



City of Winston-Salem

Request for Letters of Interest and Statements of Qualifications

THE CITY OF WINSTON-SALEM DEPARTMENT OF TRANSPORTATION DESIRES TO ENGAGE QUALIFIED PRIVATE ENGINEERING FIRMS FOR ON-CALL PROFESSIONAL ENGINEERING AND PLANNING SERVICES.

I. BACKGROUND

The City of Winston-Salem Department of Transportation regularly performs various multi-dimensional tasks covering a range of transportation engineering, transportation planning, and traffic engineering services. The City is seeking qualified consulting firms to augment City staff during periodic high-volume times and to provide the skills required for a flexible and effective way for the City of Winston-Salem Department of Transportation to service its customers. Some of the needs to be met with the on-call Contract include:

- Engineering and planning work for a variety of transportation improvement projects such as roadway design and construction as well as bicycle and pedestrian projects (Sidewalks, Greenways, Bike Lanes, etc.).
- Transportation engineering studies such as: Corridor studies, traffic signal design, traffic signal timing, traffic control plans, traffic counts, traffic modeling, traffic impact studies, and streetscape design.

II. QUALIFYING CRITERIA

The City of Winston-Salem's Department of Transportation invites qualified firms to submit proposals for professional on-call engineering and planning services. Work will include multi-dimensional tasks covering a range of engineering and transportation planning services. This contract may be partially reimbursed with Federal-Aid funding through the North Carolina Department of Transportation (hereinafter referred as NCDOT). The solicitation, selection, and negotiation of contract(s) shall be conducted in accordance with all City of Winston-Salem, NCDOT and Federal requirements and guidelines.

Except as provided below, any firm wishing to be considered must be properly registered with the Office of the Secretary of State and with the North Carolina Board of Examiners for Engineers and Surveyors. Any firm proposing to use corporate subsidiaries or subcontractors must include a statement that these companies are properly registered with the North Carolina Board of Examiners for Engineers and Surveyors and/or the NC Board for Licensing of Geologists. The Engineers performing the work and in responsible charge of the work must be registered Professional Engineers in the State of North Carolina and must have a good ethical and professional standing. It will be the responsibility of the selected private firms to verify the registration of any corporate subsidiary or subcontractor prior to submitting a Statement of Qualification. Firms which are not providing engineering services need NOT be registered with the North Carolina Board of Examiners for Engineers and Surveyors. Some of the services being solicited may not require a license. It is the responsibility of each firm to adhere to all laws of the State of North Carolina.

III. SCOPE OF WORK

The City of Winston-Salem anticipates a 24-month contract that may be extended for up to two additional 12-month periods for the following scope of services. This scope of work was developed to provide a flexible and effective way for the City of Winston-Salem's Department of Transportation (WSDOT) to respond to recurring consultant service needs for multi-dimensional tasks covering a range of transportation engineering, planning and traffic services.

In general, the selected firm's On-Call responsibilities may include but not be limited to the areas listed below. WSDOT frequently leverages State and Federal funds for a variety of projects. Because of this, the firm should indicate which disciplines related to this scope they are pre-qualified by the North Carolina Department of Transportation to conduct.

1. Performance of traffic engineering operational analysis (analysis may include unsignalized intersections, signalized intersections, coordinated signal systems, and urban & suburban highways).
2. Development of traffic engineering design plans, specifications, and estimates (designs may include traffic signals, signs, pavement markings, and traffic control)
3. Performance of transportation planning analysis to include travel demand modeling; thoroughfare and collector street planning; and bicycle, pedestrian, and transit mobility issues.
4. Performance of Feasibility Studies (includes public involvement/meetings, development of functional plans, project visualization or photo-rendering, environmental screening, and preparation of cost estimates).
5. Development of preliminary design and assistance with other tasks related to the Preliminary engineering and right of way acquisition phases of Federal or State funded project.
6. Design and construction engineering of roadways, sidewalks, greenways and various bicycle and pedestrian facilities.

The primary and/or sub-consultant firm(s) shall be pre-qualified by NCDOT to perform ANY COMBINATION of the work codes listed below or as required for the NCDOT. Primary Work Codes include:

269 - URBAN ROADWAY DESIGN

32 - CATEGORICAL EXCLUSIONS

63 - ENVIRONMENTAL ASSESSMENT/ FINDING OF NO SIGNIFICANT IMPACT

66 - ENVIRONMENTAL IMPACT STATEMENT/ RECORD OF DECISION

70 - EROSION AND SEDIMENT CONTROL DESIGN

194 - RIGHT OF WAY NEGOTIATORS

192 - RIGHT OF WAY APPRAISALS

195 - ROADWAY CONSTRUCTION ENGINEERING & INSPECTION

270 - UTILITY COORDINATION

155 - PAVEMENT MARKINGS PLANS

200 - FEASIBILITY STUDY

252 - TRAFFIC IMPACT STUDIES

459 - TRAFFIC ENGINEERING AND TRANSPORTATION SAFETY INVESTIGATIONS, RESEARCH, RECOMMENDATIONS AND STUDIES

289 - SIGNAL SYSTEM INSPECTION

207 - SIGNAL DESIGN

209 - SIGNAL SYSTEM COMMUNICATIONS DESIGN

210 - SIGNAL SYSTEM TIMING

208 - SIGNAL EQUIPMENT DESIGN

171 - PUBLIC INVOLVEMENT

132 - LANDSCAPE AND STREETScape DESIGN

318 - BICYCLE MAP PREPARATION

411 - TRANSIT SYSTEM CONSOLIDATION STUDIES

412 - TRANSIT FACILITY FEASIBILITY STUDIES FOR TRANSIT SUPPORT STRUCTURES
505 - TRANSIT FACILITY CONSTRUCTION PROJECT OVERSIGHT, ADMINISTRATION,
INSPECTION, MANAGEMENT AND/OR MONITORING
141 - MULTIMODAL TRANSPORTATION PLANNING
276 - VISUALIZATION
315 - MUNICIPAL AND REGIONAL PLANNING STUDIES
316 - MULTI-USE TRAIL DESIGN
501 - MULTIMODAL FACILITIES PLANNING

The WORK CODES for each primary and/or sub consultant firm(s) SHALL be listed on the respective RS-2 FORMS. Completed Form RS-2 forms SHALL be submitted with the firm's statement of qualification:
<https://connect.ncdot.gov/business/consultants/Roadway/Form%20RS-2%20Prime%20Contractor.pdf>

IV. SPECIFIC PROJECT ASSIGNMENTS

The City of Winston-Salem will select an On-Call List of six (6) to twelve (12) qualified consulting firms to provide the above mentioned services. A Master Agreement will be issued to each selected firm (CONSULTANT) as work is assigned. These firms will be placed on an active list for the City.

