



OLYMPIA, WASHINGTON

REQUEST FOR QUALIFICATIONS
ON-CALL ENGINEERING SERVICES
PROJECT #1937

REQUEST FOR QUALIFICATIONS (RFQ) RELEASE DATE:

December 6, 2019

QUESTION AND CLARIFICATION DEADLINE:

Date: December 19, 2019

Time: 4:00 p.m.

SUBMITTAL DEADLINE:

Date: January 2, 2020

Time: 4:00 p.m.

CONTACT PERSON:

Tammy Ferris, Procurement Coordinator

(360) 705-5818

tferris@intercitytransit.com

LEGAL ADVERTISEMENT

**REQUEST FOR QUALIFICATIONS
ON-CALL ENGINEERING SERVICES**

**INTERCITY TRANSIT
PROJECT #1937**

Intercity Transit, the public transportation provider in Thurston County, is requesting Statements of Qualifications (SOQs) from qualified firms interested in providing engineering and construction administration services on an on-call basis. The scope of work includes responding to Task Order requests for performance of Engineering, Engineering support, and Construction Administration work as the need for such work arises.

Solicitation documents are available online through Washington's Electronic Business Solution (WEBS) system at <https://fortress.wa.gov/ga/webs/>. Proposers are responsible to register in WEBS and download the RFQ #1937 solicitation documents in order to receive automatic e-mail notification of any future Addenda.

Submittals are due no later than 4:00 p.m. (PT) on January 2, 2020.

Project funding may include local, state, or federal funds. The resulting Contract is subject to all provisions prescribed by the funding source.

Intercity Transit is committed to maximum utilization of disadvantaged businesses. All businesses are encouraged to apply. Intercity Transit, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.

Please contact Tammy Ferris, Procurement Coordinator, at (360) 705-5818 or email at tferris@intercitytransit.com with any questions regarding this solicitation.

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 Washington's Electronic Business Solution (WEBS)
 Office of Minority and Women's Business Enterprises (OMWBE)

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SECTION 1 - INTRODUCTION

1.1 PURPOSE

Intercity Transit (Transit), the public transportation provider in Thurston County, Washington, is conducting this Request for Qualifications (RFQ) in order to establish a Contract for Civil Engineering, Traffic Engineering and Construction Administration Services on an on-call basis.

These professional services will enable Transit to obtain professional and technical assistance on short notice on an on-call basis from the selected firm.

1.2 SCOPE OF WORK

The scope of work includes responding to Task Order requests for various facility, traffic and public work projects as the need for such work arises. Work may include, but is not limited to: technical consultations on emerging facility or service issues; preparation of plans, specifications and estimates for small projects; inspection and construction administration support and consultation; permitting support; facility repair assessments; and other professional services related to engineering support. These tasks may be related to the maintenance, design, planning, permitting and construction of: ADA bus stop pad improvements; concrete replacement; parking lot improvements; right-of-way improvements; and other minor engineering related projects for Intercity Transit facilities, structures, and sites including those located on private and within public (ROW) areas.

The Task Order process will consist of Intercity Transit contacting the Consultant and requesting services related to an individual project. The Consultant will then prepare a detailed scope, schedule, and budget for each individual Task Order. Task Orders will be agreed upon between Intercity Transit and the Consultant individually.

1.3 FUNDING

Project funding for these projects may include local, state, or federal funds. The resulting Contract is subject to all provisions prescribed by the funding source.

1.4 AWARD

Transit intends to award a Contract to the responsive responsible Proposer who meets all RFQ requirements and is determined the most advantageous to Transit. **This Solicitation does not obligate Transit to contract for the goods and/or services specified herein.**

Transit reserves the right to add, remove, or otherwise modify requirements to meet the operational and strategic objectives of the agency.

1.5 CONTRACT TERM

Transit will select a minimum of one (1) consultant for an initial term of one year. Four, one-year renewal options are available at the sole discretion of Transit. There is no guarantee of any work under this Contract. In addition, Intercity Transit reserves the right to advertise for separate consultant services for specific projects.

SECTION 2 – GENERAL INFORMATION

2.1 CONTACT INFORMATION

Until a Contract is awarded, all questions and inquiries must be directed to the Procurement Coordinator listed below. Transit considers all oral communication unofficial and non-binding. Proposers are to rely only on written statements issued by the Procurement Coordinator.

Procurement Coordinator: Tammy Ferris
Email Address: tferris@intercitytransit.com
Address: Intercity Transit
526 Pattison Street, SE
Olympia, WA 98501

2.2 PROCUREMENT SCHEDULE

The activities and dates listed below represent the anticipated procurement schedule. Transit reserves the right to change the schedule. Transit will post any changes to Pre-Proposal date or Proposal Due Date and Time on Washington’s Electronic Business Solution (WEBS) at <https://fortress.wa.gov/ga/webs/>.

| Procurement Activity | Date and Time (Pacific Time) |
|--|-------------------------------|
| RFQ Release | December 6, 2019 |
| Questions and Request for Clarifications Due | December 19, 2019 @ 4:00 p.m. |
| Submittal Deadline | January 2, 2020 @ 4:00 p.m. |
| Evaluations Begin | January 6, 2020 |

2.3 DOCUMENT AVAILABILITY

Solicitation documents may be accessed on-line through [WEBS](#). Proposers are responsible to register in WEBS and download the Solicitation Documents. Contact WEBS customer service at (360) 902-7400 or WEBSCustomerService@des.wa.gov if you require assistance with the WEBS registration process or need help accessing the Solicitation Documents.

Transit will post Addenda or any schedule changes on WEBS. Proposers are responsible to check for updates and obtain any Addenda related to this Solicitation. Failure to do so may result in the submission of a Proposal that is inconsistent with the most current information and may result in disqualification.

2.4 EXAMINATION OF DOCUMENTS

Proposer must thoroughly examine all Solicitation Documents, including but not limited to, the RFQ, Solicitation Standards, Sample Contract, Proposal Submittal Document, any other material referenced or incorporated herein, and any Addenda. Submission of a Proposal constitutes acknowledgment that the Proposer has thoroughly examined all Solicitation Documents. Proposer’s failure or neglect to receive or examine any of the Solicitation Documents, statutes, ordinances, regulations and permits will in no way

relieve the Proposer from any obligations with respect to the Proposal or any resulting Contract. Transit will reject claims for additional compensation based upon a lack of knowledge or misunderstanding of any of the Solicitation Documents, statutes, ordinances, regulations, permit requirements, or other materials referenced or incorporated in this RFQ.

2.5 QUESTIONS AND REQUESTS FOR CLARIFICATIONS

Proposer must submit questions and/or requests for clarification in writing via email to the Procurement Coordinator. It is at Transit's sole discretion to accept or reject any request for changes.

Transit will provide an official written response to Proposer questions received by the respective deadlines. Proposers must not rely on any oral statements or conversations with Transit representatives for questions or clarifications regarding this RFQ. Verbal responses to questions and/or clarifications will be considered unofficial and non-binding. Only written responses posted to WEBS in the form of an Addendum will be considered official and binding. All such Addenda will become part of the Solicitation and any awarded Contract.

If no requests for clarification are received, Transit will construe silence as acceptance and that the Proposer intends to comply with the Solicitation Documents as written in their entirety.

2.6 SOLICITATION STANDARDS

The Solicitation Standards document is included in [Appendix B](#). The Solicitation Standards document contains important information for Proposers applicable to this Solicitation. The terms and conditions provided in the Solicitation Standards document apply directly to, and are incorporated by reference, into this Solicitation and the Contract resulting from this Solicitation. As such, Proposers do not need to attach this document with their Proposal. It is the Proposer's responsibility to read and fully understand the details of all items contained herein prior to Proposal submittal.

2.7 CONTRACT TERMS

A sample Contract has been included in [Appendix C](#). Intercity Transit expects the final Contract signed by the successful Proposer to be substantially the same as the sample Contract. Proposer's submission of a Response to this Solicitation constitutes general acceptance of these Contract requirements.

The foregoing should not be interpreted to prohibit either party from proposing additional Contract terms and conditions during negotiation of the final Contract.

2.8 INCORPORATION OF DOCUMENTS INTO CONTRACT

A Proposal submitted in response to this Solicitation is an offer to contract with Transit. This Solicitation document, all incorporated documents, any subsequent Addenda, and the successful Proposer's Response will be incorporated by reference into the resulting Contract.

SECTION 3 – PROPOSAL SUBMITTALS

Respond to the following requirements in this section.

3.1 PROPOSAL SUBMITTAL REQUIREMENTS

Proposer must complete and provide the following information (1-9) and as described in the Proposal Submittal Document of [Appendix A](#). Incomplete or vague responses may be considered non-responsive and may be rejected. Failure to complete and submit all items listed in this section may disqualify the Proposer from further participation in this RFQ.

1. Cover Letter

Proposer must compose and submit a cover letter signed by the individual capable of committing the resources of the proposing firm and authorized to bind the proposing firm to the offer. The cover letter will include:

- A brief introduction of the proposing firm including key personnel and their qualifications and experience;
- Name, address, and telephone number of the individual who will represent the Proposer(s) during contract negotiations with Intercity Transit; and
- A statement confirming the firm's availability during the contract term.

2. Statement of Qualifications

Proposer must provide the firms' summary of qualifications and submit a response to each of the criteria as requested in Section IV – Evaluation and Award, 4.2 Evaluation Criteria.

3. Proposer Acknowledgements

The Proposer Acknowledgements must be signed by the Proposer's Authorized Representative. Proposer must complete the acknowledgement of Addenda receipt box(es) by filling the "addenda numbers" fields for each Solicitation Addenda issued, and complete the signature box information on the Proposer Acknowledgements page.

4. Proposer Information

Proposer must complete the Proposer Profile, Proposer Authorized Representative, Proprietary or Confidential Information, Certified DBE and SBE Status, and Statement of Prior Contract Termination sections. Proposer may attach additional sheets if necessary.

5. Subconsultant Information

Proposer is instructed to complete the Subconsultant Information section if the Proposer intends on utilizing Subconsultants. If Proposer does not intend to use Subconsultants, the Proposer is not required to complete this section of the Proposal Submittal Document. If no information is entered, Transit will assume that Subconsultants will not be used.

Transit will accept Proposals that include third party involvement only if the Proposer submitting the Proposal agrees to take complete responsibility for all actions of such Subconsultants. Proposer must disclose the use of any Subconsultants in their Proposal.

If applicable, Proposer will identify all Subconsultants who will perform services in fulfillment of Contract requirements, including their name, the nature of services to be performed, address, telephone, email, federal tax identification number (TIN), Washington State Unified Business Identifier (UBI), and DBE or SBE certification status. Transit reserves the right to approve or reject any and all of the proposed Subconsultants. Any Subconsultants not listed in the Proposer's Response, who are engaged after award of the Contract, must be pre-approved, in writing, by Transit before providing services under the Contract.

6. References

Proposer must submit a **minimum of three (3)** references for which the Proposer has provided services similar to those described herein.

