



**Request For Proposal (RFP)  
Intelligent Transportation System (ITS) – CAD / AVL**

**KRT RFP – 2022 CAD/AVL**

**KRT  
1550 4<sup>th</sup> Avenue  
Charleston, WV 25387**

**Mailing Address:  
KRT  
PO Box 1188  
Charleston, WV 25324**

**September 15, 2022**

## TABLE OF CONTENTS

Section	Topic
<b>PART 1: GENERAL INFORMATION</b>	
1.1	Agency Information
1.2	Background & Objectives
1.3	Scope of Work
1.4	Key Dates
<b>PART 2: INSTRUCTIONS TO PROPOSERS</b>	
2.1	Proposer's Representation
2.2	Proposal Documents
2.3	Proposal Procedures
2.4	Form of Agreement Between Owner and Contractor
2.5	Evaluation
2.6	Technical Teleconference
2.7	Responders List
2.8	Technical Questions
2.9	Technical Proposal and All Required Material
2.10	Proposal Due Date
2.11	Evaluation of Proposals
2.12	Award
2.13	Substantial Project Completion
2.14	Required Proposal Forms
2.15	Owner's Right to Reject Proposals
2.16	Negotiation and Request for Best and Final Offer
2.17	Proof of Insurability
<b>PART 3: TERMS AND CONDITIONS</b>	
3.1	Term of Contract
3.2	Independent Contractor
3.3	Assignment and/or Subcontracting
3.4	Safeguarding Client Information
3.5	Hold Harmless and Indemnification
3.6	Contract Changes
3.7	Licensing in Compliance with Laws and Regulations
3.8	Insurance Requirements
3.9	Notices
3.10	Termination
3.11	Proposal Acceptance or Rejection
3.12	Proposal/Bid Protest
3.13	Withdrawals and Modifications
3.14	Liquidated Damages
3.15	Performance Bond

#### **PART 4: REQUIRED FORMS**

- 4.1 Statement of Qualifications Certification
- 4.2 DBE Form
- 4.3 Debarment
- 4.4 Proposer's Representation
- 4.5 Lobbying

#### **PART 5: FEDERAL CLAUSES**

- 5.1 Access to Records and Report
- 5.2 Clean Air Act and Federal Water Pollution Control Act
- 5.3 Civil Rights
- 5.4 Disadvantaged Business Enterprise
- 5.5 Energy Conservation
- 5.6 Government-Wide Debarment and Suspension
- 5.7 Lobbying Restrictions
- 5.8 No Government Obligations to Third Parties
- 5.9 Program Fraud and False or Fraudulent Statements and Related Acts
- 5.10 Recycled Products
- 5.11 Safe Operations of Motor Vehicles
- 5.12 Termination
- 5.13 Federal Changes
- 5.14 Privacy Act
- 5.15 Incorporation of Federal Transit Administration (FTA) Terms
- 5.16 Performance Bond

## **PART 1: GENERAL INFORMATION**

### **1.1 Agency Information**

Request For Proposal (RFP) Name and No: KRT RFP – 2022 CAD/AVL

Procuring Agency: Kanawha Valley Regional Transportation Authority

Address: 1550 4<sup>th</sup> Avenue  
Charleston, WV 25387

Project Manager: Jacob Pitman  
Phone / Fax: (304) 343-3840 / (304) 343-3877

### **1.2 Background and Objectives**

#### **Background**

Kanawha Valley Regional Transportation Authority (KRT) is a public transportation authority created in 1971 by Kanawha County and the City of Charleston. KRT is funded through property taxes, fare revenue, state and federal grants, advertising, and other miscellaneous revenue. KRT operates 20 Monday – Sunday routes with a fleet of 49 fixed route vehicles and 14 paratransit vehicles. KRT's fixed route 2021-2022 annual ridership was roughly 1 million unlinked passenger trips. KRT Computer-Aided Dispatch (CAD), Automatic Vehicle Location (AVL), and other Intelligent Transportation Systems (ITS) components in 2015 through RouteMatch. KRT is seeking to replace all, or part, of the ITS architecture as a part of this procurement.

#### **Objectives**

KRT is seeking proposals from qualified entities to enter a contract to assist with developing and implementing an upgraded onboard system utilizing the required items outlined below. Outlined in the scope of work are equipment and software that KRT has designated necessary to procure. Other items outlined have been requested by staff and found to be desirable to improve operational efficiencies. KRT will be outfitting all 49 vehicles in their fixed-route fleet with the selected equipment and the option of 5 paratransit vehicles. Given this procurement's purpose, proposers must be able to interface with standard Transit Signal Priority ("TSP") equipment.

### **1.3 Scope of Work**

The Scope of Work defined under this RFP is separated into a list of overall system components. Each component, described below, may be produced individually or as a part of a package, depending on the proposals received.

Suppose a proposer wishes to bid on any of the "core" components. In that case, it is required that proposers bid on at least one of the core components with terms for integrating that component with other proposers who may be selected to provide the remaining core component(s). Items listed as the core will be awarded during the procurement process. One vendor may be selected to provide all core components, or up to four different vendors may be selected to provide those four systems individually.

Components on the "optional" list may or not be awarded. **All proposers are encouraged to bid on any optional items on the list.** Those additional responses may include Pricing for individual system components or a package of components that must be purchased together. Given the nature of this procurement, multiple awards may be possible, and proposers need to outline their abilities to interface with other vendors. Example proposal offerings are described in Part 2.9 Form.

**CORE COMPONENTS:**

- Computer-Aided Dispatch / Automated Vehicle Location (CAD/AVL) hardware (Mobile Data Terminal and Vehicle Logic Unit) along with associated software features defined below
- Annunciator hardware with software
- Interior digital signage
- Real-time and historical APIs

**OPTIONAL COMPONENTS:**

- Service alerts software
- Reporting software
- Bus headsign hardware
- Software for the bus headsigns
- Scheduling software
- Passenger information digital signage hardware and software

**INDIVIDUAL COMPONENT MINIMUM REQUIREMENTS**

The goal of the requirement described below is to set the most straightforward possible minimum requirements of each component listed above. In their technical responses, for each component they are proposing, Bidders / Offerors are expected to highlight the strength and weaknesses of their approach and provide descriptions of their systems going beyond the minimum component requirements.

**CAD / AVL hardware and software (Core):**

This component focuses on delivering necessary real-time operational information to KRT drivers.

