

NAUGATUCK VALLEY COUNCIL OF GOVERNMENTS and the VALLEY TRANSIT DISTRICT

REQUEST FOR PROPOSAL

#08-18

PROPANE AUTOGAS SYSTEM CONVERSION

INDEX

RFP #08-18

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SECTION I

BACKGROUND

The Valley Transit District was formed in 1971 by the four towns of the Connecticut Valley Region. These four towns are Ansonia, Derby, Seymour and Shelton. The District's mission is to provide local, coordinated public transportation for the residents of the area. VTD service is open to all within the district on a shared ride, reservation basis providing Dial-A Ride, ADA, and shuttle services. The District fleet consists of fourteen (15) passenger wheelchair accessible vehicles. Hours of operation are Monday through Friday 6:00 am to 6:00 pm.

The Naugatuck Valley Council of Governments is a direct recipient of FTA 5307 funding on behalf of the Valley Transit District. This project is funded by Federal funds through the Federal Transit Administration (FTA) under the 49 USC Section 5307 along with state and local funds.

All capital contracts/agreements derived from this procurement will be made with the Naugatuck Valley Council of Governments (NVCOG) on behalf of the Valley Transit District (VTD).

NVCOG/VTD is soliciting Proposals from qualified firms to This Request for Proposal (RFP) is for the purpose of contracting with a qualified firm to provide all of the following:

EPA certified liquid injected propane autogas bi-fuel vehicle conversion systems for those vehicles as a service to the Valley Transit District as outlined within this document. This project will help the Valley Transit District meet its objectives to reduce emissions, improve the environment, reduce fuel costs, and use a fuel that is produced in the United States. All requirements are as per specifications enclosed herein.

It is **VTD's** intention to utilize one (1) qualified Vendor for the items requested in this procurement.

This RFP is not to be construed as a commitment of any kind; nor does it commit **VTD or NVCOG** to pay for costs incurred in the submission of a Proposal or for any costs incurred prior to the execution of a formal contract.

SECTION II

SPECIFIC TERMS AND CONDITIONS

2.0 COMMUNICATIONS. Communications in connection with this RFP/Contract shall be in writing only and shall be addressed to Mark Pandolfi VTD Executive Director. Proposals will be submitted to the attention of Mark Pandolfi. The address for U.S. mail and hand delivery is **Valley Transit District**, 41 Main Street, Derby, CT. 06418. The telephone number is 203-735-6824, the fax number is 203-735-0277, and e-mail is mpandolfi@valleytransit.org. It is the responsibility of the Proposer to assure that correspondence has been received by **VTD**. Any questions or comments directed to other **VTD** employees, officials, or agents may result in an Offeror's Proposal being disqualified.

2.1 SMALL BUSINESS ENTERPRISE (SBE). Please be advised that no Small Business Enterprise (SBE) goal has been assigned for this procurement. There are **no subcontracting opportunities** to be offered with this contract.

2.2 DISADVANTAGED BUSINESS ENTERPRISE (DBE). Please be advised that no Disadvantaged Business Enterprise (DBE) goal has been assigned for this procurement. There are **no subcontracting opportunities** to be offered with this contract.

2.5 BRAND NAMES/APPROVED EQUAL. If present, brand, manufacturer or product names are indicated in the specifications only for the purpose of establishing identification and a general description of the item(s) sought. Items of equal quality, not bearing such names, may be submitted. A sample of the substituted item(s) **must** be supplied upon request.

Any request for an approved equal must be fully supported by technical data, test results or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirements. All requests for Proposal deviations will be responded to via an addendum.

2.6 PROPOSAL QUESTIONS/CLARIFICATIONS AND/OR SUGGESTIONS. Proposers are encouraged to make suggestions and recommendations regarding the specifications and content of this Proposal. All suggestions will be reviewed by the Project Manager assigned to this project and will be addressed in writing via an addendum. Additionally, questions and/or requests for clarifications regarding the content of this Proposal are to be submitted in writing and will be addressed in the same addendum format. If a Proposer feels a conflict exists between what is considered a good practice and these specifications, he/she shall state in writing all objections prior to submitting a Proposal.

All interested Proposers who requested a Proposal will receive all issued addenda. All items meeting the requirements of this section must be submitted in writing to the attention of Mark Pandolfi and must be received by **Sept 07, 2018**.

2.7 ADDENDA. **VTD** reserves the right to revise or amend the specifications up to the time set for submitting the Proposals. Such revisions and addenda, if any, shall be announced by addenda to this solicitation. Copies of such addenda shall be furnished to all prospective Proposers. If the revisions and addenda require changes in quantities or specifications, or both, the date set for submitting Proposals must be postponed by such number of days as in the opinion of **VTD** shall enable Proposers to revise their Proposals.

Proposers must acknowledge receipt of addenda on the form included with the addenda. Failure to acknowledge receipt of all addenda may cause the Proposal to be considered non-responsive to the solicitation.

2.8 PROPOSAL DUE DATE. Proposals are due on or before **Sept 28, 2018 at 4:00p.m.** The address for U.S. mail and hand delivery is Valley Transit District, 41 Main Street, Derby, CT. 06418

2.9 PROPOSAL WITHDRAWAL. Each and every Proposer who submits a Proposal specifically waives any right to withdraw it except as hereinafter provided. Proposers will be given permission to withdraw any Proposal after it has been deposited with **VTD**, provided any Proposer makes his/her request in writing, one (1)

hour before time that Proposals are due. No Proposer may withdraw his/her Proposal at any time beyond this deadline.

2.10 OPENING OF PROPOSALS. Proposals will not be publicly opened. All Proposals and evaluations will be kept strictly confidential throughout the evaluation, negotiation, and selection process. Only the members of the Evaluating Committee and other procuring officials, employees, and agents having a legitimate interest will be provided access to the Proposals and evaluation results during this period.

2.11 PROCUREMENT PROCESS. This procurement is following the process as provided for in **VTD's** and **NVCOG's** Procurement Procedures, as amended. In addition to price and the responsiveness to technical specifications, there are other factors that may also be considered in the procurement in order to determine what is in the best interest of the participating agencies and is the most efficient and economical use of public funds.

2.12 ACCEPTANCE/CONTRACT. Each Proposal is to be submitted with the understanding that the acceptance in writing by **VTD** of the offer described herein shall constitute a contract between the Proposer and **VTD/NVCOG**, which shall bind the Proposer on its part to furnish at the prices Proposal and in accordance with the terms and conditions of this Proposal. The contract shall be considered as made in Connecticut, and the construction and enforcement of it shall be in accordance with the laws of the State of Connecticut. The successful Proposer will be required, within ten (10) days after receiving written notice to do so, to enter into a capital contract with **NVCOG**. The terms and conditions of a final contract between **VTD** and the successful Proposer will be subject to negotiation. All negotiation will be kept strictly confidential throughout the selection process. Only the procuring officials, employees and agents having a legitimate interest will be provided access to the Proposals and negotiation results during this period. The contract will be considered a part of these specifications and is incorporated by this reference.

2.13 AWARD. The contract will be awarded to the highest scored responsive and responsible Proposer, whose Proposal is most advantageous to **VTD**, all factors being considered. Although it is **VTD's** hope to award this contract to one contractor, we reserve the right to make multiple awards with different vendors.

VTD RESERVES THE RIGHT TO INTERVIEW; REVIEW MATERIAL AND/OR VISIT QUALIFIED RESPONDENT FACILITIES. VTD RESERVES THE RIGHT TO NEGOTIATE ANY PART OF THIS PROPOSAL INCLUDING ON A COST ELEMENT BASIS AND/OR REQUEST A BEST AND FINAL PROPOSAL. ADDITIONALLY, VTD RESERVES THE RIGHT TO AWARD ON THE BASIS OF INITIAL PROPOSALS SUBMITTED WITHOUT ANY NEGOTIATIONS OR DISCUSSIONS. PROPOSALS SHOULD BE SUBMITTED INITIALLY ON THE MOST FAVORABLE TERMS POSSIBLE, FROM A TECHNICAL STANDPOINT. VTD ADDITIONALLY RESERVES THE RIGHT TO DISCARD ALL PROPOSALS AND REISSUE SAID RFP. VTD RESERVES THE RIGHT TO WAIVE ANY INFORMALITIES OR VARIATION IN ANY PROPOSAL THAT IT DEEMS TO BE IMMATERIAL OR TO REJECT ANY OR ALL, OR ANY PART OF ANY PROPOSAL IF SUCH ACTION IS DEEMED TO BE IN THE BEST INTEREST OF VTD, NVCOG AND/OR THE DEPARTMENT OF TRANSPORTATION OF THE STATE OF CONNECTICUT.

