

**INVITATION FOR BID  
FORSYTH COUNTY**

**PUBLIC HEALTH  
OUTREACH VEHICLE REFURBISHMENT**

**BIDS WILL BE OPENED AT  
11:00 AM, October 17, 2023**

CITY HALL SUITE 324  
101 NORTH MAIN STREET  
WINSTON-SALEM, NORTH CAROLINA, 27101

Pursuant to Section 143-129 of the General Statutes of North Carolina, sealed proposals **endorsed Public Health Outreach Vehicle Refurbishment** will be received by the City/County Purchasing Department, City Hall, 101 North Main Street, Winston-Salem, NC 27101 until the time above at which time they will be opened and evaluated. There will be no public opening of proposals submitted for this project.

Instructions for submitting bids may be obtained during normal working hours (8:00 A.M. to 5:00 P.M., Monday-Friday) by contacting Russell Frye, buyer, email [russellf@cityofws.org](mailto:russellf@cityofws.org).

Any and all questions regarding the information and/or specifications contained within this document must be written questions submitted not later than **5:00 PM, October 12, 2023**, to Russell Frye, email [russellf@cityofws.org](mailto:russellf@cityofws.org). Questions submitted in this manner will be answered by bid addendum to all prospective bidders.

The County reserves the right to reject any or all proposals.

**Any contract(s) that may result from this Request for Proposal will be funded by a federal grant**



Russell Frye  
Buyer

## **Notice to Bidders**

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

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

All bids must be firm and not subject to increase, unless specified within the provisions of this Invitation for Bid (IFB) and mutually agreed upon by the County and the proposer.

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

### **County Rights and Options**

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

- To supplement, amend, substitute or otherwise modify this IFB at any time
- To cancel this IFB with or without the substitution of another IFB
- To take any action affecting this IFB, this IFB process, or the equipment subject to this IFB that would be in the best interests of the County
- To issue additional requests for information

### **Public Records**

Any material submitted in response to this IFB will become a “public record” once the bidder’s document(s) is opened and the bidder is determined to be a participant in the solicitation process and shall be subject to public disclosure consistent with Chapter 132, North Carolina Statutes. Bidders must claim any applicable exemptions to disclosure provided by law in their response to this IFB. Bidders must identify materials to be protected and must state the reasons why such exclusion from public disclosure is necessary and legal. The County reserves the right to make all final determination(s) of the applicability of North Carolina General Statutes § 132-1.2, Confidential Information.

### **Familiarity with Laws and Ordinances**

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

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

The bidder certifies that the bid is made in good faith and without collusion with any person bidding on this contract or with any officer or employee of the County of Forsyth.

## **SPECIAL TERMS AND CONDITIONS**

**SUBMITTALS:** Proposals may be submitted in the following manner:

- By submitting one complete PDF copy with all required pages and showing all required signatures and seals to [bids@cityofws.org](mailto:bids@cityofws.org).

*Or*

- By mailing ONE printed ORIGINAL along with one PDF copy on flash drive or other electronic media to City/County Purchasing Department, PO Box 2511, Winston-Salem, NC 27102.

*Or*

- By UPS, Fed-Ex or hand-delivery of ONE printed ORIGINAL along with one PDF copy on flash drive or other electronic media to City/County Purchasing, Suite 324, 101 North Main Street, Winston-Salem, NC 27101

Bids MUST be received no later than **11:00 AM, October 17, 2023**. It is the proposer's responsibility to ensure their bid arrives prior to the deadline. The County of Forsyth reserves the right to reject any or all proposals. The County reserves the right to reproduce proposals for internal use in the evaluation process.

**DETAILED SPECIFICATIONS:** Detailed specifications for this equipment are included as an attachment with the bid request. Bids to be submitted in accordance with the attached specifications and these Special Terms and Conditions, both of which require doing all that is necessary, proper, or incidental to the furnishing of the equipment identified herein. All things not expressly stated in the attached specifications or Special Terms and Conditions but involved in carrying them out must be included in bidder's proposal as though they were specifically stated.

**NOTICE TO BIDDERS:** All bids are subject to the provisions of the instructions to Bidders, special terms and conditions specific to this Invitation for Bids, the specifications, and General Contract Terms and Conditions. The County of Forsyth objects to and will not evaluate or consider any additional terms and conditions submitted with a bidder response. This applies to any response appearing in or attached to the document as part of the bidder's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.** By execution and delivery of a proposal, the bidder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect. It shall be the bidder's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.

**CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be written questions submitted not later than **5:00 PM, October 12, 2023** to Russell Frye, Buyer, [russellf@cityofws.org](mailto:russellf@cityofws.org). Questions submitted in this manner will be answered by bid addendum to all prospective bidders.

Therefore, no oral statements by any person shall modify or otherwise affect the terms, conditions, or specifications stated in this request for bids and proposals. The bidder is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source are of no effect.

**EXCEPTIONS TO SPECIFICATIONS:**

In the event that clarifications or changes to bid specifications are necessary, changes will be made by written addendum. Bidder's failure to request exceptions to specifications or approved equals as stated above will be interpreted as the bidders' intent to comply fully with the requirements as written. Conditional or qualified bids shall be subject to rejection in whole or in part. The County of Forsyth reserves the right to postpone bid openings for its own convenience.

**GENERAL REQUIREMENTS:** The equipment furnished shall be new and unused and the manufacturer's latest listed and published stock model, or models which meet all the applicable requirements of these

specifications. Specifications may require that certain makes and models of vehicles, auxiliaries and/or accessories be provided.

**BIDDERS SUBMITTALS:** Bidder must furnish all information requested herein including descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with previous bid will not satisfy this provision. Bids which do not comply with these requirements will be subject to rejection. All documents submitted should bear the name of the bidder.

**EXPENSES INCURRED IN PREPARING BID:** The County of Forsyth accepts no responsibility for any expense incurred by the bidder in the preparation and presentation of a bid. Such expenses shall be borne exclusively by the bidder.

**CONTRACT/AWARD:** Pursuant to the laws governing public contracts in North Carolina, the successful bidder's/vendor's response to this Invitation for Bids and Proposals and any addenda thereto, plus the County's issuance of a Purchase Order for the proposed goods and/or services shall constitute a binding contract.

**INDEMNIFICATION:** The bidder/vendor covenants to save, defend, keep harmless, and indemnify the County of Forsyth and all of its officers, departments, agencies, agents, and employees from and against all claims, loss, damage, injury, fines, penalties and cost - including court costs and attorney's fees, charges, liability, and exposure, however, caused resulting from, arising out of, or in any way connected with the bidder's/vendor's negligent performance or nonperformance of the terms of the contract.

**VENDOR SUPPORT/SERVICE AND PARTS:** The County of Forsyth reserves the right to reject bids from vendors that have failed to perform satisfactory under previous contracts with the County and/or vendors that cannot produce satisfactory evidence that they can furnish promptly all spare parts needed for ordinary service and repair of the equipment herein specified.

**INSPECTION, TRAINING, PERFORMANCE TEST AND ACCEPTANCE:**

- a Upon delivery the equipment will be subject to inspection to verify conformance with specifications by Forsyth County Sheriff's Office staff.
- b Any defects or failure of equipment to perform or comply with any requirements of the County specifications must be immediately remedied by the vendor at the vendor's own expense prior to acceptance by the County.