**Required**

- Driver-facing screen that presents navigational turn-by-turn directions
- Ingestion of automatic vehicle location every six (6) seconds or faster, to be provided by the Cradlepoint devices onboard the vehicles or stand-alone GPS devices
- Publishing of the vehicle location and run or block assignment information through an API accessible by KRT and its contractors and uploading that API every six (6) seconds or faster

**Desired**

- Driver sign-on integration with Genfare Farebox
- Sturdy or ruggedized vehicle logic unit as opposed to consumer-grade tablets
- Testing/training environment on which system changes can be easily tested

- Graphical User Interface available to dispatchers for the understanding of the real-time and historical status of the system (also may be provided through Realtime and Historical API system component)
- Additional driver-dispatch communication is provided through the MDT and dispatch interface
- Import and update schedule data utilizing a GTFS file
- Ability to make operational changes such as detours through the dispatch interface and have them immediately sent to MDTs
- Software and/or web portal for automated driver shift changes

**Annunciator hardware and software (Core):**

The annunciation system could be an independent component with which the driver has no interaction or an additional service offered along with the CAD / AVL component.

**Required**

- Annunciation of stop names with necessary configurations
  - Which stops
  - What text
  - Where exactly to announce
- On the vehicle, hardware should be able to be stored in a closed box behind the driver unless this component is being proposed as a feature integrated with the CAD / AVL system
- Able to accept configuration data through GTFS and location/assignment API provided by a CAD / AVL system as required above or integrated with the CAD / AVL system

**Desired**

- Software and/or web portal through which annunciation configuration can be easily customized after GTFS import or update

**Interior Digital Signage (Core):**

The interior digital signage system could be an independent component with which the driver has no interaction or could be an additional service offered along with the CAD / AVL component and integrated with the mobile data terminal.

**Required**

- Sign showing next stop information in text
- Vehicle hardware should be able to be stored in a closed box behind the driver unless this component is being proposed as a feature integrated with the CAD / AVL system.
- Able to accept configuration data through GTFS and location/assignment API provided by a CAD / AVL system as required or integrated with the CAD / AVL system

**Desired**

- Software and/or web portal through which display configuration can be easily customized after GTFS import or update

### **Real-time and historical service APIs (Core):**

The purpose of the real-time and historical APIs is to provide customer information to riders through third-party applications like Google Maps, and any other application that KRT may determine to purchase can access real-time and historical information about the KRT service. These APIs may be provided as a stand-alone component incorporating information in the CAD/AVL API

#### **Required**

- GTFS Realtime 2.0-conforming Trip-updates and Vehicle Positions feeds provided on license terms that allow KRT to download, own, and store all data
- GTFS Realtime and any other API endpoints should reference GTFS feed IDs in the GTFS data set provided by KRT and update any time IDs in that data set change
- API endpoints should update at least every 6 seconds or faster, incorporating real-time information from the CAD/AVL system

#### **Desired**

- Well-documented GeoJSON or REST API that provides useful and efficient queries regarding transit network real-time and historical status
- All data provided on license terms that allow KRT to download, store, and own all data elements and utilize the data schema for any purpose
- Graphical User Interface available to dispatchers for the understanding of the real-time and historical status of the system (also may be provided through CAD/AVL system component)
- Historical data is available for all API endpoints for 90 days after the service date, and the archiving or deleting of data on a clear operational process transparent to KRT
- Firm capacity and intention to update GTFS real-time endpoints as the specification evolves to provide better information to customers and better reporting data to KRT

### **Service alerts (Optional):**

The service alerts component may be a feature of the CAD/AVL component or maybe a stand-alone feature. The primary purpose of the service alerts is to inform KRT riders of disruptions that may affect their travel.

#### **Required**

- Graphical User Interface allows agency users to create service alerts
- GTFS Realtime Service Alerts feed conforming to the GTFS Realtime 2.0 specification
- GeoJSON or REST API that allows other software applications to retrieve alert information

#### **Desired**

- Alert automation for frequent or expected disruptions
- If integrated with the CAD/AVL system, alerts may be triggered by driver interactions on the MDT, with review by dispatchers
- History of system integration with third-party applications like Google Maps, social media platforms, and websites
- All data provided on license terms that allow KRT to download, store, and own all data elements and utilize the data schema for any purpose

**Reporting (Optional):**

The reporting component is intended to help KRT understand the operations of its services, including internal system performance metrics like runtimes and on-time performance, as well as external reporting metrics to the National Transit Database (NTD). Other components may provide some reporting features, but this system is different: it should be a robust set of tools that KRT turns to for various types of reporting and which saves the agency time during the NTD reporting process.

**Required**

- A software system that aggregates data from other components (e.g., CAD/AVL, APCs, Alerts, historical APIs) and allows users to organize that data for delivery to the National Transit
- Use of standardized data exchange formats like GTFS and clear terms that ensure free or reasonable cost integrations of other component systems procured in the future, assuming those future systems provide data according to best practices

**Desired**

- Extensive internal reporting dashboard that allows agency staff to retrieve useful visualized and custom raw data exports easily

**Headsign Automation (Optional):**

KRT currently has several different headsigns installed on its fixed route fleet (Luminator-TwinVision). If possible, KRT would like CAD/AVL proposers to provide a price to integrate these currently installed headsigns with the following-

**Required**

- Current hardware integrated with CAD/AVL component

**Headsign Hardware (Optional):**

Alternative to the scope above, KRT may choose to purchase new headsigns, which should be offered on terms to integrate with the selected CAD/AVL component.

**Required**

- Headsign showing pre-defined information in text
- Integrated with CAD/AVL component, or able to accept data through GTFS/other specified data uploads

**Scheduling & Daily Operational software (Optional):**

KRT may procure a system to create schedule data, manage driver runcuts, and manage daily assignments.

**Required**

- GTFS data export according to published GTFS best practices

**Desired**

- Management of operational data like non-revenue miles runs, and blocks
- Daily run assignment and management



- Automated runcutting, following KRT-ATU CBA rules
- Efficient Graphical User Interface to manage detours and otherwise make system updates quickly
- Provide scheduling services

#### 1.4 Key Dates

<u>Event</u>	<u>Date</u>	<u>Time (EST)</u>
Request for Proposal Issued	09/15/2022	
Technical Questions Due	10/03/2022	4:00 PM
Technical Teleconference Phone Number: (1-929-205-6099) Meeting ID: 873 0201 6116 Passcode: 697538 <a href="https://us02web.zoom.us/j/87302016116?pwd=T3pjbzhpd3pjSmoxWlJaR3ZkZDFmZz09">https://us02web.zoom.us/j/87302016116?pwd=T3pjbzhpd3pjSmoxWlJaR3ZkZDFmZz09</a>	10/07/2022	10:00 AM
Proposals Due	10/21/2022	4:00 PM
Evaluation of Proposals	10/24/2022-11/01/2022	
Qualified Proposer Interviews	11/03/2022-11/04/2022	
Best and Final Offer Letter Due	11/11/2022	4:00 PM
Intent to Award	11/17/2022	
Project Completion	09/30/2023	

KRT reserves the right to change the schedule or terminate the selection process at any time at KRT's sole discretion. Notice thereof will promptly be provided to parties on the KRT's RFP responders list by e-mail if available and by letter if not.

