



60 Washington Ave, Suite 200  
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## INVITATION TO BID

### TWO (2) C18 TIER III CAT MARINE ENGINES

**IFB KT #22-757**

**February 25, 2022**

**Bids are due March 18, 2022 @2:00 P.M**

Kitsap Transit, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat., 252.42 U.S.C. 2000d to 2000-4 and Title 49, Code of Federal Regulations Department of Transportation, subtitle A, of the Secretary, Part 21, nondiscrimination in federally assisted programs of the DOT issued pursuant to such Act, hereby notifies all Bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award. Small and women or minority owned Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26 are encouraged to submit Bids.

**Grant Funded:**



**Federal Transit Administration**



## **Bidder's Checklist**

Solicitation Number: KT #22-757
Solicitation Name: TWO (2) C18 TIER III CAT MARINE ENGINES
Due Date and Time: March 18, 2022 @ 2:00 PM

The following checklist is provided as a guide to all documents and exhibits that **MUST** be submitted with your bid to be considered responsive and complete. Failure to provide **ANY** of these documents could render your bid nonresponsive and may cause it to be rejected.

Bid Form	
Buy America	
Lobbying Certification	

I, the below signee, have reviewed this checklist and have provided all of the requested documents. I understand that failure to provide the requested documents could render my Bid non-responsive and may cause its rejection.

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

Printed Name and Title: \_\_\_\_\_

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## **Section 1: IFB Introduction**

### **Request for Bids**

#### **KT #22-757TWO (2) C18 TIER III CAT MARINE ENGINES**

##### **1.1 Scope of Work**

The Work consists of supplying and delivering two (2) new C-18 CAT marine engines. The engines must be certified to 2013 EPA Tier III and IMO II marine commercial propulsion emission standards. Engines shall be delivered FOB Bremerton Washington.

##### **1.2 Bid Documents**

Plans, specifications and addenda for this project are available by contacting Michael Ricketts at [michaelri@kitsaptransit.com](mailto:michaelri@kitsaptransit.com)

##### **1.3 Pre-Bid Meeting**

A Pre-Bid meeting is not being offered for this project

##### **1.4 Questions and Request for Clarifications**

All questions, requests for information, and Pre-Bid material substitutions, must be submitted in writing and received by **March 4, 2022** at: Kitsap Transit, Attn: Michael Ricketts, 60 Washington Ave., Ste. 200, Bremerton, WA 98337; or e-mail: [michaelri@kitsaptransit.com](mailto:michaelri@kitsaptransit.com).

##### **1.5 Time for Completion**

Bidders shall provide an estimated number of Calendar Days to delivery ARO.

##### **1.6 Bid Due Date**

Bids shall be emailed to: [michaelri@kitsaptransit.com](mailto:michaelri@kitsaptransit.com). All Bids must be received before **2:00 PM March 18, 2022**. Late Bids will not be considered. Bidders will receive a confirmation of receipt when Bid is receive

.

##### **1.7 Equal Opportunity**

It is Kitsap Transit's policy to ensure full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person on the basis of race, color, national origin or sex in the provision of benefits and services resulting from Federally assisted programs of the Department of Transportation and in the Award and administration of all Contracts. Small and women or minority owned Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26 are encouraged to submit Bids.

**END SECTION 1**

## **Section 2: Instructions to Bidders**

**Addenda:** A written or graphic document issued to all Bidders and identified as an Addendum prior to Bid opening, which modifies or supplements the Bid Documents and becomes a part of the Contract.

**ARO:** After Receipt of Order/Purchase Order

**Bid/Bid:** The offer of a Bid on a properly completed Bid Form to perform the Contract.

**Bidder/Bidder:** means a person, firm or corporation that has made an offer in response to the IFB

**Bid Documents:** means the solicitation (IFB) in its entirety, including the Plans provided under separate cover

**Contract:** The written agreement between Kitsap Transit and the Contractor. The Contract includes, Contract Agreement, these solicitation documents, any and all Addenda issued, varies certifications and affidavits, supplemental agreements, change orders, and all Contractor.

**Contractor:** means the Successful Bidder who was awarded the Contract and has subsequently executed the Contract with Kitsap Transit.

**IFB:** is an abbreviation meaning Invitations for Bid.

**Subcontractor:** An individual, partnership, firm, corporation, or joint venture who is sublet part of the Contract by the Contractor.

**Successful Bidder/Bidder:** means the lowest responsive and responsible Bidder to whom Award of the Contract shall be made

**Surety:** A company that is bound with the Contractor to ensure performance of the Contract, payment of all obligations pertaining to the Work, and fulfillment of such other conditions as are specified in the Contract as required by law.

**Work:** The provisions of all labor, materials, tolls, equipment and everything needed to successfully complete a project according to the Contract.

This IFB provides details of what is required when submitting a Bid for the Work, how KT will evaluate the Bids, and what will be required of the Contractor in performing the Work. This IFB also gives the estimated dates in Section 2, for the various events in the submission process. While these dates are subject to change, prospective Contractors must be prepared to meet them as they currently stand.

Other sections of the IFB will cover general submission instructions, project overview, Bid and project schedule, consultant qualifications and experience, evaluation criteria, contract terms and federal clauses.

## 2.1 Bid Due Date

Emailed Bids must be received NO LATER THAN **2:00 P.M. local time**, on **March 18, 2022**. Responses shall be emailed to michaelri@kitsaptransit.com. The Subject line of the email must read: **IFB KT #22-757 TWO (2) C18 TIER III CAT MARINE ENGINES**. Late Bids will not be considered.

## 2.2 Requests for Information (RFI), Communications and Addenda

Bidders who seek to obtain information, clarification, or interpretations from contacts other than the KT Purchasing Coordinator are advised that such material is used at the Bidder's own risk. KT will not provide binding oral interpretations, explanations, or instructions as to the meaning or interpretation of the solicitation documents.

**This process will be the only opportunity for Bidders to ask questions. Kitsap Transit staff will not answer questions regarding this IFB verbally. All questions must be submitted via email.**

To be given consideration, any and all communications requesting information, material substitutions, clarifications, and inquiries concerning this solicitation must be submitted in writing and received NO LATER THAN **5:00 P.M.** on **MARCH 4, 2022** to be considered in an Addendum.

## 2.3 Plan Holders List

All prospective Bidders are required to register as "Plan Holders" to receive addenda or clarifications regarding the solicitation. It is recommended that Bidders notify Michael Ricketts of their intent to submit a bid and register with Kitsap Transit's Plan Holders List in order to receive electronic or facsimile notification of issued Addenda. Bidders that do not register will not be notified of Addenda and will need to periodically check for Addenda on KT's website at:

<http://www.kitsaptransit.com/agencyinformation/procurement> during the Bid period and before submitting your Bid.