**WARRANTY:** Bidder to include the warranty provisions as outlined in bid specifications.

**TAX EXEMPTIONS:** The County of Forsyth is exempt from Federal Excise Tax but not from State and Local Sales Tax. Sales tax should not be included in bid prices but may be added as separate items.

**DELIVERY:** Delivery shall be made FOB Destination at General Services Automotive Fleet Services, ATT: Steve Brinegar, 3730 N. Liberty Street, Winston-Salem, NC 27105.

**EVALUATION AND SELECTION OF BIDS:** All bids that are submitted in accordance with this RFP and which meet the requirements in this RFP will be considered to be responsive bids. Notwithstanding anything to the contrary herein, any and all bids may be rejected, and the County may negotiate with any or all bidders. The County will ordinarily award the contract to the lowest responsive, responsible bidder, but reserves the right to consider other factors.

## **FORSYTH COUNTY**

### **PUBLIC HEALTH OUTREACH VEHICLE REFURBISHMENT**

Forsyth County is seeking bids to refurb the interior of the Outreach vehicle to the specifications below. All changes to the bid specifications must be approved by the Forsyth County Fleet Manager. The winning bidder shall pick up and return the Outreach vehicle when complete. The winning bidder shall provide detailed drawings of the modifications and have a prebuild meeting either in person or via teams meeting with Forsyth County staff. Once complete bidder shall provide a Setup and walk-thru onsite in person or a Microsoft Teams meeting. It will be the County's discretion to have a walk through in person or via teams meeting. Any additional expenses relating to insuring compliance shall be at the expense of the manufacturer and be at no additional cost to the County. This includes all lodging and meals for up to four (4) members of the County should the manufacturer be located more than 120 miles from the County's location.

#### **DESIGN, DEVELOPMENT, AND DOCUMENTATION**

Outreach vehicle is a 2005 Freightliner MT55 Morgan-Olsen

#### **FRONT ROOM ITEMS**

- Removal of the large center table
- Removal of the ceiling material
- Install new cleanable ceiling material to match the walls, PVC paneling
- Self-contained handwashing sink with hot water
- Fold-down bench seating, located on the street side
- Fold-down exam bed, located on the street side
- Heavy-duty pull curtains to separate the areas
- 4'-Fold-down table, located on the curbside
- Repair interior sub-flooring and finished flooring as needed
- New blinds for the windows
- Add yellow strips to the edges of the steps

#### **REAR AREA**

- Removal of the long bench seat
- Removal of the AV cabinet
- Removal of the shelves located beside the AV cabinet
- Produce a new smaller upper AV cabinet
- Removal of the upper storage cabinet located on the street side above the long bench seat, add back new upper storage cabinet to fit the space
- Re-finish the workstation countertops on the curbside (2)
- Build new bench seating across from each workstation, located on the street side (2), easy clean / wipe down material for the cushion
- Heavy-duty pull curtains to separate the areas
- New blinds for the windows
- Add yellow strips to the edges of the steps

#### **EXTERIOR ITEMS**

- Install fold out RV style steps under both exterior doors, including folding grab handles
- There shall be a wheelchair ramp constructed and installed at the rear entry street side door. This ramp shall be removable and able to be stored somewhere on the vehicle, unless it can be mounted permanently. This ramp shall be ADA compliant.
- Re-seal / re-coat the roof

## **ELECTRICAL**

- Electrical needed for the new layout

## **SETUP, QUALITY AUDITS, SAFETY ITEMS, AND TRAINING**

- Setup and walk-thru onsite or teams meeting
- Water Testing
- Quality Audits
- Photoshoot

**PROPOSAL**

**Public Health Outreach Vehicle Refurbishment**

The undersigned hereby declares that he has carefully examined the specifications herein referred to and will provide all the material and equipment in accordance with the specifications attached hereto; and the requirements under them for the following sum to wit: **Any exception to the Detailed Specifications must be noted; otherwise, you will be expected to supply exactly as quoted.** Attaching manufacturer's literature in lieu of noted exceptions is not acceptable but may be included as additional information.

**ITEM 1: Public Health Outreach Vehicle Refurbishment, per detailed specifications contained herein:**

TOTAL BASE BID: \$\_\_\_\_\_

**Delivery of vehicle will be completed within\_\_\_\_\_calendar days after receipt of order.**

Delivery time is a factor in the award for any or all vehicles. The County reserves the right to require of bidders, prior to award, documented proof from the factory regarding the production scheduling of vehicles bid and to contact factory personnel or representatives to confirm the factory's intention to produce and/or deliver to bidders any vehicles ordered from this bid within a stated time period.

**TERMS AND CONDITIONS:** The undersigned guarantees all parts against defects and agrees to replace and to install at his own expense any part or parts of the apparatus damaged by reason of defective material, design, or imperfect workmanship during manufacturer's standard warranty period.

The Bidder agrees that in carrying out this contract he will comply with all applicable federal, state, and local laws, specifically including, without limitations, the Occupational Safety and Health Act of 1970 and Section 1324A, the Immigration Reform and Control Act. It is certified that this proposal is made in good faith and without collusion with any person bidding on this contract or with any officer or employee of Forsyth County.



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

### **PROPOSAL AUTHORIZATION AND SIGNATURE**

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

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Authorized Signature (Notarized)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Street Address (P.O. Box)

\_\_\_\_\_  
Federal Identification #.

\_\_\_\_\_  
City, State And Zip Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Email Address

On this \_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me \_\_\_\_\_  
(name)

to me personally known, being duly sworn, did execute the foregoing proposal, and did so state that he/she was properly authorized by \_\_\_\_\_

(Company name)

to execute the proposal and did so on his/her free act and deed.

**SEAL**

Notary Public \_\_\_\_\_ My commission expires \_\_\_\_\_

**The following information is requested for statistical purposes only. Provisions or omission of this information will not affect the City's award of this contract.**

We ☐ are a Historically Underutilized Business (HUB) certified by State of North Carolina.

We ☐ are a minority business enterprise.

☐ are not a minority business enterprise.

If yes, please identify in the appropriate box below:

☐ Black

☐ Hispanic

☐ Asian American including Indian Subcontinent and Pacific Islands

☐ Native American Indian including Eskimos and Aleuts

We ☐ are a woman-owned business concern.

☐ are not a woman-owned business concern



NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of \_\_\_\_\_)

County of \_\_\_\_\_)

Project: **Public Health Outreach Vehicle Refurbishment – Bid No. RFP2484**

\_\_\_\_\_, (name), being first duly sworn,  
deposes and says that:

- He/she is \_\_\_\_\_ (circle: owner, partner, officer, authorized representative, or agent) of \_\_\_\_\_, the Bidder that has submitted the attached Bid.
- He/she is fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such Bid.
- Such Bid is genuine and is not a collusive or sham Bid.
- Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this Affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bids of any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the County of Forsyth, N.C. or any person interested in the proposed Contract; and
- The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees or parties in interest, including this Affiant.