## PART 2: INSTRUCTIONS TO PROPOSERS

### 2.1 Proposer's Representation

By submitting a proposal, the proposer represents that:

1. The proposer has carefully studied the Proposal Documents. The proposer understands the proposal documents, and the Proposal is entirely in accordance with the requirements of those documents.
2. The proposer has thoroughly examined the rideonkrt.com site, has become familiar with KRT services that might directly or indirectly affect the contract work, and has correlated its observations with the requirements of the proposed Contract Documents.

3. The Proposal is based on the materials, design, and services required by the Proposal Documents without exception.

## 2.2 Proposal Documents

- a. Copies –
  1. Copies of the Instruction to Proposers can be obtained online at [www.rideonkrt.com](http://www.rideonkrt.com) or in person at 1550 4<sup>th</sup> Ave. Charleston, WV 25387 or request by e-mail at [jpitman@rideonkrt.com](mailto:jpitman@rideonkrt.com)
- b. Interpretation or Correction of Proposal Documents -
  1. If any proposer, in their study of the Proposal Documents, is in doubt about the true meaning of any part of the Document or finds errors, discrepancies, or omissions in them, shall request interpretation or correction of those errors, discrepancies, and omissions by the Owner.
  2. Request for such clarification shall be in writing and be received by the Owner four working days minimum before the scheduled proposal opening. The Owner will promptly correct or interpret the portion of the Proposal Documents in question by issuing an Addendum to all proposers. Corrections or interpretations made in any way other than by an Addendum have no validity and shall be deemed unreliable.
  3. Suppose errors, discrepancies, or omissions are discovered in the Proposal Documents less than four working days before the proposal opening. In that case, proposers shall prepare proposals based on the order of precedence in the General Conditions.

## 2.3 Proposal Procedures

- a. Form & Style of Proposal –
  1. Signatures shall be in longhand and executed by a representative of the proposer duly authorized to make contracts.
- b. Submission of Proposals –
  1. Submit a set of one original and four complete copies in an opaque envelope containing: A technical Proposal, Cost Proposal, Contract template, and all required materials. Envelopes shall be sealed, bear the proposer's name, and be addressed as follows:

Kanawha Valley Regional Transportation Authority  
Attn: Jacob Pitman  
KRT RFP – 2022 CAD/AVL  
1550 4<sup>th</sup> Avenue  
Charleston, WV 25324

2. The proposer's sole responsibility is to see that its Proposal is received at the specified time. Proposals received after the specified time will be returned unopened.
- 3) No oral, facsimile transmitted, telegraphic, or telephonic proposals, modifications, or cancellations will be considered.

4) Modification or Withdrawal of Proposal - The proposer has the right to withdraw the Proposal in full by notifying KRT within seven days of the Proposal's due date.

## **2.4 Form of Agreement Between Owner & Contractor**

a. Agreement Form to Be Used – An example Project Contract and Agreement will be provided to KRT by the Contractor. A review by KRT Legal Counsel will occur, and KRT is requesting an example contract in the Proposal to expedite the review process. The Contract Agreement must include the federal clauses in this Proposal.

b. KRT has significant responsibilities, including operating a public transportation system and planning, designing, and programming transportation projects. The KRT Board of Members awards all contracts.

c. KRT receives funding from both the federal government and the state. Therefore, KRT adopts procurement policies and procedures consistent with federal regulations and the laws of the state of West Virginia.

## 2.5 Evaluation

The required form of the Proposal and the required proposal attachments are described in Part 4. The Proposal will be evaluated by a committee of KRT personnel and subject matter experts. Proposals will be evaluated based on the following scoring criteria:

1	Project Understanding & Technical Capacity (10 Points Each)	50
	<ul style="list-style-type: none"> <li>• Ability to meet KRT's requirements for the project</li> <li>• Design and operations of approach</li> <li>• Demonstrated understanding of KRT's project approach and needs</li> <li>• Reasonableness of schedule</li> <li>• Ability to interface with transit signal priority where applicable</li> </ul>	
2	Qualifications & Experience (5 Points Each)	20
	<ul style="list-style-type: none"> <li>• Experience in performing work similar in nature and/or related to the work described in the Scope of Work</li> <li>• Demonstrated competence as evidenced by supporting references</li> <li>• Prior experience integrating with multiple vendors</li> <li>• Experience working with transit agencies, strength and financial stability of the firm</li> </ul>	
3	References (20 Points)	20
	<ul style="list-style-type: none"> <li>• Satisfaction of three (3) key references</li> </ul>	
4	Cost (5 Points Each)	10
	<ul style="list-style-type: none"> <li>• Reasonableness of cost</li> <li>• Transparency of pricing structure</li> </ul>	

After seeing the vendor responses but before applying the evaluation criteria, the committee will investigate and determine the number and type of contracts that should result from this procurement. The evaluation criteria will then be applied to each competitive vendor.

## 2.6 Technical Teleconference

A Technical Teleconference will be held Friday, October 7, 2022, from 11:00 am – 12:00 pm EST. Proposers can submit questions in advance via e-mail (due on October 3, 2022, 4:00 pm EST), to be read and answered during the teleconference, to Jacob Pitman at: [jpitman@rideonkrt.com](mailto:jpitman@rideonkrt.com). Additional questions may be asked during the teleconference if time permits. Participants may call 1-929-205-6099 (Meeting ID: 873 0201 6116 & Passcode: 697538) or attend in person at 1550 4<sup>th</sup> Avenue Charleston, WV 25387.

## 2.7 Responder List

Only those persons who contact the Project Manager by e-mail or in writing will be on the Responders List. The Responder's List is used to send updates and amendments regarding this RFP, and KRT will not automatically send notifications to other outlets. To participate in the Responders List, please contact Jacob Pitman at: [jpitman@rideonkrt.com](mailto:jpitman@rideonkrt.com) or send it to 1550 4<sup>th</sup> Avenue Charleston, WV 25387.