All submitted bids and attachments become the property of KT and shall remain in effect for at least ninety (90) days after Bid Due Date. The accepted Bid shall remain in effect until the Contract is fully executed and will then become a part of the Contract, including any addenda and all attachments.

## 2.4 Reserved

## 2.5 Payment

KT is a public agency. KT cannot pay for services that have not been received. Therefore, we cannot provide a deposit or advance payment.

At the execution of the contract KT will issue a contract for the full value of the project. Payments will be made against that total upon successful completion and acceptance of the total or a portion of the work and receipt of an invoice from the Contractor.

All payments to Contractor shall be remitted by US mail.

Invoices shall be mailed to:

Kitsap Transit,  
Attn: Accounts Payable  
60 Washington Ave, Suite 200  
Bremerton WA 98337

No payment, whether monthly or final, to the Contractor for any services shall constitute a waiver or release by KT of any claims, rights, or remedies it may have against the Contractor under this Contract or by law, nor shall such payment constitute a waiver, remission, or discharge by KT of any failure or fault of the Contractor to satisfactorily perform the services as required under this Contract.

## 2.5 Disadvantaged Business enterprise Goal

The purpose of the Disadvantaged Business Enterprise (DBE) overall goal is to achieve a “level playing field” for ready, willing and able DBEs seeking to participate in federally-assisted contracts. KT’s DBE goal for federal fiscal year 2021 through 2023 is two point nine two percent (2.92%) the full text of which may be found at

<http://www.kitsaptransit.com/agency-information/procurement>.

## 2.6 Title VI

It is the policy of KT to assure that no person shall, on the grounds of race, color, national origin and sex, as provided by Title VI of the Civil Rights Act of 1964, be excluded from participation in, be denied the benefits of, or otherwise be discriminated against under any of its federally funded programs and activities.

See <http://www.kitsaptransit.org> for the full text of the above Civil Rights statements.



## 2.7 Anticipated Calendar of Events

The activities and dates listed below represent the anticipated procurement schedule. KT will provide changes to the Pre-Bid date and Bid Due date via Addenda. Dates preceded by an asterisk (\*) are estimated.

Activity	Date and Time
Request for Bids Released	February 25, 2022
Request for Clarification/Substitutions Due	March 4, 5:00 PM
Bids Due Date	<b>March 18, 2022 2:00 PM</b>
Anticipated Contract Award Date	*April 1, 2022
Anticipated Notice to Proceed	*April 8, 2022

## 2.8 General Information for Bidders

KT reserves the right, if necessary, to invite all firms in the competitive range to participate in an interview with the Evaluation Committee. The interviews will be scored and the scores will be added to the technical and cost bid to determine the “best value” to KT.

KT reserves the right, if necessary, to request a Best and Final Offer (BAFO) from all firms in the competitive range. Each BAFO will be evaluated by the Committee and scored in accordance with the listed criteria. Firms are advised that Award of this solicitation may be made based solely on the information provided in their Bid.

KT reserves the right to accept or reject any and all submitted bids, portions or parts thereof; to waive informalities and minor irregularities in bids; to decline award based on available funding for the Contract; and to award in whole or in part to the most responsive and responsible Bidder, whichever is in the best interest of KT.

In consideration for KT’s review and evaluation of its bid, the Bidder waives and releases any claims against KT arising from any rejection of any or all bids, including any claim for costs incurred by Bidders in the preparation of bids submitted in response to this solicitation.

If KT determines that collusion has occurred among Bidders, none of the bids of the participants in such collusion will be considered. KT’s determination shall be final.

KT may obtain clarification of any point in submitted bids or request additional information, if necessary, to properly evaluate bids. Bidders must be prepared to present necessary evidence of experience, ability, service facilities and financial standing to satisfactorily meet the requirements set forth or implied in the Bid. Failure of a Bidder to respond to such a request for additional information or clarification may result in rejection of that bid.

## **2.9 Cancellation or Extension**

KT reserves the right to cancel this solicitation or extend the Bid Due Date and time, by written Addendum, at any time *prior to* the set Bid Due Date and time, or in the event only a single bid or no bids are received. If a Bidder pursues a protest or a request for reconsideration, its bid is deemed extended until KT executes the Contract, or until the protest or request for reconsideration is withdrawn by the Bidder.

## **2.10 Modifications**

Bidders will not be allowed to alter bids *after* the Bid Due Date and time. Submitted bids may only be changed if a written request is received by KT *before* the set Bid Due Date and time. Such requests must be signed by an individual authorized to submit bids on behalf of the firm. All bid modifications shall be made in writing, executed and submitted in the same form and manner as the original bid. Nothing in this section shall be construed to permit the Bidder to alter its bid *after* it has been submitted pursuant to the terms of this solicitation.

## **2.11 Withdrawal**

Bidders will not be allowed to withdraw bids *after* the Bid Due Date and time unless the award is delayed for a period exceeding ninety (90) days. Any bid not so timely withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days, to provide KT the services described herein, or until one or more of the bids have been approved by KT, whichever occurs first.

## **2.12 Award**

Kitsap Transit reserves the right to make award within ninety (90) calendar days from the Bid Due Date. Should award, in whole or part, be delayed beyond the period of ninety (90) days, such award shall be conditioned upon Bidder's acceptance.

Submitted Bids shall be conclusive evidence to KT that the Bidder has thoroughly examined and understands all requirements of the Bid and the work to complete the Contract. The failure or neglect of a Bidder to receive or examine any bid document or any part thereof, work site, statutes, regulations, ordinances or resolutions shall in no way relieve the Bidder from the obligations with respect to its Bid or to the Contract. No

claim for additional compensation shall be allowed which is based upon a lack of knowledge thereof. KT will not be responsible for any costs incurred by Bidders in preparing, submitting, or presenting their response to this IFB.

All bids and submissions become the property of KT and are subject to public disclosure, unless certain provisions as described in Section 4 pertain.

**END SECTION 2**

### **Section 3: Purchase Order Terms and Conditions**

All Purchase Orders (POs) issued by Kitsap Transit contain the following terms and conditions, and also incorporated herein by reference all terms and conditions contained in any Agreement between the parties, Invitation to Bid, Request for Proposal, Request for Quotes and Quotes provided by the vendor; specifications; plans; and published applicable rules and regulations of Kitsap Transit (KT), The Federal Transit Administration and the laws of the State of Washington.

