

# REQUEST FOR PROPOSALS - REVISED

## Garage Door Replacement

### Tri-Valley Transit, Inc, Orange County

One L Street  
Randolph, VT 05060

#### Information

Tri-Valley Transit (TVT) in Orange & N. Winsor county is looking to obtain bids for the complete replacement of 8 garage doors at our 13 Hedding drive site. The following specifications are necessary for the bid. We are open to contractor recommendations as long as these basic specifications are met. Work must be completed by late October.

#### Project Scope

The project consists of replacement of 8 garage doors with doors compatible with the two variations of doors, all with the below minimum specifications needed:

- Doors: White doors that are made of aluminum, 2" in thickness with a ½" of insulation and full- row-glass section. Insulated steel doors with one section aluminum sash ½ insulated glass. Minimum R-value = 17.4.
- Steel tracks
- Motors: ½ H/P w/ electric brakes
- Springs: 25,000 cycle springs
- Jack Shaft: 1 ¼"
- Controllers: Push button on interior
- Keypad entry: Wireless
- Sensors on each door safety - Looking for Safety Edges on all doors

#### Proposal Requirements

A complete proposal will include:

- Description, brochure, specifications for doors to be installed
- A list of references for work completed
- Proposed timeline for the completion
- Warranty information for manufacturer and installer
- Acknowledgement of Receipt of Federally Required Third Party Clauses, located on our website ([Federal Required Third Party Contract Clauses and Acknowledgement in the about TVT section](#), Procurement and RFP's)

The price to be quoted shall be the total price of the bid and should be considered the bidder's best and final offer. Bid packet can be requested by emailing Bill Morgan, Operations Manager, TVT ACTR at [bmorgan@trivalleytransit.org](mailto:bmorgan@trivalleytransit.org) .

**Contract Provisions for Federally Funded Projects:**

Contractor must follow the regulations for federally funded projects as noted in the attached Addendum. It is the contractor's responsibility to provide an acknowledgement of their agreement to abide by these regulations, this acknowledgement is attached within the Addendum.

In accordance with the Governor of Vermont's Executive Order 01-20 and all Addenda thereto, the Contractor shall conduct work in a cautious and safe manner to prevent the spread of COVID-19. Work practices and training of Contractor personnel shall be in compliance with the latest guidance from the U.S. Center for Disease Control and Prevention (CDC), Occupational Safety and Health Administration (OSHA), Local health departments and any applicable state executive orders and addenda.

Disadvantaged Business Enterprise (DBE) Policy: It is the policy of the U.S. Department of Transportation that minority- and women-owned business enterprises (hereby referred to as DBEs) as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds.

DBE Obligation: The recipient or its subcontractor agrees to ensure that DBEs have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that DBEs have the maximum opportunity to compete for and perform contracts. Recipients and their subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

All proposals are the property of TVT upon submission. Any expenses incurred to prepare or submit this RFP are the responsibility of the applicant. TVT reserves the right to reject any and all proposals or to cancel this RFP in part or in its entirety if it is in the best interests of TVT. The RFP does not obligate TVT to award a contract. Any bid received after the "deadline for submission of bids" shall be declared late and will be rejected.

Any solicitation, award, procurement, and activity involved with the project shall be done in conformance with Title VI of the 1964 Civil Rights Act, such that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance.

**Payment Terms**

Tri-Valley Transit adheres to a net 30 payment schedule, deviations from the payment schedule may be discussed.

**Evaluation of bids:**

Criteria proposals will be judged on:

- Adherence to minimum scope above 30%
- Availability to perform work within timeline. 30%
- Length of time for work completion 20%
- Comparison of specs to other bids 10%
- Total performance value in comparison to cost 10%

**Submission Requirements:**

Electronic copies of the proposal should be sent to [angela@trivalleytransit.org](mailto:angela@trivalleytransit.org) and [bmorgan@trivalleytransit.org](mailto:bmorgan@trivalleytransit.org) . If you would like to include hard copies, envelopes should be addressed to:

Tri Valley Transit, Inc.  
Attention: Angela McCluskey, Procurement Administrator  
297 Creek Road  
Middlebury VT 05753

**Bids will be due no later than September 9, 2020 at 2:00pm.**

It is the applicant’s responsibility to ensure that proposals are complete and delivered by the deadline time and date as indicated above. Incomplete or late proposals received after the stated deadline will not be accepted or returned.