\_\_\_\_\_ Authorized Signature (SEAL)

\_\_\_\_\_ Printed Name

\_\_\_\_\_ Title

Subscribed and Sworn to Before me this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_ (SEAL)

## **FEDERALLY REQUIRED CONTRACT CLAUSES**

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

### **Uniform Administrative Requirements**

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

### **Breaches and Dispute Resolution**

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

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

The provisions include, in part, certain Standard Terms and Conditions required by the United State Department of Transportation (USDOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any Forsyth County request, which would cause Forsyth County to be in violation of the FTA terms and conditions.

### **No Government Obligation to Third Parties by Use of a Disclaimer**

- (a) The CONTRACTOR agrees that, absent the Federal Government’s express written consent, the Federal Government shall not be subject to any obligations or liabilities to any CONTRACTOR, SUBCONTRACTOR, and third-party CONTRACTOR, or any other person not a party to the Grant Agreement or Cooperative Agreement in connection with the performance of the Project. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, sub-agreement, or third-party contract, the Federal Government continues to have obligations or liabilities to any party, including SUBCONTRACTORS and third-party CONTRACTOR.
- (b) The CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the SUBCONTRACTOR who will be subject to its provisions.

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

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

Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.

- (b) The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.
- (c) The CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the SUBCONTRACTOR who will be subject to the provisions.

### **Access to Records**

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

- (a) The CONTRACTOR agrees to provide Forsyth County, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. CONTRACTOR also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO CONTRACTOR access to CONTRACTOR'S records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- (b) Where Forsyth County enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a) (1) through other than competitive bidding, the CONTRACTOR shall make available records related to the contract to Forsyth County, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- (c) The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (d) The CONTRACTOR agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case CONTRACTOR agrees to maintain same until Forsyth County, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- (e) FTA does not require the inclusion of these requirements in subcontracts.

### **Federal Changes**

CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Department of Transportation, Federal Transit Administration, Master Agreement (FTA MA (12) dated October 2005), between Forsyth County and FTA, as they may be amended or promulgated from time to time during the term of this contract. CONTRACTOR'S failure to so comply shall constitute a material breach of this contract.

### **Civil Rights Requirements**

The following requirements apply to this contract:

- (a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (b) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
  - 1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
  - 2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
  - 3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In

addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

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

### **Disadvantaged Business Enterprises (DBE)**

- a. To the extent authorized by applicable federal laws, regulations, or requirements, the Recipient agrees to facilitate, and assures that each Third-Party Participant will facilitate, participation by small business enterprises owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Underlying Agreement as follows:
  - (1) Statutory and Regulatory Requirements. The Recipient agrees to comply with:
    - (a) Section 1101(b) of the FAST Act, 23 U.S.C. § 101 note,
    - (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and
    - (c) Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement.
- b. The following applies to this contract:
  - (1) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 2%.
  - (2) The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Forsyth County deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
  - (3) The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
  - (4) The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from Forsyth County. In addition, the contractor may not withhold retainage from its subcontractors.
  - (5) The contractor must promptly notify DBE Liaison 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 DBE Liaison.

### **Termination Provisions**

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



contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

*Termination for Default (Supplies and Service).* If the CONTRACTOR fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the CONTRACTOR fails to comply with any other provisions of this contract, Forsyth County may terminate this contract for default. Forsyth County shall terminate by delivering to the CONTRACTOR a Notice of Termination specifying the nature of the default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the CONTRACTOR was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Forsyth County.

### **Energy Conservation**

CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 *et seq.*

### **Government-wide Debarment and Suspension (Non-Procurement)**

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

### **Protest Procedures**

Any party, which is a prospective bidder, Offeror, or contractor that may be aggrieved by the solicitation must submit a written protest within five (5) calendar days prior to the opening of the Request for Bid, Request for Proposal.

Any party, which is an actual bidder, Offeror, or contractor that may be aggrieved by the award of a contract, must submit a written protest within five (5) calendar days of Forsyth County transmitting via fax or email the announcement of intent to award.

The protest must be addressed to the Purchasing Director, City of Winston-Salem, PO Box 2511, Winston-Salem, NC 27102 and must include all the following information:

1. Name, address, telephone number, facsimile number and e-mail of the protester.
2. Signature of the protester or authorized agent.
3. The bid name and number.
4. A detailed statement of the legal and factual grounds of protest including copies of relevant documents.
5. Any supporting exhibits, evidence, or documents to substantiate any claims.
6. All information establishing that the protester is an interested party for the purpose of filing a protest.
7. The form of relief requested

After careful consideration of all relevant information, and consultation with the City Attorney, the Purchasing Director shall make a written decision.

A decision of the Purchasing Director may be appealed to the County Manager or appropriate Governing Board, depending on the type of bid. An appeal must be in writing and be delivered to the County Manager, 201 North Chestnut Street, Winston-Salem, N.C. 27101, within seven (7) calendar days of the date of the Purchasing Director faxed or emailed decision.

Any and all costs incurred by a protesting party in connection with a protest shall be the sole responsibility of the protesting party.

### **Clean Air Act**

- (1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Sect. 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal Assistance provided by FTA.

### **Clean Water**

- (1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Sect. 1251 et seq. The Contractor agrees to report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### **Debarment, Suspension, Ineligibility and Voluntary Exclusion**

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

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

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

The certification in this clause is a material representation of fact relied upon by Forsyth County. If it is later determined by Forsyth County that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Forsyth County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **Buy America Act**

- (a) CONTRACTOR’s attention is directed to the Buy America requirement set forth in 49 U.S.C. Section 5323(j), FTA regulations at 49 C.F.R. Part 661, and any guidance issued by FTA. CONTRACTOR must comply with 49 U.S.C. Section 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be



obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless FTA has granted a waiver or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. Section 661.7. Separate requirements for rolling stock are set out at Section 5323(j)(2)(C) and 49 C.F.R. Section 661.11. Rolling stock not subject to a general waiver must have a 70% domestic content (components and subcomponents) and final assembly must occur in the United States. The appropriate Buy America certification must be submitted to the FTA recipient as set out in the bid documents with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America Certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

(b) A bidder or offeror who has submitted an incomplete Buy America certificate or an incorrect certificate of noncompliance through inadvertent or clerical error (but not including failure to sign the certificate, submission of certificates of both compliance and noncompliance, or failure to submit a certification), may submit to the FTA Chief Counsel within 10 days of bid opening a written explanation of the circumstances surrounding the submission of the incomplete or incorrect certification in accordance with 28 U.S.C. 1746, sworn under penalty of perjury, stating that the submission resulted from inadvertent or clerical error. The bidder or offeror will also submit evidence of intent, such as information about the origin of the product, invoices, or other working documents. The bidder or offeror will simultaneously send a copy of this information to the FTA grantee.

#### **FTA Master Agreement (25) Section 34. Safe Operation of Motor Vehicles**

- (a) Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: 90 (1) Adopting and promoting 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; and (2) Including a “Seat Belt Use” provision in each third party agreement related to the Award.