2.14 INVOICING. All invoices for capital purchases must be addressed to Accounts Payable and be sent directly to the **Naugatuck Valley Council of Governments** 49 Leavenworth St Suite 303, Waterbury, CT 06702. **All invoices must be addressed to Accounts Payable.** Invoices must be submitted for all services in accordance with the successful Vendors pricing Proposal. Invoices must include the Purchase Order Number and Division for each individual order. The Proposer shall state the price based on payment terms of net thirty (30) days after acceptance thereof. **VTD and NVCOG** are exempt from the payment of state sales tax. Tax exempt certificates will be provided upon contract award.

2.15 INTEREST. **VTD** will not pay interest on unpaid or disputed invoices, whether due or overdue.

2.16 ASSIGNMENT. The selected Proposer shall not assign, transfer, convey or otherwise dispose of, in whole or part, the contract, purchase order or any award relating to this RFP without the prior written approval of **VTD**, which approval **VTD** may withhold in its sole and absolute discretion. In case any work, materials or equipment which are mentioned, specified or indicated or otherwise provided for in the contract or in the specifications forming a part of the contract shall be required to be omitted from, in or about the work, the

Proposer shall, if ordered by the Executive Director or his/her designee, upon ten (10) days prior written notice, omit the performance of such work and the furnishings of such materials or equipment and there shall be deducted from the amount to be paid to the Proposer the amount which the Executive Director or his/her designee and the Proposer shall determine and mutually agree to be the reasonable value of such work, materials and equipment, and such determination and agreement shall be final and conclusive upon the Proposer.

It is understood, however, that the amount of work, materials or equipment required by the contract shall not, in accordance with the above provisions referring to additions or omissions, be so increased or diminished as to substantially alter the general character or extent of the contract.

2.17 CONTRACT CHANGES. VTD may, at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, a mutually acceptable equitable adjustment shall be made in the contract price and the contract shall be modified in writing accordingly. Any claim by VTD for adjustment under this clause must be asserted within ten (10) calendar days from the date of receipt by the Proposer of the notification of change.

2.18 CONTRACT TERMINATION. In the event that this contract is terminated, for any valid reason VTD reserves the right to award this contract to the second highest-ranking Proposer based on the original evaluations and/or procure such items in any manner it determines to be in its best interest and the selected Proposer shall be liable to VTD for any excess costs for such similar materials or services.

2.19 CONTRACTOR EVALUATION/DEMAND TO CURE. Contractor performance will be evaluated by VTD's Executive Director or his/her designee until completion or termination of the Contract. The quality of contractor performance in a number of areas will be rated, at a minimum, as satisfactory, needs improvement, unsatisfactory, or not applicable. When evaluations are rated less than satisfactory, contractors will be notified. These notifications shall identify deficient areas in contract performance and afford the Contractor the opportunity to correct/cure or present its position concerning items that were reported to be deficient. Contractors that are determined to be not responsible will not be eligible for Contract award and are subject to the termination clauses for default contained in this document.

Failure to cure deficiencies in performance relative to any of the standards or requirements set forth in this document will result in a "demand to cure" notification to the Contractor from VTD. The third documented notification of a "demand to cure" within any 12-month period may be grounds to cancel this contract for cause.

2.20 SILENCE OF SPECIFICATIONS. The apparent silence of these specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best acceptable commercial practice is to prevail and that only services of the highest standard are to be used. All interpretations of these specifications shall be made on the basis of this statement.

2.21 BREACH OF CONTRACT. If the Contractor shall fail, refuse or neglect to fully comply with the terms and provisions hereof, such a failure, refusal or neglect shall be deemed a breach of this Contract, and VTD may, in its discretion, pursue any and all of its lawful remedies.

2.22 SINGLE PROPOSAL IF RECEIVED. If only a single Proposal is received, VTD may require that the Proposer provide a cost analysis or a price comparison between that of similar equipment, materials, supplies, and/or services to assure that the price is fair and reasonable. If requested, the Proposer shall provide the cost analysis or price comparison within seven (7) calendar days of the date requested. VTD reserves the right to reject or accept the Proposal on the basis of the cost analysis or price comparison.

SECTION III

GENERAL TERMS AND CONDITIONS

3.0 INVESTIGATION OF CONDITIONS. Proposers are directed to read the specifications and terms of this Proposal carefully, as no additional compensation will be granted for failure to inform him/her and or miscalculations.

3.1 VTD RIGHTS. **VTD** reserves the right to procure any item/service by any other means if determined to be in its best interest. **VTD** has sole and exclusive right and title to all printed material produced for **VTD** and the Contractor shall not copyright the printed matter produced under this contract.

The Contractor agrees that it is in compliance with all applicable, federal, state and local laws and regulations; including without limitation all statutes, rules, regulations, ordinances, proclamations, demands, directives, executive orders, or any other requirements of any municipal, state, federal government and all subdivisions thereof which may hereafter govern the sale, delivery, or performance of the goods and/or services contemplated by this Proposal, executive or administrative requirements in furnishing goods and services, including **VTD's** equal employment opportunity and minority business enterprise utilization obligations under its contract with the Federal Transit Administration. The Contractor also agrees that it will hold the State and **VTD** harmless and indemnify the State and **VTD** from any action that may arise out of any act by the Contractor concerning lack of compliance with these laws and regulations.

No Proposal will be accepted from nor will any contract be awarded to any person or firm that is in arrears to **VTD** or **NVCOG** upon any debt or contract or that is a defaulter as surety or otherwise upon any obligation to **VTD** or **NVCOG** or that has failed to perform faithfully in any previous contract with **VTD** or **NVCOG**.

Because bids and offers can at times be ambiguous, in its solicitation documents, **VTD** reserves the right to request additional information before making an award. **VTD/NVCOG** also reserves the right to seek clarification from any bidder or offeror about any statement in its bid or proposal that **VTD** finds ambiguous. **VTD** reserves the right to waive any informalities or variations in any Proposal that it deems to be immaterial, or to reject any or all, or any part of any Proposals if such action is deemed to be in the best interest of **VTD and/or NVCOG**.

3.2 DUTY TO INFORM. If a Proposer becomes aware of any discrepancy, ambiguity, error or omission in this solicitation package, the Proposer shall report it to **VTD's** Executive Director. **VTD** will determine the necessity for clarification and may issue an addendum as a result. If any time during the performance of this contract, the contractor becomes aware of actual or potential problems, fault or defect in the project or any non-conformance with any contract document, Federal, State or local law, rule or regulation, the contractor shall give immediate written notice thereof to **VTD's** Executive Director.

3.3 DISQUALIFICATION OF PROPOSERS. Proposers may be disqualified and Proposals may be rejected for any of, but not limited to, the following causes:

- Failure to use the Proposal Forms furnished by **VTD**;
- Lack of signature by an authorized representative on the Proposal Forms;
- Failure to properly complete the Proposal Forms and certifications;
- Evidence of collusion among Proposers;
- Unfairly represents or conceals any material fact in the Proposal;
- Conform to the law or specifications of this Proposal or
- Unauthorized alteration of the Proposal Forms.
- Conditional Proposals or those taking exceptions to the specifications may be considered non-responsive and may be rejected.
- In all cases, material must be furnished as specified.
- Proposals received after date and time scheduled for Proposal opening will be considered non-responsive.
- All Proposal documents must be returned with Proposal.

3.4 RIGHTS AND REMEDIES. The duties and obligations imposed by the resulting contract and the rights and remedies available hereunder shall be in addition to and not in limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

Failure of **VTD** or **NVCOG** to act shall in no way constitute a waiver of any right afforded to them under this agreement, nor shall any such action or failure to act constitute an approval of or an acquiescence in any breach of this agreement, except as may be specifically agreed in writing by **VTD** or **NVCOG**.