Through this submission, Proposer grants permission to Transit to independently contact the references. Transit reserves the right to obtain and consider information from other sources concerning a Proposer, such as Proposer's capability and performance under other contracts, Proposer's financial stability, past or pending litigation, and other publicly available information.

7. Certification Regarding Lobbying

Proposer must complete and submit the Certification Regarding Lobbying. This form must be completed and signed by the Proposer's Authorized Official.

8. Certification Regarding Debarment, Suspension, and other Responsibility Matters

Proposer must complete and submit the Certification Regarding Debarment, Suspension and Other Responsibility Matters. This form must be completed and signed by the Proposer's Authorized Official, and signed by the Proposer's Attorney.

9. Certification Regarding Conflict of Interest

Proposer must complete and submit the Certification Regarding Conflict of Interest. This form must be completed and signed by the Proposer's Authorized Official.

3.2 SUBMITTAL INSTRUCTIONS

Proposer will submit their complete Proposal in the following manner:

A. Proposal: Proposer must complete and submit all sections of the Proposal Submittal Document, located in [Appendix A](#), as their Proposal. Intercity Transit must receive Three (3) hard copies and one (1) electronic copy of the Proposer's complete Proposal on or before the **Proposal Due Date and Time** set forth in the Procurement Schedule.

1. *Hard Copy:* Proposals limited to a total of ten (10) double-sided pages, including cover letter, on 8½ x 11 sized paper and no less than 11-point font (excluding front and back covers, and items listed under Appendix). Proposals should be stapled or bound.
2. *Electronic Copy:* The electronic copy Proposal is to be submitted on a USB flash drive or CD-RW/CD-ROM, labeled with the RFQ number and Proposer's name. The preferred electronic formats are Microsoft Word 2000 (or more recent version) and PDF.

B. Delivery of Proposal: The Proposal must be delivered as follows:

1. Enclose the hard copy and electronic copy of the Proposal together in a single envelope or container and label as follows:

**Intercity Transit
On-Call Engineering Services Project #1937
Attn: Tammy Ferris
526 Pattison Street, SE
Olympia, WA 98501**

2. Ensure delivery to Transit at the address provided in Item B.1 above on or before the Proposal due date and time. The telephone number for shipping purposes is (360) 786-1881.

C. Time of Receipt: Time of receipt will be determined by the date and time the Proposal is received by Transit's Administrative Office Receptionist. Proposer accepts all risks of late delivery regardless of fault or chosen method of delivery.

Proposals are to be submitted in the format described in this Solicitation. No oral, faxed, e-mailed or telephone Proposals or modifications will be accepted or considered. All Proposals and any accompanying documentation become the property of Transit and will not be returned. **In the event of any discrepancies between the hard copy and electronic copy Proposal, the hard copy will prevail.**

3.3 LATE PROPOSALS

Any Proposal received after the exact time specified for Proposal due date and time will not be accepted or receive consideration. The exact time is designated as the date and time received by Transit's Administrative Office Receptionist.

3.4 PROPOSER RESPONSIVENESS

Proposer must respond to each question/requirement contained in this RFQ. Failure to demonstrate to Transit that your firm meets RFQ requirements and/or comply with any applicable item may result in the Response being deemed non-responsive and disqualified from further consideration.

Transit, at its sole discretion, reserves the right to consider the actual level of Proposer's compliance with Solicitation requirements, accept or reject any and all Proposals received, waive any irregularities or minor informalities, to accept any items or combination of items, and to request additional information required to fully evaluate a Proposal.

SECTION 4 – EVALUATION AND AWARD

4.1 OVERVIEW

The responsive responsible Proposer whose Proposal is determined to best meet all RFQ requirements and is the most advantageous to Transit, based on the evaluation factors described herein, will be declared the successful Proposer. All Proposals are subject to Transit’s final approval as to whether they meet all RFQ requirements.

4.2 EVALUATION CRITERIA

Intercity Transit will evaluate Proposals in conformance with the Brooks Act (Public Law 92-582) to determine which proposals, if any, demonstrate that the proposing firms are qualified to complete the work and are in the best interest of Transit. The scores for each Proposal will be assigned a relative importance for each scored section as follows:

PHASE 1 EVALUATION – NON-COST PROPOSAL

| No. | Criterion | Max Points |
|---------------------------------------|--|-------------------|
| 1. | Firm’s transit related engineering experience, including on-call contract work. | 30 points |
| 2. | Staff Qualifications and Experience. | 30 points |
| 3. | Firm’s Qualifications, Experience, History and Availability to perform the services. | 25 points |
| 4. | Firm’s approach to quality control, project management and administration. | 15 points |
| Total Possible Phase 1 Points: | | 100 Points |

PHASE 2 EVALUATION – INTERVIEWS

| No. | Criterion | Max Points |
|--------------------------------------|-----------|-------------------|
| 1. | Interview | 100 points |
| Total Possible Phase 2 Points | | 100 Points |

The Proposer should organize its SOQ so that the qualifications are clearly illustrated using the Submittal Requirements listed below for each Evaluation Criterion.

| | | |
|-------------------------------|---|----------------|
| Evaluation Criterion 1 | Firm’s Transit related engineering experience, including on-call contract work | 30 pts. |
|-------------------------------|---|----------------|

Submittal Requirements

1. Please provide a summary describing firm’s previous Transit related work experience.

| | | |
|-------------------------------|--|----------------|
| Evaluation Criterion 2 | Staff Qualifications and Experience | 30 pts. |
|-------------------------------|--|----------------|

Specialized experience and technical competence of the key individuals who will provide the requested services.

Submittal Requirements

1. Brief résumés for each of the key individuals who will provide the requested services.
2. A representative list of a minimum of three (3) current or past projects (within 5 years) performed by the key individuals who will provide the requested services.
3. Description of the tasks the individual would perform, their experience to perform these tasks, and their related experience.
4. Personal credentials and certification(s) to perform the work.

| | | |
|-------------------------------|---|----------------|
| Evaluation Criterion 3 | Firm’s Qualifications, Experience, History and Availability to perform the services. | 25 pts. |
|-------------------------------|---|----------------|

Submittal Requirements

1. Describe your firm’s qualifications and experience providing On-call Engineering Services. Provide a general description of firm’s history and services provided and type of clients served.
2. Description of up to three (3) projects for which the firm provided On-call Engineering Services. Submittal should include:
 - a. Project name and location.
 - b. Client name, address, phone number, and email address.
 - c. Brief description of the work and the total cost of the project.
3. Please provide information affirming the firm’s capacity and availability to provide On-Call Engineering Services to Transit, considering the firm’s current and planned workload.

| | | |
|-------------------------------|--|----------------|
| Evaluation Criterion 4 | Firm’s approach to quality control, project management, and administration. | 15 pts. |
|-------------------------------|--|----------------|

Submittal Requirements

1. Describe your firm’s approach to quality control, project management and administration.

4.3 EVALUATION PROCESS

1. Initial Determination of Responsiveness (pass/fail)

Responses will be reviewed initially by the Procurement Coordinator to determine on a pass/fail basis compliance with administrative requirements as specified in this RFQ. Only responses that meet this requirement will move to the next evaluation step. Transit reserves the right to determine at its sole discretion whether Proposer’s Response meets the Responsiveness criteria as set forth within this document. If all

responding Proposers are determined to be deemed Non-Responsive, Transit will cancel the Solicitation and reject all Proposals.

Only Responses that pass the Initial Determination of Responsiveness review will be further evaluated based on the requirements in this Solicitation.

2. Phase 1 Evaluation – Non-Cost Proposal (scored)

Evaluators will score each element of the Non-Cost Proposal. The Procurement Coordinator will tabulate the evaluation team’s scoring. Transit will calculate a single score for each Non-Cost Proposal. There are a maximum of **100 points** available for the Non-Cost Proposal.

3. Phase 2 Evaluation – Interviews (scored) (Optional)

Transit reserves the right to schedule interviews if determined to be in the best interest of Transit. In the event interviews are required, Transit will contact the top-scoring Proposer(s) from the Phase 1 Evaluation to participate in the Phase 2 Evaluation – Interview. If Phase 2 is required, Phase 1 scoring will only be used to determine which Proposer(s) move to Phase 2. Phase 2 scoring will then be used during the remainder of the RFQ evaluation process to determine the apparent successful Proposer. There are a maximum of 100 points available for the interview. Commitments made by the Proposer during the interview, if any, will be considered binding.

4. References (pass/fail) (Optional)

Transit reserves the right to check references after Proposal submittal, to assist in determining the overall responsibility of the Proposer. References may be checked during Proposal evaluation determine the responsibility of Proposers. Transit reserves the right to reject any Proposal submittal if the Proposer receives unfavorable references and may use results as a factor in award. Transit reserves the right to seek and substitute other references to determine the sufficiency of the Proposer’s level of responsibility.

5. Evidence of Qualification (pass/fail)

After Proposal submittal, Transit reserves the right to make reasonable inquiry and/or requests for additional information, to assist in determining the overall responsibility of any Proposer. Requests may include, but are not limited to, educational degrees, business licenses, financial statements, credit ratings, references, record of past performance, experience, available equipment, criminal background check, clarification of Proposer’s offer, and on-site inspection of Proposer's or Proposer's Subcontractor's facilities. Failure to respond to said request(s) may result in the Proposer being deemed non-responsive and thus disqualified. Transit reserves the right to reject any Proposal where, upon investigation of the available evidence or information, Transit is not satisfied that the Proposer is qualified to fulfill Contract requirements.

4.4 OVERVIEW OF THE AWARD PROCESS

The successful Proposer, if any, will be the responsive, responsible, qualified Proposer who's Proposal, in the sole opinion of Transit, best meets the requirements set forth in this RFQ and is in the best interest of Transit. Transit may enter into Contract negotiations with the successful Proposer. All responsive Proposers responding to this solicitation will be notified when Transit has determined the successful Proposer.

If Transit and the successful Proposer are unable to negotiate an acceptable Contract within a reasonable amount of time, Transit will terminate negotiations and will proceed to negotiations with the next highest ranked Proposer.

Transit may be required to make a recommendation of the successful Proposer to the Intercity Transit Authority (Authority). If the Authority concurs, a Contract will be awarded to the successful Proposer.

4.5 CONTRACT TERMS AND NEGOTIATIONS

The objective of negotiations is to reach agreement on all provisions of the proposed Contract. To assist in the negotiations, a Sample Contract is included in [Appendix C](#).