Project assignments will be assigned to the firm most qualified for it. At the time of specifying a project assignment, the City will provide the relevant project's background information to one or more firms qualified to do the work. These firms will have to demonstrate the availability of key qualified personnel, a commitment to begin work as soon as possible, and the qualification to cover all of the needs and requirements of the proposed project. However, the City may select any firm on the On-Call list based on a range of factors including, but not limited to, the specialized qualifications of key personnel, recent project experience in a specific work area, and the firm's past performance in services provided to the City. The selected firm will prepare and submit a specific project assignment scope of work, cost proposal, and schedule. Specific project assignments will establish fixed unit pricing and a not-to-exceed amount for each specific project assignment. At that time, the selected firm will also delineate for the City any perceived special conditions associated with the specific project assignment. The selected firm's scope of work, cost proposal, and schedule will be used as the starting point for negotiating a specific project assignment supplemental Agreement and/or task order. If terms to establish a supplemental agreement, acceptable to the City, cannot be reached in a reasonable period of time, then the City will cease negotiation with the selected firm and negotiate with another firm from the On Call list. The compensation discussed with one prospective firm will not be disclosed or discussed with another firm. This process will be repeated, if necessary, until a specific project assignment supplemental agreement, acceptable to the City, is negotiated. The Purchase Order will not be in force until it is approved and fully executed by the City Manager. The firm shall perform services as requested by the City, only after receipt of a fully executed Supplemental Agreement and the authorized City representative has issued a written "Notice to Proceed" for each specific project assignment.

Inactive Status or Removing a Firm

The criteria outlined below will be used to place a firm on inactive status or remove a firm from the On-Call List.

INACTIVE STATUS DESIGNATION

1. If a selected firm loses their technical expertise and does not replace that expertise within two (2) months, then the firm will be put on inactive status. Replacement of technical expertise will require written City approval to allow the firm to be reinstated on the "On-Call" List.
2. If a selected firm declines a specific project assignment two (2) consecutive times, then the firm will be put on inactive status. A written request from the inactive firm, providing appropriate justification, will be required to seek reinstatement on the "On-Call" List. Written City approval will be required to allow the firm to be reinstated on the "On-Call" List.

REMOVING A FIRM:

A firm may be removed from the “On-Call” List for any of the following reasons as determined by the City:

1. Loss of Technical Expertise - If a firm loses their technical expertise and has not replaced that expert within three (3) months.
2. Declining work - If a firm is put on inactive status two (2) times for declining specific project assignments.
3. Responsiveness and accessibility of the Project Manager - If a Project Manager is nonresponsive and inaccessible for more than five (5) working days.
4. Poor quality control - If a firm exhibits poor quality control.
5. Poor work product and/or deliverables - If a firm produces poor work product and/or deliverables.
6. Late work milestone performance and/or late deliverables - If a firm does not meet deadlines for milestones and/or delivers completed work late.

Subcontracting

The firm/team may use sub-contractors to perform work as outlined in this proposal subject to their meeting the required experience and/or professional qualifications. Qualifications and experience of sub-contractors proposed shall be submitted as a part of the proposal. The proposal shall clearly note the type of work they can perform.

If a proposal with subcontractors is selected, the consultant must provide the following additional information concerning each prospective subcontractor within ten working days from the date of the City's request:

1. Complete name of the subcontractor,
2. Complete address of the subcontractor,
3. Type of work the subcontractor will be performing,
4. Percentage of work the subcontractor will be providing,
5. Subconsultant Form RS-2:

<https://connect.ncdot.gov/business/consultants/Roadway/Form%20RS-2%20Subcontract.pdf>

SELECTION CRITERIA: Please do **not** submit fee information with your submittal. The City selects firms to provide professional services based on demonstrated competence and qualifications. Once firms are selected, the City will enter into a master agreement with each firm putting them on an **active list**. Once a project is identified, a selected firm's scope of work, cost proposal, and schedule will be used as the starting point for negotiating the specific project assignment supplemental Agreement and/or task order. and, as part of that negotiation, will determine a fair and reasonable fee for the services to be provided. The City reserves the right to terminate negotiations with the selected firm(s) and proceed to negotiate with other firm(s) should contract/fee negotiations fail. Once a firm is selected, a detailed/refined scope of services (broken down by specific milestone events/deliverables), the associated fee, and the implementation schedule will be agreed to, signed, and attached to the City's standard professional services agreement form. The City reserves the right to award projects in a manner that is in the best interest of the City. It may combine, divide, add to, or reduce the scope of work to the benefit of the City. The City reserves the right to perform all or some of the services described in this document with its own work force.

The City will conduct a fair and impartial evaluation of all Statements of Qualifications (SOQ) that are received in accordance with the provisions of this RFQ. The City reserves the right to obtain clarifications or additional information from any firm regarding its SOQ. All firms that submit SOQ will be notified of final selection decisions. Final recommendations of any selected firms are subject to approval by the Winston-Salem City Council. Evaluation of proposals will be performed by a committee comprised of City of Winston-Salem staff. This Committee will include: the Director of Transportation, the Deputy Director of Transportation, Transportation Engineer, Planning Development Coordinator, Bicycle and Pedestrian Coordinator, Engineering Design Manager, and Business Inclusion and Advancement staff. The proposals will be evaluated on the firm's ability to meet the requirements of this RFQ. All responsive firms will be notified of the selection results by letter.