3.5 LAW AND VENUE. This Agreement shall be governed, interpreted and construed under and in accordance with the laws of the State of Connecticut, whether or not its conflict of law principles would dictate otherwise. This Agreement shall be deemed to have been made in Hartford, Connecticut.

The contractor irrevocably consents with respect to any claims or remedies at law or in equity, arising out of or in connection with this Agreement to the jurisdiction of the Connecticut Superior Court (except as otherwise required by law or that Agreement), and, with respect to any claim between the Parties, to venue in Judicial District of Hartford-New Britain at Hartford or the United States Federal Court, District of Connecticut, and irrevocably waives any objections that it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such court or on the basis of forum non conveniens or otherwise. Nothing herein shall be construed to waive any of the States immunities.

3.6 CONTRACT INCORPORATION AND REQUIRED CERTIFICATIONS. Contractor should be aware that the contents of the successful Proposal as well as the entire content of Proposal #08-18 and attachments will become a part of the subsequent contractual documents. Additionally, the contractor should be aware of the contents of the certifications and guidelines contained herein, that it will be required to execute as required by the Federal Transit Administration (FTA), ConnDOT, **VTD** and **NVCOG**. Failure of contractor to accept these obligations will result in the rejection of its Proposal or cancellation of any award. The model clauses set forth in this Proposal are adopted and expressly made part of this Proposal, contract and agreement; and in construing such clauses, all references to the Recipient or government shall be referenced to all participating agencies and/or ConnDOT, and all references to the contractor shall refer to the party awarded any contract as a result of this procurement transaction.

3.7 INDEMNITY AND INSURANCE. The Contractor shall indemnify, defend and hold harmless **VTD**, **NVCOG**, the State of Connecticut and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to **VTD** and the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.

The Contractor agrees to, and will, indemnify and save harmless **VTD and NVCOG**, and the State of Connecticut and its, officers, agents, employees, representatives and attorneys, and each of them harmless from any liability in any amount for claims, suits, actions, damages, and costs of every name and description resulting from the negligent performance of the Second Party and/or of its subcontractors under this Agreement, including any supplement thereto, or resulting from the non-performance of the Second Party and/or any of its subcontractors of any of the covenants and/or specifications of this Agreement including any supplements thereto, and such indemnity shall not be limited by reason of any insurance coverage for damages resulting or alleged to have resulted from personal injury (including, but not limited to death, emotional or mental distress and loss of consortium) and/or for property damage, which may arise or be alleged to have arisen in any way from Contractor's performance under this contract. The Contractor agrees that while performing services specified in this agreement he shall carry sufficient insurance (liability and/or other) as applicable according to the nature of the service to be performed so as to "save harmless" **VTD, NVCOG** and the State of Connecticut from any insurable cause whatsoever. If requested, certificates of such insurance shall

be filed with the contracting State agency prior to the performance of services. Contractor further agrees to, and will, defend indemnities, or any of them, from any claims, actions, or suits for any damages, injuries or losses whatsoever, caused or alleged to have been caused by reason of Contractor's responsibilities as contemplated by the Contract. Contractor's obligations and duties as established in this Section will be in force and apply to Contractor's acts, omissions, or failures to act of any kind, whether negligent, the result of Contractor's willful or intentional misconduct, or otherwise, and shall further apply and be in force even if it is contended the acts, omissions or failures to act of parties other than the Contractor (including indemnities) caused or contributed to the losses, injuries or damages claimed.

The Contractor shall not be responsible for indemnifying or holding **VTD or NVCOG** and the State harmless from any liability arising due to the negligence of **VTD or NVCOG** and the State or any other person or entity acting under the direct control or supervision of **VTD or NVCOG** and the State.

The Contractor shall reimburse **VTD or NVCOG** and the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. **VTD or NVCOG** and the State shall give the Contractor reasonable notice of any such Claims.

The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where **VTD or NVCOG** and the State is alleged or is found to have contributed to the Acts giving rise to the Claims.

The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to **VTD or NVCOG** prior to the effective date of the Contract. The Contractor shall not begin performance until the delivery of the policy to **VTD or NVCOG**. **VTD or NVCOG** shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that **VTD or NVCOG** or the State is contributorily negligent.

For the purpose of the preceding paragraphs, the term "losses" means all amounts paid to settle or satisfy any judgments or awards resulting from any claims arising from an occurrence, plus all amounts paid on account of attorney's fees, court costs and any other costs and expenses relating to the investigation, defense, satisfaction and/or settlement of such claims.

The Bidder/ Proposer shall further assume all liability for loss by reason of neglect or violations of Federal, State, or Local laws, ordinances or regulations and shall do and perform all work necessary to conform to such laws, ordinances and regulations.

The rights provided in this section for the benefit of **VTD or NVCOG** and the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.

This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

3.8 FORCE MAJEURE. **VTD** and the Contractor shall not be excused from their obligation to perform in accordance with the Contract except in the case of Force Majeure events and as otherwise provided for in the Contract. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.

3.9 ADVERTISING. The Seller may not reference sales/service to **VTD or NVCOG** for advertising and/or promotional purposes without the prior approval of the parties.

3.10 INTERPRETATION OF LANGUAGE. Should any question arise as to the interpretation of any language of this Proposal or of any other contract document, the question shall be submitted to **VTD's** Executive Director or his/her designee, who shall interpret the language. His/Her interpretation shall be final and conclusive.

3.11 WAIVER. The waiver of any provision, term or condition herein by the participating agencies on any occasion shall not constitute a general waiver and shall not release the selected Proposer from the obligation of otherwise performing or observing such provision, term or condition.

3.12 SUBJECT TO FINANCIAL ASSISTANCE. The items/services described in these specifications are to be purchased with funding from the State of Connecticut Department of Transportation and Federal Transit Administration. In the event that funding from these sources is eliminated or decreased, **VTD, NVCOG** reserves the right to terminate this Proposal and/or any related purchase order or contract, or modify it or them, accordingly. The successful Proposer will be required to comply with all terms and conditions prescribed for third party contracts by the Federal Transit Administration. This Contract is subject to annual reauthorization of funding.

3.13 ENTIRE AGREEMENT. The terms and provisions herein contained constitute the entire Agreement between the parties and shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto with respect to the subject matter hereof; and no agreement or understanding varying or extending the same shall be binding upon either party hereto unless in writing signed by both parties hereto; and nothing contained in the terms or provisions of this Agreement shall be construed as waiving any of the rights of the State under the laws of the State of Connecticut. Nothing contained in this Agreement shall be construed as an agreement by the State to directly obligate the State to creditors or employees of the Second Party.

3.14 THIRD PARTY CONTRACT REQUIREMENTS. The successful Proposer(s) will be required to comply with all terms and conditions prescribed for third party contracts by the FTA and ConnDOT.

3.15 GOODS AND STANDARDS. Any Goods delivered must be standard new Goods, latest model, except as otherwise specifically stated in the Contract. Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under the Contract. Where the Contract does not specifically list or describe any parts or nominal appurtenances of equipment for the Goods, it shall be understood that the Contractor shall deliver such equipment and appurtenances as are usually provided with the manufacturer's stock model.

3.16 WORKING AND LABOR SYNERGIES. The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties and their work force, **VTD** employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under the Contract.

3.17 RESPONSIBILITY TO PRODUCE. Specifying brand name components and/or equipment in the specifications shall not relieve the Proposer from his or her responsibility to produce the product in accordance with the performance warranty and contractual requirements. The Proposer is responsible for notifying **VTD** of any inappropriate brand name that may be called for in the specifications and to propose a suitable substitute for consideration.

3.18 OMISSION OF DETAILS. No advantage shall be taken by the supplier in the omission of any part or detail that is required to make the supply complete and ready for utilization, even though such detail is not mentioned explicitly in the specifications. All such omissions not herein specified shall conform to the highest standards in the industry.

3.19 BASIS OF AWARD. Award will be based on the lowest qualified Bidder for the items sought.

3.20 REPLACEMENT OF DEFECTIVE OR DAMAGED WORK OR MATERIALS. If the selected Proposer fails to replace any defective or damaged work or materials after reasonable notice, **VTD** may cause such work or materials to be replaced. The replacement expenses (including any and all damage to property) shall be the

responsibility of the selected Proposer(s) and shall be deducted from the amount to be paid to the selected Proposer.