**Definitions:** PURCHASER is Kitsap Transit. VENDOR is a company from which goods or services are purchased.

**Acceptance of Terms:** Performance of any work by VENDOR will constitute acceptance to all terms and conditions listed which are a condition of KT's obligation to pay.

1. **IDENTIFICATION:** All invoices, packages, shipping notices, instruction manuals and other written documents affecting this order shall contain the applicable Purchase Order number. Packing lists shall be enclosed in each box or package shipped pursuant to this order, indicating the contents therein. Invoices will not be processed for payment until all items invoiced are received.
2. **CHANGES:** No alteration in any of the terms, conditions, delivery, price, quality, quantities, or specifications of this order will be effective without written consent of the PURCHASER.
3. **SHIPPING INSTRUCTIONS:** All goods are to be shipped freight prepaid, F.O.B. destination, unless otherwise stated. VENDOR agrees to prepay all shipping charges and bill as a separate line item on the invoice. KT reserves the right to refuse COD shipments. VENDOR shall bear the risk of loss or damage to the goods until accepted by KT.
4. **DELIVERY:** Deliveries are accepted Monday thru Friday, from 8 AM to 3 PM, unless prior arrangements have been made with KT staff. All deliveries must have a KT employee's signature verifying receipt of the delivery. KT may refuse payment of invoices received without a signature to verify proof of delivery. The PO is subject to termination for failure to deliver as specified.
5. **PAYMENT:** Unless otherwise negotiated, the terms of payment shall be net 30 days from receipt of a proper invoice. All payments and cash discounts shall be computed from the date of delivery of completion and acceptance of the material, or from the date of receipt of invoice whichever is latest. The PO number must be noted on all invoices.
6. **TAXES:** VENDOR shall pay all taxes that may arise out of its sale of the goods and services to KT. KT agrees to pay all State of Washington sales tax or Use taxes unless otherwise indicated or otherwise agreed upon between the parties. KT will

provide VENDOR any applicable exemption certificates. KT is exempt from federal excise tax.

7. LIENS, CLAIMS, AND ENCUMBRANCES: VENDOR warrants and represents that all goods will, when delivered hereunder, be free and clear of all liens, claims or encumbrances of every kind.
8. REJECTION: All goods or materials purchased herein are subject to approval by the PURCHASER. Any rejection of goods or materials resulting because of nonconformity to the terms and specifications of this order, whether held by the PURCHASER or returned will be at VENDOR's risk and expense.
9. DEFAULT: The VENDOR covenants and agrees that in the event suit is instituted by the PURCHASER for any default on the part of the VENDOR and the VENDOR is adjudged by a court of competent jurisdiction to be in default, he shall pay to the PURCHASER all costs, expenses expended or incurred by the PURCHASER in connection therewith, and reasonable attorneys' fees.
10. WARRANTIES: VENDOR represents and warrants that the goods are new, current, and fully warranted by the manufacturer. Delivered goods will comply with specifications and be free from defects in labor, material and manufacture. All UCC implied and expressed warranties are incorporated in this PO. VENDOR shall transfer all warranties to KT.
11. INFRINGEMENTS: VENDOR warrants that KT's purchase, installation, and /or use of the goods covered hereby will not result in any claim of infringement, or actual infringement of any patent, trademark, copyright, franchise, or other intellectual property right. VENDOR shall indemnify and hold KT harmless from and against all claims, losses, expenses, damages, causes of action and liabilities of every kind and nature, including without limitation reasonable attorneys' fees (without waiver of VENDOR's obligation to indemnify KT hereunder), arising from or out of any breach of the foregoing warranty.
12. EQUAL EMPLOYMENT OPPORTUNITY: It is Kitsap Transit's policy to ensure full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person on the basis of race, color, national origin or gender in the provision of benefits and services resulting from Federally assisted programs of the Department of Transportation and in the Award and administration of all Contracts. Small and women or minority owned Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26 are encouraged to submit Bids.
13. GOVERNING LAW/VENUE: The laws of the State of Washington shall govern this order, and the venue of any action brought hereunder may be laid in or transferred to the County of Kitsap, State of Washington.
14. TERMINATION: (i) The parties may terminate this PO by mutual agreement. (ii) The PURCHASER may terminate this PO at any time with written notice to VENDOR.

Upon receipt of the written notice, VENDOR shall stop performance, and the PURCHASER shall pay VENDOR for goods delivered and accepted. (iii) PURCHASER may terminate this PO at any time if the PURCHASER fails to receive funding, appropriations, or other expenditure authority. (iv) If VENDOR breaches any PO provisions or is declared insolvent, the PURCHASER may terminate this PO for cause with written notice to VENDOR, and VENDOR shall be liable for all incidental and consequential damages resulting from its breach, including all damages as provide in the UCC.

- 15. ATTORNEY'S FEES AND COSTS:** In any suit or action brought to enforce any term, condition, or covenant herein, or to recover damages arising from any breach of this contract, the losing party shall pay to the prevailing party reasonable attorney's fees and all other costs and expenses which may be incurred by the prevailing party in any such suit or action and in any reviews thereof and appeals thereof.

**End Section 3**

#### **Section 4: Bid as Public Records**

By submitting a bid, the Bidder has thereby agreed to the provision of this Section. Except to the extent permitted by Washington State public disclosure laws RCW Chapter 42.56, KT will regard bids as public records which will be available for public inspection and/or copying following contract award, regardless of any markings or notices contained in the bid documents. Information will not be released by KT *prior to* contract award in order to protect the integrity of the procurement process, unless otherwise required by law. All bids will remain confidential until a contract is awarded and fully executed by all parties involved.

If a Bidder considers portions of its bid to be protected under Washington State law, the Bidder shall clearly identify and mark such portions as “CONFIDENTIAL” or “PROPRIETARY” and submit such portions in a sealed envelope separate from the rest of the bid. It is not usually reasonable or legally defensible to mark an entire bid as “confidential” or “proprietary”. Marking the entire bid as such will not be honored and the bid may be rejected as non-responsive. KT shall not release or divulge such information to third parties without the consent of the Bidder, unless required to do so by applicable law or order of a court of competent jurisdiction. If a member of the public demands to review portions of a bid marked “Confidential”, KT will notify the affected Bidder of the request and the date that such records will be released unless the Bidder obtains a court order enjoining that disclosure.