4.6 COST PROPOSAL

The selected firm will be required to submit a Cost Proposal. The cost elements must include:

1. Labor Hours - Provide labor hours by task and by labor category.
2. Direct Labor Rates - Identify the proposed direct labor rates by individual and by labor category (i.e., by function or discipline)
3. Overhead Rates - Provide a copy of the most recent independent audit that has been performed within the past two (2) years. If an independent audit is available, then the items below will not be required. If an independent audit report is not available then provide the following:
 - a. Provide an overhead schedule showing a detailed listing of overhead expenses incurred for the most recent year as well as total direct labor costs. This overhead schedule should be based on actual expenses incurred during the previous year.
 - b. Unallowable costs must not be included in the proposed overhead rate. Include a certified statement that the proposal does not include any unallowable costs. Refer to Federal Acquisition Regulations Part 31 for more information on which costs are allowable and which are unallowable.
 - c. Provide a chart of accounts, describing what is included in each overhead account line item.
4. Other Direct Costs (ODCs) – If proposing direct costs other than labor, then provide a description and rationale for the estimate. Any proposed ODCs must be task or job specific costs that are normally charged directly to a Contract and have not been included in the overhead rate. ODCs, if approved, will be reimbursed at cost only, with no markup added.
5. Professional Fee/Profit - Identify the proposed professional fee/profit rate, expressed as a percentage of direct labor and overhead costs.

4.7 EXECUTION OF CONTRACT

The successful Proposer will execute the final Contract in duplicate and return to Transit, together with the evidences of insurance, within ten (10) Business Days of its receipt. After execution by Transit, one (1) original signed Contract will be returned to the awarded Consultant.

4.8 POST AWARD MEETING

The awarded firm may be required to attend a post award meeting scheduled by the Procurement Coordinator to discuss Contract performance requirements.

SECTION 5 – NOTICES: FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS

1. APPLICABILITY OF FEDERAL GRANT CONTRACT

This procurement may be subject to one or more financial assistance contracts between Intercity Transit and the U.S. Department of Transportation, which incorporate the current FTA Master Agreement and Circular 4220.1F as amended. The Submitter is required to comply with all terms and conditions prescribed for third party contracts in this solicitation.

Federal laws, regulations, policies and administrative practices may be modified or codified after the date this Agreement is established and may apply to this solicitation. To assure compliance with changing federal requirements, Contract Award indicates that the Submitter agrees to accept all changed requirements that apply to this Agreement.

Incorporation of Federal Transit Administration (FTA) Terms.

All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F as amended and the Master Grant agreement, are hereby incorporated by reference. Anything to the contrary, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this solicitation. The Submitter shall not perform any act, fail to perform any act, or refuse to comply with any Intercity Transit request that would cause Intercity Transit to be in violation of the FTA terms and conditions.

2. FEDERAL FUNDING LIMITATION

If funds are not allocated, or ultimately are disapproved by FTA for a project, Intercity Transit may terminate or suspend Submitter's services without penalty. Intercity Transit will notify the Submitter promptly in writing of the non-allocation, delay or disapproval of funding.

3. FTA REQUIREMENTS

The Submitter shall also comply with the FTA requirements included in Appendix C, Sample Contract.

APPENDIX A – PROPOSAL SUBMITTAL DOCUMENT

INSTRUCTIONS:

The following documents constitute the required SOQ Submittal. Failure to submit all the required documents along with their proposal may cause a Submittal to be non-responsive. Proposers are advised to read carefully all portions of the Contract documents and to comply with all requirements therein. The Submittal must include all of the items listed below:

1. **Cover Letter:**

The Cover Letter must be signed by the individual within the organization authorized to bind the proposing firm to the offer. The Cover Letter will address the items as outlined in the RFQ.

2. **SOQ Submittal:**

Summary of qualifications of firm and proposed approach as outlined in the RFQ.

3. **Proposer Acknowledgements:**

Proposer must complete the Proposer Acknowledgements and include with their Submittal.

4. **Proposer Information:**

Proposer must complete the Proposer Information and include with their Submittal.

5. **Subconsultant Information:**

Proposer must complete subconsultant information if Proposer intends to use any subconsultants.

6. **References:**

Proposer must provide a minimum three (3) references for which the Proposer has provided services similar to those described in this solicitation. References must not be from an individual, company or organization with any special interest, financial or otherwise, to the Proposer.

7. **Certification Regarding Lobbying**

Proposer must complete the Certification Regarding Lobbying and include with their Submittal.

8. **Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

Proposer must complete the Certification Regarding Debarment, Suspension, and Other Responsibility Matters and include with their Submittal.

9. **Certification Regarding Conflict of Interest**

Proposer must complete the Certification Regarding Conflict of Interest and include with their Submittal.

PROPOSER ACKNOWLEDGEMENTS
On-Call Engineering Services – RFQ #1937
Issued by Intercity Transit

Having carefully examined all requirements and terms and conditions identified in this Request for Qualifications (RFQ), the undersigned, declares that I/we have examined all of the solicitation documents and that I/we will Contract with Intercity Transit (Transit) to do everything necessary for fulfillment of RFQ #1937, On-Call Engineering Consultant Services, and the resulting Contract, at the prices and on the terms and conditions contained herein.

I/We certify, under penalty of perjury, that this is not a sham or collusive Proposal, nor made in the interest or on behalf of any person not herein named. I/We have not directly or indirectly induced or solicited any Proposer on the above work, or suppliers to put in a sham Proposal, nor any other person or corporation to refrain from Proposing. I/We have not in any manner sought by collusion to secure advantage over any other Proposers.

I/We agree that our Proposal constitutes an offer to Transit, which shall be binding for sixty (60) Calendar Days from the Proposal due date. If our Proposal is accepted, we agree to sign the Contract form and furnish evidences of insurance required herein within ten (10) Business Days after receipt from Transit of written notice of award of Contract.

I/We certify that we are, at the time of submitting this Proposal and shall remain throughout the period of the Contract, registered and licensed by the state of Washington to perform the type of work required under the procurement. We further certify that we are skilled and regularly engaged in the general class and type of work called for in the procurement.

I/We further agree, if our Proposal is accepted and a Contract is awarded by Transit, to plan and prosecute the work with such diligence that the work and portions thereof shall be completed and ready for use within the period set forth.

I/We acknowledge receipt of addenda numbers _____ through _____ and have been taken into account as part of our Proposal.

The following information is accurate to the best of our knowledge. Any required documentation has been attached separately. We understand that failure to complete this form in its entirety may deem our Proposal “Non-Responsive”.

The signatory below represents that he/she has the authority to bind the company named below to the Proposal submitted and any Contract awarded as a result of this Solicitation. The authorized signatory acknowledges having read and understood the entire Solicitation and agrees to comply with the terms and conditions of the Solicitation in submitting and fulfilling the offer made in its Proposal. By submitting this Proposal, Proposer hereby offers to furnish materials, supplies, services and/or equipment in compliance with all terms, conditions, and specifications contained in this Solicitation.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct”:

| | | |
|----------------------|---------------------------------|------|
| Proposer Signature | Company Name | |
| Print Name and Title | Location Executed (City, State) | Date |

END OF FORM

PROPOSER INFORMATION

1. Proposer Profile:

Proposer must provide the following:

| | |
|---------------------------------|-------|
| Firm Name | _____ |
| DBA Name <i>(if applicable)</i> | _____ |
| Street Address | _____ |
| City, State, Zip Code | _____ |
| Federal Tax ID Number | _____ |
| WA State UBI Number | _____ |
| DUNS # | _____ |

2. Proposer Authorized Representative:

Proposer must designate an Authorized Representative who will be the principal point of contact for the Procurement Coordinator for the duration of this RFQ process. Proposer's Authorized Representative will serve as the focal point for business matters and administrative activities.

| | |
|-----------------------|-------|
| Representative Name: | _____ |
| Street Address | _____ |
| City, State, Zip Code | _____ |
| Telephone Number | _____ |
| Email Address | _____ |

3. Proprietary or Confidential Information:

Proposer must indicate any pages and/or sections of their Response that Proposer desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW below. Indicate the pages of Proposer's Response that have been marked "Confidential" and the particular exception from disclosure upon which the Proposer is making the claim below. Please see the Solicitation Standards document for more detail on Proprietary or Confidential Information as it relates to this Solicitation. *If not applicable, Proposer is instructed to enter "NA" in the box below.*

4. Certified DBE and SBE Status:

Intercity Transit gathers the following Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) information for reporting purposes. Proposer is instructed to check the applicable boxes and enter associated certification numbers, as applicable, below:

Not Applicable

DBE Certification #: _____

SBE Certification #: _____

5. Statement of Prior Contract Termination:

Proposer must disclose below if the Proposer's firm and/or any proposed subconsultants have had a Contract terminated for either cause or convenience in the last five (5) years. If a Contract was terminated for cause or convenience during this timeframe, submit full details of the termination including but not limited to, the reason for termination, the other party's contact information (name, address, email address, and telephone number), and the Proposer's position on the matter. Transit will evaluate the information and may, at its sole discretion, reject the Response based on the risk to the Agency. *If not applicable, Proposer is instructed to enter "NA" in the box below.*

END OF FORM

SUBCONSULTANT INFORMATION

Check the applicable box:

Yes No Proposing firm intends on utilizing subconsultants to fulfill the service requirements outlined in RFQ #1937, On-call Engineering Services.

Proposer will be required to perform all work under this Contract using his/her own employees carried on payroll or by using subconsultants. Where subconsultants are used in the performance of the Contract, Proposer will indicate as required with the Response. Service Provider will be held responsible for all work performed or not performed by the subconsultant(s). subconsultant(s) will be required to bill through the Proposer.

If revisions are required in the subcontract assignment, new parties are to be proposed in advance of assignment, in writing to the Transit Procurement Coordinator and Contract Administrator.

If applicable, Proposer will identify below all subconsultants who will perform services in fulfillment of Contract requirements, including their name, the nature of services to be performed, address, telephone number, email address, federal tax identification number (TIN), Washington State Unified Business Identifier (UBI), and DBE or SBE certification status:

SUBCONSULTANT 1

Name: _____
Services: _____
Address: _____
Telephone: _____
Email: _____
Fed ID: _____
UBI: _____
Certified DBE: Yes No
Certified SBE: Yes No

SUBCONSULTANT 2

Name: _____
Services: _____
Address: _____
Telephone: _____
Email: _____
Fed ID: _____
UBI: _____
Certified DBE: Yes No
Certified SBE: Yes No

SUBCONSULTANT 3

Name: _____
Services: _____
Address: _____
Telephone: _____
Email: _____
Fed ID: _____
UBI: _____
Certified DBE: Yes No
Certified SBE: Yes No

SUBCONSULTANT 4

Name: _____
Services: _____
Address: _____
Telephone: _____
Email: _____
Fed ID: _____
UBI: _____
Certified DBE: Yes No
Certified SBE: Yes No

END OF FORM

REFERENCES

Proposer must provide a minimum of three (3) references for which the Proposer has provided services similar to those described in this Solicitation. References must not be from an individual, company or organization with any special interest, financial or otherwise, to the Proposer.