**Questions**

Questions regarding the project scope of work should be submitted by September 1, 2020 to Angela McCluskey at [angela@trivalleytransit.org](mailto:angela@trivalleytransit.org) and Bill Morgan at [bmorgan@trivalleytransit.org](mailto:bmorgan@trivalleytransit.org) . All potential bidders submitting questions will receive all questions and corresponding answers no later than September 4, 2020.

**Timeline**

RFP released	August 28, 2020
Deadline for questions to be submitted	September 1, 2020 by 2pm.
Deadline for pre-proposal opening protests	September 4, 2020
Deadline for proposals to be submitted	September 9, 2020, by 2pm.
Deadline for post-proposal protests	September 14, 2020, by 2pm.
Date of vendor selection	September 17, 2020
Deadline for post-award protests	3 Working days after award
Deadline for work to be completed	October 30, 2020

## **PROTEST PROCEDURES**

### **GENERAL**

Protests before award must be submitted within the time frame specified below and all protests and related correspondence must be sent via e-mail or US Mail. If the protest is not received by the time specified, the bid or evaluation process shall continue.

TVT reserves the right to amend this procedure at any time.

### **PROTEST BEFORE BID OPENING**

A protest addressing the adequacy of the Invitation to Bid or Request for Proposal, including the Pre-Award Procedure, the Instruction to Bidders, General Terms and Conditions, Specifications and Scope of Work, must be filed with TVT not less than ten (10) full working days before the bid or proposal opening. Thereafter, all issues and appeals are deemed waived by all interested parties.

Upon receipt of the written protest, TVT will determine if the bid opening or evaluation process should be postponed. If the bid opening or evaluation process is postponed, TVT will immediately contact all parties who have been furnished a copy of the specifications that a protest has been filed and that bid opening or evaluation process is postponed until a final decision is issued. An appropriate addendum will be issued regarding a rescheduling of the bid opening or evaluation process.

Any protest may be withdrawn at any time before TVT has issued its decision.

### **PROTEST AFTER BID OPENING**

A protest of a decision by TVT to award a contract to a prime contractor or a subcontractor after bid opening/evaluation process must conform to the above and be received by TVT within three (3) full working days after bid opening or deadline for receipt of proposals, whichever comes first. Thereafter, all such issues and appeals are deemed waived by all interested parties.

In addition, when a protest against the making of an award is received and TVT determines to withhold the award pending disposition of the protest, the bidders/proposers (whose bids/proposals might become eligible for award)

shall be requested, before expiration of the time for acceptance of their bids/proposals, to extend the time for acceptance (with the consent of sureties if any) to avoid the need for re-advertising.

When a written protest against the making of an award is received, the award shall not be made until three (3) working days after the matter is resolved. TVT may, however, proceed to make an award if it determines that:

- a. The items to be procured are urgently requested; or
- b. Delivery or performance will be unduly delayed by failure to make the award promptly; or
- c. Failure to make a prompt award otherwise causes undue harm to TVT, the State of Vermont or the Federal Government.

In the event that TVT determines that an award is to be made during the three (3) day period or during the pending of a protest, the FTA will be notified prior to the making of the award. The FTA reserves the right not to participate in such procurements.

If an award is made, the appropriate documents will be prepared to explain the need for the award with notice going to the protestor and other concerned parties.

#### **PROTEST AFTER AWARD**

Protest against an award must be filed with TVT within three (3) full working days immediately following the award. This protest shall conform to the above requirements. Thereafter, such issues are deemed waived by all interested parties.

Although the number of persons involved in or affected by the filing of a protest may be limited to instances where an award has been made, the contractor shall be furnished with the notice of protest and related information. Also, if it appears that the award may be invalidated and a delay in receiving the supplies or service is not prejudicial to TVT interest, TVT shall consider a mutual agreement with the contractor to suspend performance on a no-cost basis.

