. Delays and Extensions

1. The DEPARTMENT may extend the time for completion, with a CONTRACT AMENDMENT, in the event of an excusable non-compensable delay as defined in the Standard Specifications.
2. Prior to completion of the CONTRACT, request, if desired, a CONTRACT AMENDMENT for an excusable delay.

E. Termination of Contract

1. Termination for Cause – Default

- a. The DEPARTMENT may terminate this CONTRACT, in whole or in part, upon default by CONSULTANT, including:
 - (1) Failing to begin the SERVICES under the CONTRACT within the time specified.
 - (2) Failing to perform the SERVICES with sufficient workers, equipment, or materials to complete the SERVICES within the specified time.
 - (3) Failing to complete the CONTRACT within the CONTRACT time specified, as extended by the DEPARTMENT.
 - (4) Performing the SERVICES unsuitably, or not obeying a DEPARTMENT directive to remove and replace or otherwise correct unacceptable SERVICES.

SPECIALTY SERVICES CONTRACT
STANDARD PROVISIONS

- (5) Discontinuing the prosecution of the SERVICES before completion without the DEPARTMENT'S permission.
- (6) Failing to resume SERVICES that the DEPARTMENT discontinued within a reasonable time after notice to do so.
- (7) Insolvency or bankruptcy, or committing an act of bankruptcy or insolvency.
- (8) Allowing a final judgment against the CONSULTANT to stand unsatisfied for a period of 48 hours.
- (9) Making an assignment for the benefit of creditors.
- (10) Failing to comply with the provisions of the CONTRACT.
- (11) Failing to acquire or maintain the required insurance.
- (12) Failing to perform the SERVICES in an acceptable manner.
- b. The DEPARTMENT will notify CONSULTANT in writing of a default condition specifying the default and the action required. If the CONSULTANT, within a period of 10 calendar days of the notice, fails to proceed satisfactorily in compliance therewith, the DEPARTMENT then has full power and authority to take the performance of SERVICES out of the hands of the CONSULTANT; to use all suitable materials and equipment on the project; or to enter into CONTRACT, or use other methods that the DEPARTMENT requires to perform the SERVICES.
- c. If the DEPARTMENT takes over or reassigns the incomplete SERVICES (III)(E)(a), the DEPARTMENT will deduct all additional costs and damages and the costs and charges of completing the SERVICES under CONTRACT from payments due the CONSULTANT. If that total exceeds the sum that would have been payable under the CONTRACT, the DEPARTMENT will consider the CONSULTANT liable, and the CONSULTANT shall pay the excess sum to the DEPARTMENT.
- d. The DEPARTMENT will not relieve the CONSULTANT of the liability for the assessment of liquidated damages because of the CONSULTANT'S default.
- e. The rights and remedies of the DEPARTMENT are in addition to all other rights and remedies provided by law or under the CONTRACT.
- 2. Termination for Convenience
 - a. The DEPARTMENT may terminate the CONTRACT in whole or in part after determining that termination is in the DEPARTMENT'S or the public interest.
 - b. The DEPARTMENT will deliver to the CONSULTANT a termination notice specifying the extent of termination and the effective date.
 - c. Upon receipt of a termination notice, do not proceed with the affected SERVICES unless directed to do so in that notice. Complete all SERVICES specified in the termination notice. The DEPARTMENT reserves the right to declare in default a CONSULTANT who does not carry out the conditions of a termination for convenience.
 - d. If the DEPARTMENT orders termination of the CONTRACT for convenience, the CONSULTANT shall be paid for the SERVICES rendered, an amount bearing the same ratio to the total CONTRACT amount as the amount of SERVICES completed or partially completed and delivered to the DEPARTMENT bears to the total amount of SERVICES provided for herein, as a CONTRACT AMENDMENT.
 - e. If the DEPARTMENT directs, the CONSULTANT shall promptly remove equipment and supplies from the project site or other DEPARTMENT property. If the CONSULTANT does not remove the equipment and supplies as directed, the DEPARTMENT may do so at the CONSULTANT'S expense.
 - f. The DEPARTMENT will not relieve the CONSULTANT of contractual responsibilities for the SERVICES performed and SERVICES completed.
- F. Subletting or Assignment of Contract

SPECIALTY SERVICES CONTRACT
STANDARD PROVISIONS

1. Obtain approval to sublet or assign any part of this CONTRACT.
2. Perform SERVICES amounting to at least one-half of the original CONTRACT amount.
3. Retain full responsibility for the fulfillment of the CONTRACT.