## 2.8 Technical Questions

KRT shall receive the final Technical Questions by 4:00 pm October 3, 2022. KRT will respond to the questions by October 12, 2022, via e-mail response only. Responses will be sent to the Responders list and posted online at [www.rideonkrt.com](http://www.rideonkrt.com). If necessary, KRT will issue addendums this same day. Questions, Responses, and, if necessary, Addendums will be available online at [www.rideonkrt.com](http://www.rideonkrt.com). ALL TECHNICAL QUESTIONS SHOULD BE SENT TO: Jacob Pitman, [jpitman@rideonkrt.com](mailto:jpitman@rideonkrt.com)

## 2.9 Technical Proposal and All Required Material

Proposals should include several offerings. Each offering should be responsive to one or more of the scope of work components. Suppose the core components are included in a proposal. In that case, at least one offering must consist of a core scope component and the commitment by the proposer to integrate that core scope component with the other core components listed provided by other vendors. Other offerings are entirely at the discretion of the proposer. Still, KRT encourages proposers to offer the "a la carte" or groups of components that provide the best competitive value from their systems based on the needs of KRT. Proposals should include both a technical proposal and a cost proposal with the following sections.

- Technical Proposal
  - o Description of scope components responded to
  - o Technical approach and unique value for each offering
  - o Experience and Qualifications
  - o Three references of similar projects
- Cost Proposal
  - o Pricing for each offering, in whatever format the proposer believes provides the best context for understanding cost, so long as the following fixed or not-to-exceed prices are included for each offering:
    - Implementation cost, including all costs due by the time of component implementation
    - Yearly cost of the component, including all support, maintenance, hosting, etc.

## **Examples of "offerings"**

A proposer may include any number of offerings in their Proposal. Here are a few valid configurations of proposal offerings:

- Proposal 1
  - o Offer A: CAD/AVL with API that can feed information to the other core components, including various advanced driver dispatching features
  - o Offer B: All core components, as well as a reporting module
  - o Offer C: APC component
  - o Offer D: Scheduling component
- Proposal 2
  - o Offer A: Service alerts component
- Proposal 3
  - o Offer A: Real-time and historical APIs that pull from external CAD/AVL with an integrated reporting module
  - o Offer B: Scheduling component
  - o Offer C: Service alerts component
- Proposal 4
  - o Offer A: APC component
- Invalid Proposal:
  - o Offer A: All core components are offered as a single package with no promise of integration with other core component proposers

## **2.10 Proposal Due Date**

Technical Proposals and All Required Materials are due to KRT no later than October 21, 2022, 4:00 pm to 1550 4<sup>th</sup> Avenue Charleston, WV 25387, with "KRT RFP – 2022 CAD/AVL" written on the package. Technical Proposals that are mailed must arrive by the deadline. Proposals can be dropped off at 1550 4<sup>th</sup> Avenue Charleston, WV 25387.

## **2.11 Evaluation of Proposals**

Proposers' responsiveness to all required materials will be evaluated, and a 'competitive range' will be determined. KRT reserves the right to allow proposers to submit incomplete or missing information by 4:00 pm on October 26, 2022. KRT intends to have proposal evaluations completed by November 1, 2022, and will notify proposers deemed to not be within a competitive range and will not continue to be considered by KRT.

## **2.12 Award**

Interviews and written requests for Best and Final Offer will be published to proposers who remain within the competitive range. Best and Final Offers will be due to KRT no later than November 11, 2022, at 4:00 pm. The Contractor shall not begin work until the Notice to Proceed letter has been received, which is scheduled to occur on December 1, 2022.

### **2.13 Substantial Project Completion**

Substantial Project Completion shall occur by September 15, 2023.

### **2.14 Required Proposal Forms**

Subcontractor designations, Insurances, Contractor Licenses, and DBE Participation must be submitted with the Proposal for a proposal to be considered responsive. All required forms are contained within the proposal documents and located in Section 4: Required Proposal Forms. Non-responsive proposals may be rejected.

### **2.15 Owner's Right to Reject Proposals**

The Owner reserves the right to reject any or all proposals and to waive any irregularities therein. The Owner reserves the right to award all or portions of the Proposal titled "Project Options."

### **2.16 Negotiation and Request for Best and Final Offer**

The Owner reserves the right to conduct written or oral negotiations with offerors who submit proposals within a competitive range, price, and evaluation factors. KRT reserves the right to request Best and Final Offers (BAFO) from proposers who are considered to be within a competitive range.

### **2.17 Proof of Insurability**

Proposers must submit a copy of their current certificate of insurance (COI) with their Proposal. Suppose the COI does not include the required coverage and minimum limits specified in the RFP. In that case, Proposers must also submit a letter from their insurance provider stating the provider's commitment to ensure the proposer, if awarded the contract, for the types of coverage and at the limits specified in the RFP.

## **PART 3: TERMS AND CONDITIONS**

### **3.1 Term of Contract**

This agreement shall commence on December 1, 2022, upon execution by both parties and shall be in place until November 30, 2027, with an option to renew ten (1) year terms for a total of up to 15 years.

### **3.2 Independent Contractor**

A. The parties intend that this contract will create an independent relationship. KRT is interested primarily in the results to be achieved; the implementation of services will lie solely with the CONTRACTOR. No agent, employee, servant, or representative of CONTRACTOR shall be deemed to be an employee, agent, servant, or representative of KRT for any purpose, and the employees of CONTRACTOR are not entitled to any of the benefits KRT provides to its employees. CONTRACTOR will be solely and entirely responsible for its acts and the acts of its agents, servants, SUBCONTRACTORS, or representatives during the performance of this contract.

B. In the performance of the services contemplated, the CONTRACTOR is an independent CONTRACTOR with 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 KRT. They shall be subject to KRT's general rights of inspection and review to secure satisfactory completion.

C. CONTRACTOR shall designate a representative to act on its behalf. The said representative shall have full authority to direct all affairs concerning the work performed under this contract.

### **3.3 Assignment and/or Subcontracting**

KRT and CONTRACTOR, each for himself, binds himself, his principals, successors, assignees, and legal representatives of such party in respect of all contract covenants. This contract and all obligations arising thereunder shall not be sold, assigned, or transferred by either party without the previous consent, in writing, of the other party to this contract. The performance of all activities contemplated by this contract shall be accomplished personally by the CONTRACTOR, persons, and SUB-CONTRACTORS identified in the submittal. CONTRACTOR shall not assign or subcontract performance to others unless authorized in writing by KRT in advance. All terms and conditions of this contract shall apply to any approved subcontract or assignment related to this contract.