It will be the responsibility of the Bidder to protect the confidentiality of any information submitted in the Bid and the Bidder shall take such legal actions as it may determine to be necessary to protect its interest. If the Bidder has not commenced such action within five (5) calendar days after receipt of the notice, KT will make the requested portions available to the Requestor. The Bidder, asserting that portions of its bid are legally protected, will assume all liability and responsibility for any information declared confidential and shall defend and hold KT harmless for any cost, penalties, and/or fees (including reasonable attorney fees) incurred in any action regarding the disclosure of said information. KT assumes no responsibility or liability for any losses or damages which may result from the information contained in the bid.

By submitting a bid, the Bidder has thereby agreed to the provision of this Section.

#### **END OF SECTION 4**

## **Section 5: General Provisions**

These General Provisions are complementary to the Contract which is required to properly define and delineate the responsibilities and rights of the parties to this Contract.

### **5.1 Conflicts of Interest**

Current and Former Employees: KT seeks to eliminate and avoid actual or perceived conflicts of interest and unethical conduct by current and former KT employees in transactions with KT. Consistent with this policy, no current or former KT employee may contract with, influence, advocate, advise, or consult with a third party about a KT transaction, or assist with preparation of bids submitted to KT while employed by KT or after leaving KT's employment, if he/she was substantially involved in determining the Work to be done or process to be followed while a KT employee.

#### **A. Organizational Conflicts of Interest**

An organizational conflict of interest is a situation in which, because of other activities, relationships, or contracts, a contractor or subcontractor is unable, or potentially unable, to render impartial assistance or advice to KT; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage. KT will evaluate future procurements related to this Contract to determine if there is an organizational conflict of interest. If an organizational conflict of interest exists, KT may prohibit the contractor and any of its subcontractors from participating in such related procurements/projects.

### **5.2 Debarment and Suspension**

Contractor must not be debarred or suspended in order to conduct business with KT. Upon the Bid due date and for the full duration of the Contract, the Contractor will not be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or State department or agency or from proposing on any public contract; and shall not be presently indicted for, or otherwise criminally or civilly charged by, a governmental entity (federal, State or local) with commission of any of the offenses enumerated in below.

Within a three (3) year period preceding this bid, Contractor shall not have been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract; Violation of federal or State anti-trust statutes; Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or had one or more public transactions (federal, State or local) terminated for cause or default. If it



is later determined that the Contractor knowingly rendered an erroneous certification under the Affidavit submitted with its bid, or failed to notify KT immediately of circumstances which made the original certification no longer valid, KT may immediately terminate the Contract.

### **5.3 Defective Materials or Services**

When and as often as KT determines that the products or services furnished under the Contract are not fully and completely in accordance with any requirement of the Contract, KT may give written notice and description of such non-compliance to the Contractor. Within seven (7) calendar days of receiving such written notification, Contractor must supply KT with a written detailed plan of action that indicates the time and methods needed to bring the products or services within acceptable limits under the Contract. KT may reject or accept this plan at its discretion.

In the event this plan is rejected or the defect has not been remedied within thirty (30) days of Contractor's receipt of notice, the products or services will be deemed not accepted and returned to the Contractor at the Contractor's expense. KT, in its sole discretion, may purchase a replacement from another source and charge-back the cost for such warranty replacement to the Contractor. This procedure to remedy defects is not intended to limit or preclude any other remedies available to KT by law, including those available under the Uniform Commercial Code, Title 62A RCW.

### **5.4 Subcontracts**

Any Subcontractors and outside associates or consulting firms or individuals, including any substitutions thereof, required by the Contractor in connection with work to be provided under this Contract will be subject to prior authorization by KT. Each subcontract and a cost summary, therefore, shall be subject to review by KT prior to the Subcontractor proceeding with the work. The Contractor shall be responsible for the professional standards, performance, and actions of all persons and firms performing subcontract work. The Contractor shall be responsible for the completion and submission of any federally required forms that may be required of the Subcontractor. The Contractor, at the request and direction of KT, will provide copies of any written agreements showing their contractual relationship.

### **5.5 Limitation of Liability**

- A. Non-conforming Services** – For any services which fail to conform to the scope of the Contract and such failure is caused solely by the negligence of the Contractor, no charge will be invoiced to KT. If both parties are negligent, they agree to apportion between them the damage attributable to the actions of each.

- B. Damages** – Neither party will seek damages, either direct, consequential, or otherwise against the other in addition to the remedies stated herein.
- C. Third Party Claims** – In the event that either party is found liable for damages to third parties as a result of the performance of services under this Contract, each party will be financially responsible for the portion of damages attributable to its own acts and responsibilities under this Contract.

## 5.6 Taxes

Any Contract wholly for professional or other applicable services is generally not subject to Retail Sales Tax and therefore, the Consultant shall not collect Retail Sales Tax from Kitsap Transit on those Contracts. Any incidental taxes paid as part of providing the services shall be included in the payments under the contract.

No adjustments will be made in the amount to be paid by KT under the Contract because of any misunderstanding or any lack of knowledge of the Bidder as to liability for, or the amount of, any taxes or assessments which the Bidder may be liable or responsible for by law.

- A. RCW 82.08.0285 Ferry Vessels:** provides for a retail sales tax exemption on labor and materials that “becomes a component part” of a ferry vessel. The Awarded Vendor will receive a signed DOR Buyer’s Retail Sales Tax Exemption Certificate at the time of Contract signing.

## 5.7 Confidentiality

After the Bid due date and until a Contract is awarded, no information will be discussed with the competitors or anyone outside the Evaluation Committee. No Bidder or other member of the public will be told of the rankings among Bidders, nor the number of firms within the competitive range. Bidders will only be told that their bid was ranked within the competitive range. Names of firms, cost data, or other information from Bidders submitted in response to this RFQ shall remain strictly confidential until after contract award.

## 5.8 Contract Documents

The successful Bidder will receive an award package from KT that includes the Final Award Notice, two original duplicates of the Contract for signature, and other documents as required. Contractor must immediately sign and return all requested documents to KT within ten (10) calendar days, unless indicated otherwise, or KT may utilize their right to cancel the award and go to the next highest scoring Bidder. Bidders should already have preparations in place to notify their insurance broker and/or bonding agent to immediately obtain the required documents. *A sample contract for services is provided to inform submitters of the expected terms and conditions required by Kitsap*

*Transit. The contract is provided for information only and does need to be returned with the bid submission. (See Attachment B)*

### **5.9 Failure to Execute Contract**

Should the awarded Contractor fail to execute the Contract within ten (10) days from the Final Award Notice date, KT may withdraw the award and present the award to the next highest scoring Bidder. Should events give rise to this instance, the Bidder failing to execute a contract may be removed from KT's bid list for any future contracting opportunities.