IV. BASIS OF PAYMENT

A. General

1. The CONSULTANT will be paid for the performed and approved SERVICES under this CONTRACT.
2. Reimbursement for costs will be limited to those which are allowable under 48 CFR Part 31 and by DEPARTMENT policy.
3. Submit invoices for the SERVICES performed to date. The final invoice shall be submitted within three months of completion of SERVICES.
4. Submit a separate invoice and a separate final invoice for each individual PROJECT.
5. Payment does not constitute acceptance of unsatisfactory or defective SERVICES.
6. The DEPARTMENT has the equitable right to set off against any sum due and payable to CONSULTANT under this CONTRACT, any amount the DEPARTMENT determines the CONSULTANT owes the DEPARTMENT, whether arising under this CONTRACT or under any other CONTRACT.
7. Maintain and make available all records pertaining to all costs incurred for inspection by the DEPARTMENT and the Comptroller General of the United States for three years following the final payment.
8. Compensation will not exceed the total CONTRACT amount unless authorized by a CONTRACT AMENDMENT.
9. Compensation will not be allowed for improper CONSULTANT performance.
10. Pay subconsultants within 10 business days of receipt of a payment for SERVICES performed.

B. SERVICE Orders, Additional SERVICES, or Decreased SERVICES

1. The DEPARTMENT may give orders regarding the SERVICES including additional SERVICES or the elimination of required SERVICES until the CONTRACT is terminated.
 - a. If the order will not increase or decrease SERVICES, there is no change to the CONTRACT amount.
 - b. The CONSULTANT must notify the DEPARTMENT if extra compensation is desired for the SERVICES in (IV)(B)(1)(a).
 - c. If the order will increase or decrease SERVICES the DEPARTMENT and the CONSULTANT will negotiate adjustments to the CONTRACT amount and submit a CONTRACT AMENDMENT.

C. Errors and Omissions

1. Be responsible for the accuracy of the SERVICES, and promptly make necessary revisions to its SERVICES resulting from its negligent acts, errors, or omissions without additional compensation.
2. Give immediate attention to these revisions to prevent or minimize delay to any PROJECT.
3. Be responsible to the DEPARTMENT for any losses to or costs to repair or remedy as a result of negligent acts, errors or omissions.
4. Unless terminated, the CONTRACT is in full force and effect for the purposes of requiring revisions in the SERVICES necessary to correct errors or omissions.

V. MISCELLANEOUS PROVISIONS

A. Professional Practice

1. Perform all SERVICES consistent with generally accepted professional practice.

B. Ownership of Documents

1. The DEPARTMENT is owner of all PROJECT DOCUMENTS.

SPECIALTY SERVICES CONTRACT
STANDARD PROVISIONS

2. Deliver all PROJECT DOCUMENTS within 10 business days of request or completion of CONTRACT.
 3. The DEPARTMENT'S reuse of PROJECT DOCUMENTS other than for the intended PROJECT shall be at the sole risk of the DEPARTMENT.
- C. Legal Relations
1. Comply with and observe applicable federal, state, and local laws, ordinances, and regulations in effect at the time the SERVICES are performed.
 2. Indemnify the DEPARTMENT and all of their officers, agents, and employees on account of any damages to persons or property resulting from negligence in performance of the SERVICES, errors, omissions and/or noncompliance with any applicable federal, state or local laws.
 3. Be responsible for all damages to property or persons arising out of negligent act, error and/or omission.
- D. Prevailing Wage Rate
1. Sec. 103.50, Wis. Stats., the Wisconsin prevailing wage rate law, does not apply.
- E. Nondiscrimination in Employment
1. The CONSULTANT will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Transit Administration (FTA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this CONTRACT.
 2. The CONSULTANT, with regard to the SERVICES performed by it during the CONTRACT, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
 3. In all solicitations, either by competitive bidding, or negotiation made by the CONSULTANT for SERVICES to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subconsultant or supplier will be notified by the CONSULTANT of the CONSULTANT'S obligations under this CONTRACT and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
 4. The CONSULTANT will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or FTA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish the information, the CONSULTANT will so certify to the Recipient or the FTA, as appropriate, and will set forth what efforts it has made to obtain the information.
 5. In the event of the CONSULTANT'S noncompliance with the Non-discrimination provisions of this CONTRACT, the Recipient will impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the CONSULTANT under the CONTRACT until the CONSULTANT complies; and/or
 - b. Cancelling, terminating, or suspending the CONTRACT, in whole or in part.
 6. The CONSULTANT will include the provisions of (V)(E) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the

SPECIALTY SERVICES CONTRACT
STANDARD PROVISIONS

Regulations and directives issued pursuant thereto. The CONSULTANT will take action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the CONSULTANT becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the CONSULTANT may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the CONSULTANT may request the United States to enter into the litigation to protect the interests of the United States.