Reference 1

Company Name: _____
Type of
Organization:* _____
Contact Name: _____
Job Title: _____
Street Address: _____
City, State, Zip: _____
Telephone: _____
Email: _____
Brief Reference
Project Description: _____

Reference 2

Company Name: _____
Type of
Organization:* _____
Contact Name: _____
Job Title: _____
Street Address: _____
City, State, Zip: _____
Telephone: _____
Email: _____
Brief Reference
Project Description: _____

Reference 3

Company Name: _____
Type of
Organization:* _____
Contact Name: _____
Job Title: _____
Street Address: _____
City, State, Zip: _____
Telephone: _____
Email: _____
Brief Reference
Project Description: _____

Reference 4

Company Name: _____
Type of
Organization:* _____
Contact Name: _____
Job Title: _____
Street Address: _____
City, State, Zip: _____
Telephone: _____
Email: _____
Brief Reference
Project Description: _____

*Type of Organization – Municipality, Public Agency, Etc.

END OF FORM

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS**

Required of Consultant's and Sub-consultants whose Contract participation is expected to exceed \$100,000.

Not Applicable

The Consultant, _____, (insert name of company) certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or Contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

(If the primary participant (applicant for an FTA grant, or cooperative agreement, or potential third party Service Provider) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

THE CONSULTANT, _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTION 3801 ET. SEQ. ARE APPLICABLE THERETO.

Signature of Consultant's Authorized Official

Date

Name and Title of Consultant's Authorized Official

END OF FORM

CERTIFICATION REGARDING CONFLICT OF INTEREST

The Proposer is required to certify performance of the work will not create any conflicts of interest or disclose any actual or potential conflicts of interest by completing and signing one of the following statements:

The Proposer hereby certifies that to the best of its knowledge and belief, performance of the services described in the Scope of Work will not create any conflicts of interest for the Proposer, any affiliates, any proposed subconsultants or key personnel of any of these organizations.

DATE:

AUTHORIZED
SIGNATURE:

TITLE:

COMPANY NAME:

OR

The Proposer hereby discloses the following circumstances that could give rise to a conflict of interest for the Proposer, any affiliates, any proposed subconsultants or key personnel of any of these organizations (Attach additional sheets as needed).

Name of Individual/Company to which potential conflict of interest might apply:

Nature of potential conflict of interest:

Proposed Remedy:

DATE:

AUTHORIZED
SIGNATURE:

TITLE:

COMPANY NAME:

END OF FORM

APPENDIX B – SOLICITATION STANDARDS

Solicitation Standards: This document contains the Standard Definitions, Instructions to Proposers and Terms and Conditions. This document does not need to be submitted, however Proposers are instructed to be familiar with it as it governs this Solicitation and will be incorporated into the resulting Contract.

DEFINITIONS

This section contains definitions of terms commonly used in Solicitations conducted by Transit.

| | |
|----------------------------------|---|
| Agency | Intercity Transit (Transit). |
| Amendment or Addendum | A change to a legal document. For the purposes of a Solicitation document, an amendment is a unilateral change issued by Transit, at its sole discretion. |
| Authorized Representative | An individual designated by the Proposer to act on its behalf with the authority to legally bind the Proposer concerning the terms and conditions set forth in Solicitation and Proposal documents. |
| Bid | A sealed written offer to provide materials, supplies, services, and/or equipment in reply to a Request for Bids (RFB). |
| Business Days | Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the Intercity Transit, unless otherwise specified within the Solicitation document. |
| Calendar Days | Consecutive days of the year including weekends and holidays, each of which commence at 12:00:01 a.m. and end at Midnight, Pacific Time. When “days” are not specified, Calendar Days will prevail. |
| Contract | All types of agency agreements, regardless of what they may be called, for the procurement of supplies, services or construction |
| Contractor | Any person having a Contract with Intercity Transit. |
| Procurement Coordinator | The individual authorized by Transit who is responsible for conducting a specific Solicitation. |
| Proposal | A written offer to perform a Contract to supply materials, supplies, services, and/or equipment in reply to a Request For Proposals (RFP) or Request for Qualifications (RFQ). |
| Proposer | A Vendor who submits a Proposal in reply to a Solicitation. |
| RCW | Revised Code of Washington |

| | |
|-------------------------|---|
| Responsible | The ability, capacity, and skill to perform the Contract or provide the service required, including, but not limited to the character, integrity, reputation, judgment, experience, and efficiency of the Proposer. Further considerations may include, but are not limited to, whether the Proposer can perform the Contract within the time specified, the quality of performance of previous contracts or services, the previous and existing compliance by the Proposer with laws relating to the Contract or services and such other information as may be secured having a bearing on the decision to award the Contract. |
| Responsive | A Bid or Proposal that meets all material terms of the Solicitation document. |
| Response | A Bid or Proposal |
| Service Provider | Any person or company having a Contract with Intercity Transit. |
| Solicitation | The process of notifying prospective Bidders that Transit wants competitive Bids or Proposals for furnishing specified materials, supplies, services, and/or equipment. Also includes reference to the actual documents used for that process, including: the Invitation For Bids (IFB) or Request For Proposals (RFP) or Request for Qualifications (RFQ), along with all attachments and exhibits. |
| Subconsultant | A person or business that is, or will be, providing or performing an essential aspect of the Contract under the direction and responsibility of the subconsultant. |
| Submittal | A written offer to perform a Contract to supply materials, supplies, services, and/or equipment in reply to a Request for Proposals (RFP) or Request for Qualifications (RFQ). |
| Vendor | A provider of materials, supplies, services, and/or equipment. |

1. AMENDMENTS

Transit reserves the right to amend this Solicitation at any time before the Submittal deadline. Amendments may be for any reason deemed necessary by Transit including, without limitation, changes in quantity, quality, delivery requirements, due date, procedures, baseline technical requirements, statement of work requirements, or selection criteria.

All amendments will be posted on [Washington’s Electronic Business Solution \(WEBS\)](#). If the project is construction related, amendments will also be posted on the [Builder’s Exchange of Washington](#) (BXWA) website. It is the Proposer’s sole responsibility to check periodically for addenda related to this Solicitation.

If there is any conflict between amendments, or between an amendment and the original Solicitation document, whichever document was issued last in time shall be controlling.

2. COLLUSION

If Transit determines that collusion has occurred among Proposers, none of the Proposals of the participants in the collusion will be considered. Transit's determination shall be conclusive.

3. ENVIRONMENTAL MANAGEMENT AND SUSTAINABILITY PRACTICES

Intercity Transit is a founding signatory with Gold Level recognition for the American Public Transportation Association Sustainability Commitment. Intercity Transit's Environmental & Sustainability Policy directs us to protect the environment and incorporate sustainability practices in all our operations. Intercity Transit has committed to putting core processes in place that set the basis for environmental, social and economic sustainability. Depending on the subject of a procurement and its relationship to Intercity Transit's commitment, bidders or proposers may be required to provide relevant information about the goods and services being procured or may be required to demonstrate their ability to comply with Intercity Transit's environmental management and sustainability practices.

4. ENVIRONMENTAL POLLUTION PREVENTION AND PUBLIC NATURAL RESOURCES PRESERVATION

The Successful Proposer will comply with applicable portions of the following statutes, ordinances and regulations and such other regulatory measures dealing with the prevention of environmental pollution and the preservation of public natural resources as may be subsequently identified by Transit or other public agencies as applicable to the work.

- A. Federal. Natural Environmental Policy Act of 1969, 42 USC 4321 et seq.; Executive Order 11514; Clean Water Act, 33 USC 1251 et seq.
- B. State. Water Pollution Control Act, Chapter 90.48 RCW; State Environmental Policy Act of 1971, Chapter 43.21C RCW and WAC Chapter 1997-10; Noise Control Act of 1974, Chapter 70.107 RCW; Washington Clean Air Act, Chapter 70.94 RCW and WAC Chapter 1; Shoreline Management Act of 1971, Chapter 90.58 RCW.
- C. Regional. Any applicable Air Pollution Control District regulations.
- D. Thurston County. Any applicable County ordinances and regulations.
- E. Local. Any applicable City ordinances and regulations.

5. INSURANCE

The successful Proposer is required to obtain insurance to protect Transit should there be any claims, suits, actions, costs, or damages or expenses arising from any negligent or intentional act or omission of the Proposer or its Subconsultant(s), or their agents, while performing work under the terms of any Contract resulting from this Solicitation. Proposers will find a complete description of the specific insurance requirements in the sample Contract document located in Appendix C of the Solicitation document.

6. MINORITY, WOMEN, DISADVANTAGED AND SMALL BUSINESS ENTERPRISES

Transit is committed to maximum utilization of minority, women, and disadvantaged businesses enterprises (DBE) and small businesses enterprises (SBE) whether included in these categories or not. All businesses are encouraged to respond.

All interested firms are reminded to provide all potential business partners an equal, non-discriminatory opportunity to compete for business as joint venture partners or subconsultants. Transit is interested in firms that demonstrate a commitment to equal employment opportunity and encourages firms to employ a workforce that reflects the region's diversity and to adhere to non-discrimination provisions in federal and state laws.

For more information on how to become certified as a disadvantaged business enterprise (DBE) please contact the Office of Minority and Women's Business Enterprises (OMWBE) at www.omwbe.wa.gov, call (360) 753-9693, or mail an inquiry to OMWBE at PO Box 41160, Olympia, WA 98504-1160.

Intercity Transit does not set Contract specific DBE participation goals.

7. NO COSTS OR CHARGES

Costs or charges under the proposed Contract incurred before the Contract is fully executed will be the sole responsibility of the Proposer.

8. NO OBLIGATION TO CONTRACT

This Solicitation does not obligate Transit to Contract for the service(s) or product(s) specified. Transit reserves the right to cancel or reissue this Solicitation in whole or in part, for any reason, prior to Contract award.

9. POLICY COMPLIANCE

Transit does not permit alcohol, drugs and weapons on Transit property. Tobacco products can only be used in designated areas. Service Provider is responsible to ensure that all employees and any Subconsultants assigned to work on Transit property are aware of and comply with these policies.

10. PROJECT PERSONNEL

Proposer represents that it has, or will obtain, all personnel necessary to perform the services required under this Solicitation. All services required under this Solicitation shall be performed by the Proposer, its employees, agents, representatives, or authorized Subconsultants.

Upon Contract award, Proposer shall not change assigned project personnel or subconsultants without prior Transit approval.

11. SUBMITTAL CLARIFICATION

Transit will make the sole determination of clarity and completeness in the Submittals relative to any of the provisions in this Solicitation. Transit reserves the right to require clarification, additional information and materials in any form relative to any or all of the provisions or conditions of this Solicitation.

To aid in the Response evaluation process, after Response deadline, Transit may require individual Proposers to appear at a date, time and place determined by Transit for the purpose of conducting discussions to determine whether both parties have a full and complete understanding of the nature and scope of contractual requirements. In no manner shall such action be construed as negotiations or an indication of Transit's intention to award.

12. COSTS

Proposer is solely liable for any and all costs associated with preparing, submitting or presenting a Submittal in response to this Solicitation. Transit is not liable for any cost incurred by the Proposer in the process of responding to this Solicitation.

13. SUBMITTAL DEADLINE POSPTPONEMENT

Transit reserves the right to postpone the due date and time of Submittals at any time prior to the Submittal deadline.