### **3.4 Safeguarding Client Information / Trade Secrets or Confidential Proprietary Data**

CONTRACTOR agrees that confidential information obtained from KRT shall not be disclosed except upon the written consent of KRT. KRT may withhold from disclosure those portions of the Proposal or bid that the Offeror designates as trade secrets or as confidential, proprietary data by applicable law. The Offeror shall separate information designated as confidential from other non-confidential information at the time of submitting its Proposal or bid.

### **3.5 Hold Harmless and Indemnification**

A. CONTRACTOR expressly agrees to indemnify and hold harmless KRT. All of its officers, employees, agents, or otherwise from any loss, damages, costs, charges, or expenses, whether to persons or property, including any costs, expenses, or attorney's fees in defense of any claims, therefore, which KRT may incur because of any act, action, neglect, omission or default on the part of CONTRACTOR; provided, however, as to any liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of KRT and/or its agents or employees and CONTRACTOR or its agents and employees. This section is valid and enforceable only to the extent of the CONTRACTOR's negligence.

B. In case any suit be brought against KRT on account of any negligent act, action, neglect, omission, or default of CONTRACTOR, CONTRACTOR hereby covenants to assume the defense thereof and pay any costs, charges, attorney's fees, and other expenses and CONTRACTOR shall pay any judgments that may be incurred by or obtained against KRT, except any judgments for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of KRT and/or its agents and employees, and except in the case of a judgment for liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of KRT and/or its agents or employees, and CONTRACTOR and its/his agents or employees,



the obligation of CONTRACTOR shall be limited and enforceable only to the extent of CONTRACTOR's negligence.

C. It is further provided that no liability shall attach to KRT because of entering into this contract, except as expressly provided herein.

### **3.6 Contract Changes**

Either party may request changes to the scope of services and performance to be provided hereunder; however, no change or addition to this contract shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made a part of this contract.

### **3.7 Licensing in Compliance with Laws and Regulations**

CONTRACTOR agrees to comply with all applicable federal, state, county, or municipal standards for the licensing, certifications, operation of facilities and programs, and accreditation and licensing of individuals if any.

### **3.8 Insurance Requirements**

The Contractor shall purchase and maintain in full force and effect during the entire period of this contract, including any maintenance period thereof, insurance of the following types and in amounts not less than the amounts stated below. Such insurance shall protect Contractor from any claims and damages, which may arise from, or result from, Contractor's operations whether such operations are performed by Contractor or by its subcontractor or by anyone for whose acts the Contractor may be liable. All costs associated with these insurance coverages are the sole responsibility of the Contractor. The Contractor must adhere to the following requirements:

- Comprehensive Commercial General Liability insurance of at least \$5,000,000 Per Occurrence
- Automotive Liability of at least \$1,000,000 CSL
- Bodily Injury of at least \$1,000,000
- Property Damage of at least \$2,000,000
- Worker's Compensation (Limits required by the State of West Virginia)
- Employer's Liability of at least \$1,000,000

Additional Insured: The Commercial General Liability and Commercial Automobile Liability policies shall be endorsed to name KRT and its officers, trustees, and employees as additional insured regarding the Contractor's operations and completed operations in the performance of this contract.

Waiver of Subrogation: The Commercial General Liability, Commercial Automobile Liability Workers' Compensation, and Employer's Liability shall be endorsed to provide a waiver of subrogation in favor of KRT, its officers, trustees, and employees. If the Contractor is an approved self-insurer, the Contractor will waive all rights of recovery against KRT, its officers, trustees, and employees for any claims.

Coverage Primary: Such insurance provided herein shall be primary and non-contributing with any other valid and collectible insurance available to KRT. The limits of liability required herein may be provided

by a single insurance policy or by a combination of primary, excess, or umbrella policies. In no event shall the total limits of liability available for any one occurrence or accident be less than the amounts required.

**No Commencement without Coverage:** The Contractor shall not commence work under this contract until all required insurance is obtained and approved by KRT. Approval of the insurance by KRT shall not relieve or decrease the Contractor's liability hereunder.

**Certificates:** A copy of all required endorsements and completed certificates of insurance evidencing coverage shall be furnished to KRT before commencement of work and within ten (10) calendar days after the date of Notice of Award. Certificates and endorsements shall be provided by the Contractor and anyone involved in the performance of work under this contract by and through the Contractor (not otherwise included under the Contractor's coverage), including all subcontractors. All Certificates of Insurance shall reflect the KRT project number and be signed by a person authorized by that insurer to bind coverage on its behalf. Failure to furnish the required certificates of insurance and accompanying endorsements within the time allowed shall not be considered cause for modification of any contractual time limits. All certificates, endorsements, and/or policies of insurance presented as proof of compliance with the above requirements shall be on forms and with insurance companies approved by KRT. All such insurance documents shall be provided by insurance companies authorized to do business in the State of West Virginia and have a Best's rating of A-(VII) rating or greater, as shown in the most current issue of A.M. Best Key Rating Guide. Policies of insurance issued by insurance companies not rated by Best's or have a Best's rating lower than A-(VII) will not be accepted as complying with the insurance requirements of the contract unless such insurance companies are approved in writing by KRT before the award of the contract. Certificates of Insurance and, if applicable, any endorsements shall contain transcripts from the proper office of the insurer, evidencing, in particular, those insured, the extent of the insurance, the location, and the endorsement as required above. If any of the foregoing insurance coverages are required to remain in force after the final payment and are reasonably available, an additional certificate with endorsement evidencing the continuation of such coverage shall be submitted with the Contractor's final invoice for payment.

**No Lapse or Cancellation:** The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse. Except as otherwise may be provided in this contract, all insurance policies shall include an endorsement that the policy shall not be canceled, non-renewed, reduced, restricted, or limited without 30 days' written notice. In the event of cancellation or lapse of insurance, the Contractor shall notify KRT immediately, in writing, by certified or registered mail, return receipt requested. The Contractor shall also provide written notification to KRT, within ten (10) days of any cancellation due to non-payment of premium, a notice of expiration, cancellation, nonrenewal, or material change in coverage it receives from its insurer. In addition to any other remedies KRT may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, KRT shall have the right to order Contractor to stop work hereunder and/or withhold payment(s) which become due to Contractor until Contractor demonstrates compliance hereof and unless otherwise directed by KRT, shall cease work until evidence of acceptance insurance coverage is supplied to KRT.