Any firm wishing to be considered must be properly registered with the Office of the Secretary of State. The Engineers performing the work and in responsible charge of the work must be registered in the State of North Carolina and must have a good ethical and professional standing. It will be the responsibility of the selected private firm to verify the registration of any corporate subsidiary or subcontractor prior to submitting a Letter of Interest. The firm must have the financial ability to undertake the work and assume the liability. The selected firm(s) will be required to furnish proof of Professional Liability insurance coverage in the minimum amount of \$1,000,000.00 per claim. The firm(s) must have an adequate accounting system to identify costs chargeable to the project.

All qualified firms submitting responsive Letters of Interest will be considered. The evaluation of these firms will be based on the firm's overall experience, past performance, knowledge, and familiarity with the type of work required, and the experience of proposed staff to perform specific work required, including any sub-consultants.

VI. SUBMITTAL REQUIREMENTS

Please submit one original and three copies of your Letters of Interest and Statements of Qualifications (LOI/SOQs). Submittals should be marked "Letter of Interest/Statement of Qualifications – 'On-Call Professional Engineering and Planning Services'". All LOI/SOQs are limited to twenty (20) pages (not including MWBE forms or RS-2 forms) inclusive of the cover sheet, and shall be typed on 8 ½" x 11" sheets that are single spaced, one sided, and with a font size of 12 or larger. To reduce costs and to facilitate recycling; binders, dividers, tabs, etc. are discouraged. One staple in the upper left-hand corner is preferred. LOI/SOQs containing more than twenty (20) pages will not be considered.

In the interest of fairness to all the private engineering firms submitting LOI/SOQs and to allow for the City's timely review, LOI/SOQs received after the scheduled receipt time stated herein will not be accepted and will be returned to the sender marked "LATE". All LOI/SOQs received on time become the property of the City and will not be returned. Faxed documents will not be accepted.

Submittals for providing the requested engineering services to the City MUST be received by **12:00 Noon, Friday, February 1, 2019**. Letters of interest submitted after this deadline will not be considered. The submittal, in PDF format, should be submitted to Mrs. Kelly Garvin, per the following email address: kellym@cityofws.org

Firms submitting Letters of Interest and Statements of Qualifications (LOI/SOQs) are encouraged to carefully check them for conformance to the requirements identified herein. If LOI/SOQs do not meet these requirements, they will be disqualified. If you feel the information provided is inadequate to submit a Letter of Interest, please contact Mrs. Kelly Garvin.

All questions concerning this request for Letters of Interest/Statement of Qualifications or the scope of this work must be submitted in writing only by 12:00 Noon, Friday, January 18, 2019, to Jerry Bates, City/County Purchasing Director at: jerryjb@cityofws.org.

Each LOI/SOQs should be assembled as follows:

Cover/Introductory Letter

The introductory letter should be addressed to Mrs. Kelly Garvin, Transportation Engineer.

- Expression of firm's interest in executing the work;
- Statement of understanding of services listed in RFQ;
- Date of most recent private engineering firm qualification;
- Statement of any possible conflicts of interest;
- Location of office or offices where the work is to be performed; and
- Summation of information contained within the letter of interest, including an email address and telephone number for the firm's contact person.

Team Qualifications

This chapter should elaborate on the general information presented in the introduction, to establish the credentials and experience of the consultant to undertake this type of effort. The following must be included:

1. Identify recent, similar projects the firm, acting as the prime contractor, has conducted (within the past 7 years) which demonstrates its ability to conduct and manage the project. Provide a synopsis of each project and include the date completed, and contact person.
2. Identify recent, similar projects the project manager has conducted (if different than the above) which demonstrates its ability to conduct and manage the project. Provide a synopsis of each project and include the date completed, and contact person.
3. Provide documentation of previous clients satisfaction with similar work
4. If sub-contractors are involved, provide corresponding information describing their qualifications as requested in bullet number 1 above.

Team Experience

This section should contain the following information:

- Organizational chart indicating personnel to be assigned by discipline;
- Resumes of key personnel;

- Names, classifications, professional credentials, and location(s) of the firm's North Carolina personnel and resources to be assigned to the work; and
- Other relevant information

Note: If a project team or sub-contractors encounters personnel changes, or any other changes of significance dealing with the company, the City of Winston-Salem should be notified immediately.

General questions regarding the selection process may be directed to project engineer mentioned above.

Small Professional Services Firms (SPSF) Participation

The North Carolina Department of Transportation encourages the use of Small Professional Services Firms (SPSF). Small businesses determined to be eligible for participation in the SPSF program are those meeting size standards defined by Small Business Administration (SBA) regulations, 13 CFR Part 121 in Sector 54 under the North American Industrial Classification System (NAICS). The SPSF program is a race, ethnicity, and gender neutral program designed to increase the availability of contracting opportunities for small businesses on federal, state or locally funded contracts. SPSF participation is not contingent upon the funding source.

The Firm, at the time the Letter of Interest is submitted, shall submit a listing of all known SPSF firms that will participate in the performance of the identified work. The participation shall be submitted on the Department's Subconsultant Form RS-2. RS-2 forms may be accessed on the Department's website at NCDOT Connect Guidelines & Forms: <https://connect.ncdot.gov/business/consultants/Pages/Guidelines-Forms.aspx>

The SPSF must be qualified with the Department to perform the work for which they are listed.

Real-time information about firms doing business with the Department and firms that are SPSF certified through the Contractual Services Unit is available in the Directory of Transportation Firms. The Directory can be accessed on the Department's website at Directory of Firms: <https://www.ebs.nc.gov/VendorDirectory/default.html> -- Complete listing of certified and prequalified firms.

The listing of an individual firm in the Department's directory shall not be construed as an endorsement of the firm.