#### **TVT DECISION ON THE PROTEST**

Written protest, detailing the specific complaint(s), must be submitted to TVT Executive Director on or before the deadlines above.

The Executive Director will evaluate and:

1. Determine if there is a need for review by TVT Board of Directors
2. Seek attorney guidance if necessary
3. Take appropriate actions
4. Advise TVT Board of complaint(s) and actions and seek approval of action no later than thirty days (30) after receipt of complaint(s).

Should the involvement of the Board of Directors be determined necessary, the Board of Directors will review the complaint(s) and take action in accordance with FTA guidance no later than thirty (30) calendar days after receipt of complaint(s).

Following an adverse decision by TVT the protestor may file a protest with VTrans and/or the Federal Transportation Administration (FTA)

## **TVT General Contract Provisions**

### **A. Applicability**

The following requirements and conditions shall be considered as an essential part of specifications and proposal. This document will serve as the contract for the project once the bid is awarded. If there is another contract document the following shall be considered part of that contract. These Contract Provisions are attached to a Request for Proposal Tri-Valley Transit (TVT). The Request for Proposal will sometimes be referred to hereinafter as the "RFP" or the "solicitation."

### **B. Energy Conservation**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act pursuant to 42 USC 6321 and 49 CFR part 18.

### **C. 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 current "Master Agreement" between TVT 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.

### **D. Recycled Products**

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

### **E. No Government Obligation to Third Parties**

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

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

### **F. Program Fraud and False or Fraudulent Statements & Related**

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 C.F.R. 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.

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.

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.

### **G. Privacy Act**

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

### **H. Civil Rights Requirements**

The following requirements apply to the underlying contract:

(1) 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.

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

(a) 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 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The 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.

(b) 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.

(c) 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 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) 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.

## **I. Incorporation of FTA Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, 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 TVT requests which would cause TVT to be in violation of the FTA terms and conditions.

## **J. Nondiscrimination – Title VI of the Civil Rights Act**

The Contractor and any subcontractor agree to comply with all requirements prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21, and any implementing requirements FTA may issue.

The Contractor must include the above statement in any subcontract.

## **K. Interest of Member of, or Delegates to, Congress**

No member of, or delegate to, the Congress of the United States, shall be admitted to any share or part of this contract, or to any benefit arising therefrom.

#### **L. Conflict of Interest**

The officers, employees or agents of TVT shall neither solicit nor accept gratuities, favors, or anything of monetary value from Contractors, potential Contractors, or parties to sub-agreements.

#### **M. Prohibited Interests**

No employee, officer, board member, or agent of TVT who is involved in, or is the supervisor of an employee who is involved in, contract specifications, solicitations, selection, or award, shall have any interests in this contract, or the proceeds thereof. In addition, no immediate family members or partners of an employee, officer, board member, or agent of TVT who is involved in or is the supervisor of an employee who is involved in contract specifications, solicitations, selection, or award, shall have any interests in this contract, or the proceeds thereof. Nor shall any organization that employs or is about to employ an employee, officer, board member, or agent of TVT who is involved in, or is the supervisor of an employee who is involved in, contract specifications, solicitations, selection, or award, shall have any interests in this contract, or the proceeds thereof. Finally, no organization that employs or is about to employ any immediate family members or partners of an employee, officer, board member, or agent of TVT who is involved in or is the supervisor of an employee who is involved in contract specifications, solicitations, selection, or award, shall have any interests in this contract, or the proceeds thereof.

#### **N. Lawful Business Conduct**

The Contractor shall conduct its business and perform services pursuant to this contract in a lawful manner, and shall fully comply at all times with all federal, state, and local laws with its business operations.

#### **O. Bid Rejection or Cancellation**

TVT reserves the right to waive any minor bid informalities or irregularities which are not crucial to the bid or prejudice against other bidders and/or to reject, for compelling reasons, any and all bids submitted. TVT may reject all bids or cancel the solicitation before opening if it is deemed by TVT to be in its best interest to do so.