14. SUBMITTAL OWNERSHIP

All Submittals and materials submitted in response to this Solicitation will become the property of Transit. Information in each Submittal will be shared with Transit employees and other persons involved in Submittal evaluation. Transit will have the right to use ideas or adaptations of ideas that are presented in the Submittal. Selection or rejection of the offer will not affect this right.

15. SUBMITTAL REJECTION

Transit reserves the right to reject any Submittal for any reason including, but not limited to, the following:

- A. Any Submittal which is incomplete, obscure, irregular or lacking necessary detail and specificity;
- B. Any Submittal which contains figures (price, percentage or others) that are not legible or subject to more than one interpretation;
- C. Any Submittal from Proposer(s) who (in the sole judgment of Transit) lack the qualification and/or responsibility necessary to perform the work properly;
- D. Any Submittal for which a Proposer fails or neglects to complete and submit any qualification information within the time specified by Transit; and
- E. Any Submittal submitted by a Proposer who is not registered or licensed as may be required by the laws of the state of Washington.

Transit further reserves the right to reject any or all Submittals, to waive any irregularities or informalities in any response to the Solicitation, and to accept any items or combination of items. In consideration for Transit's review and evaluation of its Submittal, the Proposer waives and releases any claims against Transit arising from rejection of any or all Submittals.

16. SUBMITTAL WITHDRAWAL OR MODIFICATION

A modification of a Submittal already received will be considered only if the modification is received prior to the Submittal deadline. All modifications shall be made in writing,

executed and submitted in the same form and manner as the original Submittal. Notwithstanding the above, a late modification of an otherwise successful Submittal that makes its terms more favorable to Transit may be considered at any time it is received and may be accepted.

Proposers may withdraw their Submittal by written request to the Procurement Coordinator. The withdrawal request must be received by the Procurement Coordinator prior to Submittal deadline. Submittals may be withdrawn in person by the Proposer or an Authorized Representative, if the representative's identity is made known and the representative signs a receipt for the Submittal before the Submittal deadline.

No Proposer may withdraw a Submittal after the Submittal deadline, or before the award and execution of the Contract, unless the award is delayed for a period exceeding ninety (90) days from the Submittal deadline. Transit reserves the right to request that Proposers grant an extension of such effective period.

No consideration shall be given by Transit to a claim of error in a Submittal unless written notice of such claim and supporting evidence of such claim, including cost breakdown sheets, are delivered to Transit within forty-eight (48) hours after the opening of Submittals. Any review by Transit of a Submittal and/or any review of such a claim of error (including supporting evidence) creates no duty or liability on Transit to discover any other error or mistake, and the sole liability for any Submittal errors rests with the Proposer.

17. PROPRIETARY OR CONFIDENTIAL INFORMATION

Transit will not disclose any information contained in competing Submittals or the number of Submittals received until after Contract award. Transit will keep information submitted through this process confidential to the extent allowed by state or federal law.

All information contained in the Submittal is subject to the state of Washington Public Records Act, RCW Chapter 42.56, and may be subject to public inspection. It should be noted that RCW 42.56.270(1) states that the following information is exempt from disclosure: "Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss."

Proposers, who include data in their Submittals which conforms to the above limitations and that they do not want disclosed to the public for any purpose or used by IT, except for in evaluation purposes, must indicate any pages and/or sections of the Response that Proposer desires to claim as proprietary in the "Proprietary or Confidential Information" portion of the Proposer Information section of the Submittal Document.

18. PROTEST PROCEDURES

Protests shall be filed and resolved in accordance with following procedure:

- A. **Right to Protest.** Any actual or prospective Proposer, including sub-Service Providers and suppliers showing a substantial economic interest in this project, who is aggrieved in connection with the solicitation or award of this project, shall file a protest with the Intercity Transit General Manager. A protest with respect to a Request for Qualifications

and Qualifications shall be submitted in writing prior to the established Submittal deadline unless the aggrieved person did not know the facts giving rise to such protest prior to Submittal date. The protest shall be submitted within seven calendar days after such aggrieved person knows or should have known of the facts giving rise thereto. If the protester is not satisfied with the solution of the General Manager, a written protest may be filed with the Intercity Transit Authority. Protests filed more than seven (7) calendar days following the receipt of the General Manager's written determination will not be accepted.

- B. **Stay of Procurements During Protests.** In the event of a timely protest under subsection 1 of this Section, the General Manager shall not proceed further with the solicitation or award of the Contract until all administrative and judicial remedies have been exhausted or until the Intercity Transit Authority makes a determination on the record that the award of a Contract without delay is necessary to protect substantial interests of Transit.
- C. **Entitlement of Costs.** In addition to any other relief, when a protest is sustained and the protesting Proposer should have been awarded the Contract under the solicitation, but is not, then the protesting Proposer shall be entitled to the reasonable costs incurred in connection with the solicitation, including preparation costs, other than attorney's fees.
- D. **Process.** In order to be considered, a protest shall be in writing and shall include:
- The name and address of the aggrieved person;
 - The project number and title under which the protest is submitted;
 - A detailed description of the specific grounds for protest and any supporting documentation; and
 - The specific ruling or relief requested.

The written protest will be addressed to Intercity Transit, 526 SE Pattison Street, P.O. Box 659, Olympia, WA 98501, Attention: General Manager Proposal Protest. Failure to comply with these protest procedures shall render a protest untimely or inadequate and may result in rejection thereof by Transit.

The Federal Transit Administration (FTA) may entertain a protest that alleges that Transit failed to have or follow written protest procedures. Such protest must be filed with FTA not later than five (5) days after Transit renders a final decision or five (5) days after the protester knows or has reason to know that Transit has failed to render a final decision. A protest to FTA must be filed in accordance with FTA Circular 4220.1C (as periodically updated).

19. WORK SITE INSPECTION

Proposer must understand and inspect the work location(s). Interested Proposers may visit the location during the scheduled Pre-Submittal Conference. By signing its Submittal, Proposer is accepting the work conditions. The Awarded Service Provider will be responsible to complete all required work in accordance with the Solicitation and Contract documents. If during the course of or as a result of the inspection and examination, a

Proposer finds facts or conditions which appear to conflict with the letter or spirit of the Solicitation and Contract documents, or with any other data or material made available to the Proposer relating to the work, the Proposer will promptly notify Transit in writing and request additional information and explanation before submitting a Submittal.

20. LOBBYING

Service Providers who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

21. SUSPENSION AND DEBARMENT

- A. Pursuant to Executive Order 12549, as implemented by 49 CFR Part 29, entities and individuals who are debarred or suspended by the Federal Government are excluded from obtaining Federal assistance funds under this Contract. To assure that such entities and individuals are not involved as participants on the FTA-financed Contract, each Proposer shall complete and submit, as part of its Submittal, the certification contained in the Contract Documents for itself and its principals. If the Proposer is unable to provide a positive certification, it must submit a complete explanation, attached to the certification form, of why it cannot provide the certification. Failure to submit a certification or explanation may disqualify the Proposer from participation under this Submittal. Transit, in conjunction with FTA, will consider the certification or explanation in determining award of a Contract.
- B. This certification is a material representation of fact upon which reliance is placed in determination of award of Contract. If at any time the Proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, it shall immediately provide written notice to Transit. If it is later determined that the Proposer knowingly rendered an erroneous certification, Transit may terminate the Contract for cause of default, in addition to other remedies available, including FTA suspension and/or debarment.
- C. By submitting a Proposal for this Contract, the Proposer agrees that should it be awarded the Contract, it shall not knowingly enter into any subcontract exceeding \$25,000 with an entity or person who is debarred, suspended or has been declared ineligible from obtaining Federal assistance funds. The Proposer, if awarded the Contract, shall require each Subcontractor and all lower tier Subcontractors to complete the certificate.

Each subcontract, regardless of tier, shall contain a provision that the Subcontractor shall not knowingly enter into any lower tier subcontract with a person or entity who is debarred, suspended or declared ineligible from obtaining Federal assistance funds. The Service Provider shall require that each Subcontractor regardless of tier, immediately provide written notice to the Service Provider if at any time the Subcontractor learns that a lower-tier certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The Service Provider may rely upon the certifications of the Subcontractor unless it knows that the certification is erroneous. The Service Provider's knowledge and information regarding any Subcontractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business.

APPENDIX C - SAMPLE CONTRACT

**INTERCITY TRANSIT
CONTRACT NO. 1937
FOR
ON-CALL ENGINEERING SERVICES**

THIS CONTRACT is made and entered into in duplicate this _____ day of _____, 2020 by and between INTERCITY TRANSIT, a Washington municipal corporation, hereinafter referred to as "Transit", and the below named company, hereinafter referred to as "Service Provider", for the purpose of providing On-Call Engineering and Construction Administration Services.

Service Provider:

Authorized Rep:

Address:

Phone:

Email:

Federal TIN:

WA State UBI No.:

1. RECITALS

WHEREAS, Transit desires to retain the Service Provider to perform certain professional services including On-Call Engineering and Construction Administration Consultant Services. The scope of this contract comprises the provision of consultant services on an on-call basis for performance of engineering and construction administration work as the need for such work arises. Services will be authorized by issuance of individual task orders that will define in detail the scope and schedule of the work to be performed. This contract is non-exclusive, with no guaranteed minimum amount of work; and

WHEREAS, Transit desires to have certain services and/or tasks performed as hereinafter set forth requiring specialized skills and other supportive capabilities; and

WHEREAS, sufficient Transit resources are not available to provide such services; and

WHEREAS, Service Provider represents that Service Provider is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise where required, to perform the services and/or tasks set forth in this Contract.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, Transit and Service Provider agree as follows:

2. SCOPE OF SERVICES

- A. Service Provider will perform such services and comply with the requirements set forth in this Contract document, including furnishing all materials and equipment necessary, and as identified in the following attached Exhibits which are incorporated by reference:
1. Request for Qualifications #1937, Released 12/6/19, attached as Exhibit "A"
 2. Service Provider's Response to RFQ #1937, dated _____, attached as Exhibit "B"
 3. Scope of Services, attached as Exhibit "C"
 4. Service Provider's Rate Schedule, attached as Exhibit "D"

3. ADMINISTRATION AND SUPERVISION

- A. The work and services under this Agreement is subject to certain federal laws, regulations, and other requirements in effect on the date of execution of this Contract. Transit and the Service Provider agree that such federal laws, regulations, and other requirements supersede any conflicting provisions of this Contract.
- B. The Service Provider represents that it has, or will obtain, all personnel necessary to perform the services required under this Agreement and that such personnel are qualified, experienced, and licensed as may be necessary or required by laws and regulations to perform such services. All services required under this Contract must be performed by the Service Provider, its employees, or by subconsultants whose selection has been authorized by Transit; provided, that Transit's authorization will not relieve the Service Provider or its subconsultants from any duties or obligations under this Agreement or at law to perform in a satisfactory and competent manner. The Service Provider will remove from the Project any of its subconsultants or personnel assigned to the Project if, after the matter has been thoroughly considered by Transit and the Service Provider, Transit considers such removal necessary and in the best interests of the Project and so directs the Service Provider in writing.
- C. The Project must be coordinated and integrated with other Transit activities.