PREQUALIFICATION

Evaluation Factors

This section should contain information regarding evaluation and other factors listed in the advertisement such as:

- Identify project personnel/sub-consultants qualifications and experience;
- Unique qualifications of key team members;

Evaluation Criteria

All proposals received prior to the established due date/time will be evaluated and considered based on the completeness of the responses to the defined specifications. The City of Winston-Salem reserves the right to award this contract to the vendors deemed best suited to achieve the goals and desires outlined in this proposal.

Respondents will be evaluated for selection on the basis of the Proposers most qualified to meet the requirements of this RFQ. Major criteria to be considered in evaluation are:

- A. Work Experience** - The background, education, and experience of the respondent in providing similar services elsewhere, including and especially the level of experience in working with municipalities, and the quality of services performed. List those areas in which

the firm is prequalified by NCDOT. Experience can also be demonstrated by providing a synopsis of federally funded projects where the firm acted as the prime contractor. Proposer should include a list of similar projects within the last seven (7) years that have been completed by the proposed project team.

- B. Project Manager Qualification** – Experience and qualification of the project manager to perform the type of work required.
- C. Team Qualification** - Experience and qualification of the firm’s proposed staff to perform the type of work required.
- D. Previous Client satisfaction** – Previous client satisfaction with similar work.
- E. Staff Availability** - The proposed staff’s availability of time in which they are able to work on projects over the next 24 months presented as a percent available.
- F. SPSF Participation** – After reviewing qualifications, if Firms are equal on the evaluation review, the qualified Firms with proposed SPSF (Small Professional Services Firm) participation will be given priority consideration in the procurement of professional and specialized service contracts. This criteria will only be used as a tie-breaker.

The following “Weighted Scale” will be used to evaluate each proposal

| Evaluation Criteria | Weight |
|--------------------------------|---------------|
| Work Experience | 25 |
| Project Manager Qualifications | 20 |
| Team Qualification | 25 |
| Client Satisfaction | 20 |
| Staff Availability | 10 |

Notice to Proposers:

It is the policy of the City that an employee, officer, or agent of City may not participate in any manner in the bidding, awarding, or administering of contracts in which they, or a member of their immediate family, their business partner, or any organization in which they serve as an officer, director, trustee, or employee, has a financial interest.

The successful proposer must comply with all provisions of the Americans with Disabilities Act (ADA), the Equal Employment Opportunity Act (EEOA), and all rules and regulations promulgated thereunder. By submitting a proposal, the successful proposer agrees to indemnify the City from and against all claims, suits, damages, costs, losses, and expenses in any manner arising out of, or connected with, the failure of the Company, its subcontractors, agents, successors, assigns, officers, or employees to comply with the provisions of the ADA, EEOA, or the rules and regulations promulgated thereunder.

No special inducements will be considered that are not a part of the original bidding document.

City's Rights and Options

The City, at its sole discretion, reserves the following rights:

- To supplement, amend, substitute or otherwise modify this RFQ at any time
- To cancel this RFQ with or without the substitution of another RFQ
- To take any action affecting this RFQ, this RFQ process, or the services subject to this RFQ that would be in the best interests of the City
- To issue additional requests for information
- To require one or more service providers to supplement, clarify, or provide additional information in order for the City to evaluate the responses submitted
- To share the Proposals with City employees other than the Evaluation Committee or City advisory committees as deemed necessary
- To award all, none, or any part of the Services that is in the best interest of the City, with one or more of the Service Providers responding, which may be done with or without re-solicitation.
- To discuss and negotiate with selected Service Provider(s) any terms and conditions in the Proposals including but not limited to financial terms
- To negotiate a contract with a service provider based on the information provided in response to this RFQ

Public Records

Any material submitted in response to this RFQ will become a "public record" once the proposer's document(s) is opened and the proposer is determined to be a participant in the solicitation process and shall be subject to public disclosure consistent with Chapter 132, North Carolina General Statutes. Proposals submitted under this section shall not be subject to public inspection until a contract is awarded N.C.G.S 143-129.8(d).

Trade Secrets/Confidentiality

Proposers must claim any material that qualifies as "trade secret" information under N.C.G.S. 66152(3) in their response to this RFQ and must state the reasons why such exclusion from public disclosure is necessary and legal.

To properly designate material as trade secret under these circumstances, each Proposer must take the following precautions: (a) any trade secrets submitted by a Proposer should be submitted in a separate, sealed envelope marked "Trade Secret - Confidential and Proprietary Information - Do Not Disclose Except for the Purpose of Evaluating this Proposal," and (b) the same trade secret/confidentiality designation should be stamped on each page of the trade secret materials contained in the envelope.

Do not attempt to designate your entire proposal as a trade secret, and do not attempt to designate pricing information as a trade secret. Doing so may result in your submittal being disqualified.

In submitting a proposal, each Proposer agrees that the City may reveal any trade secret materials contained in such response to all City staff and City officials involved in the selection process. Furthermore, each Proposer agrees to indemnify and hold harmless the City and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with disclosing any material, which the Proposer has designated as a trade secret.

The City reserves the right to make all final determination(s) of the applicability of North Carolina General Statutes § 132-1.2, Confidential Information.

Familiarity with Laws and Ordinances

The submission of a proposal on the services requested herein shall be considered as a representation that the Proposer is familiar with all federal, state, and local laws, ordinances, rules, and regulations which affect those engaged or employed in the provision of such services, or which in any way affects the conduct of the provision of such services; and no plea of misunderstanding will be considered on account of ignorance thereof. If the Proposer discovers any provisions in the RFQ documents that are contrary to or inconsistent with any law, ordinance, or regulation, it shall be reported to the City in writing without delay.

The Proposer agrees that in carrying out this contract, compliance will be maintained with all applicable federal, state, and local laws, specifically including, without limitations, the Occupational Safety and Health Act of 1970 and Section 1324A, the Immigration Reform and Control Act.

The Proposer certifies that the proposal is made in good faith and without collusion with any person making a proposal or with any officer or employee of the City.

The undersigned further agrees, in connection with the performance of this contract, not to discriminate against any employee or applicant for employment because of race, religion, color, gender, age, handicap, political affiliation, or national origin.