#### **P. Non-Collusion**

The bidder guarantees that the bid submitted is not a product of collusion with any other bidder and no effort has been made to fix the bid price for any bidder or to fix any overhead, profit or cost element of any bid price. An affidavit of Non-Collusion, as per attached format, must be signed and submitted with bid (Attachment A).

#### **Q. Notices**

All notices required to be given to TVT hereunder shall be given by Certified Mail, Return Receipt Requested to Executive Director, TVT, to 297 Creek Road, Middlebury, VT 05753.

Bidder shall identify person and address to whom notices shall be given in the bid.

#### **R. Independent Status of TVT and Contractor**

The Contractor recognizes and acknowledges that neither it nor any of its employees are agents or servants of TVT, and that Contractor is and shall remain an independent Contractor in the performance of all services hereunder.

#### **S. Modifications and Withdrawals of Bids**

Bids may be withdrawn by written notice or received at any time before the exact time set for receipt of bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established as an authorized officer of the company and the person signs a receipt for the bid.

#### **T. Right Infringement**

Contractor agrees to save, keep, and hold harmless, and fully indemnify TVT and its officers or agents from all damages, cost, or expenses in law or equity, that may at any time be claimed against TVT for or in connection with any infringement of the patent, trademark, or other rights of any person or persons in the consequence of the use by TVT, or any of its officers or agents, of any product or service supplied under the contract, arising from bids submitted, and any claim that the bidder did not have all necessary right and authority to sell the products or services to TVT, provided TVT gives the Contractor prompt notice in writing of any such claim.

#### **U. Firm Information for TVT Bidder's List**

Fill out Attachment B in entirety and return with proposal or bid. In addition, for EACH subcontractor, who may be working for your firm under this contract, copy and fill out sub-contractor information.

#### **V. Miscellaneous**

This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Vermont. The RFP, timeline, TVT General Contract Provisions, TVT Special Contract Provisions, bid documents of contractor, and attachments to any of the above, constitute the entire agreement and may not be amended, supplemented or modified by any oral communications between the parties, or by any written communications from contractor unless accepted in writing by TVT. No waiver of any provision of these documents by TVT shall be deemed or constitute a waiver of any other provision. No waiver shall be binding on TVT unless executed in writing by TVT. The provisions of the contract shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties.

**Attachment A**

**Affidavit of Non-Collusion**

I hereby swear (or affirm) under penalty of perjury:

1. That I am the bidder (if the bidder is an individual), a partner in the bid (if the bidder is a partnership), or an officer or employee of the bidding corporation having authority to sign on its behalf (if the bidder is a corporation);
2. That the attached bid or bids has been arrived at by the bidder independently and have been submitted without collusion and without any agreement, understanding, or planned common course of action with any other vendor of materials, supplies, equipment, or service described in the invitation to bid, designed to limit independent bids or competition;
3. That the contents of the bid or bids has not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid or bids, and will not be communicated to any such person prior to the official opening of the bid or bids; and
4. That I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

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

My commission expires \_\_\_\_\_

Proposers E.I Number \_\_\_\_\_  
(number used on employers Quarterly Federal Tax Return)

**Attachment B**

**Firm Information for TVT Bidders List**

**1. Prime Contractor Information**

a. Firm Name \_\_\_\_\_

b. Age of Firm \_\_\_\_\_  
(number of years doing business under current name and or incorporation)

c. Firm' Annual Gross Receipts (most recent completed/audited year) \_\_\_\_\_

d. Name of Project Proposal was submitted for \_\_\_\_\_

**2. Subcontractor Information**

*Subcontractor 1*

a. Firm Name (Subcontractor 1) \_\_\_\_\_

b. Age of Firm \_\_\_\_\_  
(number of years doing business under current name and or incorporation)

c. Firm' Annual Gross Receipts (most recent completed/audited year) \_\_\_\_\_

d. Name of Project Proposal was submitted for \_\_\_\_\_

*Subcontractor 2*

a. Firm Name (Subcontractor 2) \_\_\_\_\_

b. Age of Firm \_\_\_\_\_  
(number of years doing business under current name and or incorporation)

c. Firm' Annual Gross Receipts (most recent completed/audited year) \_\_\_\_\_

d. Name of Project Proposal was submitted for \_\_\_\_\_

*Subcontractor 3*

a. Firm Name (Subcontractor 3) \_\_\_\_\_

b. Age of Firm \_\_\_\_\_  
(number of years doing business under current name and or incorporation)

c. Firm' Annual Gross Receipts (most recent completed/audited year) \_\_\_\_\_

d. Name of Project Proposal was submitted for \_\_\_\_\_

**TVT Internal Use Only**

Procurement Officer determine status:

1. TVT/VT UCP DBE (Y/N) \_\_\_\_\_ 2. Included on Bidder List (date) \_\_\_\_\_

## **TVT SPECIAL CONTRACT PROVISIONS**

### **1. Applicability**

The following requirements and conditions shall be considered as an essential part of specifications and proposal. This document will serve as the contract for the project once the bid is awarded. If there is another contract document the following shall be considered part of that contract. These Contract Provisions are attached to a Request for Proposal for Tri-Valley Transit (TVT). The Request for Proposal will sometimes be referred to hereinafter as the "RFP" or the "solicitation.

### **2. Lobbying**

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

Attachment 1 must be filled out and returned to TVT with the bid or proposal.

### **3. Access to Records and Reports**

The following access to records requirements apply to this Contract:

1. The Contractor agrees to provide TVT, 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 C. F. R. 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.
2. The Contractor shall make available records related to the contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) to TVT, 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.
3. 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.
4. 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 TVT, 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).

#### **4. Default and Termination**

##### **a. Termination for Convenience**

TVT, by written notice, may terminate this contract, in whole or in part, when it is in the TVT's interest. If this contract is terminated, TVT shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

##### **b. Termination for Default**

If a contractor fails to perform in the manner called for, or breaches any provision of the contract, TVT may terminate the contract for default. Termination shall be effected by TVT serving a notice of termination on the contractor setting forth the reason for termination. The contractor will only be paid the contract price for services performed through the date of termination, and the contract price may be offset by any damages incurred by TVT by reason of contractor's default under the contract.

##### **c. Opportunity to Cure**

TVT in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to TVT's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor or written notice from TVT setting forth the nature of said breach or default, TVT shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude TVT from also pursuing all available remedies against Contractor and its sureties for said breach or default.

##### **d. Waiver of Remedies for any Breach**

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

##### **e. Cost and Expenses**

In the event of a default under the contract by the contractor, contractor shall reimburse TVT for all costs and expenses reasonably incurred by TVT in connection with the default, including without limitation, attorney's fees. Additionally, in the event a lawsuit or action is filed by TVT to enforce the contract provisions, TVT shall be reimbursed by the contractor for all costs and expense incurred in connection with the suit or action, including reasonable attorney's fees at the trial level and on appeal.

#### **5. Clean Water Requirements**

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. 1251 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.

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 or TVT.

## **6. Clean Air and Excluded Facilities**

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. §§ 7401 et seq . The Contractor agrees to report each violation to TVT and understands and agrees that TVT will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The contractor also agrees to comply with the provisions of 40 CFR Part 15 which prohibits the use of facilities included on the EPA list of violating facilities.

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

## **7. Debarment (Suspension from Government Purchases)**

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, TVT may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to TVT if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact TVT for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by TVT.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions (subcontracts) and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.



8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, TVT may pursue available remedies including suspension and/or debarment.

10. Contractor must complete Attachment 2 and submit it to TVT with the bid or proposal.

11. Any Subcontractor whose total payments from the prime contractor, may exceed \$25,000 over the course of this contract, shall also complete Attachment 2. The prime contractor shall be responsible for obtaining this documentation and for submitting it with the bid or proposal.

## **8. Breaches and Dispute Resolution**

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of TVT. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to TVT. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of TVT shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by TVT, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between TVT and the Contractor arising out of or relating to this agreement or its breach will be decided by a court of competent jurisdiction in Vermont.