3.21 INSPECTION OF MATERIALS AND WORKMANSHIP. VTD may inspect all material and workmanship at any time during the progress of the work and shall have the right to reject all materials and workmanship which does not conform to the specifications or which is not considered to be of adequate quality

3.22 EXTENSION OF TIME. VTD may determine, in its sole and absolute discretion, that a reasonable extension of time for completion of delivery of services contemplated hereunder may be made under the following conditions:

When the Vendor is delayed due to cause beyond his/her control including, but not limited to strikes, fire, flood, earthquake, storm, acts of God, explosion, war, insurrection, riots, acts of any government (including judicial action or acts of terrorism), and/or any other cause similar to the foregoing. A delay shall be construed as being beyond the selected Proposer's control only if the delay was not reasonably expected to occur in connection with or during the selected Proposer's performance, and it was substantial and in fact delayed the total progress of the work, and it could not adequately have been guarded against by contractual or legal means. When the selected Proposer is delayed in progress regarding one area of fulfilling the agreement, but can proceed with performance in another area, he or she must so proceed.

Where the selected Proposer and VTD have executed a change order that provides for an extension of time of completion, no extension of time will be granted unless a written request for extension is served on VTD within ten (10) business days from commencement of the delay. Requests for extensions of time shall specify the nature of the cause of the delay, and such other proofs as are reasonably related to the cause of the delay. The selected Proposer shall provide VTD with all information reasonably required by it to make a decision on the request. In the case of such extension, the time of delivery completion shall be extended by a period of time equal to 1-1/2 days for every one-day of delay.

3.23 PROTEST POLICY AND PROCEDURES

It is the policy of VTD and NVCOG that it is responsible for resolving all Pre-Bid, Pre-Award and Post-Award Procurement Protest disputes arising out of third party procurements using good administrative practices and sound business judgment. It is VTD's intention that its procurement process provides for fair and open competition in compliance with federal and state laws and VTD policies.

VTD/NVCOG has established these Pre-Bid, Pre-Award and Post-Award Procurement Protest Policy and Procedures so that all procurement protests/disputes are filed, processed and resolved in a manner consistent with the requirements of the Federal Transit Administration (FTA) Circular (4220.1F) *Third Party Contracting Guidance*, dated November 1, 2008, which are on file at VTD's Administrative Offices, 41 Main Street, Derby CT 06418.

APPLICABILITY

This regulation is applicable to all VTD employees. This regulation is applicable to any Interested Party as defined herein who has a protest/dispute against VTD in the Pre-Bid, Pre-Award and Post-Award procurement phase.

DEFINITIONS

"Common Grant Rules" refers to the Department of Transportation regulations "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 CFR Part 18, which apply to Federal grants and cooperative agreements with governmental recipients/subrecipients of Federal assistance including Indian tribal governments.

"Interested Party" means a party that is an actual or prospective Bidder or Offeror whose direct economic interest would be affected by the award or failure to award the third party contract at issue. A subcontractor does not qualify as an "interested party".

"Protest" means a formal declaration of disapproval or objection issued by a concerned person, group, or organization that arises during the procurement process. A Protest is a potential Bidder's or contractor's remedy for correcting a perceived wrong in the procurement process. See "Types of Protests" below.

“Protester” means a person, group, or organization that files a formal declaration of disapproval or objection. A protester must qualify as an “interested party”.

“Types of Protests” there are three basic types of Protests pursuant to this regulation, based on the time in the procurement cycle when they occur:

1. A pre-bid or solicitation phase Protest is received prior to the bid opening or proposal due date. Pre-bid protests are those based on the content of the initial Notice and/or solicitation published by **VTD** requesting bids from vendors or other interested parties.
2. A pre-award Protest is a protest against making an award and is received after receipt of proposals or bids, but before award of a contract.
3. A post-award Protest is a protest received after award of a contract. A post-award Protest must be received within 5 business days of the making of the award. A post-award Protest generally alleges a violation of applicable federal or state law and/or **VTD/NVCOG** policy or procedures relative to the seeking, evaluating and/or awarding of the contract.

STANDARDS

All Protests must be filed in writing to:

NVCOG Administrative Offices
Rick Dunne, Executive Director
49 Leavenworth St Suite 303, Waterbury, CT 06702

Additionally a copy of the protest must be provided to:

VTD Administrative Offices
Mark Pandolfi, Executive Director
41 Main Street
Derby CT 06418

No other locations are acceptable.

A Protest must be in writing and set forth the specific grounds of the dispute and shall be fully supported with technical data, test results, or other pertinent information related to the subject being protested. The Protest shall include the name and contact information of the Protester, solicitation/contract number or description, and what remedy the Protester is seeking. The Protester is responsible for adhering to this regulation. A Protester must exhaust all of protest administrative remedies before pursuing a protest with ConnDOT.

NVCOG’s, Rick Dunne, Executive Director or designee shall make a determination on the Protest generally within ten (10) working days from receipt of the Protest. The Decision of the Executive Director or Designee must be in writing and shall include a response to each substantive issue raised in the Protest. The Executive Director’s decision shall constitute **NVCOG/VTD’s** final administrative determination.

If NVCOG/VTD postpones the date of Bid submission because of a Protest or Appeal of the solicitation specifications, addenda, dates or any other issue relating to the procurement, **VTD** will notify, via addendum, all parties who are on record as having obtained a copy of the solicitation documents that a Protest/Appeal had been filed, and the due date for Bid submission shall be postponed until **NVCOG**, Executive Director or Designee has issued its final Decision.

The Protester may withdraw its Protest or Appeal at any time before a final decision is issued.

NVCOG/VTD’s RESPONSIBILITIES TO CONNDOT and FTA

NVCOG/VTD will notify ConnDOT and FTA when they receive a protest and will keep ConnDOT and FTA informed about the status of the Protest including any appeals.

NVCOG/VTD will provide the following information to ConnDOT:

- Subjects:** **A list of Protests involving that:**
- ✓ Have a value exceeding \$100,000, or
 - ✓ Involve controversial matter, irrespective of amount, or
 - ✓ Involve a highly publicized matter, irrespective of amount.

- Details:** **The following information about each Protest:**
- ✓ A brief description of the Protest,
 - ✓ The basis of disagreement, and
 - ✓ If open, how far the Protest has proceeded, or
 - ✓ If resolved, the agreement or decision reached, and
 - ✓ Whether an appeal has been taken or is likely to be taken.

- When and Where:** **NVCOG/VTD will provide this information:**
- ✓ In its next quarterly Milestone Progress Report, and
 - ✓ At its next Project Management Oversight review, if any.

Failure to comply with the above protest procedures will render a protest untimely and/or inadequate and shall result in its rejection.

**** NVCOG/VTD** reserves the right to modify its protest procedures for the procurement of commodities such as diesel fuel, as award notification must be on the date of the bid opening or within a relatively short period of time thereafter as pricing is tied to market pricing and subject fluctuations of the market.

3.24 AMERICANS WITH DISABILITIES ACT. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. The State of Connecticut and **VTD** may terminate the contract if the Contractor fails to comply with the Act.

3.25 WHISTLEBLOWING. This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State and **VTD** may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

3.26 AUDIT AND INSPECTION OF PLANTS, PLACES OF BUSINESS AND RECORDS.

(a) The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.

(b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.

(c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.

(d) All audits and inspections shall be at the State's expense.

(e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Contract, or (ii) the expiration or earlier termination of this Contract, as the same may be modified for any reason. The State and **VTD** may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.

(f) The Contractor shall cooperate fully with the State and **VTD** and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.

(g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

3.27 CONTINUED PERFORMANCE. The Contractor and Contractor Parties shall continue to perform their obligations under the contract while any dispute concerning the contract is being resolved.