Proposals are to be signed by an officer of the company authorized to bind the submitter to its provisions. Failure to manually sign the appropriate proposal form will disqualify the proposer and the proposal will not be considered.

Ethics Policy / Code of Conduct

The City of Winston-Salem has establish guidelines for ethical standards of conduct for City representatives and to provide guidance in determining what conduct is appropriate in particular cases. City representatives should maintain high standards of personal integrity, truthfulness, honesty, and fairness in carrying out public duties; avoid any improprieties in their roles as public servants including the appearance of impropriety; and never use their position or power for improper personal gain. In establishing an ethics policy, the City of Winston-Salem desires to protect the public against decisions that are affected by undue influence, conflicts of interest, or any other violation of these policies as well as promote and strengthen the confidence of the public in their governing body. For a complete review of the City Policy as it relates to this solicitation, click the following link. <http://www.cityofws.org/bids>

Stimulation of the Local Economy

In an effort to stimulate the local economy, foster development and promote efficiency in the provision of city services and the completion of various city projects, the City of Winston-Salem has undertaken an initiative to strongly encourage all parties contracting with the City of Winston-Salem to evaluate their internal operations and hiring practices and, where appropriate, to initiate efforts to stimulate the local economy by hiring applicants and contractors from the Winston-Salem/Forsyth County Area and by utilizing minority and women contractors and service providers. Such efforts to stimulate the local economy may be accomplished by posting job vacancies with the North Carolina Employment Security Commission, the Piedmont Triad Regional Council of Governments, and the Winston-Salem Urban League; and utilizing the State of North Carolina Office for Historically Underutilized Business database

<https://www.ips.state.nc.us/vendor/searchvendor.aspx?t=h> or other local resources such as the City of Winston-Salem M/WBE Program to identify Winston-Salem/Forsyth County based contractors and subcontractors. Stimulation of the local economy requires a collaborative effort of both the public and private sector. The city is committed to taking reasonable steps to achieve said goal.

Iran Divestment Act

Provider hereby certifies that it is not on the North Carolina State Treasurer’s list of persons engaging in business activities in Iran, prepared pursuant to NCGS 147-86.58, nor will Provider utilize on this agreement any subcontractor on such list. This list, along with additional information about the Iran Divestment Act, is available on the Treasurer’s Office site: <https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.aspx>.

Divestment from Companies that Boycott Israel

Contractor hereby certifies that it is not on the North Carolina State Treasurer’s list of companies engaged in a boycott of Israel in violation of NCGS 147-86.80 et. seq. and that it will not utilize on this agreement any subcontractor on said list.”

E-Verify Compliance

Per N.C.G.S. 143-133.3 “E-VERIFY. CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if the CONTRACTOR utilizes a subcontractor, the CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.”

Any contract(s) that may result from this Request for Qualification will be funded by a federal grant; therefore **“Contracts funded with federal grant or loan funds must be procured in a manner that conforms with all applicable Federal laws, policies, and standards, including those under the Uniform Guidance (2 C.F.R. Part 200).”**

Uniform Administrative Requirements

By entering into this Contract the Contractor agrees to comply with all applicable provisions of Title 2, Subtitle A, Chapter II, PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS contained in Title 2 C.F.R. § 200 et seq.

FEDERALLY REQUIRED CONTRACT CLAUSES

Incorporation of Federal Transit Administration (FTA) Terms

The provisions include, in part, certain Standard Terms and Conditions required by the United State Department of Transportation (USDOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, 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 City of Winston-Salem request, which would cause the City of Winston-Salem to be in violation of the FTA terms and conditions.

No Government Obligation to Third Parties by Use of a Disclaimer

- (a) The CONTRACTOR agrees that, absent the Federal Government’s express written consent, the Federal Government shall not be subject to any obligations or liabilities to any CONTRACTOR, SUBCONTRACTOR, and third-party CONTRACTOR, or any other person not a party to the Grant

Agreement or Cooperative Agreement in connection with the performance of the Project. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, sub-agreement, or third-party contract, the Federal Government continues to have obligations or liabilities to any party, including SUBCONTRACTORS and third-party CONTRACTOR.

- (b) 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 or Related Acts

- (a) 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 CFR 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.
- (b) 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.
- (c) 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.

Access to Records

For contracts that are greater than \$100,000 or are capital projects, the following access to records requirements apply to this contract:

- (a) The CONTRACTOR agrees to provide the City of Winston-Salem, 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 CFR 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.
- (b) Where the City of Winston-Salem 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 City of Winston-Salem, 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.
- (c) 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.

- (d) 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 City of Winston-Salem, 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).
- (e) FTA does not require the inclusion of these requirements in subcontracts.

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 Department of Transportation, Federal Transit Administration, Master Agreement (FTA MA (12) dated October, 2005), between the City of Winston-Salem 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.

Exclusionary or Discriminatory Specifications

Apart from inconsistent requirements imposed by Federal statute or regulations, the CONTRACTOR agrees that it will comply with the requirements of 49 U.S.C. Section 5323 (h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Interest of Members of or Delegates to the United States Congress

In accordance with 41 U.S.C. Section 22, the CONTRACTOR agrees that it will not admit any member of or delegate to the United States Congress to any share or part of the Project or any benefit derived there from.

Geographic Restrictions

The CONTRACTOR agrees to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal statute, and as permitted by FTA, such as in the acquisition of management, architectural and engineering services provided a sufficient number of qualified firms are eligible to compete for the third-party contract.

Civil Rights Requirements

The following requirements apply to this contract:

- (a) 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.
- (b) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 - 1. 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 CFR 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.

2. 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.

3. 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 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

(c) 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.

Disadvantaged Business Enterprises (DBE)

a. To the extent authorized by applicable federal laws, regulations, or requirements, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business enterprises owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Underlying Agreement as follows:

(1) Statutory and Regulatory Requirements. The Recipient agrees to comply with:

(a) Section 1101(b) of the FAST Act, 23 U.S.C. § 101 note,

(b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and

(c) Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement.

b. The following applies to this contract:

(1) 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%.