## **9. Disadvantaged Business Enterprises – Purchases other than Revenue Vehicles**

TVT has an active DBE program required and authorized by the Federal Transit Administration. TVT attempts to hire contractors and subcontractors that represent the community that TVT serves. A DBE is described as a small business concern owned and controlled by socially and economically disadvantaged individuals.

### Contract Assurance

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or

such other remedy as TVT deems appropriate.

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 15 days from the receipt of each payment the prime contractor receives from TVT. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of TVT. This clause applies to both DBE and non-DBE subcontractors.

Sanctions/consequences of noncompliance with the prompt payment clause may include:

1. Requiring documentation of all payment to subcontractors for all previous payments from TVT to the prime contractor before any future payments from TVT to the prime contractor are made.
2. Termination of contract for Default
3. Prohibiting prime contractor from bidding on any future TVT contracts.

TVT will ensure that the prompt payment clause of the contract is enforced by:

1. Requiring prime contractors (in sub-contracts in excess of \$10,000), to provide subcontractors with all contract provisions, including the prompt payment provision.) Essentially, ensuring that subcontractors are knowledgeable of the prompt payment requirement.
2. Because our contract requires prompt payment by the prime contractor to the subcontractor, the subcontractor is entitled to prompt payment. Because subcontractors will be aware of this right, and it is in their greatest financial interest to assure that this right is respected, we believe it is reasonable to expect that subcontractors not receiving prompt payment will contact TVT.
3. If TVT is contacted by a subcontractor regarding possible violation of the prompt payment clause by the prime contractor we will make inquiries to the prime contractor. Depending on the response from the prime contractor, TVT may implement the sanctions/consequences listed in the above section.

#### Legal and Contract Remedies

In the event a prime contractor fails to comply with its stated contract goals, and cannot show that a good faith effort has been made to do so, TVT shall initiate the following actions:

1. If there are any findings deemed to be fraudulent or dishonest conduct on the part of the prime contractor in connection with the DBE program associated with the contract, TVT will notify the Department of Transportation's Inspector General, who in turn under 49 CFR 26 may sanction criminal prosecution, action under suspension and debarment or Program Fraud and Civil Penalties rule provided in 26.109.
2. TVT will also consider similar action under our own legal authorities, including responsibility determination in future contracts. Such actions can include termination for default or prohibition from bidding on future TVT contracts.

#### Monitoring and Enforcement Mechanisms

Prime contractors must maintain records and documents of payments to DBEs for three years following the completion of the contract. These records will be made available for inspection upon request by any authorized representative of TVT or DOT. This requirement also extends to any certified DBE subcontractor.

#### DBE Financial Institutions

TVT encourages all prime contractors to use the financial service institutions owned and controlled by socially and financially disadvantaged groups. TVT maintains a list of such institutions and will provide it to any contractors interested in utilizing them.

All prime contractors will include the above statements in this section in all subcontracts over \$10,000.

#### **10. Equal Opportunity Employment for Non-Construction Contracts**

The contractor agrees to comply with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing requirements FTA may issue. Those equal employment opportunity (EEO) requirements include, but are not limited to, the following:

The Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient 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, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor also agrees to comply with any implementing requirements FTA may issue.

The contractor will also insert this provision in all its sub-contracts.

#### **11. Subcontracting and Assignability**

Contractor shall not assign, sublet, pledge or transfer its rights under this Agreement, in whole or in part, nor delegate or subcontract any of its duties or obligations under this Agreement nor grant any licenses or concessions hereunder, without the prior written approval of Tri-Valley Transit's Executive Director. Such approval may be withheld at the sole discretion of TVT's ED.

#### **12. Additional Contractor's Insurance Requirements**

The OR shall provide a certificate of Commercial Liability Insurance at \$1,000,000/occurrence with TVT named as additional insured, proof of Worker's Compensation insurance or proof that this coverage is not legally required and a signed waiver stating such, and proof of Auto Insurance of at least \$100,000/person and \$300,000/occurrence and TVT named as additional insured.

#### **13. Award Based on Initial Proposals**

Awards to proposers may be made, at TVT's sole discretion, without discussion of proposals with proposers. Proposals should be submitted initially on the most favorable terms possible, from a price and technical standpoint.