4. TERM

- A. The term of this Contract and the performance called for herein shall begin on the effective date of this Contract. The term of the Contract is for one (1) year with four (4), one-year renewal options at Transit's discretion. Transit reserves the option to extend this Contract in the event that requirements change or work is not completed by the expected termination date.

5. SCOPE OF WORK

- A. The Scope of Work will be defined by Task Orders. This Contract is non-exclusive and there is no guaranteed minimum amount of work. A cost and schedule will be developed for each Task Order, using formats approved by Transit. The initial cost and initial schedule for each Task Order will be updated via Amendments, pursuant to Section 6, Changes and Additional Work. Updated project and schedule reports must be submitted with each invoice for payment.

6. CHANGES AND ADDITIONAL WORK

- A. Transit may, at any time, by written order direct the Service Provider to revise portions of the project, or make other changes, including additional work, within the general scope of the services or work to be performed under this Contract.
- B. Compensation for each such request for additional work will be negotiated by Transit and the Service Provider consistent with the compensation provisions set forth herein, and if so authorized, will be considered part of the project work. The Service Provider may not perform any additional work until authorized by Transit in writing.

7. RESPONSIBILITY OF THE SERVICE PROVIDER

- A. The Service Provider will be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings, specifications, cost estimates, reports, and other services prepared or performed by the Service Provider and its subconsultants under this Contract.
- B. The Service Provider must, without additional compensation, correct or revise any errors, omissions, or other deficiencies in such plans, designs, drawings, specifications, reports, and other services; and, in the event of any deficiencies in such plans, designs drawings, specifications, reports, or other services resulting from the Service Provider's professional negligence or from the professional negligence of the Service Provider's subconsultants, whether or not said deficiencies have been brought to the attention of Transit, the Service Provider must indemnify and reimburse Transit for the cost of the corrective remedial work (including, without limitation, design, demolition, and construction) necessary to correct any such deficiencies and the consequences of such deficiencies caused by the Service Provider's or subconsultants' professional negligence.
- C. Transit's approval of plans, drawings, designs, specifications, reports and other products of the professional services rendered hereunder does not in any way relieve the Service Provider of responsibility for the technical adequacy or accuracy thereof. Transit's review, approval, acceptance of, and/or payment for any of the services will not be construed to operate as a waiver of any rights under this Contract.

8. CONSULTANT ACQUISITION AND/OR MERGER

- A. If the Service Provider executing this Contract ceases to exist as an independent business entity by means of acquisition by and/or merger with a successor or otherwise, the Service Provider must notify Transit in writing not less than 30 calendar days prior to the effective date of the circumstance causing the cessation of the independent business status. Transit reserves the right to take steps to ensure it has contractual privity with the successor. The Service Provider must cooperate with this effort by agreeing to an

assignment, a novation, or other document required to transfer the rights and responsibilities of the Service Provider to the successor. The successor will be required to be bound to the same degree that the Service Provider was bound to the obligations of this Contract.

9. COMMENCEMENT AND COMPLETION OF PROJECT WORK

- A. After execution of this Contract by Transit and the Service Provider, Transit may issue written Task Orders, which will constitute notices to proceed on the scope or work included in the Task Order. Such notices to proceed will be provided for specific tasks identified as necessary to produce specified work products and will set forth the date of commencement of the work, a description of the work to be performed, the schedule for the work authorized, and the costs for such tasks.
- B. Time is of the essence in the performance by the Service Provider under this Contract. The Service Provider must complete its work and services within the Task Order schedule, including the established milestones and task and Project completion dates, set forth in the Scope of Work. The completion dates for tasks may be modified only upon written agreement of the parties hereto. The completion dates for tasks and the completion date of the entire Project will not be extended because of any unwarranted delays attributable to the Service Provider, but will be extended by Transit in the event of a delay caused by Additional Work requested by Transit or because of unavoidable delay caused by any governmental action or other conditions beyond the control of the Service Provider that could not be reasonably anticipated.
- C. During performance under this Contract, the Service Provider must manage the Contract such that its and its subconsultant's services are provided and performed in a cost-effective and efficient manner. Task budgets are established in the Scope of Work. The Service Provider must complete its work and services within said task budgets. Task budgets may be modified only upon authorization of Transit's Project Manager. Task budgets will not be increased because of any unwarranted delays or costs attributable to the Service Provider, but will be increased by Transit in the event of Additional Work within or affecting a task, because of unavoidable delay by any governmental action, or other conditions beyond the control of the Service Provider that could not be reasonably anticipated.

10. TASK ORDERS

- A. Service Provider will be authorized to perform Work under this Contract by issuance of a written Task Order executed by Transit and Service Provider. Each Task Order will identify the Scope of Work to be performed, the period of performance, and the not-to-exceed Cost, together which constitute the Task Order total authorized amounts. In the event the Service Provider incurs costs in the performance of an individual Task Order in excess of the Task Order total authorized amounts, the Service Provider must pay such excess from its own funds and Transit will not be required to pay any part of such excess and the Service Provider will have no claim against Transit on account thereof.

- B. A Task Order will be initiated by the Transit Project Manager through a letter with a designated Task Order number and a description of the proposed work, including the estimated timeframe when the task must be completed.
- C. Prior to issuing Task Orders, Service Provider must meet with the Project Manager to: (1) review and confirm the Scope of Work, allocation of level of effort, and the performance schedule, and (2) negotiate an estimated cost amount and a Fixed Fee amount for each Task Order. Service Provider will not be entitled to any reimbursement for its time or costs associated with the development and negotiation for each Task Order. Any changes to the Scope of Work or reallocation of level of effort within each Task Order will be in accordance with Section 6, Changes and Additional Work.
- D. No reference to the terms and conditions of this Contract is necessary in the Task Order as the terms and conditions stated in this Contract are incorporated into and are part of each Task Order issued under this Contract.

11. COMPENSATION AND METHOD OF PAYMENT

- A. Subject to the provisions set forth in this Contract, the Service Provider will be paid on a monthly basis by Transit for authorized and satisfactorily completed work and services rendered under this Contract. Such payment will be full compensation for work performed and services rendered, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals, but in no case will such payment exceed the earned value (i.e., percentage of work completed) as determined by Transit.
- B. This is a cost reimbursement, cost plus fixed-fee contract. Compensation will be the sum of direct labor costs, overhead costs, and a fixed professional fee. Costs to be paid are identified on the "Summary of Service Provider and Subconsultant's Rate Schedule" form which is attached hereto as Exhibit __, and incorporated herein.
- C. Transit will pay Service Provider a fixed fee (profit) for each Task Order issued hereunder. Service Provider understands and agrees that it will not earn additional fee if it exceeds the negotiated labor hours. It is further understood and agreed that fixed fees are only due and payable for Project work for which Transit has issued a Task Order and for which the Service Provider has satisfactorily completed. If the Scope of Work changes, as determined by Transit, then Transit and Service Provider may negotiate additional fixed fee. Invoices must detail the work, hours, and employee name and level for which payment is being requested, and must itemize, with receipts and invoices attached, the Other Direct Costs for which reimbursement is being requested. Service Provider will break down invoices to show the current invoice amount with its associated fixed fee, past invoiced amount and its associated fixed fee, and the remaining budget and fixed fee yet to be invoiced.
- D. The Service Provider shall submit its final invoice and such other documents as are required pursuant to this Contract within ten (10) calendar days of completion of the Scope of Services. Unless waived by Transit in writing, failure by the Service Provider to submit the final invoice and required documents will relieve Transit from any and all liability for payment to the Service Provider for the amount set forth in such invoice or any subsequent invoice.

- E. If the Service Provider fails to comply with any terms or conditions of this Contract or to provide in any manner the work or services agreed to herein, Transit may withhold any payment due the Service Provider until Transit is satisfied that corrective action, as specified by Transit, has been completed. This right is in addition to and not in lieu of Transit's right to terminate this Contract as provided in Section 30 below.

12. INDEPENDENT SERVICE PROVIDER RELATIONSHIP

- A. The parties intend that an independent Service Provider relationship between Service Provider and Transit will be created by this Contract. Transit is interested primarily in the results to be achieved; subject to the provisions herein, the implementation of services will lie solely with the discretion of Service Provider. No agent, employee, servant or representative of Service Provider shall be deemed to be an employee, agent, servant or representative of Transit for any purpose, and the employees of Service Provider are not entitled to any of the benefits Transit provides to its employees. Service Provider will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Contract.
- B. In the performance of the services herein contemplated, Service Provider is an independent Service Provider with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of Transit and shall be subject to Transit's general rights of inspection and review to secure the satisfactory completion thereof.

13. BILLING PROCEDURES

- A. Payments for services and materials provided under this Contract will be made on not more than a monthly basis, following the performance and acceptance of such service. No payment will be made for any service rendered or material provided by Service Provider except for services and materials identified and set forth in this Contract unless otherwise permitted by law and approved in writing by Transit.
- B. Service Provider will submit an invoice for services rendered to Transit on forms approved by Transit. Invoices should be submitted electronically to tferris@intercitytransit.com. If Service Provider is unable to submit invoices electronically, invoices may be submitted by mail to:

Intercity transit
Attn: Procurement Office
526 Pattison Street, SE
Olympia, WA 98501

- C. Transit will submit payment for stated services to Service Provider within thirty (30) days following Transit's receipt of each accurate and complete invoice. No payments in advance of, or in anticipation of, receipt of goods or services to be provided under this Contract will be made by Transit.

14. PROJECT MANAGEMENT

The individuals listed below, or their successors will be the main points of contact for services provided under this Contract. Transit's Project Manager or his/her successor is responsible for monitoring Service Provider's performance and will be the contact person

for all communications regarding Contract performance and deliverables. Transit’s Project Manager has the authority to accept or reject the services provided and if satisfactory, certify acceptance of each invoice submitted for payment. Notifications regarding changes to this section must be in writing and maintained in the project file, but will not require a formal Contract amendment.

| Service Provider’s Project Manager | Transit’s Project Manager |
|--------------------------------------|---|
| First Last | Tammy Ferris |
| Company | Intercity Transit |
| Street Address | 526 Pattison Street, SE |
| City, State Zip | Olympia, WA 98501 |
| Phone: (###) ###-#### | Phone: (360) 705-5818 |
| Email address: [Enter email address] | Email address: tferris@intercitytransit.com |

15. CONTRACT ADMINISTRATION

The individual listed below, or his/her successor, will be Contract Administrator for this Contract. The Contract Administrator is designated to receive legal notices, invoices, and to administer, amend, or terminate this Contract. All Contract documents under this Contract will be processed by the Contract Administrator and submitted to Service Provider for acceptance. Contact information for the Contract Administrator is:

Tammy Ferris
 Intercity Transit
 P.O. Box 659
 Olympia, WA 98507-0659
 Phone: (360) 705-5818
 Email address: tferris@intercitytransit.com

16. PROJECT PERSONNEL

Service Provider represents that it has, or will obtain, all personnel necessary to perform the services required under this Contract. Service Provider agrees that the key personnel identified in its Submittal will be committed by Service Provider to this project for its duration. Substitution or replacement of key personnel will be subject to Transit’s following written request by the Service Provider. All services required under this Contract will be performed by the Service Provider, its employees, agents, representatives, or authorized subcontractors.