(2) 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 **City of Winston-Salem** deems appropriate. Each subcontract

the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

- (3) The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- (4) The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **City of Winston-Salem**. In addition, the contractor may not withhold retainage from its subcontractors.
- (5) The contractor must promptly notify **City of Winston-Salem** 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 **City of Winston-Salem**.

Termination Provisions

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 City of Winston-Salem including the manner by which it will be affected 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. 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.

- *Termination for Convenience.* The City of Winston-Salem may terminate this contract, in whole or in part, at any time by written notice to the CONTRACTOR when it is in the Municipality's best interest. The CONTRACTOR shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to City of Winston-Salem to be paid the CONTRACTOR. If the CONTRACTOR has any property in its possession belonging to the City of Winston-Salem, the CONTRACTOR will account for the same, and dispose of it in the manner the City of Winston-Salem directs.

- *Termination for Default [Breach or Cause].* 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 City of Winston-Salem may terminate this contract for default. Termination shall be affected 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 City of Winston-Salem 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 City of Winston-Salem, 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.

- *Opportunity to Cure.* The City of Winston-Salem 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 City of Winston-Salem's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by CONTRACTOR or written notice from City of Winston-Salem setting forth the nature of said breach or default, City of Winston-Salem 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 City of Winston-Salem from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.

- *Waiver of Remedies for any Breach.* In the event that City of Winston-Salem elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this Contract, such waiver by City of Winston-Salem shall not limit City of Winston-Salem's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

- *Termination for Convenience (Professional or Transit Service Contracts).* The City of Winston-Salem, 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 City of Winston-Salem shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

- *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 City of Winston-Salem may terminate this contract for default. The City of Winston-Salem 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 City of Winston-Salem.

- *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 City of Winston-Salem may terminate this contract for default. The City of Winston-Salem 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 City of Winston-Salem goods, the CONTRACTOR shall, upon direction of the City of Winston-Salem, protect and preserve the goods until surrendered to the City of Winston-Salem or its agent. The CONTRACTOR and City of Winston-Salem 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 City of Winston-Salem.

- *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 City of Winston-Salem may terminate this contract for default. The City of Winston-Salem shall terminate by delivering to the CONTRACTOR a Notice of Termination specifying the nature of the default. In this event, the City of Winston-Salem 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 City of Winston-Salem 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 City of Winston-Salem 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 City of Winston-Salem, acts of another CONTRACTOR in the performance of a contract with the City of Winston-Salem, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. the CONTRACTOR, within [10] days from the beginning of any delay, notifies the City of Winston-Salem in writing of the causes of delay. If in the judgment of the City of Winston-Salem, the delay is excusable, the time for completing the work shall be extended. The judgment of the City of Winston-Salem 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 City of Winston-Salem.

- *Termination for Convenience or Default (Architect and Engineering).* The City of Winston-Salem may terminate this contract in whole or in part, for the City of Winston-Salem's convenience or because of the failure of the CONTRACTOR to fulfill the contract obligations. The City of Winston-Salem 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 City of Winston-Salem 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 City of Winston-Salem may complete the work by contract or otherwise and the CONTRACTOR shall be liable for any additional cost incurred by the City of Winston-Salem.

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 City of Winston-Salem.

- *Termination for Convenience of Default (Cost-Type Contracts).* The City of Winston-Salem may terminate this contract, or any portion of it, by serving a notice or termination on the CONTRACTOR. The notice shall state whether the termination is for convenience of the City of Winston-Salem 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 City of Winston-Salem, or property supplied to the CONTRACTOR by the City of Winston-Salem. If the termination is for default, the City of Winston-Salem 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 City of Winston-Salem and the parties shall negotiate the termination settlement to be paid the CONTRACTOR.

If the termination is for the convenience of the City of Winston-Salem, the CONTRACTOR shall be paid its contract closeout 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 City of Winston-Salem 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 City of Winston-Salem, after setting up a new work schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

Energy Conservation

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, 42 U.S.C. §§ 6321 *et seq.*

CONTRACT PROVISIONS THAT APPLY FOR AWARDS EXCEEDING \$25,000

| Clauses | Professional Services and A&E | Operations/ Management | Rolling Stock | Construction | Materials & Supplies |
|--------------------------------------|-------------------------------|------------------------|---------------|--------------|----------------------|
| Debarment and Suspension Requirement | X | X | X | X | X |

Government-wide Debarment and Suspension (Non-Procurement)

The CONTRACTOR agrees to comply and assures the compliance of each third-party CONTRACTOR and SUBCONTRACTOR at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government-wide Debarment and Suspension (Non-Procurement)," within 49 CFR Part 29.

CONTRACT PROVISIONS THAT APPLY FOR AN ACQUISITION OF PROPERTY SHIPPED BY OCEAN VESSEL

| Clauses | Professional Services and A&E | Operations/ Management | Rolling Stock | Construction | Materials & Supplies |
|------------------|-------------------------------|------------------------|---------------|--------------|----------------------|
| Cargo Preference | | | X | X | X |
| Fly America | X | X | X | X | X |

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 leading 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 City of Winston-Salem (through the CONTRACTOR in the case of a SUBCONTRACTOR'S bill-of-lading); and
- (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.

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.

Protest Procedures

All protests shall be filed, handled, and resolved in a manner consistent with the requirements of Federal Transit Administration (FTA) Circular 4220.1F Third Party Contracting Guidelines and the City of Winston-Salem's Protest Procedures below.