3.28 SEVERABILITY. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.

3.29 CONFIDENTIAL INFORMATION. The State and **VTD** will afford due regard to the Bidder's and Contractor's request for the protection of proprietary or confidential information which the State receives. However, all materials associated with the Bid and the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the Bidder or Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the vendor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Bidder or Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Contract, especially including the Bid, the records and the specifications, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Bidder or Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, the State and **VTD** will endeavor to keep said information confidential to the extent permitted by law. The State and **VTD**, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall the State or **VTD** have any liability for the disclosure of any documents or information in its possession which the State or **VTD** believes are required to be disclosed pursuant to the FOIA or other requirements of law.

3.30 REFERENCES TO STATUTES, PUBLIC ACTS, REGULATIONS, CODES AND EXECUTIVE ORDERS.

All references in this Contract to any statute, public act, regulation, code or executive order shall mean such statute, public act, regulation, code or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this Contract that relates to such statute, public act, regulation, code or executive order, and notwithstanding a lack of a formal amendment to this Contract, this Contract shall always be read and interpreted as if it contained the most current and applicable wording and requirements of such statute, public act, regulation, code or executive order as if their most current language had been used in and requirements incorporated into this Contract at the time of its execution.

3.31 SOVEREIGN IMMUNITY. The parties acknowledge and agree that nothing in the Invitation to Bid or the contract shall be construed as a modification, compromise or waiver by the State or **VTD** of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the contract. To the extent that this section conflicts with any other section, this section shall govern.

3.32 CAMPAIGN CONTRIBUTION RESTRICTION. For all State contracts as defined in Conn. Gen. Stat. § 9-612(g)(1) having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this contract expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice, as set forth in "Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations".

3.33 PROTECTION OF CONFIDENTIAL INFORMATION

(a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.

(b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:

- (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
- (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
- (3) A process for reviewing policies and security measures at least annually;
- (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
- (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.

(c) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.

(d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.

(e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

3.34 TERMINATION. All contracts in excess of \$10,000 shall contain suitable provisions for termination by **VTD** including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

a. Termination for Convenience (General Provision). **VTD** may terminate this contract, in whole or in part, at any time by written notice to the contractor when it is in the State of Connecticut's best interest. The contractor shall be paid its costs, including contract close-out costs and profit on work performed up to the time of termination. The contractor shall promptly submit its termination claim to **VTD** to be paid the contractor. If the contractor has any property in its possession belonging to **VTD**, the contractor will account for the same and dispose of it in the manner that **VTD** directs.

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

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

c. Opportunity to Cure (General Provision). **VTD** in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If contractor fails to remedy to **VTD/NVCOG**'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor of written notice from **VTD/NVCOG** setting forth the nature of said breach or default, **VTD/NVCOG** 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 **VTD/NVCOG** 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 **VTD/NVCOG** elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by **VTD/NVCOG** shall not limit **VTD/NVCOG**'s remedies for any succeeding breach of that or of any other term, covenant or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts). **VTD/NVCOG**, by written notice, may terminate this contract, in whole or in part, when it is in the State of Connecticut's best interest. If this contract is terminated, **VTD/NVCOG** shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service). If the contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, **VTD/NVCOG** may terminate this contract for default. **VTD/NVCOG** shall terminate by delivering to the contractor a Notice of Termination specifying the nature of the default. The contractor will only be paid the contract price for supplies delivered and accepted or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of **VTD/NVCOG**.

g. Termination for Default (Transportation Services). If the contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, **VTD/NVCOG** may terminate this contract for default. **VTD/NVCOG** shall terminate by delivering to the contractor a Notice of Termination specifying the nature of default. The contractor will only be paid the contract price for services performed in

accordance with the manner of performance set forth in this contract. If this contract is terminated while the contractor has possession of **VTD/NVCOG** goods, the contractor shall, upon direction of **VTD/NVCOG** protect and preserve the goods until surrendered to **VTD/NVCOG** or its agent. The contractor and **VTD/NVCOG** shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that the contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of **VTD/NVCOG**.

3.35 SUSPENSION AND DEBARMENT. By signing and submitting its bid or proposal, the Bidder or Proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by **VTD/NVCOG**. If it is later determined that the Bidder or Proposer knowingly rendered an erroneous certification, in addition to remedies available to **VTD/NVCOG**, the State of Connecticut may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder or Proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

3.36 PRIVACY ACT - CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS. The following requirements apply to the contractor and its employees that administer any system of records on behalf of the State of Connecticut 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 State of Connecticut before the contractor or its employees operate a system of records on behalf of the State of Connecticut. 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 State of Connecticut financed in whole or in part with State assistance provided by the State of Connecticut.

3.37 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 State of Connecticut implementing regulations and other implementing requirements the State of Connecticut 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 State of Connecticut assistance provided, modified only if necessary to identify the affected parties.

3.38 BREACHES AND 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 **VTD/NVCOG's** Executive Director. 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 the General Manager. 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 the General Manager shall be binding upon the contractor and the contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by VTD/NVCOG, 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 therefore 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 **VTD/NVCOG** and the contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Connecticut, in which **VTD and NVCOG** is located.

Rights and Remedies - The duties and obligations imposed by the contract documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by **VTD/NVCOG** or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

3.39 PAYMENT OF RECOVERABLE COSTS DUE TO VTD/NVCOG. **VTD/NVCOG** shall have the right to set-off against amounts otherwise due to **VTD/NVCOG** under this Agreement or under any other agreement or arrangement that the Contractor has with **VTD/NVCOG**:

- a. Any cost that **VTD/NVCOG** incurs which are due to the Contractor's non-compliance with the Agreement, and
- b. Any other amounts that are due and payable from the Contractor to **VTD/NVCOG**. Any sum take in set-off from the Contractor shall be deemed to have been paid to the Contractor for purposes of the Contractors' payment obligations under Connecticut General Statutes Section 49-41c.

3.40 REVISIONS IN ORGANIZATION. The Contractor shall notify **VTD/NVCOG** in writing when there is a change in its Certificate of Incorporation or a change in the individual(s) in actual charge of the work specified herein. The change shall not relieve the Contractor of any responsibility for the accuracy and/or completeness of all products of the work under this Agreement, including all supplements thereto.

3.41 ADDITIONAL DOCUMENTATION. The successful Proposer must be aware that prior to an award being made additional documentation may be requested to complete the contract. This documentation may include any or all of the following: Additional Company Information, Title VI Compliance Information, Required Affidavits (upon award), etc.

SECTION IV
SPECIFICATIONS

VTD/NVCOG is requesting the successful Proposer provide new, quality materials to satisfy the needs of this procurement.

4.0 CONTRACT PERIOD

Contracted supplies and installation to be performed within 6 months of contract execution.

4.1 SPECIFICATIONS

The Valley Transit District intends to initiate a clean fuel conversion program, which includes fourteen (14) 2018 Ford E450 Supreme vehicles. It is the Valley Transit District's intent to contract with one vendor to provide equipment and installation services for injection propane systems. The Valley Transit District is seeking ways to accomplish this conversion through any Grant monies that may be available and with no initial expense to the Valley Transit District or the NVCOG.

Propane Conversion Specifications

1. The sale of an EPA certified "Bi-Fuel (propane/gasoline) liquid Injection Propane system on a minimum of 14 vehicles.
2. The qualified contractor shall provide training to VTD mechanics and shall include:
 - a. Automotive LPG Gasfitter
 - b. System Operation and Conversion
 - c. Service, Repair and Diagnosis
 - d. Installation Practices
 - e. LPG Licensing for up to two (2) mechanics to be certified to work on these vehicles
3. The bidder must provide and install the propane bi-fuel liquid conversion system. The Propane conversion system must include all necessary parts, the motor fuel tank, and the installation labor.
4. The bidder must obtain EPA certification for the propane conversion system for the VTD's vehicles.
5. The bidder must use a propane bi-fuel liquid conversion system that can be removed from one vehicle and transferred/installed on another vehicle.
6. The bidder must provide on-site training to VTD's technicians on the repair and maintenance of the propane conversion system.
7. The bidder must provide a five year – 60,000 mile warranty for the conversion system that covers parts, labor and any damage that the conversion system might do to the VTD's vehicles.
8. The bidder must provide all software necessary to repair and maintain the propane conversion system.
9. Provide a plan and time line for converting fourteen (14) vehicles to propane autogas. Conversions will be completed by contractor and VTD mechanics will be trained by vendors certified installers on routine maintenance. Contractors trained technicians will have expert knowledge in conversions, troubleshooting, warranty and safety.