## **END SECTION 5**

**Section 6: Sample Contract**

The Contract for this procurement shall include, in order of significance:

- Kitsap Transit Solicitation KT #22-757 including clauses, terms and conditions and exhibits
- Any Addenda that are released subsequently amending solicitation KT #22-757
- The Awarded Firms offer
- Kitsap Transit Purchase Order (terms and conditions of the Purchase Order are included in the solicitation documents)

**End Section 6**

**KITSAP TRANSIT**

**REQUEST FOR PROPOSALS KT #22-757**

**FOR**

**TWO (2) C18 TIER III CAT MARINE ENGINES**

**ATTACHEMENT A – BID FORM**

**PART 1 – INSTRUCTIONS**

All entries below shall be legible and entered in ink or typed. Do not leave an item blank or your Bid may be considered non-responsive. Mark spaces that do not apply to your firm with the initials "N/A" (Not Applicable).

**PART 2 – CONTRACTOR INFORMATION**

Business name, as registered: \_\_\_\_\_

Type of Business (sole proprietorship, partnership, corporation, other) \_\_\_\_\_

Name & Title of person preparing Bid: \_\_\_\_\_

Mailing Address, including Zip Code: \_\_\_\_\_

Physical Address, including Zip Code: \_\_\_\_\_

Telephone/Fax Numbers, including Area Code:

Ph: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_

WA State Contractor Registration Number: \_\_\_\_\_

WA Unified Business Identification (UBI) Number: \_\_\_\_\_

WA Industrial Insurance Account Identification Number: \_\_\_\_\_

WA Employment Security Dept. Number: \_\_\_\_\_

WA State Excise Tax Registration Number: \_\_\_\_\_

DBE / OMWBE / MBE / SDB Certification Number(s): \_\_\_\_\_

Dunns Registration Number: \_\_\_\_\_

**PART 3 – RECEIPT OF ADDENDA****3.1 FAILURE TO ACKNOWLEDGE RECEIPT OF ADDENDA MAY RESULT IN YOUR BID BEING CONSIDERED NON-RESPONSIVE.****3.2** Receipt of the following Addenda is acknowledged:

Addendum No.: \_\_\_\_\_ Received By: \_\_\_\_\_ Date: \_\_\_\_\_

Addendum No.: \_\_\_\_\_ Received By: \_\_\_\_\_ Date: \_\_\_\_\_

Addendum No.: \_\_\_\_\_ Received By: \_\_\_\_\_ Date: \_\_\_\_\_

Addendum No.: \_\_\_\_\_ Received By: \_\_\_\_\_ Date: \_\_\_\_\_

**3.3** No Addenda Received \_\_\_\_\_ (initial)**PART 4 – BIDDER'S CERTIFICATION AND GUARANTEE****4.1 I/WE CERTIFY**, that to the best of my/our knowledge and belief that I/we fully understand:

- ❖ The nature of the Work and the goal of the Project;
- ❖ The instructions and requirements of the Contract Documents;
- ❖ The terms and conditions of the Contract Documents;
- ❖ That all costs are included in this Bid;
- ❖ That the information contained in this Bid is accurate and complete;
- ❖ The offer shall be kept open for a period of ninety (90) days from the Bid Due Date;
- ❖ That I/we have the legal authority to commit this company to a contractual agreement;
- ❖ That final funding is based upon budget amounts approved by the Kitsap Transit Board of Directors.
- ❖ That the submitted Bid will become part of the public record.

**4.2 I/WE GUARANTEE** to complete the Work following receipt of a Notice to Proceed/ Purchase Order, should I/We be the successful Bidder.\_\_\_\_\_  
Authorized Signature Date

Printed Name &amp; Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

**PART 5: Schedule of Values:**

*Having carefully examined all documents for this Project, as well as the site of the Work, and the availability of materials and labor we, the above signed Bidder, propose to perform all Work identified herein in strict compliance with the Specifications, Plans, terms and conditions contained within the Contract Documents for the amounts set forth below:*

**Kitsap Transit KT #22-757TWO (2) C18 TIER III CAT MARINE ENGINES**

Item No.	Description	Unit	Unit Qty	Unit Price	Extended Price
1	TWO (2) C18 TIER III CAT MARINE ENGINES	Each	2	\$	\$
				Subtotal	\$
				Sales Tax	\$
				Total	\$

End Attachment A



**KITSAP TRANSIT**

**INVITATION FOR BIDS # KT #22-757**

**FOR**

**TWO (2) C18 TIER III CAT MARINE ENGINES**

**ATTACHEMENT B**

**SCOPE OF WORK AND SPECIFICATION**

Kitsap Transit is seeking quotes from qualified sources to provide all labor, materials, tools, equipment, transportation, supplies, permits and incidentals required to complete all Work for the items included in the solicitation. The intent of the Contract is to prescribe a complete Work. Omissions from the Contract of details of Work that are necessary to carry out the intent of the Contract shall not relieve the Contractor from performing the omitted Work. All Work shall comply with all local, state, federal, regulations and industry standards; all of which are incorporated herein by reference as if they were written in their entirety.

The Contractor shall provide two (2) CAT Tier III Marine Engines to Kitsap Transit. The engines shall be free of lien and shall be delivered to Bremerton Washington. Engines shall provide the standard manufacturer's warranty that shall be fully transferred to Kitsap Transit.

The following is a list of specification that the new engines must meet:

### **Caterpillar C18 Marine Engines Rated at 803HP@2100 RPM's Intermittent Duty "D"**

#### **AIR INLET SYSTEM**

- Separate circuit after-cooled (SCAC)
- Open Crankcase Ventilation (OCV) system
- Turbocharger, jacket water cooled
- Turbocharger inlet, 152 mm (6 in) OD straight connection

#### **CONTROL SYSTEM**

- Programmable low idle
- WOSR (Wide Operating Speed Range) available for EPA Tier 3 - B and C Ratings
- Adjustable High Idle (TEL) - EPA Tier 3 WOSR Ratings Only
- Electronic diagnostics and fault logging
- Engine and transmission monitoring (speed, temperature, pressure)
- Electronic fuel/air ratio control
- Engine Protection Mode for extended ambient conditions - EPA Tier 3 Ratings Only
- Torque Limiting functionality for WOSR ratings only
- 70-pin customer connector
- Three types of throttle inputs (primary/ secondary PWM, 0-5V, 4-20mA +/-
  - Programmable ECM Shutdowns for:
    - High Jacket Water Coolant Temp
    - Low Engine Oil Pressure
    - Engine Overspeed