### **3.9 Notices**

Any notice or demand under, or required by, this contract shall be given in writing and shall be deemed properly given if received in a due and timely course by the party for whom the notice was intended, or

if sent by registered or certified mail, postage prepaid, to the intended party in care of the appropriate address below:

Kanawha Valley Regional Transportation Authority  
Attn: Jacob Pitman  
1550 4<sup>th</sup> Avenue  
Charleston, WV 25387

### **3.10 Termination**

**Default:** In the event, that the Contractor breaches the terms or violates the conditions of this contract and does not cure the default within ten (10) business days after receiving written notice of such default from KRT, KRT may immediately terminate the contract, and pursue any legal and equitable remedies available to it against the Contractor.

**Notice:** Termination shall be effected by serving a written notice of termination on the Contractor setting forth how the Contractor is in default. Service shall be obtained by personal delivery or delivery by mail, registered or certified, postage prepaid with return receipt requested and addressed to the Contractor at the most recent address provided by Contractor.

**KRT Options:** In addition to any other remedies at law or in equity that are available to KRT, default by the Contractor may result in the Occurrence of one or more of the following:

- a) KRT may complete such contract without further liability to the Contractor for compensation for any labor, supplies, or materials furnished by the Contractor under the contract; and
- b) To the extent applicable, KRT may direct the Contractor to remove any equipment delivered and/or installed by the Contractor and to refund to KRT any amounts paid by KRT to the Contractor, and KRT shall have no further liability to the Contractor; and
- c) KRT may contract to acquire supplies or services similar to those terminated and the Contractor shall remain liable to KRT for any difference in the total costs and expenses incurred by KRT.

#### **Compensation and Liability:**

The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed by the manner of performance bargained and outlined in the contract. In addition to any other available remedies, the Contractor, and to the extent applicable, the Contractor's sureties shall be liable to KRT for all costs, loss, or damage incurred for supplies or services to complete the contract.

#### **Termination of SubContracts:**

As directed to do so in the notice of termination, the Contractor agrees to and shall cancel, withdraw, or otherwise terminate any outstanding orders or subcontracts which relate to the performance of this contract. To this effect, KRT shall not be liable to the Contractor nor Contractor's creditors for any expense, encumbrances, or obligations whatsoever incurred after the date of termination.

### **3.11 Proposal Acceptance or Rejection**

KRT reserves the right to reject any or all proposals, to accept or reject any or all items in the Proposal, to waive any informality in the proposals received, and to award the contract in whole or in part if it is deemed to be in the best interest of the KRT. KRT reserves the right to negotiate with any consultant after proposals are opened if such action is deemed to be in the best interest of KRT. In addition to the factors mentioned above, Contractors are cautioned to carefully review all terms, conditions, and specifications of the RFP before submission of proposals. The work may be awarded based on the Contractor's Proposal including the Contractor's qualifications as received and without further discussion.

### **3.12 Proposal/Bid Protest**

All protests shall be filed, handled, and resolved in a manner consistent with the requirements of FTA Circular 4220.1F and the procedures set forth in Section 3.4.7 of KRT's Procurement Manual and reproduced below.

Protests will only be considered if they are submitted by an interested party: an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. All protests shall be filed in writing with the Director of Purchasing and shall:

- Contain the protestor's name, address, and phone number; Identify the procurement at issue; State the factual and legal grounds for the protest; Include copies of any supporting documents; and describe the relief requested.

The office of the Director of Purchasing shall document the date and time of receipt of any protest in the file.

KRT shall give all known potential offerors timely notice of any protest filed and the basis therefore by addendum. The procurement committee shall respond in detail in writing to each substantive issue raised in the protest. A protestor may withdraw its protest at any time before KRT issues a final decision. All protest decisions shall: Be made within fifteen (15) working days of the date the protest is received by KRT; Be made in writing by the General Manager; Clearly state the decision and grounds on which it is based; Be final. The protestor may file a request for reconsideration within five (5) working days of the issuance of KRT's decision, but only if: New information becomes available that was not previously known; or there has been an error in law or regulation. When it receives any protest relating to a contract required to comply with FTA Circular 4220.1F, KRT shall, at a minimum, informally notify its FTA regional office of that protest and thereafter keep that office apprised of the status of the protest. KRT protest procedures must be exhausted before an actual or potential protestor may pursue a protest with FTA. A copy of the protest rules and procedures shall be included in every Procurement Packet.

Protests will be received after the award of a contract.

Protests must be filed within ten (10) working days of contract award. Thereafter, all issues relating to the award of the contract are deemed waived by all interested parties.

The procurement committee shall respond in writing to each post-award protest within twenty (20) working days of the date it is received by KRT. After it is received by KRT, the post-award protest shall be handled in accordance with this Section D and the general protest rules and procedures set forth in section A above.

Upon receipt of a post-award protest, KRT shall suspend performance of the contract at issue until five (5) calendar days after the resolution of the protest unless KRT determines in writing that proceeding to award the contract is justified for urgent and compelling reasons or is in the best interest of KRT because failure to proceed would otherwise unduly delay delivery or performance or otherwise cause undue harm to KRT or the state or federal government.

The contractor/awardee shall be notified of the protest and the basis therefore within one working day after its receipt by KRT.

The contractor/awardee may, at its option, submit a written response to the protest within twenty (20) working days of the date the protest was received by KRT

In order to prevent the improper disclosure of confidential business information, unredacted copies of the protest shall be provided solely to attorneys or other appropriate representatives of the contractor/awardee who have signed and are subject to a confidentiality agreement designed to prevent such disclosure.

### **Appeals to FTA**

FTA reviews of protests are limited to:

KRT's failure to have or follow its own protest procedures or its failure to review a complaint or protest;  
or

Violations of Federal law or regulation.

An appeal to FTA must be received by the cognizant FTA regional or headquarters office within five (5) working days of the date that the protestor learned or should have learned of an adverse decision by KRT or other basis of appeal to FTA.

An appeal to the FTA must be filed in accordance with FTA Circular 4220.1F, a copy of which is available upon request from KRT.

### **Order of Precedence**

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) Procurement document and contract schedule;
- (b) General instructions and conditions, representations, and certifications;
- (c) Contract clauses;
- (d) Other documents, exhibits, and attachments; and
- (e) Technical specifications or statement of work.

### **3.13 Withdrawals and Modifications**

Any proposals can be withdrawn or modified in writing by contacting Jacob Pitman, [jpitman@rideonkrt.com](mailto:jpitman@rideonkrt.com), before the closing date.