QUALIFICATIONS CONVERSION CONTRACTOR

1. Vendor must have at least four (4) years' experience in the alternative fuels business.
2. Vendor must have completed conversions on (itself or a partner) a minimum of 300 vehicles in the past four (4) years.
3. Vendor must have at least ten (10) clients with at least ten (10) vehicles currently running on propane autogas, using EPA Certified Propane Autogas System.
4. The bidder must have a minimum of three (3) years of experience installing EPA certified propane conversion systems.

4.2 PRICING SPECIFICATIONS

Pricing Forms

Unit price must be entered and extended and the total price of the product must be shown. All Proposals will be evaluated on lowest overall price. **VTD/NVCOG's** will award this contract to one (1) Vendor for the duration of the contract. Unit prices are to be quoted on the basis of the unit specified. **VTD/NVCOG** assumes no responsibility for errors. The Proposal price/cost shall include all labor, materials, tools, equipment, transportation, and other costs necessary to fully complete the procurement pursuant to the Proposal terms, conditions, and specifications. It is the intention of these specifications to provide and require complete services and supplies as prescribed herein. Any items omitted from the specifications, which are necessary for such service, shall be considered a portion of such service although not directly specified or called for in these specifications. No advantage shall be taken of the omission of any part of detail, which fails to make service complete and ready for full effective and efficient utilization.

Invoices

All invoices for capital purchases must be addressed to Accounts Payable and be sent directly to the **Valley Council of Governments** 12 Main Street, Railroad Station, Derby, CT 06418. All invoices for operating purchases (fuel) must be addressed to Accounts Payable and be sent directly to the **Valley Transit District** 41 Main Street, Derby CT. 06418. Invoices must be submitted for all services in accordance with the successful Vendors pricing Proposal. Invoices must include the Purchase Order Number and Division for each individual order. The Proposer shall state the price based on payment terms of net thirty (30) days after acceptance thereof.

Taxes

VTD and NVCOG are exempt from the payment of federal and state sales taxes. A tax-exempt form will be issued upon award.

4.3 RESPONSIBILITY SPECIFICATIONS

The entire content of the Responsibility Questionnaire will be evaluated in determining if the Proposer is responsible. Those items will include but not be limited to the following items.

Quality Control

The selected vendor shall establish and maintain an effective quality assurance procedure. The Quality Assurance Procedure shall guarantee the control of the quality of materials and supplied articles. This section is addressed on the responsibility questionnaire and will be evaluated as a part of the responsibility criteria.

Statement of Experience

Each Proposer must submit with its Proposal a statement of experience in providing such supplies and services.

Qualification of Proposers

Proposals will be acceptable only if they are offered in person, firm, or corporation with the following qualifications:

- Adequate experience and verifiable history in the provision of such services sought through this procurement;
- Adequate personnel available, upon twenty-four (24) hours notice, to remedy any supply or service problems during the contract period;
- Supply a name and phone number of a contact for billing inquiries;
- Adequate facility and financial resources to fulfill the agreement in a satisfactory manner within the time specified;

SECTION V

**RFP SCHEDULE OF EVENTS,
PROPOSAL SUBMISSION, EVALUATION CRITERIA & EVALUATION**

RFP SCHEDULE OF EVENTS

Aug 24, 2018----- RFP Available

Sept 07, 2018----- Vendors Questions Submitted via email by 4:00 P.M.

Sept 18, 2018----- -Vendors Questions Answered via email and Posted on Website
by 4:00 P.M.

Sept 28, 2018----- --RFP due at 4:00 P.M.

Oct 09, 2018----- Evaluation, Committee recommendation, Award of Contract and Notification to
Successful Vendor.

SUBMISSION

The **original and 3 copies** of the Proposal must be submitted and received on or before **Sept 28, 2018 no later than 4:00 p.m.** The address for U.S. mail and hand delivery is **Valley Transit District**, 41 Main Street, Derby CT 06418. The telephone number is (203) 735-6824. Proposals must be submitted to the attention of Mark Pandolfi, Executive Director, **VTD**. Proposal outer packaging must be clearly marked with **"RFP #08-18"** and **"Propane Autogas Conversion Systems."** in capital letters. Each package must contain the following:

- One-page cover letter indicating your interest in being considered and why your company should be selected.
- Detailed response to all Proposal requirements including but not limited to all items contained in the technical scope of work specification section of this RFP.
- Please discuss any other information that you feel is pertinent and will assist us in making a selection.
- Also, if available, provide a copy of your firm's brochure along with any and all related forms, policies and procedures.
- Required Proposal forms as provided in this RFP, including all required information and pricing detail. The Proposer must print or type his/her name and company on each Proposal and continuation sheet.

VTD/NVCOG has established procedures to protect the integrity of the Proposal process. Failure to properly mark your Proposals appropriately may result in your Proposal being disqualified for noncompliance. It is solely and strictly the respondents' responsibility to ensure that Proposals are delivered prior to the closing date and time. **VTD/NVCOG** assumes no responsibility for any disclosure of Proposal terms for a Proposal that is submitted which does not meet these sealed Proposal marking requirements including delays caused by United States mail delivery or any other occurrence.

Proposers are advised that they follow the same Proposal format and organization as specified in the **"Evaluation of Proposal"** section of this document.

Submittal of a Proposal will signify that the Proposer has accepted the whole of the Contract documents, except such conditions, exceptions, reservations or understandings explicitly, fully and separately stated on the forms and according to the instructions of the "Proposal Deviation Forms" contained in the required submittal section of this document. Any such conditions, exceptions, reservations or understandings, which do not result in the rejection of the Proposal, will become part of the binding contract, if the Proposal is accepted; the Proposal is considered accepted by the issuance of an Award Letter at any time within the period so given. Each Proposer should carefully check his/her Proposal before submitting it to **VTD/NVCOG** as no additional charge/compensation will be allowed for delivery, or any other reasons, unless specified in Proposal Form.

Proposals that do not comply with these instructions and do not include the required information, forms and certifications may be rejected as insufficient or not be considered. VTD/NVCOG reserves the right to request a Proposer to provide any missing information and to make corrections. All non-responsive respondents will be notified in writing.

EVALUATION CRITERIA

The following represent the principal selection criteria, which will be considered during the evaluation process of the Proposals to evaluate each Proposer:

Price: 60%
The Price Proposal Forms will be reviewed to determine the Proposal that is in the best financial interest of **VTD/NVCOG**. A thorough and accurate pricing Proposal for each contract term is required detailing how the Proposer intends to bill **VTD/NVCOG** for services. The Evaluation Committee will determine if the price is fair and reasonable based on the price estimate prepared prior to this solicitation and consistent with the budgetary figure set for this project. Failure to fully cost out any item or aspect of this Proposal will be the responsibility of the Proposer.

Technical Specifications--Scope of Services: 30%
Section IV pertaining to the Specifications of this document will be evaluated in this category. Proposers must adequately incorporate and address all of the requirements of the RFP. Proposal deviations pertaining to the technical specifications of this RFP will be reviewed under this section.

Responsibility Questionnaire and Required Proposal Submittals: 10%
The Responsibility questionnaire and its contents will be reviewed under this section for determining Proposer responsibility. In order to qualify as a responsible Proposer, in addition to other requirements herein provided, a Proposer must be prepared to prove to the satisfaction of **VTD/NVCOG** that it has the integrity, skill and the time specified. All Proposers shall complete and submit the Responsibility Questionnaire contained in the required form submittal section of this RFP. Items including but not limited to references (**make your references aware that VTD/NVCOG will be calling and that the call should be addressed AS QUICKLY AS POSSIBLE**; this may affect your responsibility scoring), personnel, insurance certifications, etc. will be checked and verified. The experience and capability of the Proposer to undertake this contract will be evaluated for the maximum benefit to **VTD/NVCOG**.

Qualification of Proposers

Proposals will be acceptable only if a person, firm or corporation with the following qualifications offers them:

- Adequate experience and verifiable history in the provision of supplies sought through this procurement;
- Adequate personnel available to remedy any service problem during the contract period; Vendor must supply a name and telephone number of a contact for service and billing;
- Adequate personnel and financial resources to fulfill the agreement in a satisfactory manner within the time specified; Operates services within the time parameters (days and hours of operation, if any) specified.