Current FTA policy states that: "Reviews of protests by FTA will be limited to a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation. Violations of federal law or regulations will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local officials." (FTA Circular 4220.1E, Section 7, paragraph 1., Written Protest Procedures)

Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or time set for receipt of proposals shall be filed 15 days prior to bid opening or the time set for receipt of proposals. If the contract has been awarded, protests must be filed within 10 days after contract award or 5 days after the date the protester was given the opportunity to be debriefed, whichever date is later. To be filed on a given day, protests must be received by 4:30 p.m. current local time. Any protests received after that time will be considered to be filed on the next day. Incomplete submissions will not be considered filed until all information is complete. Unless the time limit for receiving the protest is extended for good cause, a protest that is received after the time limit will not be considered. All protests should be filed in writing with the Director of Transportation, Stuart Municipal Building Suite 307, 100 East First Street, Winston-Salem, NC 27101. No other location shall be acceptable. To be complete, protests **must** contain the following information:

1. The protester's name, address, telephone number, and fax number;
2. The solicitation/bid number;
3. A detailed statement of all factual and legal grounds for protests and an explanation of how the protester was prejudiced;
4. Copies of relevant documents supporting protester's statement;
5. A request for ruling by the City of Winston-Salem;
6. Statement as to form of relief requested;
7. All information establishing that the protester is an interested party for the purpose of filing a protest; and
8. All information establishing the timeliness of the protest.

All protests must be signed by an authorized representative of the protester.

When a protest is filed before an award, an award shall not be made until the matter is resolved unless based on written finding that: 1) the supplies or services are urgently required, or 2) delivery or performance would be unduly delayed by failure to make the award promptly, or 3) a prompt award would be in the best interest of the City. Should the City postpone the date of bid submission owing to a protest or appeal of the solicitation specifications, addenda, dates, or any other issue relating to the procurement, the City shall notify, via addendum, all parties who are on record as having obtained a copy of the solicitation documents that an appeal/protest has been filed, and the due date for the bid submission shall be postponed until the City has issued its final decision.

When a protest is filed within ten (10) days after an award or five (5) days after a debriefing date was offered to the protester under a timely debriefing request, whichever is later, performance shall be immediately suspended pending resolution of the protest. However, contract performance may continue, notwithstanding the protest, based on written finding that 1) contract performance would be in the best interest of the City, or 2) urgent and compelling circumstances that significantly affect the interests of the City will not permit waiting for a decision.

The Director of Transportation shall make a decision on the protest within ten (10) working days from the receipt of the protest. The written decision will respond to the issues raised by the protester and will address any other issues, which even if not raised by the protester, that may have been identified as being relevant to the fairness of the procurement process. The decision will be delivered to the protester by "Certified Mail, Return Receipt Requested." In extreme cases, it may take longer than ten (10) working days to issue a decision. In these cases, the protester and all other interested parties will be notified of the delay. Any decision rendered by the Director of Transportation may be appealed to the Assistant City Manager. The protester has the right within five (5) working days of receipt of determination to file an appeal restating the basis of the protest and the grounds of the appeal. In the appeal, the protester shall only be permitted to raise factual information previously provided in the protest or discovered subsequent to the Assistant City Manager's decision and directly related to the grounds of the protest. The Assistant City Manager's decision shall constitute the final administrative remedy of the City of Winston-Salem.

If the Assistant City Manager finds for the protester, one or more of the following remedies may be granted:

1. Terminate the contract.
2. Modify the requirement.
3. Issue a new solicitation.
4. Refrain from exercising options under the contract.
5. Award a contract consistent with statutes and regulations.
6. Amend the solicitation provisions that gave rise to the protest and continue with the procurement.
7. Such other remedies as the decision-maker may determine are necessary to correct a defect.

The bidder may withdraw its protest or appeal at any time before the Assistant City Manager issues a final decision.

A protester must exhaust all administrative remedies with the City before pursuing a protest with the Federal Transit Administration (FTA). However, if the protester believes that the City of Winston-Salem failed to review the complaint or protest or failed to follow its own protest procedures, the protester may file an appeal to the FTA office below:

Regional Administrator
Federal Transit Administration, Region IV
230 Peachtree N.W.
Atlanta, GA 30303

The protester must file with the FTA no later than five (5) working days after the Assistant City Manager's final decision is rendered, with a concurrent copy of the appeal to the Assistant City Manager. The submission to the FTA should include the name and address of the protester, a statement of the grounds for protest and any supporting documentation, a copy of the local protest filed with the City of Winston-Salem, and a copy of the Assistant City Manager's decision.

The City of Winston-Salem will submit to the FTA any required information requested in order for the FTA to make a determination, including a copy of these protest procedures, a description of the process followed concerning the protest in question and any supporting documentation. The City of Winston-Salem will provide to the protester any material submitted to the FTA.

Clean Air Act

(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. Sect. 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.

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. Sect. 1251 et seq. The Contractor agrees to 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.

Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended 42 U.S.C. subsection 4321 et seq. in accordance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994, FTA statutory requirements on environmental matters at 49 U.S.C. section 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq. and joint FHWA FTA regulations, "environmental Impact and Related procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622;

and when promulgated, FHWA/FTA joint regulations, "NEPA and Related Procedures for Transportation Decision-making, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 1420 and 49 C.F.R. Part 623.

Recycled Products

The Recycled Products requirement applies 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 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. These requirements flow down to all to all contractor and subcontractor tiers.

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. These items include:

Paper and paper products, excluding building and construction paper grades.

Vehicular products:

- (a) Lubricating oils containing re-refined oil, including engine lubricating oils, hydraulic fluids, and gear oils, excluding marine and aviation oils;
- (b) Tires, excluding airplane tires;
- (c) Reclaimed engine coolants, excluding coolants used in non-vehicular applications.

Construction products:

- (a) Building insulation products, including the following items:
 - (1) Loose-fill insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite, and perlite;
 - (2) Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);
 - (3) Board (sheathing, roof decking, wall panel) insulation, including but not limited to structural fiberboard and laminated paperboard products, perlite composite board, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and
 - (4) Spray-in-place insulation, including but not limited to foam-in-place polyurethane and polyisocyanurate, and spray-on cellulose.
- (b) Structural fiberboard and laminated paperboard products for applications other than building insulation, including building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayment, and roof overlay (coverboard).
- (c) Cement and concrete, including concrete products such as pipe and block, containing coal fly ash or ground granulated blast furnace (GGBF) slag.
- (d) Carpet made of polyester fiber for use in low- and medium-wear applications.
- (e) Floor tiles and patio blocks containing recovered rubber or plastic.