### **3.14 Liquidated Damages**

a) Delivery delays beyond the contract delivery date will result in added expense to KRT. KRT shall be paid damages for such delay. Because the amount of damage is extremely difficult to ascertain, the Contractor agrees to compensate KRT in the amount of \$300 per day.

b) This amount shall be fixed as liquidated damages that KRT will suffer because of such delay, and not as a penalty.

c) KRT shall have the right to deduct and retain the amount of such liquidated damages from any monies due to the Contractor.

d) The Contractor shall be entitled to a reasonable extension of time for unavoidable delay in delivery due to causes not reasonably foreseeable by the parties at the time of the contract execution, and that are entirely beyond the control and without the fault or negligence of the Contractor, including, but not limited to, acts of god or the public enemy, war or other national emergency making delivery temporarily impossible or illegal, acts or omissions of other suppliers, strikes and labor disputes not brought on by any act or omission of the supplier, fire, flood, epidemics, quarantines, or freight embargoes.

### **3.15 Performance Bond**

Bidders shall furnish a bid guaranty in the form of a bid bond, or a certified treasurer's or cashier's check issued by a responsible bank or trust company made payable to KRT. The amount of such a guarantee shall be 100% of the total bid price.

In submitting this bid, it is understood and agreed by the bidder that KRT reserves the right to reject any bids or part of any bid, and it is agreed that the bid may not be withdrawn for 90 days after the opening of bids, without the written consent of KRT.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within 90 days after the bid opening without the written consent of KRT, or refuse or be unable to enter into this contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bond, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent KRT's damages occasioned by such withdrawal, or refusal, or inability to agree or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense KRT for the damages occasioned by default, then the undersigned bidder agrees to indemnify KRT and pay over to KRT the difference between the bid guarantee and KRT's total damages to make KRT whole.

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

## PART 4: REQUIRED FORMS

### 4.1 Statement of Qualifications Certification

#### Representation Concerning Offeror's Business Form

The Offeror is a:

- Corporation
- Partnership
- Limited Liability Company
- Sole Proprietorship
- Other: \_\_\_\_\_

organized and existing under the laws of \_\_\_\_\_.

\_\_\_\_\_  
Offeror Representative Signature

\_\_\_\_\_  
Offeror Representative Name and Title

\_\_\_\_\_  
Offeror Company

\_\_\_\_\_  
Date

## 4.2 DBE Form

### Representation Concerning Offeror's DBE Status

The Offeror  is /  is not a Disadvantaged Business Entity as defined under 49 CFR Part 26.

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Offeror Representative Signature

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Offeror Representative Name and Title

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Offeror Company

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Date



### 4.3 Debarment

#### Debarment, Suspension, and Other Responsibility Matters

1. The Offeror certifies to the best of its knowledge and belief, that it and its principals:
  - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
  - (b) Have not within a three-year period preceding this bid/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; or violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this bid/proposal had one or more public transaction (Federal, State, or Local) terminated for cause of default.
2. If the Offeror is unable to certify to any of the statements in this certification, it must attach an explanation to this certification.
3. The Offeror 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 USC Sections 3801 *et seq.* are applicable thereto.

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Offeror Representative Signature

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Offeror Representative Name and Title

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Offeror Company

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Date

## 4.4 Representation

### Proposer's Representation

By the act of submitting a bid for the proposed contract, the proposer represents that:

- The Proposer and all subcontractors they intend to use have carefully and thoroughly reviewed the Drawings, Specifications and other Documents and found them complete and free from ambiguities and sufficient for the purpose intended.
- The Proposer and all workers, employees, and subcontractors the proposer intends to use shall follow all applicable codes and regulations, including but not limited to, the Americans with Disabilities Act (ADA) requirements. To that effect the successful proposer shall be responsible to verify and construct the project in compliance with the above stated regulations and coordinate any installations as required to meet the respective codes. In the event that the project, or any part thereof, is found to be non-compliant, the successful proposer shall be held solely responsible to remedy all found deficiencies at no additional cost to the Owner, or the Owner's employees or agents including Architects, Engineers or Consultants.
- The Proposer and all workers, employees, and subcontractors the proposer intends to use are skilled and experienced in the type of construction represented by the Construction Contract Documents described in bid.
- The proposed figure is based solely upon the Construction Contract Documents and properly issued written Addenda and not upon any other written representation.
- Neither the Proposer nor any of the proposer's employees, agents, intended suppliers or subcontractors have relied upon any verbal representations from the Owner, or the Owner's employees or agents including Architects, Engineers, or Consultants in assembling the bid figure.

Acknowledged:

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

For: \_\_\_\_\_

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

## 4.5 Lobbying

### Lobbying Certification

(Page 1 of 2)

The Offeror certifies, to the best of its knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in Paragraph B herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (PL 104-65, to be codified at 2 USC 1601, *et seq.*)]
- C. The Offeror shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

**Lobbying Certification**

(Page 2 of 2)

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

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Offeror Representative Signature

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Offeror Representative Name and Title

---

Offeror Company

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Date

## **PART 5: FEDERAL CLAUSES**

### **5.1 Access to Records and Report**

The following access to records requirements apply to this contract:

- (a) The Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311.
- (b) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (c) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

### **5.2 Clean Air Act and Federal Water Pollution Control Act**

Application: Include in all contracts worth greater than \$150,000.

Laws: 42 U.S.C. §§ 7401 – 7671q; 33 U.S.C. §§ 1251-1387; 2 C.F.R. part 200, Appendix II (G).

Contractual clause language:

- a. The Contractor agrees it will comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 USC 7401–7671q) and the Federal Water Pollution Control Act as amended (33 USC 1251–1387).
- b. The Contractor agrees it will report the use of facilities placed on or likely to be placed on the United States Environmental Protection Agency's 'List of Violating Facilities.'
- c. The Contractor agrees it will not use any violating facilities and will report violations of the use of prohibited facilities to the FTA.
- d. The Contractor agrees to include the above requirements in all subcontracts issued pursuant to this contract and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts.

### **5.3 Civil Rights**

The following requirements apply to this contract:

- (a) *Nondiscrimination* - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC § 6102, section 202 of

the Americans with Disabilities Act of 1990, 42 USC § 12132, and Federal transit law at 49 USC § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

(1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC § 2000e, and Federal transit laws at 49 USC § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of US Department of Labor (US 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 USC § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

(c) The Contractor 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.

#### **5.4 Disadvantaged Business Enterprise**

(a) *Policy.* It is the policy of the Department of Transportation (DOT) and KRT that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with federal funds under this contract. Consequently the DBE requirement of 49 CFR Part 26 applies to this contract.

(b) The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out

these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

(c) *Prompt payment:* The prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime Contractor receives from KRT. The prime Contractor agrees further to return retainage payments to each subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the KRT. This clause applies to both DBE and non-DBE subcontractors.