F. Federal Requirements for Disadvantaged Business Program

1. Disadvantaged Businesses Enterprises (DBE) as defined in 49 CFR Part 26 and federal law shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the DBE requirements 49 CFR Part 26 and federal law apply to this CONTRACT (and any WORK ORDER) only when they are federally funded.
2. When any portion of this CONTRACT is federally funded and Federal law in effect at the time this CONTRACT is executed authorizes and requires it, the CONSULTANT agrees to ensure that DBE'S have the maximum opportunity to participate in the performance of any subcontracts financed in whole or in part with federal funds provided under this agreement. Take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform subcontracts. The CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts. Failure to carry out the requirements of this provision shall constitute a breach of contract and may result in termination of this CONTRACT (or any WORK ORDER) by the DEPARTMENT or other such remedy as the DEPARTMENT deems appropriate.
3. When this CONTRACT is federally funded, identify, by name, the DBE'S whose utilization is intended to satisfy this provision, the items of SERVICES involved, and the dollar amounts of such items of SERVICES.
4. When this CONTRACT is federally funded, maintain records and document its performance under this item.

G. Equal Employment Opportunity (All Contracts Exceeding \$10,000)

1. During the performance of this CONTRACT, the CONSULTANT, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:
 - a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
 - b. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - c. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
 - d. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
 - e. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);

SPECIALTY SERVICES CONTRACT
STANDARD PROVISIONS

- f. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
 - g. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
 - h. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
 - i. The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 - k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 7408 to 74100);
 - l. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.)
2. Include the provisions of (V)(G) in every subcontract in excess of \$10,000.
- H. Implementation of Clean Air Act and Clean Water Act (All Contracts Exceeding \$10,000)
- 1. Stipulate that any facility to be utilized in the performance of this CONTRACT, unless such CONTRACT is exempt under the Clean Air Act and under the Clean Water Act is not listed, on the date of CONTRACT award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities Pursuant to 40 CFR 15.20.
 - 2. Comply with all the requirements of the Clean Air Act and the Clean Water Act and all regulations and guidelines listed therein.
 - 3. Notify the DEPARTMENT (or MUNICIPALITY, in the case of a three-party contract) and the U.S. EPA Assistance Administrator for Enforcement of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for this CONTRACT is under consideration to be listed on the EPA List of Violating Facilities.
 - 4. Include the provisions (V)(H) in every nonexempt subcontract.
- I. Conflict of Interest
- 1. Warrant that neither it nor any of its affiliates have any financial or personal interest that would conflict in any manner with the performance of the SERVICES, and that neither it nor any of its affiliates will acquire directly or indirectly any such interest.

SPECIALTY SERVICES CONTRACT
STANDARD PROVISIONS

2. Warrant that it will not employ for any SERVICES any person who is employed by the DEPARTMENT at the time of execution or during the life of this contract without prior written approval from the DEPARTMENT.
 3. Warrant that it will immediately notify the DEPARTMENT if any actual or potential conflict of interest arises or becomes known. Upon receipt of such notification a DEPARTMENT review and approval is required to continue to perform SERVICES under this CONTRACT.
- J. Certification Regarding Lobbying
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the CONSULTANT shall complete and submit standard form-LOLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 3. The CONSULTANT shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- K. Contingent Fees
1. Warrant that only employee(s) working solely for the CONSULTANT solicited or secured this CONTRACT (or any WORK ORDERS), and that any fees, commissions, percentages, brokerage fees, gifts, or any other considerations, contingent upon or resulting from the award or making of this CONTRACT (or any WORK ORDER) will be given only to employee(s) working solely for the CONSULTANT.
 2. For breach or violation of this warranty, the DEPARTMENT may terminate this CONTRACT without liability, or deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- L. Certification Regarding Debarment, Suspension, and Other Responsibility Matters-All Covered Transactions
1. For purposes of this section, "proposal" means this entire CONTRACT when signed and submitted by CONSULTANT to the DEPARTMENT before execution by the DEPARTMENT.
 - a. Instructions for Certification
 - (1) Signing and submitting this proposal provides the certification set out in section (V)(L)(1)(b) below.
 - (2) The terms "covered transaction", "debarred", "suspended", "ineligible", "lowertier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this provision, have

SPECIALTY SERVICES CONTRACT
STANDARD PROVISIONS

the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549 and Chapter Trans 504 Wis. Admin. Code.