#### **FTA Master Agreement (25) Section 34. Safe Operation of Motor Vehicles. (b) Distracted Driving, Including Text Messaging While Driving.**

The Recipient agrees to comply with: (1) Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” **October 1, 2009**, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); (2) U.S. DOT Order 3902.10, “Text Messaging While Driving,” **December 30, 2009**; and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (i) Safety. The Recipient 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 Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award; (ii) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and (iii) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34(b)(3)(i) – (ii) of this Master Agreement in its third party agreements and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

#### **Lobbying Restrictions**

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

- (1) Laws, Regulations, Requirements, and Guidance. This includes:  
(a) The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended,

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

## Title 49 - Transportation

### Subtitle B - Other Regulations Relating to Transportation

#### Chapter VI - Federal Transit Administration, Department of Transportation

#### Part 661 - Buy America Requirements

Authority: 49 U.S.C. 5323(j) (formerly sec. 165 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424); as amended by sec. 337, Pub. L. 100-17; sec. 1048, Pub. L. 102-240; sec. 3020(b), Pub. L. 105-178; and sec. 3023(i) and (k), Pub. L. 109-59); 49 CFR 1.51.

Source: 56 FR 932, Jan. 9, 1991, unless otherwise noted.

#### **§ 661.12 Certification requirement for procurement of buses, other rolling stock and associated equipment.**

If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirement contained in § 661.13(b) of this part.

##### **Certificate of Compliance with Buy America Rolling Stock Requirements**

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations of 49 CFR 661.11.

Date \_\_\_\_\_  
Signature \_\_\_\_\_  
Company \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

##### **Certificate of Non-Compliance with Buy America Rolling Stock Requirements**

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2)(C), and the applicable regulations in 49 CFR 661.7.

Date \_\_\_\_\_  
Signature \_\_\_\_\_  
Company \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Certification requirement for procurement of buses, other rol... 49 CFR 661.12 49 CFR 661.12 (enhanced display)  
[71 FR 14117, Mar. 21, 2006, as amended at 72 FR 53698, Sept. 20, 2007; 74 FR 30239, June 25, 2009]

**Debarment and Suspension Certification**

**(Lower Tier Covered Transaction) (Attachment 49 CFR 29 Subpart C)**

*(To be submitted with a bid or offer exceeding the small purchase for Federal assistance programs, currently \$25,000.)*

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

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

**THE BIDDER OR OFFEROR, \_\_\_\_\_ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE BIDDER OR OFFEROR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C. §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.**

\_\_\_\_\_ Signature of the Bidder or Offeror’s Authorized Official

\_\_\_\_\_ Name & Title of the Bidder or Offeror’s Authorized Official

\_\_\_\_\_ Date

**CERTIFICATION REGARDING LOBBYING**

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

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

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

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

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

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

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

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

Date \_\_\_\_\_

Signature of Contractor's Authorized Official \_\_\_\_\_

Name and Title of Contractors Authorized Official \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public \_\_\_\_\_

My Appointment Expires \_\_\_\_\_

## **SPECIAL INSTRUCTIONS TO BIDDERS**

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE) - LOCAL GOVERNMENT AGENCIES:**

#### **Description**

The purpose of this Special Provision is to carry out the U.S. Department of Transportation's policy of ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with Federal funds. This provision is guided by 49 CFR Part 26.

#### **Definitions**

*Additional DBE Subcontractors* - Any DBE submitted at the time of bid that will not be used to meet the DBE goal. No submittal of a Letter of Intent is required.

*Committed DBE Subcontractor* - Any DBE submitted at the time of bid that is being used to meet the DBE goal by submission of a Letter of Intent. Or any DBE used as a replacement for a previously committed DBE firm.

*Contract Goal Requirement* - The approved DBE participation at time of award, but not greater than the advertised contract goal.

*DBE Goal* - A portion of the total contract, expressed as a percentage that is to be performed by committed DBE subcontractor.

*Disadvantaged Business Enterprise (DBE)* - A firm certified as a Disadvantaged Business Enterprise through the North Carolina Unified Certification Program.

*Goal Confirmation Letter* - Written documentation from Forsyth County to the bidder confirming the Contractor's approved, committed DBE participation along with a listing of the committed DBE firms.

*Local Government Agencies (LGA)* - The entity letting the contract.

*Manufacturer* - A firm that operates or maintains a factory or establishment that produces on the premises, the materials or supplies obtained by the Contractor.

*Regular Dealer* - A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A regular dealer engages in, as its principal business and in its own name, the purchase and sale or lease of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns and operates distribution equipment for the products. Brokers and packagers are not regarded as manufacturers or regular dealers within the meaning of this section.

*Replacement / Substitution* - A full or partial reduction in the amount of work subcontracted to a committed (or an approved substitute) DBE firm.

*North Carolina Unified Certification Program (NCUCP)* - A program that provides comprehensive services and information to applicants for DBE certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients of USDOT funds in the state and not limited to the Department of Transportation only. The Certification Program is in accordance with 49 CFR Part 26.



*Standard Specifications* - The general term comprising all directions, provisions, and requirements contained or referred to in the *North Carolina Department of Transportation Standard Specifications for Roads and Structures* and any subsequent revisions or additions to such book.

*United States Department of Transportation (USDOT)* - Federal agency responsible for issuing regulations (49 CFR Part 26) and official guidance for the DBE program.

### **Forms and Websites Referenced in this Provision**

*DBE Payment Tracking System* - On-line system in which the Contractor enters the payments made to DBE subcontractors who have performed work on the project. <https://apps.dot.state.nc.us/Vendor/PaymentTracking/>

*DBE-IS Subcontractor Payment Information* - Form for reporting the payments made to all DBE firms working on the project. This form is for paper bid projects only.  
<https://connect.ncdot.gov/business/Turnpike/Documents/Form%20DBE-IS%20Subcontractor%20Payment%20Information.pdf>

*RF-1 DBE Replacement Request Form* - Form for replacing a committed DBE.  
<http://connect.ncdot.gov/projects/construction/Construction%20Forms/DBE%20MBE%20WBE%20Replacement%20Request%20Form.pdf>

*SAF Subcontract Approval Form*- Form required for approval to sublet the contract.  
<http://connect.ncdot.gov/projects/construction/Construction%20Forms/Subcontract%20Approval%20Form%20Rev.%202012.zip>

*JC-1 Joint Check Notification Form* - Form and procedures for joint check notification. The form acts as a written joint check agreement among the parties providing full and prompt disclosure of the expected use of joint checks.  
<http://connect.ncdot.gov/projects/construction/Construction%20Forms/Joint%20Check%20Notification%20Form.pdf>

*Letter of Intent* - Form signed by the Contractor and the DBE subcontractor, manufacturer or regular dealer that affirms that a portion of said contract is going to be performed by the signed DBE for the estimated amount (based on quantities and unit prices) listed at the time of bid.  
<http://connect.ncdot.gov/letting/LetCentral/Letter%20of%20Intent%20to%20Perform%20as%20a%20Subcontractor.pdf>

*Listing of DBE Subcontractors Form* - Form for entering DBE subcontractors on a project that will meet this DBE goal. This form is for paper bids only.\_  
[http://connect.ncdot.gov/municipalities/Bid%20Proposals%20for%20LGA%20Content/08%20DBE%20Subcontractors%20\(Federal\).docx](http://connect.ncdot.gov/municipalities/Bid%20Proposals%20for%20LGA%20Content/08%20DBE%20Subcontractors%20(Federal).docx)

*Subcontractor Quote Comparison Sheet* - Spreadsheet for showing all subcontractor quotes in the work areas where DBEs quoted on the project. This sheet is submitted with good faith effort packages.\_  
<http://connect.ncdot.gov/business/SmallBusiness/Documents/DBE%20Subcontractor%20Quote%20Comparison%20Example.xls>



## DBE Goal

The following DBE goal for participation by Disadvantaged Business Enterprises is established for this contract:

Disadvantaged Business Enterprises **%**

- (A) *If the DBE goal is more than zero*, the Contractor shall exercise all necessary and reasonable steps to ensure that DBEs participate in at least the percent of the contract as set forth above as the DBE goal.
- (B) *If the DBE goal is zero*, the Contractor shall make an effort to recruit and use DBEs during the performance of the contract. Any DBE participation obtained shall be reported to Forsyth County.