(d) *DBE/WBE Obligation.* The Contractor or its subcontractors agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this contract. In this regard all contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform under this contract. Contractors shall not discriminate on the basis of race, creed, color, age, sex or national origin in the award and performance of DOT-assisted contracts.

(e) Disadvantaged Business Enterprises will be encouraged and afforded full opportunity to actively solicit information concerning this project and to submit bids and/or quotes. Information on and applications for our DBE Program can be obtained from the Purchasing Department and the DBE Liaison.

## **5.5 Energy Conservation**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act and to insert this provision in every subcontract.

## **5.6 Government-Wide Debarment and Suspension**

(a) This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that neither the Contractor, any of its principals, as defined at 49 CFR 29.105, or any of its affiliates, as defined at 49 CFR 29.105, are presently debarred, suspended, proposed for debarment, or voluntarily excluded by any Federal or State department or agency.

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

(c) The certification required by this clause is a material representation of fact relied upon by KRT. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to KRT, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **5.7 Lobbying Restrictions**

(a) This contract is subject to the lobbying restrictions set forth under Federal law. As such, the Offeror is required to verify that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in

connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement or, if any such payments have been made, that the Offeror has made all required disclosures.

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

### **5.8 No Government Obligations to Third Parties**

(a) KRT and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the KRT, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### **5.9 Program Fraud and False or Fraudulent Statements and Related Acts**

The Contractor:

(a) Acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC § 3801 *et seq.* and US DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(b) 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 USC § 5307, the government reserves the right to impose the penalties of 18 USC § 1001 and 49 USC § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(c) 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.

### **5.10 Recycled Products**

Application: Include in all contracts.

Laws: 42 U.S.C. § 6962; 40 C.F.R. part 247; 2 C.F.R. part § 200.322

Contractual clause language:



The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962, and US Environmental Protection Agency (US EPA), 'Comprehensive Procurement Guideline for Products Containing Recovered Materials,' 40 CFR part 247."

### **5.11 Safe Operations of Motor Vehicles**

Application: Include in all contracts funded in part by federal funds.

Laws: 23 USC part 402; Executive Order No. 13043; Executive Order No. 13513; US DOT Order No. 3902.10

Contractual clause language:

a. Seat Belt Use. The Contractor 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 KRT.

b. Distracted Driving. The Contractor 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

### **5.12 Termination**

(a) *Termination for Convenience* KRT may terminate this contract, in whole or in part, at any time if KRT determines doing so is in its best interest. Termination shall be effected by serving the Contractor with a notice of termination for convenience stating the extent of the termination.

(1) The Contractor shall be paid its costs, including contract close-out costs, and profit on accepted goods and/or work performed up to the date of termination notice. The settlement of the Contractor's termination claim shall be governed by the cost principles set forth in Part 49 of the Federal Acquisition Regulations. The Contractor shall promptly submit its termination claim to KRT to be paid the Contractor.

(b) *Termination for Default* If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, KRT may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in breach or default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract prior to the date of the termination notice.

(1) The Contractor and its sureties shall be liable for any damage to KRT resulting from the Contractor's default, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any re-procurement costs incurred by KRT.

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

(3) KRT, in its sole discretion may, in the case of a termination for default, allow the Contractor a short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to KRT's satisfaction the breach or default of any of the terms, covenants, or conditions of this contract within the stated amount of time after receipt by Contractor of written notice from KRT setting forth the nature of said breach or default, KRT shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude KRT from also pursuing all available remedies against Contractor and its sureties for said breach or default.

(c) *Post-Termination Obligations* After receipt of a notice of termination, and except as directed by KRT, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to KRT, as directed by KRT, all right, title, and interest of the Contractor under the subcontracts terminated, in which case KRT shall have the

right to settle or to pay any termination settlement quote arising out of those terminations.

(5) With approval or ratification to the extent required by KRT, settle all outstanding liabilities and termination settlement quotes arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by KRT, transfer title and deliver to KRT (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially

completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to KRT.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that KRT may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which KRT has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by KRT, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the

Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, KRT. The proceeds of any transfer or disposition will be applied to reduce any payments to be

made by KRT under this contract, credited to the price or cost of the work, or paid in any other manner directed by KRT.

(d) *Waiver of Remedies for any Breach* In the event that KRT elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by KRT shall not limit KRT 's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

### **5.13 Federal Changes**

Pursuant to Federal, State, and Local Law, in the performance of its obligations pursuant to this contract, the Contractor agrees to comply with all applicable clauses and provisions of Federal, State, and Local Laws, Regulations, and FTA directives. The Contractor understands and agrees that Federal Laws, Regulations, Policies, and related administrative practices in force and made applicable to this contract on the date of execution may be modified from time to time, and that the most recent of such clauses and provisions will govern administration of this contract at any particular time, except if there is sufficient evidence in the contract of a contrary intent. Such contrary intent might be evidenced by express language in the notification of Grant or Assistance Approval between FTA and the Purchaser, which language modifies or otherwise conditions the language of a particular provision of contract. Likewise, new federal laws, regulations, policies and administrative practices may be established after the date of execution and thereafter be applied to this contract, as may necessary to achieve compliance with these requirements, the Contractor shall include notice of such requirement in all contracts, subcontracts, and other sub assistance agreements financed with FTA assistance. All limits or standards set forth in this contract to be observed in the performance of the project are minimum requirements. If there is a conflict between federal and state-or local requirements, the purchaser shall inform the FTA in order that an appropriate resolution may be arranged Contractor's failure to so comply shall constitute a material breach of this contract.

### **5.14 Privacy Act**

Contracts involving Federal Privacy Act Requirements – The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract.

The Contractor agrees to comply with and assures the compliance of its employees with the information restrictions and other applicable requirements of the Privacy Act of 1974. 5 USC § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of this 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.

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

### **5.15 Incorporation of Federal Transit Administration (FTA) Terms**

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

### **5.16 Performance Bond**

Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to KRT. The amount of such guaranty shall be 100% of the total bid price.

In submitting this bid, it is understood and agreed by bidder that KRT reserves the right to reject any and all bids, or part of any bid, and it is agreed that the bid may not be withdrawn for a period of 90 days subsequent to the opening of bids, without the written consent of KRT.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within 90 days after the bid opening without the written consent of KRT, or refuse or be unable to enter into this contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bond, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent KRT's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense KRT for the damages occasioned by default, then the undersigned bidder agrees to indemnify KRT and pay over to KRT the difference between the bid guarantee and KRT's total damages so as to make KRT whole.

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