- (3) Include (V)(L) titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—All Covered Transactions" without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (4) Submit an explanation for the inability to provide the certification set out in (V)(L)(1)(b) below. The DEPARTMENT will determine if the explanation is sufficient to enter into this transaction. Failure to furnish a certification or explanation will exclude participation in this transaction.
- (5) The certification in this clause is a material representation of fact upon which reliance was placed when the DEPARTMENT determined to enter into this transaction. If it is later determined that the CONSULTANT knowingly rendered an erroneous certification the DEPARTMENT may pursue all available remedies.
- (6) Provide immediate written notice to the DEPARTMENT if at any time the CONSULTANT learns that its certification was invalid when submitted or has become invalid by reason of changed circumstances.
- (7) Will not 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 without written notice by the DEPARTMENT. The DEPARTMENT may pursue all available remedies for failure to obtain this written notice.

b. The CONSULTANT certifies to the best of its knowledge and belief, that it and its principals:

- (1) Are not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by the DEPARTMENT, under Chapter Trans 504 Wis. Admin. Code or any federal department or agency;
- (2) Have not within a three-year period preceding this proposal 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.
- (3) Are not currently 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 section (V)(L)(1)(b)(2) above; and
- (4) Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State, or Local) terminated for cause or default.

M. Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions

1. Certify that all grantees or subcontractors, also known as lower tier participants as that term is used in 49CFR Part 29 have certified in writing that neither they nor their principals are currently debarred, suspended or proposed for debarment, have been declared ineligible or have voluntarily been excluded from participation in this or any other Federal, State or local transaction by any Federal, State or local department agency or official.

N. Insurance Requirements

1. Maintain the following types and limits of commercial insurance in force until such time as all SERVICES under or incidentals to the CONTRACT have been completed.

(See Insurance Table, VI Attachment A)

SPECIALTY SERVICES CONTRACT
STANDARD PROVISIONS

2. Furnish an Insurance Certificate, (or Certificates) showing the CONSULTANT is covered by the required types and amounts of insurance to the DEPARTMENT prior to the performance of any SERVICES under this CONTRACT.
 3. A 60-day notice of cancellation or change in coverage will be required. All coverage shall be placed with insurance companies licensed to do business in the State of Wisconsin with an
A.M. Best rating of A - or better. The DEPARTMENT reserves the right to require other coverage and limits as described in the Special Provisions of this CONTRACT.
 4. The insurance requirements shall apply with equal force whether the SERVICES under this CONTRACT is performed by the CONSULTANT, a subcontractor of the CONSULTANT, or by any entity employed directly or indirectly by either party.
 5. Exceptions to the insurance requirements require approval from the DEPARTMENT. The approval must be reflected in the Special Provisions of the CONTRACT.
- O. Choice of Law and Sovereign Immunity
1. The CONTRACT shall be governed, construed, and enforced in accordance with the laws of the State of Wisconsin.
 2. Nothing in this CONTRACT shall be deemed as a waiver of the State's sovereign immunity consistent with Wisconsin law.
 3. Non-Appropriation of Funds. With respect to any payment required to be made by DEPARTMENT under this CONTRACT, the parties acknowledge DEPARTMENT'S authority to make such payment is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Legislature. If such funds are not so appropriated, either CONSULTANT or DEPARTMENT may terminate this CONTRACT after providing not less than thirty (30) days notice to the other party.
- P. Choice of Forum
1. Any dispute arising out of or related to this CONTRACT shall be brought solely and exclusively in front of the State and Federal courts of Dane County, Wisconsin.
- Q. Entire Agreement
1. This CONTRACT and its attachments contain the entire agreement of the parties and supersede any and all prior agreements or oral understandings between the parties.
- R. Severability
1. The invalidity or unenforceability of any provisions of this CONTRACT shall not affect the validity or enforceability of any other provision of this CONTRACT, which shall remain in full force and effect.

SPECIALTY SERVICES CONTRACT
STANDARD PROVISIONS

VI. Attachment A. Insurance Table

Type of Insurance	Minimum Limits required *
(a) Commercial General Liability Insurance; shall be endorsed to include completed operations and blanket contractual liability coverage.	\$1 Million Combined Single Limits per Occurrence, may be subject to an Annual Aggregate Limit of not less than \$2 Million.
(b) Worker's Compensation and Employer's Liability Insurance	Worker's Compensation: Statutory Limits Employer's Liability: Bodily Injury by Accident - \$100,000 Each Accident Bodily Injury by Disease \$500,000 Each Accident \$100,000 Each Employee
(c) Commercial Automobile Liability Insurance; shall cover all CONSULTANT owned, non-owned and hired vehicles used in carrying out the contract.	\$1 Million - Combined Single Limits per occurrence
(d) Architect [sic] and Engineer [sic] Professional Liability Insurance **	\$1 Million - Each Claim, may be subject to an Annual Aggregate Limit of \$1 Million

* These requirements may be satisfied either through primary insurance coverage or through excess/umbrella insurance policies.

**This insurance requirement applies only to engineering services and is waived for non-engineering services. Engineering services are defined as project management, construction management and inspection, feasibility studies, preliminary engineering, design engineering, surveying mapping and architectural related services.

Attachment B. Special Provisions

Insert Special Provisions