#### **COOLING SYSTEM**

- Separate Circuit After-Cooling (SCAC) for both HEX and Keel cooled engines
- Engine JW and SCAC Shell & Tube Heat Exchangers for HEX cooled engines
- SCAC pump, gear driven, for HEX cooled engines only
- Jacket water pump, gear driven
- Auxiliary water pump, gear driven
- Sea water pump, bronze impeller, gear driven
- SCAC and JW shunt tanks for maintaining proper pump inlet pressures

#### **EXHAUST SYSTEM**

- Water-cooled exhaust manifold & turbocharger 152 mm (6 in) round flanged outlet

#### **FLYWHEELS & FLYWHEEL HOUSINGS**

- SAE standard rotation
- Flywheel Housing:
  - SAE No. 1; Flywheel: SAE No. 14, 113 teeth

#### **FUEL SYSTEM**

- Front service simplex fuel system
- Fuel transfer pump, gear driven
- Manual fuel priming pump
- Hybrid fuel line design

#### **LUBE SYSTEM**

- Front service simplex oil system
- Center sump oil pan:
  - Shallow, 250hr oil change interval
  - Front and top service oil filler locations
  - Front service dipstick
  - Oil pump, gear driven

#### **MOUNTING SYSTEM**

- Front support – adjustable

#### **POWER TAKE-OFFS**

- Poly-V groove for alternator drive

#### **GENERAL**

- Front damper guard
- Front service engine
- Common electrical bonding point
- Engine does not ship with zinc components

Engines must be Certified to 2013 EPA Tier III and IMO II Marine Commercial Propulsion (E3 Cycle) Emission Standards.

End Attachment B

**KITSAP TRANSIT**

**INVITATION FOR BIDS # KT #22-757**

**FOR**

**TWO (2) C18 TIER III CAT MARINE ENGINES**

**ATTACHEMENT C**

**FEDERAL TRANSIT ADMINISTRATION'S CONTRACT**  
**CLAUSES AND CERTIFICATIONS**

**Contractors Certification of Acknowledgment  
Federal Transit Administration Contract Clauses and Certifications**

Source: FTA Master Agreement (29, February 7, 2022)

[FTA Master Agreement 2022](#)

The Contractor, \_\_\_\_\_,  
certifies, to the best of its knowledge and belief, that it:

- A. **Has** \_\_\_\_ **Has not** \_\_\_\_ read and understood the attached Federal Transit  
Administration Contract Clauses as they pertain to project \_\_\_\_\_  
and;
- B. **Has** \_\_\_\_ **Has not** \_\_\_\_ read and understood the attached Federal Transit  
Administration Contract Certifications as they pertain to project \_\_\_\_\_.

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name & Title of Contractor's Authorized Official

## **FEDERAL TRANSIT ADMINISTRATION CONTRACT CLAUSES**

### **NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD-PARTIES BY USE OF A DISCLAIMER**

Except as the Federal Government expressly consents in writing, the Recipient agrees that:

- (1) The Federal Government shall not have any obligation or liability related to:
  - (a) The Project,
  - (b) Any Third Party Participant at any tier, or
  - (c) Any other person or entity that is not a party (Recipient or FTA) to the Underlying Agreement for the Project, and
- (2) Notwithstanding that the Federal Government may have concurred in or approved any solicitation or third party agreement at any tier that has affected the Project, the Federal Government shall not have any obligation or liability to any:
  - (a) Third Party Participant, or
  - (b) Other entity or person that is not a party (Recipient or FTA) to the Underlying Agreement.

### **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

- (1) Civil Fraud. The Recipient acknowledges and agrees that:
  - (a) Federal laws and regulations apply to itself and its Project, including:
    1. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq., and
    2. U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. part 31,
  - (b) By executing its Underlying Agreement, the Recipient certifies and affirms to the truthfulness and accuracy of any of the following that the Recipient provides to the Federal Government:
    1. Claim,
    2. Statement,
    3. Submission,
    4. Certification,
    5. Assurance, or
    6. Representation, and
  - (c) The Recipient acknowledges that the Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended and other applicable penalties if the Recipient:
    1. Presents, submits, or makes available any information in connection with any:
      - a. Claim,
      - b. Statement,
      - c. Submission,

- d. Certification,
    - e. Assurance, or
    - f. Representation, and
  - 2. That information is false, fictitious, or fraudulent.
- (2) **Criminal Fraud.** The Recipient acknowledges that 49 U.S.C. § 5323(l)(1), authorizes the Federal Government to impose the penalties authorized by 18 U.S.C. § 1001 if the Recipient:
- (a) Presents, submits, or makes available any information in connection with any:
    - 1. Claim,
    - 2. Statement,
    - 3. Submission,
    - 4. Certification,
    - 5. Assurance, or
    - 6. Representation, and
  - (b) That information is false, fictitious, or fraudulent.

### **ACCESS TO RECORDS**

The Recipient agrees that:

- (1) As required by 49 U.S.C. § 5325(g), 49 C.F.R. § 18.36(i)(10), and 49 C.F.R. § 19.53(e), it will provide, and require its Third Party Participants at each tier to provide, sufficient access to inspect and audit records and information pertaining to the Project to the:
  - (a) U.S. Secretary of Transportation or the Secretary's duly authorized representatives,
  - (b) Comptroller General of the United States, and the Comptroller General's duly authorized representatives, and
  - (c) Recipient and Subrecipient,
- (2) The Recipient will permit and assures that its Third Party Participants will permit the individuals listed above in (1) to do the following:
  - (a) Inspect all:
    - 1. Project work,
    - 2. Project materials,
    - 3. Project payrolls, and
    - 4. Other Project data, and
  - (b) Audit any information related to the Project under the control of the Recipient or Third Party Participant within:
    - 1. Books,
    - 2. Records,
    - 3. Accounts, or
    - 4. Other locations.

## **FEDERAL CHANGES**

### Changes to Federal Requirements and Guidance:

- (1) Requirements and Guidance. New Federal Requirements and Guidance may:
  - (a) Become effective after the FTA Authorized Official signs the Recipient's Underlying Agreement awarding funds for the Project, and
  - (b) Apply to the Recipient or its Project.
- (2) Modifications. Federal requirements and guidance that apply to the Recipient or its Project when the FTA Authorized Official awards Federal funds for the Recipient's Underlying Agreement may:
  - (a) Be modified from time to time, and
  - (b) Apply to the Recipient or its Project.
- (3) Most Recent Provisions. The latest Federal requirements will apply to the Recipient or its Project, except as FTA determines otherwise in writing using a:
  - (a) Special Condition in the Recipient's Underlying Agreement,
  - (b) Special Requirement in the Recipient's Underlying Agreement,
  - (c) Special Provision in the Recipient's Underlying Agreement,
  - (d) Condition of Award in the Recipient's Underlying Agreement,
  - (e) Letter to the Recipient signed by an authorized FTA official, or
  - (f) Change to FTA or Federal guidance.