Proposals must address individually each of the items above relative to the qualification of the Proposer. The Evaluation Committee reserves the right to request a tour of the Proposers' facility. If such tours are pursued, their occurrence, time and date will be at the discretion of **VTD/NVCOG**.

ORAL PRESENTATIONS. During the evaluation process, the Evaluation Committee may, at its discretion, request any one or all of the respondents to make oral presentations. Such presentations will provide firms with an opportunity to answer any questions the Evaluation Committee may have on the firm's Proposal. Not all respondents may be asked to make such oral presentations.

EVALUATION

VTD/NVCOG has an established evaluation process for the review of the Proposals. Proposals will be analyzed for responsiveness, compliance with technical specifications, capabilities, quality, price, instructions and all other aspects of this RFP.

Proposals that do not comply with these instructions and do not include the required information, forms and certifications may be rejected as insufficient or not be considered. **VTD/NVCOG** reserves the right to request a Proposer to provide any missing information and to make corrections. All non-responsive respondents will be notified in writing.

Proposers are advised that detailed evaluation forms and procedures will follow the same Proposal format and organization as specified in Section V of this document. Therefore, Proposers shall pay close attention to this format and instruction. Submittal of a Proposal will signify that the Proposer has accepted the whole of the Contract documents, except such conditions, exceptions, reservations or understandings explicitly, fully and separately stated in the Proposer's Proposal submittal. Any such conditions, exceptions, reservations or understandings, which do not result in the rejection of the Proposal, are subject to evaluation under the Proposal evaluation criteria.

VTD/NVCOG will appoint an Evaluation Committee who will be responsible for the review and evaluation of Proposals submitted in response to this RFP. Additionally, **VTD/NVCOG** has established a resource support team that will assist the Committee in the evaluation process. The Team may be called on for a variety of different research and analysis purposes including but not limited to reference checking, price analysis etc. The Committee will initially meet to discuss the overall Proposals and to determine how the Team will most efficiently be utilized in the evaluation process. The Committee will direct the Team in what specific areas of analysis and/or research if any that will be required. All reports provided by the Team will be made to all Committee members in writing. On receipt of all required information the Committee may meet to jointly discuss the Proposals and any areas of concerns. The Committee then will independently evaluate Proposals. The Committee reserves the right to call upon the Team at any time during the evaluation process for its expertise. The Committee may convene at any time to discuss any questions or concerns they may encounter. The Committee may rely on this resource material in the evaluation of the Proposals.

Upon completion of reviews, each Proposal will be given a total composite score. Each Evaluator will rank the Proposals based on the total score with number 1 being the highest. The rankings for each Proposal will be added together for a total composite ranking score. The Proposer with the lowest total composite ranking score will be determined the top ranked Proposer and so on down the line.

If determined necessary the Committee may invite top ranked Proposers for an interview or may chose to visit current Proposer sites. If interviews or visits are conducted the Committee will be provided the opportunity to revise their original review to accurately reflect any additional information that may have been obtained through the interview process. Each Committee member will document this separately and independently. Once again Proposals will be evaluated and scored as noted above to determine the top ranked Proposer. The Proposer ranked number one and whose price Proposal is acceptable, may be contacted regarding any potential areas to be negotiated. If negotiations are conducted and not successful with the top ranked Proposer(s) then negotiations may be conducted with the next highest ranking Proposer(s) and so on down the line until negotiations are successful in producing a list of qualified appraisers to call upon for service that is found to be the most advantageous to **VTD/NVCOG**, cost and other factors considered.

VTD/NVCOG reserves the right to contact Proposer(s) regarding an interview, areas of concern, areas to be negotiated and/or request a best and final Proposal. **VTD/NVCOG** additionally reserves the right to award on the basis of initial Proposals submitted without any negotiations or discussions if such action is deemed to be in the best interest of **VTD/NVCOG** and/or the Department of Transportation of the State of Connecticut. In any event, **VTD/NVCOG** reserves the right to accept other than the lowest cost Proposal. All unsuccessful Proposers will be contacted notifying them of their status.

This criterion is presented to allow **VTD/NVCOG** the ability to analyze Proposals received on an equal basis and to afford all Proposers the opportunity to know the basis upon which their Proposals will be evaluated.

SECTION VI

VTD/NVCOG REQUIRED PROPOSAL FORMS AND CLAUSES

The Proposal price/cost shall include all labor, materials, tools, equipment, transportation and other costs necessary to fully complete the procurement pursuant to the Proposal terms, conditions and specifications.

RFP #08-18 SUBMITTAL CHECKLIST

ALL FORMS BELOW MUST BE **COMPLETED AND INCLUDED** WHEN YOU SUBMIT YOUR PROPOSAL PACKAGE:

- One Original and 3 Copies of the Proposal Package
- Cover Letter
- Statement of No Proposal
- Proposal Deviation Form
- Pricing Pages (Completed)
- Part II Identity of the Proposer
- Part III Technical
- Part IV Verification and Acknowledgement
- Affirmative Action Requirement
- DMV Certification
- VTD/NVCOG** Proposal Submission Form
- Requirements of the State of Connecticut
- SBE Certification
- DBE Certification
- Insurance Certification
- Affidavit of Suspension and Debarment
- Eligible Contractors Certification
- Affidavit of Non-Collusion/Conflict of Interest
- Lobbying
- Addendum(s) (as issued)

SUBMITTED PROPOSAL CONTAINS ALL COMPLETED FORMS/CERTIFICATIONS AS LISTED ABOVE

Authorized Signature _____

Date _____

STATEMENT OF NO PROPOSAL

Note: If you do not intend to submit a Proposal for this project, please return this form immediately to the address below:

VTD, Attn: Mark Pandolfi, 41 Main Street, Derby CT 06418.

We, the undersigned, have declined to submit on your RFP # 08-18 for the following reasons:

- _____ Specifications too "tight", i.e., geared toward one brand or manufacturer only (explain below)
- _____ Insufficient time to respond to the RFP
- _____ we do not offer this product or service
- _____ our schedule would not permit us to perform
- _____ Unable to meet Bond Requirements
- _____ Unable to meet Specifications
- _____ Specifications unclear (explain below)
- _____ Unable to meet Insurance Requirements
- _____ Remove us from your "Vendors List" altogether
- _____ Other (specify below)

Remarks: _____

We understand that if the "no proposal" letter is not executed and returned, our name may be deleted from any and all Vendors Lists for **VTD/NVCOG**.

Company Name: _____

Address: _____

Authorized Signature: _____

Print Name: _____

Title: _____

Date: _____

PROPOSAL DEVIATION FORM

Any and all deviations conditions, exceptions, reservations, or understandings of any and all requirements/ specifications specified in this Proposal must be fully disclosed explicitly, fully, and separately stated on individual "Proposal Deviation Forms". Please make copies of additional forms as required. **Proposal Deviations are due on or before 4:00p.m. on Sept 28, 2018.** If no deviations are noted please indicate so on this form, execute, and return with your Proposal submittal.

Company Name: _____

Address: _____

Authorized Signature: _____

Print Name: _____

Title: _____

Date: _____

PRICING PAGES

PROPOSAL FORM

WE, _____, PROPOSE TO PROVIDE THE REQUESTED SERVICES PER THE REQUIREMENTS OF THIS REQUEST FOR PROPOSAL IN ACCORDANCE WITH THE SPECIFICATIONS CONTAINED HEREIN.

PROPANE CONVERSION SYSTEM
Conversion Parts & Installation

Per vehicle cost \$

Total of 14 vehicles

WE ALSO CERTIFY THAT THIS WRITTEN PROPOSAL IS VALID FOR 120 DAYS FROM THE DAY OF THIS PROPOSAL AND THE ATTACHED INFORMATION IS RECEIVED AND FILED BY THE VALLEY TRANSIT DISTRICT OF

**Please list below other costs that may be associated with this service or used additional sheets if necessary:

Estimated start date after receipt of purchase order: # _____ days.