17. NON-EXCLUSIVE PROVIDER

Transit reserves the right to obtain services or supplies not specifically covered by this Contract from other providers as deemed in the best interest of Transit.

18. ASSIGNMENT

Service Provider will not assign its performance under this Contract, or any portion of this Contract, without the written consent of Transit. Service Provider must seek consent from Transit, in writing, not less than thirty (30) days prior to the date of any proposed assignment. Transit reserves the right to reject any assignment without cause.

19. HOLD HARMLESS AND INDEMNIFICATION

The Service Provider shall defend, indemnify, and hold Transit and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the negligence of, or the breach of any obligation under this Contract by, the Service Provider or the Service Provider's agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the Service Provider may be legally liable; provided, that nothing herein shall require a Service Provider to defend, indemnify or hold harmless Transit and its officers and employees from claims, demands or suits based upon the sole negligence of, or breach of any obligation under this Contract by Transit, its agents, officers, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom Transit may be legally liable; and provided further, that if the claims or suits are caused by or result from the concurrent negligence of (a) the Service Provider or the Consultant's/Contractor's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the Service Provider is legally liable, and (b) Transit, its agents, officers, employees, sub-consultants, subcontractors and or vendors, of any tier, or any other persons for whom Transit may be legally liable, the defense and indemnity obligation shall be valid and enforceable only to the extent of the Consultant's/Contractor's negligence or the negligence of the Consultant's/Contractor's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the Service Provider may be legally liable. This provision shall be included in any Contract between Service Provider and any sub-consultant, subcontractor and vendor, of any tier.

The Service Provider shall also defend, indemnify, and hold Transit and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the Service Provider or the Consultant's/Contractor's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the Service Provider may be legally liable, in performance of the Work under this Contract or arising out of any use in connection with the Contract of methods, processes, designs, information or other items furnished or communicated to Transit, its agents, officers and employees pursuant to the Contract; provided that this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from Transit, or its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to Transit, its agents, officers and employees by the Service Provider, its agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the Service Provider may be legally liable.

The Service Provider's relation to Transit shall be at all times as an independent contractor. Notwithstanding any determination by the Executive Ethics Board or other tribunal, Transit may, in its sole discretion, by written notice to the Service Provider terminate this Contract if it is found after due notice and examination by Transit that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Service Provider in the procurement of, or performance under, this Contract.

The Service Provider specifically assumes potential liability for actions brought by the Consultant's/Contractor's own employees or its agents against Transit and, solely for the purpose of this indemnification and defense, the Service Provider specifically waives any immunity under the state industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated between the Parties.

Unless otherwise specified in this Contract, Transit shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of a new sole source, or an acceptable supplemental Contract, the Service Provider shall provide On-Call assistance to Transit during contract administration. By providing such assistance, the Service Provider shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The Service Provider shall obtain and keep in force during the terms of this Contract, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

20. INSURANCE

- A. Insurance Requirements - Service Provider shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, Transit shall not be deemed or construed to have assessed the risks that may be applicable to the Service Provider under this Contract. The Service Provider shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.
1. *Commercial General Liability Insurance* on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.
 2. *Business Automobile Liability Insurance* in an amount not less than \$1,000,000 per occurrence, extending to any automobile, including owned, non-owned and hired vehicles.
 3. *Workers' Compensation Insurance* as required by Washington State law and *Employer's Liability Insurance (Stop Gap)* with limits not less than \$1,000,000 per occurrence.
 4. *Professional Liability Insurance* coverage with limits of not less than \$500,000 per claim/annual aggregate throughout the duration of this Contract and for a period of two (2) years thereafter.
- B. Additional Requirements - Service Provider shall provide to Transit Certificates of Insurance and copies of policies, if requested, prior to commencement of work. All policies of insurance, with the exception of Professional Liability and Workers Compensation for i., ii., and iv., below, shall:

- i. Contain an endorsement specifically naming Intercity Transit its officers, officials, agents, and employees, as Additional Insureds.
- ii. Be on a primary basis and not contributory with any other insurance coverages and/or self-insurance carried by Transit.
- iii. Include a Waiver of Subrogation clause.
- iv. Include a Severability of Interest clause (cross liability).
- v. Not be non-renewed, cancelled, or materially changed or altered unless thirty days prior written notice is provided to Transit.
- vi. Be provided on forms and by insurance companies satisfactory to Transit.

No provision in this paragraph shall be construed to limit the liability of the Service Provider for work not done in accordance with the Contract, or express or implied warranties. The Service Provider's liability for the work shall extend as far as the appropriate periods of limitation provided by law.

- C. Worker's Compensation - The Service Provider and its subcontractors shall maintain worker's compensation insurance in the amount and type required by law for all employees employed under this Contract who may come within the protection of worker's compensation laws. The Service Provider shall make all payments arising from the performance of this Contract due the State Washington pursuant to Titles 50 and 51 RCW.
- D. Evidences and Cancellation of Insurance - Prior to execution of the Contract, the Service Provider shall file with Transit evidences of insurance from the insurer(s) certifying to the coverage of all insurance required herein. All evidences of insurance must be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and that the insurer(s) shall give, by registered mail, notice to Transit at least thirty days prior to the effective date of any cancellation, lapse, or material change in the policy. Any failure to mail such notice shall not relieve the insurance company, its agents, or representatives from obligations and/or liability hereunder.
- E. The Service Provider shall, upon demand of Transit, deliver to Transit all such policy or policies of insurance and the receipts for payment of premiums thereon; and should the Service Provider neglect so to obtain and maintain in force any such insurance or deliver such policy or action plan to acquire such insurance and/or deliver policies and receipts within three days or before any further performance hereunder, whichever is first. Failure to provide such insurance in a timeframe acceptable to Transit shall enable Transit to suspend or terminate the Service Provider's work. Suspension or termination of this Contract shall not relieve the Service Provider from its insurance obligations hereunder.

21. TREATMENT OF ASSETS

- A. Title to all property furnished by Transit shall remain in the name of Transit and Transit shall become the owner of the work product and other documents, if any,

prepared by Service Provider pursuant to this Contract, unless otherwise expressly provided herein.

- B. Work product shall include, but not be limited to, research, reports, computer programs, manuals, drawings, recordings, photographs, artwork and any data or information in any form; the Service Provider and Transit intend that such work product shall be deemed “work made for hire” of which Transit shall be deemed the author.

22. COMPLIANCE WITH LAWS

- A. Service Provider, in the performance of this Contract, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of equipment, and licensing of individuals, and any other standards or criteria described in this Contract to assure quality of services.
- B. Service Provider agrees to pay any applicable business and occupation (B&O) taxes which may be due on account of this Contract.
- C. If sales tax becomes applicable to the professional services covered by this Contract, Transit shall pay such tax to Service Provider, and Service Provider shall pay the tax as required by law.

23. POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property or services provided directly or indirectly under this Contract shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

24. PROHIBITED INTEREST

No Authority member, officer or employee of Transit shall have any personal interest, direct or indirect, in this Contract or the proceeds thereof.

25. NONDISCRIMINATION

- A. Equal Opportunity. Transit is an equal opportunity employer.
- B. Nondiscrimination in Employment. In the performance of this Contract, Service Provider will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular work involved. Applicants employed by Service Provider shall be treated during employment, without regard to their race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and programs for training including apprenticeships. Service Provider shall take such action with respect to this Contract as may be required to ensure full compliance with Chapter 49.60 Revised Code of Washington, Law against Discrimination.

- C. Nondiscrimination in Services. Service Provider will not discriminate against any recipient of any services or benefits provided for in this Contract on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap.
- D. Nondiscrimination in Sub-Contracting. If any assignment and/or subcontracting have been authorized by Transit, said assignment or subcontract shall include appropriate safeguards against discrimination. Service Provider shall take such action as may be required to facilitate compliance with the provisions in the immediately preceding paragraphs herein and further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

26. GRATUITIES AND KICKBACKS

- A. Gratuities. It shall be a breach of ethical standards for any person to offer, give or agree to give any Transit Authority member, officer, employee, agent or former Authority member, officer, employee, or agent or for any Authority member, officer, employee, agent or former Authority member, officer, employee or agent to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a Contract or subcontract, or to any solicitation or proposal therefore.
- B. Kickbacks. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a Contract to the prime Service Provider or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

27. LIENS, CLAIMS AND ENCUMBRANCES

Service Provider certifies that all materials, equipment or services shall be free of all liens, claims, or encumbrances of any kind, and if Transit requests, a formal release of same shall be provided.

28. MAINTENANCE AND INSPECTION OF RECORDS

- A. Service Provider shall maintain books, records, documents which sufficiently and properly reflect all direct and indirect costs related to the performance of this Contract and shall undertake such accounting procedures and practices as may be deemed necessary to assure proper accounting of all funds paid pursuant to this Contract. These records shall be subject at all reasonable times to inspection, review or audit, by Transit, its authorized representative, the State Auditor or any of their authorized representatives or other governmental officials authorized by law to monitor this Contract.
- B. Service Provider shall retain all books, records, documents and other material relevant to this Contract for five (5) years after Transit's final payment and all other pending matters are closed. Service Provider agrees that Transit or its designee shall have full

access and right to examine any of said materials at all reasonable times during said period.

- C. Service Provider's fiscal management system shall include the capability to provide accurate, current and complete disclosure of the financial status of this Contract upon request.

29. DISPUTES

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties will be decided by arbitration if the parties mutually agree, or in the Superior Court of Thurston County, Washington, which shall have exclusive jurisdiction and venue over all matters in question between Transit and Service Provider.

30. TERMINATION

- A. Termination for Convenience or Default. Transit may terminate the Contract, in whole or in part, for Transit's convenience or because of the failure of Service Provider to fulfill the Contract obligations. Transit shall terminate by delivering to Service Provider a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, Service Provider shall (1) immediately discontinue all services affected (unless the notice directs otherwise or Transit has granted Service Provider a cure period as set forth in (B) below), and (2) deliver to Transit all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Contract, whether completed or in process.
 - i. If the termination is for the convenience of Transit, Transit shall make an equitable adjustment in the Contract price such that all amounts due to Service Provider for Products delivered and services performed are paid, but shall allow no anticipated profit on unperformed services.
 - ii. If the termination is for failure of Service Provider to fulfill the Contract obligations, the Service Provider shall only be paid for work delivered and accepted unless such work does not fulfill the Contract obligations. Transit may complete the work by Contract or otherwise and Service Provider shall be liable for any additional cost incurred by Transit.
 - iii. If, after termination for failure to fulfill Contract obligations, it is determined that Service Provider 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 Transit.
- B. Opportunity to Cure. Transit in its sole discretion may, in the case of a termination for breach or default, allow Service Provider a commercially reasonable 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.
 - i. If Service Provider fails to remedy to Transit's satisfaction, the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Service Provider of written notice from Transit setting forth the nature of said breach or default, Transit shall have the right to terminate the Contract without any further obligation to Service Provider, except that Service Provider shall be paid for work delivered and accepted unless such work does not fulfill the Contract obligations. Any such termination for default shall not in

any way operate to preclude Transit from also pursuing all available remedies against Service Provider and its sureties for said breach or default.