## Directory of Transportation Firms (Directory)

Real-time information is available about firms doing business with the NCDOT and firms that are certified through NCUCP in the Directory of Transportation Firms. Only firms identified in the Directory as DBE certified shall be used to meet the DBE goal. The Directory can be found at the following link. <https://www.ebs.nc.gov/VendorDirectory/default.html>

The listing of an individual firm in the directory shall not be construed as an endorsement of the firm's capability to perform certain work.

## Listing of DBE Subcontractors

At the time of bid, bidders shall submit all DBE participation that they anticipate using during the life of the contract. Only those identified to meet the DBE goal will be considered committed, even though the listing shall include both committed DBE subcontractors and additional DBE subcontractors. Additional DBE subcontractor participation submitted at the time of bid will be used toward the overall race-neutral goal. Only those firms with current DBE certification at the time of bid opening will be acceptable for listing in the bidder's submittal of DBE participation. The Contractor shall indicate the following required information:

- (A) *If the DBE goal is more than zero*,
  - (1) Bidders, at the time the bid proposal is submitted, shall submit a listing of DBE participation, including the names and addresses on *Listing of DBE Subcontractors* contained elsewhere in the contract documents in order for the bid to be considered responsive. Bidders shall indicate the total dollar value of the DBE participation for the contract.
  - (2) If bidders have no DBE participation, they shall indicate this on the *Listing of DBE Subcontractors* by entering the word "None" or the number "0." This form shall be completed in its entirety. **Blank forms will not be deemed to represent zero participation.** Bids submitted that do not have DBE participation indicated on the appropriate form will not be read publicly during the opening of bids. Forsyth County will not consider these bids for award and the proposal will be rejected.

- (3) The bidder shall be responsible for ensuring that the DBE is certified at the time of bid by checking the Directory of Transportation Firms. If the firm is not certified at the time of the bid-letting, that DBE's participation will not count towards achieving the DBE goal.

- (B) *If the DBE goal is zero, entries on the Listing of DBE Subcontractors are not required, however any DBE participation that is achieved during the project shall be reported in accordance with requirements contained elsewhere in the special provision.*

### **DBE Prime Contractor**

When a certified DBE firm bids on a contract that contains a DBE goal, the DBE firm is responsible for meeting the goal or making good faith efforts to meet the goal, just like any other bidder. In most cases, a DBE bidder on a contract will meet the DBE goal by virtue of the work it performs on the contract with its own forces. However, all the work that is performed by the DBE bidder and any other DBE subcontractors will count toward the DBE goal. The DBE bidder shall list itself along with any DBE subcontractors, if any, in order to receive credit toward the DBE goal.

For example, if the DBE goal is 45% and the DBE bidder will only perform 40% of the contract work, the prime will list itself at 40%, and the additional 5% shall be obtained through additional DBE participation with DBE subcontractors or documented through a good faith effort.

DBE prime contractors shall also follow Sections A or B listed under *Listing of DBE Subcontractor* just as a non-DBE bidder would.

### **Written Documentation – Letter of Intent**

The bidder shall submit written documentation for each DBE that will be used to meet the DBE goal of the contract, indicating the bidder's commitment to use the DBE in the contract. This documentation shall be submitted on the NCDOT's form titled *Letter of Intent*.

The documentation shall be received in the office of the DBE Liaison no later than 2:00 p.m. of the fifth calendar day following opening of bids, unless the fifth day falls on Saturday, Sunday or an official state holiday. In that situation, it is due in the office of the DBE Liaison no later than 10:00 a.m. on the next official state business day.

If the bidder fails to submit the Letter of Intent from each committed DBE to be used toward the DBE goal, or if the form is incomplete (i.e., both signatures are not present), the DBE participation will not count toward meeting the DBE goal. If the lack of this participation drops the commitment below the DBE goal, the Contractor shall submit evidence of good faith efforts, completed in its entirety, to the DBE Liaison no later than 2:00 p.m. on the eighth calendar day following opening of bids, unless the eighth day falls on Saturday, Sunday or an official state holiday. In that situation, it is due in the office of the DBE Liaison no later than 10:00 a.m. on the next official state business day.

### **Submission of Good Faith Effort**

If the bidder fails to meet or exceed the DBE goal, the apparent lowest responsive bidder shall submit to the City of Winston-Salem documentation of adequate good faith efforts made to reach the DBE goal.

One complete set of this information shall be received in the office of the DBE Liaison no later than 2:00 p.m. of the fifth calendar day following opening of bids, unless the fifth day falls on Saturday, Sunday or an official state

holiday. In that situation, it is due in the office of the DBE Liaison no later than 10:00 a.m. on the next official state business day.

Note: Where the information submitted includes repetitious solicitation letters, it will be acceptable to submit a representative letter along with a distribution list of the firms that were solicited. Documentation of DBE quotations shall be a part of the good faith effort submittal. This documentation may include written subcontractor quotations, telephone log notations of verbal quotations, or other types of quotation documentation.

### **Consideration of Good Faith Effort for Projects with DBE Goals More Than Zero**

Adequate good faith efforts mean that the bidder took all necessary and reasonable steps to achieve the goal which, by their scope, intensity, and appropriateness, could reasonably be expected to obtain sufficient DBE participation. Adequate good faith efforts also mean that the bidder actively and aggressively sought DBE participation. Mere *pro forma* efforts are not considered good faith efforts.

Forsyth County will consider the quality, quantity, and intensity of the different kinds of efforts a bidder has made. Listed below are examples of the types of actions a bidder will take in making a good faith effort to meet the goal and are not intended to be exclusive or exhaustive, nor is it intended to be a mandatory checklist.

- (A) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising, written notices, use of verifiable electronic means through the use of the NCDOT Directory of Transportation Firms) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within at least 10 days prior to bid opening to allow the DBEs to respond to the solicitation. Solicitation shall provide the opportunity to DBEs within the Division and surrounding Divisions where the project is located. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- (B) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved.
  - (1) Where appropriate, break out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
  - (2) Negotiate with subcontractors to assume part of the responsibility to meet the contract DBE goal when the work to be sublet includes potential for DBE participation (2nd and 3rd tier subcontractors).
- (C) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (D) (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to

make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that

were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself a sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Bidding contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- (E) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The bidder's standing within its industry, membership in specific groups, organizations, or associates and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal.
- (F) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or bidder.
- (G) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (H) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; Federal, State, and local minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs. Contact within 7 days from the bid opening NCDOT's Business Opportunity and Work Force Development Unit at [BOWD@ncdot.gov](mailto:BOWD@ncdot.gov) to give notification of the bidder's inability to get DBE quotes.
- (I) Any other evidence that the bidder submits which shows that the bidder has made reasonably good faith efforts to meet the DBE goal.