## **TERMINATION PROVISIONS**

The Recipient agrees to all of the following:

- (1) Justification. After providing notice, the Federal Government may suspend, suspend then terminate, or terminate all or any part of the Federal funding awarded for the Project if:
  - (a) The Recipient has violated the Underlying Agreement or FTA Master Agreement (27 & 28), especially if that violation would endanger substantial performance of the Project,
  - (b) The Recipient has failed to make reasonable progress on the Project, or
  - (c) The Federal Government determines that continuing to provide Federal funding for the Project does not adequately serve the purposes of the law authorizing the Project,
- (2) Financial Implications.
  - (a) In general, termination of Federal funding for the Project will not invalidate obligations properly incurred before the termination date to the extent the obligations cannot be canceled, and
  - (b) The Federal Government may:
    1. Recover Federal funds it has provided for the Project if it determines that the Recipient has willfully misused Federal funds by:
      - a. Failing to make adequate progress,
      - b. Failing to make appropriate use of the Project property, or
      - c. Failing to comply with the Underlying Grant Agreement or FTA Master Agreement (27 & 28), and



2. Require the Recipient to refund:
  - a. The entire amount of Federal funds provided for the Project, or
  - b. Any lesser amount as the Federal Government may determine, and
- (3) Expiration of Project Time Period. Except for a Full Funding Grant Agreements, expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Underlying Agreement.
- (4) Uniform Administrative Requirements. These termination rights are in addition to and in no way limit the Federal Government's rights to terminate described in 2 CFR § 200.340.

### **CIVIL RIGHTS REQUIREMENTS**

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Specifically:

- (1) Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute):
  - (a) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of:
    1. Race,
    2. Color,
    3. Religion,
    4. National origin,
    5. Sex (including gender identity),
    6. Disability, or
    7. Age, and
  - (b) The FTA "Nondiscrimination" statute's prohibition against discrimination includes:
    1. Exclusion from participation,
    2. Denial of program benefits, or
    3. Discrimination, including discrimination in employment or business opportunity.
- (2) Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will:
  - (a) Prohibit discrimination based on:
    1. Race,
    2. Color, or
    3. National origin,
  - (b) Comply with:
    1. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*,

2. U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. part 23, and
3. Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document, and
- (a) Except as FTA determines otherwise in writing, follow:
  1. The most recent edition of FTA Circular 4702.1, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable Federal laws, regulations, and guidance.
  2. U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3, and
  3. Other applicable Federal guidance that may be issued.
- (3) Equal Employment Opportunity.
  - (a) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and:
    1. Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*,
    2. Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, and as further amended by Executive Order 13672, “Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity,” July 21, 2014,
    3. Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document, and
    4. FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients,” and
    5. Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing.
  - (b) Specifics. The Recipient agrees to:
    1. Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their:
      - a. Race,
      - b. Color,
      - c. Religion,
      - d. National Origin,
      - e. Disability,
      - f. Age,
      - g. Sexual Origin,

- h. Gender identity, or
    - i. Status as a parent, and
  - 2. Take affirmative action that includes, but is not limited to:
    - a. Recruitment advertising,
    - b. Recruitment,
    - c. Employment,
    - d. Rates of pay,
    - e. Other forms of compensation,
    - f. Selection for training, including apprenticeship,
    - g. Upgrading,
    - h. Transfers,
    - i. Demotions,
    - j. Layoffs, and
    - k. Terminations.
- (c) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with:
  - 1. U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and
  - 2. Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note
- (4) Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as “Disadvantaged Business Enterprises” (DBEs), in the Project as follows:
  - (a) Requirements. The Recipient agrees to comply with:
    - 1. Section 1101(b) of MAP-21, 23 U.S.C. § 101 note,
    - 2. U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. part 26, and
    - 3. Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document.
  - (b) Assurance. As required by 49 C.F.R. § 26.13(a), the Recipient provides assurance that:
    - 1. It shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract.
    - 2. It shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- (5) Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including:

- (a) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.*,
  - (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance”, 49 C.F.R. part 25, and
  - (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document.
- (6) Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including:
- (a) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § § 621 – 634, which prohibits discrimination on the basis of age,
  - (b) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, which implements the ADEA,
  - (c) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § *et seq.*, which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds,
  - (d) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, which implements the Age discrimination Act of 1975, and
  - (e) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document.
- (7) Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities:
- (a) Federal laws, including:
    - 1. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities,
    - 2. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities,
    - 3. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities,
    - 4. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and
    - 5. Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities.
  - (b) Federal regulations, including:
    - 1. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.F. part 37,

2. U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27,
  3. U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39,
  4. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38,
  5. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35,
  6. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36,
  7. U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630,
  8. U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F,
  9. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and
  11. FTA Circular 4710.1, “Americans with Disabilities Act: Guidance,” and
  12. Other applicable Federal civil rights and nondiscrimination guidance.
- (8) Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of:
- (a) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 *et seq.*,
  - (b) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 *et seq.*, and
  - (c) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2.
- (9) Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following:
- (a) Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. § 2000d-1 note, and
  - (b) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005.
- (10) Environmental Justice. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following:

- (a) Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and
  - (b) DOT Order 5610.2, “Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,” 62 Fed. Reg. 18377, April 15, 1997, and
  - (c) The most recent and applicable edition of FTA Circular 4703.1, “Environmental Justice Policy Guidance for Federal Transit Administration Recipients,” August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance.
- (11) Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to:
- (a) Comply with other applicable Federal nondiscrimination laws and regulations, and
  - (b) Follow Federal guidance prohibiting discrimination.
- (12) Promoting Free Speech and Religious Liberty. The recipient shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

## **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

### **FTA Circular 4220.1F**

The Recipient agrees not to use FTA funds for third party procurements unless there is satisfactory compliance with Federal requirements. Therefore:

- (1) Federal Laws, Regulations, and Guidance. The Recipient agrees:
- (a) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable Federal laws and regulations now in effect or later that affect its third party procurements,
  - (b) To comply with U.S. DOT third party procurement regulations, specifically 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 – 19.48, and other applicable Federal regulations that affect its third party procurements in effect now and as may be later amended,
  - (c) To follow the most recent edition and any revisions of FTA Circular 4220.1F, “Third Party Contracting Guidance,” to the extent consistent with applicable Federal laws, regulations, and guidance, except as FTA determines otherwise in writing, and
  - (d) That although the FTA “Best Practices Procurement Manual” provides additional third party contracting guidance, the Manual may lack the necessary information for compliance with certain Federal requirements that apply to specific third party contracts at this time.