31. WAIVER OF REMEDIES FOR ANY BREACH

In the event that Transit elects to waive its remedies for any breach by Service Provider of any covenant, term or condition of this Contract, such waiver by Transit shall not limit Transit's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

32. NOTICE

Notice provided for in this Contract shall be sent by certified mail to the addresses designated for the parties on the last page of this Contract.

33. ATTORNEYS FEES AND COSTS

If any legal proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Contract, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and costs incurred in such action or proceeding.

34. APPLICABILITY OF FEDERAL GRANT CONTRACT

- A. This procurement may be subject to one or more financial assistance contracts between Transit and the U.S. Department of Transportation, which incorporate the current FTA Master Agreement and Circular 4220.1F, as amended. The Service Provider is required to comply with all terms and conditions prescribed for third party contracts in these documents.
- B. Federal laws, regulations, policies and administrative practices may be modified or codified after the date this Contract is established and may apply to this Contract. To assure compliance with changing federal requirements, Contract Award indicates that the Service Provider agrees to accept all changed requirements that apply to this Contract.

35. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

- A. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, as amended, and the Master Grant Agreement, as amended 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 Service Provider shall not perform any act, fail to perform any act, or refuse to comply with any Transit request that would cause Transit to be in violation of the FTA terms and conditions.
- B. The FTA Master Agreement obligates Transit to incorporate certain provisions into this Agreement and any lower tier subcontracts at any level and to take appropriate measures to ensure that Service Provider and its lower tier subconsultants at any level comply with certain applicable requirements set forth in the Master Agreement. The FTA Master Agreement is hereby incorporated by reference into this Agreement, and Service Provider shall comply with all such requirements.

36. COMPLIANCE WITH FEDERAL REGULATIONS

All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as 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.

37. FLY AMERICA REQUIREMENTS

The Service Provider agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in The Service Provider 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 Service Providers 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 Service Provider 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 Service Provider agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

38. SEISMIC SAFETY REQUIREMENTS

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

39. ENERGY CONSERVATION

The Service Provider 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.

40. CLEAN WATER

The Service Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Service Provider 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.

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

41. LOBBYING

Service Providers who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

42. ACCESS TO RECORDS AND REPORTS

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

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Service Provider agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Service Provider which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Service Provider also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Service Provider access to Service Provider's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Service Provider agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Service Provider, access to the Service Provider 'srecords and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated Contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Service Provider agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Service Provider which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a Contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Service Provider shall make available records related to the Contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Service Provider agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Service Provider 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 Service Provider agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

43. FEDERAL CHANGES

Service Provider shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Service Provider's failure to so comply shall constitute a material breach of this Contract.

44. CLEAN AIR

- A. The Service Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Service Provider 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.
- B. The Service Provider also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

45. FEDERAL FUNDING

Service Provider understands that Transit may use funds to pay for the Service Provider's performance under this Contract made available from the United States Department of Transportation through the Federal Transit Administration (FTA). All funds must be approved and administered by FTA. Transit's obligation hereunder is payable from funds that are appropriated and allocated by FTA for the performance of this Contract. If funds are not allocated, or ultimately are disapproved by FTA, Transit may terminate or suspend Service Provider's services without penalty. Transit shall notify Service Provider promptly in writing of the non-allocation, delay, or disapproval of funding.

46. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

- A. The Purchaser and Service Provider acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Purchaser, Service Provider, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.
- B. The Service Provider 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.

47. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

- A. The Service Provider acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Service Provider 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 Service Provider 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 Service Provider to the extent the Federal Government deems appropriate.
- B. The Service Provider 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 Service Provider, to the extent the Federal Government deems appropriate.
- C. The Service Provider 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.

48. FEDERAL PRIVACY ACT REQUIREMENTS

- A. The Service Provider agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Service Provider agrees to obtain the express consent of the Federal Government before the Service Provider or its employees operate a system of records on behalf of the Federal Government. The Service Provider understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Contract.
- B. The Service Provider also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

49. SUSPENSION AND DEBARMENT

- A. Pursuant to Executive Order 12549, as implemented by 49 CFR Part 29, entities and individuals who are debarred or suspended by the Federal Government are excluded from obtaining Federal assistance funds under this Contract. To assure that such entities and individuals are not involved as participants on the FTA-financed Contract, each Proposer shall complete and submit, as part of its Submittal, the certification contained in the Contract Documents for itself and its principals. If the Proposer is unable to provide a positive certification, it must submit a complete explanation, attached to the certification form, of why it cannot provide the certification. Failure to submit a certification or explanation may disqualify the Proposer from participation under this Submittal. Transit, in conjunction with FTA, will consider the certification or explanation in determining award of a Contract.
- B. This certification is a material representation of fact upon which reliance is placed in determination of award of Contract. If at any time the Proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, it shall immediately provide written notice to Transit. If it is later determined that the Proposer knowingly rendered an erroneous certification, Transit may terminate the Contract for cause of default, in addition to other remedies available, including FTA suspension and/or debarment.
- C. By submitting a Proposal for this Contract, the Proposer agrees that should it be awarded the Contract, it shall not knowingly enter into any subcontract exceeding \$25,000 with an entity or person who is debarred, suspended or has been declared ineligible from obtaining Federal assistance funds. The Proposer, if awarded the Contract, shall require each Subcontractor and all lower tier Subcontractors to complete the certificate.
- D. Each subcontract, regardless of tier, shall contain a provision that the Subcontractor shall not knowingly enter into any lower tier subcontract with a person or entity who is debarred, suspended or declared ineligible from obtaining Federal assistance funds. The Service Provider shall require that each Subcontractor regardless of tier, immediately provide written notice to the Service Provider if at any time the Subcontractor learns that a lower-tier certification was erroneous when submitted or has become erroneous by

reason of changed circumstances. The Service Provider may rely upon the certifications of the Subcontractor unless it knows that the certification is erroneous. The Service Provider's knowledge and information regarding any Subcontractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business.

50. FEDERAL CIVIL RIGHTS REQUIREMENTS

In addition to Transit nondiscrimination requirements set forth in other Sections in this Contract, the following Federal requirements apply to the Service Provider's performance under 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 Service Provider 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 Service Provider 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:
 - i. *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 Service Provider agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Service Provider 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 Service Provider agrees to comply with any implementing requirements FTA may issue.
 - ii. *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 Service Provider agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Service Provider agrees to comply with any implementing requirements FTA may issue.

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

51. BREACHES AND DISPUTE RESOLUTION

- A. Except as otherwise provided in the Contract, the Service Provider must notify Transit in writing within thirty (30) calendar days of any dispute arising under the Contract which is not disposed of by agreement.
- B. All disputes shall be decided by the General Manager of Transit who shall indicate his/her decision in writing and mail or otherwise furnish a copy thereof to the Service Provider. The decisions of the General Manager shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence.
- C. In connection with any appeal proceeding under this clause, the Service Provider shall be afforded an opportunity to be heard within thirty (30) days of the decision, and to offer evidence in support of their appeal. Pending final decisions of a dispute hereunder, the Service Provider shall proceed diligently with the performance of the Contract in accord with the General Manager's decision, and such continued performance does not in any manner imply acceptance of our Contract with that decision by the Service Provider, nor does it infringe upon the Service Provider's right to appeal that decision. This clause does not preclude consideration of law questions in connection with decisions provided for in the above paragraph, provided that nothing in this Contract shall be construed as making final decision of any administrative official, representative, or board on a question of law.

52. DISADVANTAGED BUSINESS ENTERPRISES

- A. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is .77%. A separate Contract goal has not been established for this procurement.
- B. The Service Provider, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Service Provider shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by the Service Provider 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 Transit deems appropriate which may include, but is not limited to (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the Service Provider/Contractor from future bidding as non-responsible. Each subcontract the Service Provider signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

- C. The Service Provider must promptly notify Transit, 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 Transit.

53. PROMPT PAYMENT

Service Provider is required to pay its subconsultants performing work related to this Contract for satisfactory performance of that work no later than thirty (30) days after the Service Provider's receipt of payment for that work from Transit.

54. SAFE OPERATION OF MOTOR VEHICLES

- A. The Service Provider is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY.
- B. The Service Provider agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

55. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

The Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg.1455 etseq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

56. ADA ACCESS AND OTHER FEDERAL REQUIREMENTS

The Service Provider is also required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;

U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;

U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local federal government Services," 28 CFR Part 35;

DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;

U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;

U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;

U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; and

FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.

Any implementing requirements that the FTA may issue.

57. EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

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

58. JURISDICTION

- A. This Contract has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Contract shall be governed by laws of the State of Washington, both as to interpretation and performance.
- B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Contract or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Thurston County, Washington.

59. SEVERABILITY

- A. It is understood and agreed by the parties that if any part, term or provision of this Contract is held by the courts to be illegal, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
- B. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

60. FORCE MAJEURE

- A. Service Provider is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of Consultant.
- B. If the Project is delayed by any circumstance beyond the reasonable control of the Service Provider, Service Provider will be entitled to an equitable adjustment of rates and Project schedule. This equitable adjustment will reflect all reasonable costs incurred by the Service Provider.

61. ORDER OF PRECEDENCE

Each of the exhibits listed below is hereby incorporated into this Contract. In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable federal and state of Washington statutes and regulations;
2. Terms and conditions as contained in this basic Contract instrument, and any change orders or amendments;
3. Exhibit A – Statement of Work
4. Exhibit B – Service Provider’s Rate Schedule and Fees
5. Exhibit C – Request for Qualifications No. 1937, released December 6, 2019
6. Exhibit D – Service Provider’s Response to RFQ No. 1937, dated _____
7. Any other provision, term or material incorporated herein by reference or otherwise incorporated

62. ENTIRE CONTRACT

The parties agree that this Contract is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Failure to comply with any of the provisions stated herein shall constitute material breach of Contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Contract. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Contract does not constitute a waiver of the provisions of this Contract.

63. APPROVAL

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed the day and year first hereinabove written.

TRANSIT:

INTERCITY TRANSIT
526 Pattison Street, SE
Olympia, WA 98501

SERVICE PROVIDER:

SERVICE PROVIDER
Address
City, State, Zip

By: Ann Freeman-Manzanares
Its: General Manager

By: Authorized Representative
Its: Title