In addition, the City of Winston-Salem may take into account the following:

- (1) Whether the bidder's documentation reflects a clear and realistic plan for achieving the DBE goal.
  - (2) The bidders' past performance in meeting the DBE goals.
- (3) The performance of other bidders in meeting the DBE goal. For example, when the apparent successful bidder fails to meet the DBE goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the DBE goal but meets or exceeds the average DBE participation obtained by other bidders, Forsyth County may view this, in conjunction with other

factors, as evidence of the apparent successful bidder having made a good faith effort. If Forsyth County does not award the contract to the apparent lowest responsive bidder, Forsyth County reserves the right to award the contract to the next lowest responsive bidder that can satisfy to Forsyth County that the DBE goal can be met or that an adequate good faith effort has been made to meet the DBE goal.

### **Non-Good Faith Appeal**

The DBE Liaison will notify the contractor verbally and in writing of non-good faith. A contractor may appeal a determination of non-good faith made by the Goal Compliance Committee. If a contractor wishes to appeal the determination made by the Committee, they shall provide written notification to the DBE Liaison. The appeal shall be made within 2 business days of notification of the determination of non-good faith.

### **Counting DBE Participation Toward Meeting DBE Goal**

#### **(A) Participation**

The total dollar value of the participation by a committed DBE will be counted toward the contract goal requirement. The total dollar value of participation by a committed DBE will be based upon the value of work actually performed by the DBE and the actual payments to DBE firms by the Contractor.

#### **(B) Joint Checks**

Prior notification of joint check use shall be required when counting DBE participation for services or purchases that involves the use of a joint check. Notification shall be through submission of Form JC-1 (*Joint Check Notification Form*) and the use of joint checks shall be in accordance with the NCDOT's Joint Check Procedures.

#### **(C) Subcontracts (Non-Trucking)**

A DBE may enter into subcontracts. Work that a DBE subcontracts to another DBE firm may be counted toward the contract goal requirement. Work that a DBE subcontracts to a non-DBE firm does not count toward the contract goal requirement. If a DBE contractor or subcontractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of standard industry practices, it shall be presumed that the DBE is not performing a commercially useful function. The DBE may present evidence to rebut this presumption to Forsyth County. Forsyth County's decision on the rebuttal of this presumption is subject to review by the Federal Highway Administration but is not administratively appealable to USDOT.

#### **(D) Joint Venture**

When a DBE performs as a participant in a joint venture, the Contractor may count toward its contract goal requirement a portion of the total value of participation with the DBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the DBE performs with its forces.

#### **(E) Suppliers**

A contractor may count toward its DBE requirement 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from a DBE regular dealer and 100 percent of such expenditures from a DBE manufacturer.

(F) Manufacturers and Regular Dealers

A contractor may count toward its DBE requirement the following expenditures to DBE firms that are not manufacturers or regular dealers:

- (1) The fees or commissions charged by a DBE firm for providing a *bona fide* service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, provided the fees or commissions are determined to be reasonable and not excessive as compared with fees and commissions customarily allowed for similar services.
- (2) With respect to materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site (but not the cost of the materials and supplies themselves), provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

**Commercially Useful Function**

(A) DBE Utilization

The Contractor may count toward its contract goal requirement only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE shall also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, Forsyth County will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and the DBE credit claimed for its performance of the work, and any other relevant factors.

(B) DBE Utilization in Trucking

The following factors will be used to determine if a DBE trucking firm is performing a commercially useful function:

- (1) The DBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there shall not be a contrived arrangement for the purpose of meeting DBE goals.



- (2) The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- (4) The DBE may subcontract the work to another DBE firm, including an owner-operator who is certified as a DBE. The DBE who subcontracts work to another DBE receives credit for the total value of the transportation services the subcontracted DBE provides on the contract.
- (5) The DBE may also subcontract the work to a non-DBE firm, including from an owner-operator. The DBE who subcontracts the work to a non-DBE is entitled to credit for the total value of transportation services provided by the non-DBE subcontractor not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE subcontractors receives credit only for the fee or commission it receives as a result of the subcontract arrangement. The value of services performed under subcontract agreements between the DBE and the Contractor will not count towards the DBE contract requirement.
- (6) A DBE may lease truck(s) from an established equipment leasing business open to the general public. The lease must indicate that the DBE has exclusive use of and control over the truck. This requirement does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. This type of lease may count toward the DBE's credit as long as the driver is under the DBE's payroll.
- (7) Subcontracted/leased trucks shall display clearly on the dashboard the name of the DBE that they are subcontracted/leased to and their own company name if it is not identified on the truck itself. Magnetic door signs are not permitted.

## **DBE Replacement**

When a Contractor has relied on a commitment to a DBE subcontractor (or an approved substitute DBE subcontractor) to meet all or part of a contract goal requirement, the contractor shall not terminate the DBE subcontractor for convenience. This includes, but is not limited to, instances in which the Contractor seeks to perform the work of the terminated subcontractor with another DBE subcontractor, a non-DBE subcontractor, or with the Contractor's own forces or those of an affiliate.

The Contractor must give notice in writing both by certified mail and email to the DBE subcontractor, with a copy to the DBE Liaison of its intent to request to terminate and/or substitute, and the reason for the request. The Contractor must give the DBE subcontractor five (5) business days to respond to the Contractor's Notice of Intent to Request Termination and/or Substitution. If the DBE subcontractor objects to the intended termination/substitution, the DBE, within five (5) business days must advise the Contractor and Forsyth County



of the reasons why the action should not be approved. The five-day notice period shall begin on the next business day after written notice is provided to the DBE subcontractor.

A committed DBE subcontractor may only be terminated after receiving Forsyth County's written approval based upon a finding of good cause for the proposed termination and/or substitution. For purposes of this section, good cause shall include the following circumstances:

- (a) The listed DBE subcontractor fails or refuses to execute a written contract.
- (b) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor.
- (c) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
- (d) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
- (e) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (f) The listed DBE subcontractor is not a responsible contractor.
- (g) The listed DBE voluntarily withdraws from the project and provides written notice of withdrawal.
- (h) The listed DBE is ineligible to receive DBE credit for the type of work required.
- (i) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract.
- (j) Other documented good cause that compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

The Contractor shall comply with the following for replacement of a committed DBE:

(A) Performance Related Replacement

When a committed DBE is terminated for good cause as stated above, an additional DBE that was submitted at the time of bid may be used to fulfill the DBE commitment. A good faith effort will only be required for removing a committed DBE if there were no additional DBEs submitted at the time of bid to cover the same amount of work as the DBE that was terminated.

If a replacement DBE is not found that can perform at least the same amount of work as the terminated DBE, the Contractor shall submit a good faith effort documenting the steps taken. Such documentation shall include, but not be limited to, the following:

- (1) Copies of written notification to DBEs that their interest is solicited in contracting the work defaulted by the previous DBE or in subcontracting other items of work in the contract.
- (2) Efforts to negotiate with DBEs for specific sub-bids including, at a minimum:
  - (a) The names, addresses, and telephone numbers of DBEs who were contacted.
  - (b) A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed.
- (3) A list of reasons why DBE quotes were not accepted.
- (4) Efforts made to assist the DBEs contacted, if needed, in obtaining bonding or insurance required by the Contractor.