## **DEBARMENT AND SUSPENSION**

The Recipient agrees that:

- (1) It will not engage Third Party Participants that are debarred or suspended except as authorized by:
  - (a) U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200,
  - (b) U.S. OMB, “Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180, including any amendments thereto, and
  - (c) Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101 note,
- (2) It will review the “Excluded Parties Listing System” at <https://epls.gov> (to be transferred to <https://www.sam.gov>), if required by U.S. DOT regulations, 2 C.F.R. part 1200, and
- (3) It will include, and require its Third Party Participants to include a similar condition in each lower tier covered transaction, assuring that all lower tier Third Part Participants:
  - (a) Will comply with Federal debarment and suspension requirements, and
  - (b) Review the “Excluded Parties Listing System” at <https://www.epls.gov> (to be transferred to <https://www.sam.gov>), if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200.

## **BUY AMERICA**

Domestic preference procurement requirements of:

- (1) 49 U.S.C. § 5323(j), as amended by MAP-21 and FAST Act, and
- (2) FTA regulations, “Buy America Requirements,” 49 C.F.R. part 661, to the extent consistent with MAP-21 and FAST Act.
- (3) Uniform Administrative Requirements, Compliance with FTA’s Buy America requirements shall be deemed to satisfy 2 CFR § 200.322, “Domestic Preferences for Procurements.”
- (4) Limitation on Certain Rolling Stock Procurements, The Recipient will comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u).

## **PROVISIONS FOR RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION**

The Recipient understands and agrees that:

- (1) FTA Interest. FTA has a vested interest in the settlement of any disagreement involving the Project including, but not limited to:
  - (a) A major dispute,
  - (b) A breach,
  - (c) A default, or
  - (d) Litigation,

- (2) Notification to FTA. If a current or prospective legal matter that may affect the Federal Government emerges:
  - (a) The Recipient agrees to promptly notify:
    - 1. The FTA Chief Counsel, or
    - 2. The FTA Regional Counsel for the Region in which the Recipient is located,
    - 3. U.S. DOT Inspector General Counsel for the Region
  - (b) The types of legal matters that require notification include, but are not limited to:
    - 1. A major dispute,
    - 2. A breach,
    - 3. A default,
    - 4. Litigation, or
    - 5. Naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason, and
  - (c) The types of matters that may affect the Federal Government include, but are not limited to:
    - 1. The Federal Government's interests in the Project, or
    - 2. The Federal Government's administration or enforcement of Federal laws or regulations,
- (3) Federal Interest in Recovery
  - (a) General. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the Federal share for the Project, but
  - (b) Liquidated Damages. Notwithstanding the preceding section XI.(1) of this document, the Recipient may return all liquidated damages it receives to its Project Account rather than return the Federal share of those liquidated damages to the Federal Government,
- (4) Enforcement. The Recipient agrees to pursue its legal rights and remedies available under:
  - (a) Any third party agreement,
  - (b) Any Federal law or regulation,
  - (c) Any State law or regulation, or
  - (d) Any local law or regulation,

#### **BYRD ANTI-LOBBYING AMENDMENT**

The Recipient agrees that, as provided by 31 U.S.C. § 1352(a):

- (1) Prohibition on Use of Federal Funds. It will not use Federal funds:
  - (a) To influence any:
    - 1. Officer or employee of a Federal agency,
    - 2. Member of Congress,



3. Officer or employee of Congress, or
4. Employee of a Member of Congress,
- (b) To take any action involving the Project or the Underlying Agreement for the Project, including any:
  1. Award,
  2. Extension, or
  3. Modification,
- (2) Laws and Regulations. It will comply, and will assure that each Third Party Participant complies with:
  - (a) 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 as necessary by 31 U.S.C. § 1352, as amended, and
  - (c) Other applicable Federal laws and regulations prohibiting the use of Federal funds for any activity concerning legislation or appropriations designed to influence:
    1. The U.S. Congress, or
    2. A State legislature, but
- (3) Exception. The prohibitions of (1)-(2) above do not apply to an activity that is undertaken through proper official channels, if permitted by the underlying law or regulations.

### **CLEAN AIR & CLEAN WATER**

The Recipient agrees to include adequate provisions in each third party agreement exceeding \$150,000 to ensure that each Third Party Participant will agree to:

- (1) Report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities,”
- (2) Refrain from using any violating facilities,
- (3) Report violations to FTA and the Regional U.S. EPA Office, and
- (4) Comply with the inspection and other requirements of:
  - (a) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7606, and other requirements of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7671q, and
  - (b) Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1388.

### **CARGO PREFERENCE**

- (1) Use of United States-Flag Vessels. Shipping requirements of:
  - (a) 46 U.S.C. § 55305, and
  - (b) U.S. Maritime Administration regulations, “Cargo Preference - U.S.-Flag Vessels,” 46 C.F.R. part 381.

### **FLY AMERICA**

The Contractor agrees to comply with 49 USC 40118 (the Fly America Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act.

### **ENERGY CONSERVATION**

The Recipient agrees to, and assures its Subrecipients will:

- (1) State Energy Conservation Plans. Comply with the mandatory energy standards and policies of its State energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321 *et seq.*, except as the Federal Government determines otherwise in writing, and
- (2) Energy Assessment. Perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. part 622, subpart C.

## **Buy America Certification**

### **Certification Requirement for Procurement of Steel or Manufactured Products**

This procurement is subject to Federal Transit Administration requirements in 49 CFR Part 661. A

*The Buy America Certificate, as shown below, must be completed and submitted with your Bid.*

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

The Bidder hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j) (1) and the applicable regulations in 49 CFR Part 661.5. The product will be manufactured in the United States with all components being of US Origin.

Bidder agrees to submit a complete bill of materials with the origin of each component. The bill of materials must be submitted as a condition of retainage release where retainage is part of the contract.

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

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

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

The Bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2) (B) or (j) (2) (D) and the regulations in 49 CFR § 661.7.

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

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

**THIS FORM MUST ACCOMPANY BID**

### LOBBYING CERTIFICATION

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

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a federal department or agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a member of the U.S. Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification thereof.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal Contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction, as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, USC § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

**Name of the Bidder's authorized official:** \_\_\_\_\_

**Title:** \_\_\_\_\_

\_\_\_\_\_  
Signature Date

**THIS FORM MUST ACCOMPANY BID**