#### **14. Metric System**

The contractor understands that the Federal government, the USDOT or the FTA may issue guidelines, policies, or regulations requiring metric measurements in this project as may be required by 15 USC 205a (The Metric Conversion Act of 1975) and or Executive order 12770. TVT may, to the extent it deems practicable and feasible, agree to accept products and services with dimensions expressed in the metric system.

#### **15. Liabilities against TVT**

The contractor agrees to indemnify, defend and hold TVT harmless from any and all claims and lawsuits by third parties (including, but not limited to, employees and agents of TVT and the contractor), including

the payment of all damages, expenses, penalties, fines, costs, royalties, charges and attorneys' fees incurred by TVT which arise out of, or relate to contractors performance of the work required under this contract, whether concerning personal injury (or death), damage to property, or any other type of loss or claim, whether these claims or lawsuits are based upon negligence, intentional misconduct, breach of warranty, strict liability in tort, any failure by the contractor to comply with any laws pertaining to the contract documents, the use of patent appliances, products or processes, or any breach by the contractor of any of its other duties, representations, covenants, or the agreements in the contract documents. The contractor will defend all suits brought upon all such claims and lawsuits and will pay all costs and expenses incidental thereto, but TVT shall have the right, at its option, to participate in the defense of any suit, without relieving the Contractor of any of its obligations hereunder.

## **16. Order of Precedence – Proposal**

In the event of inconsistency between provisions of this solicitation prior to the parties entering into a contract, the inconsistency will be resolved by giving precedence in the following order: 1) the TVT project completion timeline for performance as set forth in the solicitation (if any); 2) solicitation instructions and technical specifications, if included; 3) TVT General Contract Provisions, and TVT Special Contract Provisions, which are included in the solicitation documents; and 4) in the event of any inconsistencies between the technical specifications and a written request for approval that has been approved by TVT, the request for approval will have precedence.

## **17. Order of Precedence – Contract**

In the event of inconsistency between various documents that constitute the contract, the inconsistency will be resolved by giving precedence in the following order 1) any modifications approved by TVT after the contract was signed; 2) any contract documents TVT executes to award the contract (such as a purchase order, letter of contract award, or negotiated contract signed by both parties); 3) the Contractor's proposal including any approved equals or modifications approved by TVT; and 4) the solicitation.

## **18. Use of TVT's Name in Contractor Advertising or Public Relations**

The Contractor will not allow the TVT logo(s) or any TVT-related copy to be published in the Contractor's advertisements or public relations programs without TVT's written approval and then only upon submitting such material to TVT for review. The Contractor will agree that published information on TVT or its services will be factual and in no way imply that TVT endorsed the Contractor's firm, service, or product.

## **19. Protest Procedures**

Any bidder wishing to protest prior to or after the award of a contract must follow TVT's protest procedures contained below. Deadlines in protest procedures must be adhered to otherwise TVT will not consider the protest. In addition, the protest must include a statement that that it is a protest, otherwise it will not be considered a protest.

### **Protest Procedures**

Protests concerning TVT's purchasing policies, the contract requirements, the specifications, the bidding procedures, or the contract award, or any other request for explanation or clarification must be submitted in writing and must include the following information:

- The name and address of the protester.

- The name and telephone number of the protester's contact person having responsibility.
- A complete statement of the grounds of the protest with full documentation of the protester's claim.

**a. Pre-award Protests**

Pre-award protests must be received by TVT no less than ten (5) working days before the scheduled bid opening. TVT will respond to the protest in writing and render its final decision at least five (3) working days prior to bid opening. TVT will report such protests to the FTA regional office.

**b. Post-award Protests**

Post-award protests will be received no later than five (3) working days after notification of the award bid. TVT will have ten (3) working days after receipt of the formal protest package to evaluate, and issue a response, except in cases where the original bid has been awarded by the Board. In such cases, the decision to protest will be handled at the next regularly scheduled Board meeting, following completion of the staff review of the protests. TVT will report such protests to the FTA regional office.