Transportation products:

- (a) Traffic barricades and traffic cones used in controlling or restricting vehicular traffic.

Park and recreation products:

- (a) Playground surfaces and running tracks containing recovered rubber or plastic.

Landscaping products:

- (a) Hydraulic mulch products containing recovered paper or recovered wood used for hydroseeding and as an over-spray for straw mulch in landscaping, erosion control, and soil reclamation;

(b) Compost made from yard trimmings, leaves, and/or grass clippings for use in landscaping, seeding of grass or other plants on roadsides and embankments, as a nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.

Non-paper office products:

- (a) Office recycling containers and office waste receptacles;
- (b) Plastic desktop accessories;
- (c) Toner cartridges;
- (d) Binders; and
- (e) Plastic trash bags.

Cargo Preference

46 U.S.C. 1241(b)(1) and 46 CFR Part 381 impose cargo preference requirements in contracts and subcontracts in which equipment, materials or commodities may be transported by ocean vessel in carrying out the project. If the Contractor has knowledge of or anticipates any equipment, materials or commodities that may be shipped by ocean vessel, the Contractor is obligated to inform the Department, so that additional requirements and clauses may be attached to this Contract.

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.

Veterans Employment

The contractor agrees to give 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 this contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, individual with a disability or former employee [FTA C 4220.1F, IV, 2c (1)].

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 AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, 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.

*****Bidders must submit a Certificate of Eligibility with their bid.** After bids are opened and prior to award, the federal SAM database <https://www.sam.gov> will be checked.

Davis-Bacon Act and Copeland “Anti-Kickback” Act

Applies to all prime construction, alteration or repair contracts in excess of \$2,000.

a. Prevailing Wage and Anti-Kickback

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

b. Contract Work Hours and Safety Standards

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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

this clause 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 this clause.

The FTA 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 this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 this agreement. (See Appendix A).

Davis-Bacon Act, updated 7/13/18. <https://www.wdol.gov/wdol/scafiles/davisbacon/nc29.dvb>

Lobbying Restrictions (submit attached form with bid)

The Recipient agrees that neither it nor any Third Party Participant will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Underlying Agreement, including any extension or modification, according to the following:

- (1) Laws, Regulations, Requirements, and Guidance. This includes:
 - (a) The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended,
 - (b) U.S. DOT regulations, “New Restrictions on Lobbying,” 49 C.F.R. part 20, to the extent consistent with 31 U.S.C. § 1352, as amended, and
 - (c) Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature, and
- (2) Exception. If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the Recipient’s or Subrecipient’s proper official channels.

CERTIFICATION REGARDING LOBBYING

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

The undersigned _____ certifies, to the best of his or her knowledge and belief, that:
(Contractor)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons 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 to 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 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 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 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 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. Section A 3801 *et seq.*, apply to this certification and disclosure, if any.

Date _____ Signature of Contractor's Authorized Official _____

Name and Title of Contractors Authorized Official _____

State of _____
County of _____

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

Notary Public
My Appointment Expires

E-Verify

STATE OF _____ COUNTY OF _____

I, _____ (the individual attesting below), being duly authorized by and on behalf of _____ ("Employer") after first being duly sworn hereby swears or affirms as follows:

1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25(5).
2. Employer understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).
3. Employer is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. (Mark Yes or No)
 - a. YES _____, or
 - b. NO _____
4. Employer and Employer's subcontractors comply with E-Verify, and if Employer subsequently retains any subcontractors on this project Employer will ensure their compliance with E-Verify.

This _____ day of _____, 2016.

Signature of Affiant
Print or Type Name: _____
State of _____ County of _____

Signed and sworn to (or affirmed) before me, this
the _____ day of _____, 2016. My Commission
Expires: _____

Notary Public

(Affix
Official/Notarial
Seal)

Iran Divestment Act Certification

N.C.G.S. 143C-6A-5(a)

As of the date listed below, _____ (name of vendor/bidder) is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4.

The undersigned hereby certifies that he or she is authorized by the vendor/bidder listed above to make the foregoing statement.

| | |
|--------------|-------|
| Signature | Date |
| Printed Name | Title |

Notes to persons signing this form:

N.C.G.S. 143C-6A-5(a) requires this certification for bids or contracts with the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina. The certification is required at the following times:

- When a bid is submitted
- When a contract is entered into (if the certification was not already made when the vendor made its bid)
- When a contract is renewed or assigned

N.C.G.S. 143C-6A-5(b) requires that contracts with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List.

The State Treasurer's Final Divestment List can be found on the State Treasurer's website at www.nctreasurer.com/Iran and will be updated every 180 days.

Required Clauses in Third Party Contracts.

In addition to other applicable provisions of federal law, regulations, requirements, and guidance, all third party contracts made by the Recipient under the Federal award must contain provisions covering the following, as applicable:

- (1) Simplified Acquisition Threshold. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (2) Termination. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be effected and the basis for settlement.
- (3) Equal Employment Opportunity. Except as otherwise provided under 41 C.F.R. part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order No. 11246, “Equal Employment Opportunity,” 42 U.S.C. § 2000e note (30 *Fed. Reg.* 12319, 12935, 3 C.F.R. 1964–1965 Comp., p. 339), as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” (32 *Fed. Reg.* 14,303) and implementing regulations at 41 C.F.R. part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (4) Davis-Bacon Act, as amended (40 U.S.C. §§ 3141 – 3148). When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141 - 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of a public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.
- (5) Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 – 3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction

work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(6) Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(7) Clean Air Act (42 U.S.C. §§ 7401 – 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 – 1388), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 – 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 – 1388). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(8) Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (*see* 2 C.F.R. § 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (31 U.S.C. § 6101 note, 51 *Fed. Reg.* 6370,) and 12689 (31 U.S.C. § 6101 note, 54 *Fed. Reg.* 34131), “Debarment and Suspension.” SAM Exclusions 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.

(9) Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. 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 must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

(10) Solid Wastes. A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.