(B) Decertification Replacement

- (1) When a committed DBE is decertified by the NCDOT after the SAF (*Subcontract Approval Form*) has been received by Forsyth County, the County will not require the Contractor to solicit replacement DBE participation equal to the remaining work to be performed by the decertified firm. The participation equal to the remaining work performed by the decertified firm will count toward the contract goal requirement.
- (2) When a committed DBE is decertified prior to Forsyth County receiving the SAF (*Subcontract Approval Form*) for the named DBE firm, the Contractor shall take all necessary and reasonable steps to replace the DBE subcontractor with another DBE subcontractor to perform at least the same amount of work to meet the DBE goal requirement. If a DBE firm is not found to do the same amount of work, a good faith effort must be submitted to DBE Liaison (see A herein for required documentation).

All requests for replacement of a committed DBE firm shall be submitted to the DBE Liaison for approval on Form RF-1 (*DBE Replacement Request*). If the Contractor fails to follow this procedure, the Contractor may be disqualified from further bidding for a period of up to 6 months

### **Changes in the Work**

When the Engineer makes changes that result in the reduction or elimination of work to be performed by a committed DBE, the Contractor will not be required to seek additional participation. When the Engineer makes changes that result in additional work to be performed by a DBE based upon the Contractor's commitment, the DBE shall participate in additional work to the same extent as the DBE participated in the original contract work. When the Engineer makes changes that result in extra work, which has more than a minimal impact on the contract amount, the Contractor shall seek additional participation by DBEs unless otherwise approved by the DBE Liaison.

When the Engineer makes changes that result in an alteration of plans or details of construction, and a portion or all of the work had been expected to be performed by a committed DBE, the Contractor shall seek participation by DBEs unless otherwise approved by the DBE Liaison.

When the Contractor requests changes in the work that result in the reduction or elimination of work that the Contractor committed to be performed by a DBE, the Contractor shall seek additional participation by DBEs equal to the reduced DBE participation caused by the changes.

### **Reports and Documentation**

A SAF (*Subcontract Approval Form*) shall be submitted for all work which is to be performed by a DBE subcontractor. Forsyth County reserves the right to require copies of actual subcontract agreements involving DBE subcontractors.

When using transportation services to meet the contract commitment, the Contractor shall submit a proposed trucking plan in addition to the SAF. The plan shall be submitted prior to beginning construction on the project. The plan shall include the names of all trucking firms proposed for use, their certification type(s), the number of trucks owned by the firm, as well as the individual truck identification numbers, and the line item(s) being performed.

Within 30 calendar days of entering into an agreement with a DBE for materials, supplies or services, not otherwise documented by the SAF as specified above, the Contractor shall furnish the DBE Liaison a copy of the agreement. The documentation shall also indicate the percentage (60% or 100%) of expenditures claimed for DBE credit.

### **Reporting Disadvantaged Business Enterprise Participation**

The Contractor shall provide the DBE Liaison with an accounting of payments made to all DBE firms, including material suppliers and contractors at all levels (prime, subcontractor, or second tier subcontractor). This accounting shall be furnished to the DBE Liaison for any given month by the end of the following month. Failure to submit this information accordingly may result in the following action:

- (A) Withholding of money due in the next partial pay estimate; or
- (B) Removal of an approved contractor from the prequalified bidders' list or the removal of other entities from the approved subcontractors list.

While each contractor (prime, subcontractor, 2nd tier subcontractor) is responsible for accurate accounting of payments to DBEs, it shall be the prime contractor's responsibility to report all monthly and final payment information in the correct reporting manner.

Failure on the part of the Contractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies from further bidding until the required information is submitted.

Failure on the part of any subcontractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies from being approved for work on future projects until the required information is submitted.

Contractors reporting transportation services provided by non-DBE lessees shall evaluate the value of services provided during the month of the reporting period only.

At any time, the DBE Liaison can request written verification of subcontractor payments.

The Contractor shall report the accounting of payments on the NCDOT's DBE-IS (*Subcontractor Payment Information*) with each invoice. Invoices will not be processed for payment until the DBE-IS is received.

### **Failure to Meet Contract Requirements**

Failure to meet contract requirements in accordance with Subarticle 102-15(J) of the *2018 Standard Specifications* may be cause to disqualify the Contractor.

LISTING OF DBE SUBCONTRACTORS				
Sheet of ____				
Firm Name and Address	Item No.	Item Description	* Agreed Upon Unit Price	**Dollar Volume of Item
<b>Name</b>  Address				
<b>Name</b>  Address				
<b>Name</b>  Address				
<b>Name</b>  Address				
<b>Name</b>  Address				
<b>Name</b>  Address				
<b>Name</b>  Address				

\* The Dollar Volume shown in this column shall be the Actual Price Agreed Upon by the Prime Contractor and the DBE subcontractor, and these prices will be used to determine the percentage of the DBE participation in the contract.

\*\* Dollar Volume of DBE Subcontractor Percentage of Total Contract Bid Price:

*If firm is a Material Supplier Only, show Dollar Volume as 60% of Agreed Upon Amount from Letter of Intent.*

*If firm is a Manufacturer, show Dollar Volume as 100% of Agreed Upon Amount from Letter of Intent.*

LISTING OF DBE SUBCONTRACTORS				
Sheet of _____				
Firm Name and Address	Item No.	Item Description	* Agreed Upon Unit Price	** Dollar Volume of Item
Name  Address				
Name  Address				
Name  Address				
Name  Address				
Name  Address				
Name  Address				

\* The Dollar Volume shown in this column shall be the Actual Price Agreed Upon by the Prime Contractor and the DBE subcontractor, and these prices will be used to determine the percentage of the DBE participation in the contract.

\*\*\* Dollar Volume of DBE Subcontractor  
\$ \_\_\_\_\_

Percentage of Total Contract Bid Price  
\_\_\_\_\_ %

\*\* Dollar Volume of DBE Subcontractor Percentage of Total Contract Bid Price:

*If firm is a Material Supplier Only, show Dollar Volume as 60% of Agreed Upon Amount from Letter of Intent. If firm is a Manufacturer, show Dollar Volume as 100% of Agreed Upon Amount from Letter of Intent.*

#### LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR



<b>CONTRACT:</b>	<b>NAME OF BIDDER:</b>
------------------	------------------------

The undersigned intends to perform work in connection with the above contract upon execution of the bid and subsequent award of contract by the Local Public Agency as:

**Name of MBE/WBE/DBE Subcontractor** \_\_\_\_\_

**Address** \_\_\_\_\_

**City** \_\_\_\_\_ **State** \_\_\_\_\_ **Zip** \_\_\_\_\_

Please check all that apply:  
 Minority Business Enterprise (MBE) \_\_\_\_\_  
 Women Business Enterprise (WBE) \_\_\_\_\_  
 Disadvantaged Business Enterprise (DBE) \_\_\_\_\_

The MBE /WBE /DBE status of the above-named subcontractor is certified by the North Carolina Department of Transportation. The above-named subcontractor is prepared to perform the described work listed on the attached MBE/WBE/DBE Commitment Items sheet, in connection with the above contract upon execution of the bid and subsequent award of contract by the Local Public Agency. The above-named subcontractor is prepared to perform the described work at the estimated Commitment Total for Subcontractor Price identified on the MBE/WBE/DBE Commitment Items sheet and amount indicated below.