**c. Appeals to FTA**

It is the responsibility of TVT to settle contract issues and disputes. TVT is committed to using good sound administrative practices and business judgements, as well as professional ethics. Reviews of protests by FTA will be limited to alleged failure by TVT to have followed proper protests procedures, or its failure to review a complaint or protest. Protesters dissatisfied with TVT's final decision may appeal to FTA regional or Headquarters Office within five (3) working days of the date the protester knew or should have known of the violation.

**20. Addenda Acknowledgement**

The bidder must submit with the Bid and Addenda Acknowledgement Form acknowledging receipt of all bid addenda issued by TVT. Acknowledge receipt of addenda on Attachment 3.

**21. Tax Exception and Tax Issues**

TVT is a 501(c)(3) and is exempt from payment of all State and local sales taxes. Said taxes must not be included in prices. TVT will provide necessary tax exemption information upon request of Contractor after contract award. Contractor shall pay promptly all taxes, excises, license fees and permit fees of whatever nature, applicable to its operations hereunder and take out, pay for, and keep current all licenses, municipal, state, and federal, required for the conduct of its business pursuant to this contract, and further agrees not to permit any of the said taxes excises, or license fees to become delinquent.

**22. DAVIS BACON ACT AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

**WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT**

Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal

Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts.

Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5 (a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14. Definitions: For purposes of this article, Davis Bacon Act and Contract Work Hours and Safety Standards Act, the

following definitions are applicable:

(1) "Award" means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, Contractors and subcontractors.

(2) "Contractor" means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Subrecipients, and Recipients' or Subrecipients' contractors, subcontractors, and lower-tier subcontractors. "Contractor" does not mean a unit of State or local government where construction is performed by its own employees."

(3) "Contract" means a contract executed by a Recipient, Subrecipient, prime contractor or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable)

(i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and,

(ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. "Contract" does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.

(4) "Contracting Officer" means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

(5) "Recipient" means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

(6) "Subaward" means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower-tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient's procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of "Award" above.

(7) "Subrecipient" means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

(a) Davis Bacon Act

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3) ), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30- day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the

benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is



responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5

(a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5

(a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH- 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in

excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the

Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in (a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

(7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who

has an interest in the Contractor's firm is a person or firm ineligible to be awarded

Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications,

hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees.

## Attachment 1

### Lobbying Certification

The undersigned [Contractor] certifies, to the best of his or her 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 an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(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 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 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, 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 and not more than \$100,000 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. A 3801, et seq., apply to this certification and disclosure, if any.

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

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

\_\_\_\_\_ Date

**Attachment 2**

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Covered Transactions**

*This form shall be completed by the prospective prime contractors AND prospective subcontractors, whose contract amount MAY exceed \$25,000 over the life of the contract.*

(1) The prospective primary participant (potential contractor or subcontractor) \_\_\_\_\_ certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The primary participant (potential contractor or subcontractor) \_\_\_\_\_ certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification.

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

\_\_\_\_\_ Name and Title of Contractor's or Subcontractor's Authorized Official

\_\_\_\_\_ Date

**Attachment 3**

**Addenda Acknowledgement Form**

**Addenda received**

**Addendum No:** \_\_\_\_\_

**Date Received:** \_\_\_\_\_

**Addendum No:** \_\_\_\_\_

**Date Received:** \_\_\_\_\_

**Addendum No:** \_\_\_\_\_

**Date Received:** \_\_\_\_\_

**Addendum No:** \_\_\_\_\_

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**Addendum No:** \_\_\_\_\_

**Date Received:** \_\_\_\_\_

**Addendum No:** \_\_\_\_\_

**Date Received:** \_\_\_\_\_

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

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

\_\_\_\_\_ Date

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

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

**Acknowledgement of Receipt of General and Special Contract Provisions**  
(known as Federally Required Third Party Contract Clauses)

Acknowledgement of Receipt:

I acknowledge receipt of the “Federally Required Third Party Contract Clauses” general and special contract provisions addendum as part of the bid/quote package and potential future contract as required by the Federal Transit Administration (FTA), State of Vermont Department of Transportation (VTrans) and Tri-Valley Transit, Inc. (TVT).

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date