Commitment Total based on estimated Unit Prices and Quantities on the “attached” MBE/WBE/DBE Commitment Items sheet:

Amount \$ \_\_\_\_\_

The above-named bidder and subcontractor mutually accepts the Commitment Total estimated for the Unit Prices and Quantities. This commitment total is based on estimated quantities only and most likely will vary up or down as the project is completed. Final compensation will be based on actual quantities of work performed and accepted during the pursuance of work. The above listed amount represents the entire dollar amount quoted based on these estimated quantities. No conversations, verbal agreements, and/or other forms of non-written representations shall serve to add, delete, or modify the terms as stated.

This document shall not serve in any manner as an actual subcontract between the two parties. A separate subcontractor agreement will describe in detail the contractual obligations of the bidder and the MBE/WBE/DBE subcontractor.

### Affirmation

The above-named MBE/ WBE/ DBE subcontractor affirms that it will perform the portion(s) of the contract for the estimated dollar value as stated above.

\_\_\_\_\_  
**Name of MBE/ WBE/ DBE Subcontractor**

\_\_\_\_\_  
**Name of Bidder**

\_\_\_\_\_  
**Signature / Title**

\_\_\_\_\_  
**Signature / Title**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

### **Contract Assurance**

The Contractor, subrecipient 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 C.F.R. 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 Forsyth County deems appropriate.

### **DBE Participation**

For the purpose of this Contract, Forsyth County will accept only DBE's who are:

1. Certified, at the time of bid opening or proposal evaluation, by Forsyth County or the Unified Certification Program (UCP)]; or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
3. Certified by another agency approved by Forsyth County.

### **DBE Participation Goal**

The DBE participation goal for this Contract is set at \_\_\_\_\_ %. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling not less than \_\_\_\_\_% of the total Contract price. Failure to meet the stated goal at the time of proposal submission may render the Bidder/Offeror non-responsive.

### Proposed Submission

Each Bidder/Offeror, as part of its submission, shall supply the DBE Utilization Form below.

#### DBE UTILIZATION FORM

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

\_\_\_\_\_ The Bidder/Offer is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract.

\_\_\_\_\_ The Bidder/Offeror (if unable to meet the DBE goal of %) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

#### DBE PARTICIPATION SCHEDULE

The Bidder/Offeror shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

#### DBE IDENTIFICATION AND INFORMATION FORM

Name and Address	Contact Name and Telephone Number	Participation Percent (Of Total Contract Value)	Description Of Work To Be Performed	Race and Gender of Firm

**FORSYTH COUNTY**  
**GENERAL CONDITIONS AND INSTRUCTIONS**

- A. The specified item(s) shall be delivered F.O.B. to Forsyth County, North Carolina, according to the address stated on the Purchase Order.
- B. The Purchase Order Number, Item Number, and Inquiry Number shall be affixed to the outside of each packing crate or carton and items not in packing material.
- C. The County reserves the right to reject any and all shipments if the supplier fails to meet all terms and conditions of the contract award.
- D. Suppliers of equipment requiring service connections must visit the field site to check buildings, measurements, and conditions, and furnish all data (including proper location, size and/or capacity) to the contractor making service connections.
- E. The supplier is responsible for all errors, omissions, and deviations from the contract requirements in shop drawings when such drawings are submitted by the supplier and approved by the County.
- F. The successful bidder must prepare two (2) printed sets of neatly bound operating instructions, recommended maintenance schedules, parts lists, and descriptive literature for the County.
- G. After the installation is completed, the supplier shall instruct the designated County personnel in the proper use of the equipment.
- H. On notification by the customer, the supplier must remove all equipment and reconstruct or refurnish any defects or work rejected by the County. The expense of removing, reconstruction, replacing, or refurnishing unfit, unsound, or damaged work or material shall be the responsibility of the supplier.
- I. In the case of installed equipment, twenty-five percent (25%) of the total contract award shall be withheld until the equipment and installation is accepted by the County. Withholding twenty- five percent (25%) of the contract award shall not affect the discount terms of the contract.
- J. All equipment will be guaranteed against defects in materials and workmanship for a period of not less than one year from the date the equipment is put into service and accepted by the County. Copies of all guarantees and warranties are to be attached to the bids.
- K. The County reserves the right to reject any or all bids, to waive informalities in the bids, and to choose the bid that is in the best interests of the County.
- L. In accordance with State Law (G.S. 143-129), the award will be made to the lowest responsible bidder taking into consideration quality, performance and time specified in the proposal for the performance of the contract.
- M. Taxes:
  - a. Federal: Forsyth County is exempt from Federal Excise Taxes. The County will issue Federal Excise Exemption Certificates or Bureau of Internal Revenue Tax Exception Number only upon request of the contractor. Issuance of the certificate does not mean that the contractor is entitled to a tax refund. All requests for refunds are to be handled by the contractor. The County will not guarantee any Federal Tax refunds to the contractor.
  - b. State: Applicable North Carolina Sales and Use Taxes are NOT to be shown on bids but are to be added to invoices as a separate item.
- N. All supplies, materials, and equipment must be new and in first-class condition. Bids offered on inferior, or "second-line" equipment will not be accepted.

**General Conditions and Instructions (Page 2)**

- O. Bids may be rejected that do not have the complete factory specifications, catalog numbers

- of items, and any other data specifically requested in the "conditions" and "specifications".
- P. Alternate items that are not outlined in the attached specifications may be bid but must be accompanied by complete factory specifications and descriptive pamphlets and must be clearly designated as an alternate bid.
  - Q. If a bidder cannot meet the minimum requirements of the detailed specifications, he must outline and itemize each instance by a letter of transmittal and detail the item he offers.
  - R. All bids must be firm and not subject to increase.
  - S. The supplier shall give the City and/or County the benefit of any industry-wide price reduction during the contract period.
  - T. The unit price as well as total price for each item must be listed for purposes of individual evaluation.
  - U. Forsyth County reserves the right to hold bids open for a period of sixty (60) days after bid opening before making awards.
  - V. No special inducements will be considered that are not a part of the original bidding document.
  - W. BID DEPOSIT REQUIREMENTS: BID DEPOSIT NOT REQUIRED FOR THIS BID.
  - X. PERFORMANCE BOND REQUIREMENTS - NOT REQUIRED FOR THIS BID.
  - Y. USE OF BRAND NAMES In the event brand names are used in the detailed specification, they are used to state the product level desired, and the technical functional requirements for day-to-day operations. The use of brand names is in no way intended to restrict competitive bidding.
  - Z. In the event that the bidder's line-item total price does not equal the product of the quantity specified multiplied by the unit price quoted, then the line-item total price shall be disregarded, and the unit price shall be accepted as the correct bid offering. The line-item total price and the grand total price shall then be adjusted accordingly.
  - AA. **Bid response must be on the forms provided in this document. All signatures must be original hand-written in ink.**
  - BB. Pursuant to N.C.G.S. Chapter 55 Article 15 entitled Foreign Corporations, the successful bidder must have on file with the Secretary of State of the State of North Carolina a Certificate of Authority to transact business in this state.