Estimated time of completion: # _____ days

RESPONSIBILITY QUESTIONNAIRE

PART I - INSTRUCTIONS

1. Please state "not applicable" in questions clearly not applicable to Bidder/Proposer in connection with this solicitation. Do not omit any question. If any representation is not accurate and complete at the time Bidder/Proposer signs this Questionnaire, Bidder/Proposer must, as part of its Bid/Proposal, identify the provision and explain the reason in detail in the space provided below. If additional space is needed, add additional sheet(s) to this Questionnaire. If this space is left blank, Bidder/Proposer shall be deemed to have represented and warranted the accuracy and completeness of the representations on this Questionnaire:
2. All information must be legible.
3. The term "Bidder" includes the term "Proposer" and also refers to the firm awarded the Contract. The term "Bid" includes the term "Proposal".
4. If during the performance of this Contract, either of the following occurs, Bidder shall promptly give notice in writing of the situation to **VTD/NVCOG's** Executive Director, and therefore cooperate with **VTD/NVCOG's** review and investigation of such information.
 - i) Bidder has reason to believe that any representation or answer to any question contained in this Questionnaire was not accurate or complete at the time this Questionnaire was signed; or
 - ii) Events occur or circumstances change so that an answer to any question is no longer accurate or complete.
5. In **VTD/NVCOG's** sole discretion, the following shall constitute grounds for **VTD/NVCOG** to take remedial action up to and including immediate termination of the Contract for convenience without payment for profit and overhead for work not performed if:
 - i) Bidder fails to notify the PCO as required by "4" above:
 - ii) Bidder fails to cooperate with **VTD/NVCOG's** request for additional information as required by "4" above.
6. **VTD/NVCOG** reserves the right to inquire further with respect to Bidder's responses; and Bidder consents to such further inquiry and agrees to furnish all relevant documents and information as requested by **VTD/NVCOG**. Any response to this document prior or subsequent to Bidder's Bid which is or may be construed as unfavorable to Bidder will not necessarily automatically result in a negative finding on the question of Bidder's responsibility or a decision to terminate the Contract if it is awarded to Bidder.

PART II - IDENTITY OF PROPOSER

Company Full Legal Name: _____

Contact Person: _____

Legal Address: _____

Legal Telephone Number: _____

Indicate all other names by which this organization has been know and the lengths of time know by each name. Please attach additional pages as needed.

Company Federal taxpayer identification number _____

Operating as one of the following forms of legal entity (Check whichever applies and fill in any appropriate blanks):

_____ An individual or sole proprietorship

_____ A general partnership

_____ A limited partnership

_____ A joint venture consisting of: _____
and _____
(List all joint venturers on a separate sheet if this space is inadequate.)

_____ A non-profit organization

_____ A corporation organized or incorporated under the laws of the following state or country: _____
_____ on the following date: _____.

1. If the organization is a corporation, indicate the following:

Date of incorporation: _____

State of incorporation: _____

President's name: _____

Vice-President's name: _____

Secretary's name: _____

2. Certificate of Incorporation been previously filed with **VTD/NVCOG** (corporation only)

Yes No If "NO", attach a certified copy

3. How many years has this organization been in business under its present business name? _____

4. How many employees does this organization have? _____

5. If the organization is an individual or a partnership, answer the following:

Date of organization: _____

Name and address of all partners (state whether general or limited partnership)

Please attach additional pages as needed.

6. If the organization is other than a corporation or partnership, describe the organization and name its principals. Please attach additional pages as needed:

7. List the States in which your organization is legally qualified to do business. Indicate category or trade and indicate registration or license numbers, if applicable. List states in which partnership or trade name is filed. Please attach additional pages as needed.

8. Trade References. List names, addresses and telephone numbers of three firms with whom your organization has regular business dealings. Please attach additional pages as needed.

9. List below the names, business addresses, telephone numbers and contact person(s) of three Companies, (**make your references aware that VTD/NVCOG will be calling and that the call should be addressed AS QUICKLY AS POSSIBLE;** this may affect your responsibility scoring), Firms or Organizations similar in size to **VTD/NVCOG** for whom you have performed work/services similar to those sought through this Request for Proposal.

| Name | Address | Contact | Telephone Number |
|------|---------|---------|------------------|
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10. Bank References: List names, addresses and telephone numbers of the financial institutions used by your organization. Please attach additional pages as needed:

11. Has your organization ever failed to complete any work awarded to you? If so, note when, where and attach a separate sheet of explanation to this form.

12. Within the last five years, has any officer or partner of your organization ever been an officer or partner of another organization where it failed to complete a contract? If so, note whom, when and where and attach a separate sheet of explanation to this form.

13. Attach a corporate financial statement for the most recent year. If a financial statement is not available, please provide other suitable documentation of the financial stability of the organization. It is imperative that the company demonstrates that it has the financial capacity to carry out the overall performance of this project.

Name of the firm preparing the financial statement and date of preparation:

Is this financial statement for the identical organization named on the first page of this questionnaire?

If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent, subsidiary):

Will this organization act as a guarantor of the contract for management? _____

I certify that the attached financial statements for this Proposal properly reflect the financial position of the company for the periods indicated on the financials.

This _____ Day of _____, 20____

Title: _____

Name: _____

PART III - TECHNICAL

1. List each contract which, during the last two years, the person/entity contracting with you: i) terminated for default; ii) sued to compel performance; iii) sued to recover damages, including, without limitation, upon alleged breach of contract, misfeasance, error or omission or other alleged failure on your part to perform as required by your contract; or iv) called upon a surety to perform the work.

2. During the past three years, has the Proposer's firm ever been a party to a bankruptcy or reorganization proceeding?

YES

NO

If answer is "YES" explain below.

3. Describe below whether any present or anticipated Title VI Discrimination Complaints against your company exist. Attach additional paperwork if necessary. If none, state "None".

4. Describe whether any present or anticipated commitments and/or contractual obligations might have an influence on the capabilities of the Proposer to perform the work called for by this Contract. Any apparent conflicts as between the requirements/commitments for this Contract with respect to the use of Proposer's resources, such as management or technical expertise or financing, should be explained. If none, state "None".

5. a. If any professional or other licenses, permits, or certifications are required to perform the work/services called for by this solicitation, list the license, permit, or certification that the Proposer or Proposer's employees or agents possess. If none, state "None".

| <u>License or Permit or Certification</u> | <u>Name of Holder</u> | <u>Issuing State or Entity</u> |
|---|-----------------------|--------------------------------|
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- b. If any insurance is required please provide certificates of insurance naming **VTD and NVCOG** as an additional insured. If none, state "None".

| <u>Type of Insurance</u> | <u>Name of Insuring Co.</u> | <u>Limit of coverage</u> |
|--------------------------|-----------------------------|--------------------------|
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- c. Have any of the Proposer's officers, partners, owners, managers or employees had any project related licenses, permits or certifications revoked or suspended in the past three years.

| <u>YES</u> | <u>NO</u> | <u>If answer is "YES" explain below.</u> |
|------------|-----------|--|
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6. List the names, titles and attach resumes or brief descriptions of the related industry experience for all management personnel assigned to this project. At a minimum this will include the primary Manger assigned to this project that will have the primary responsibility for performing the majority of work under this contract. This should clearly reflect the record of skill and experience of your proposed project management team.

PART IV - VERIFICATION AND ACKNOWLEDGMENT

STATE OF

_____)

) **ss.:**

COUNTY OF _____)

On the _____ day of _____, 20____, before me personally came and appeared,

_____, by me known to be said person, who swore under oath as follows:

1. He/she is _____ of _____
(Print title) (Print name of firm)

2. He/she is duly authorizes to sign this Questionnaire on behalf of said firm and duly signed this document pursuant to said authorization.

3. The answers to the questions set forth in this Questionnaire are true, accurate and complete.

4. He/she acknowledged and understands that the Questionnaire includes provisions, which are deemed included in the Contract if awarded to the firm.

Sworn to before me this _____ day of _____, 200____

(Notary Public)

AFFIRMATIVE ACTION REQUIREMENT

Company Name
(if applicable include d/b/a) _____

Address _____

City/State/Zip _____

Area Code/Phone Number _____

Area Code/Fax Number _____

Contact Person _____

AFFIRMATIVE ACTION POLICY STATEMENT

It is the policy of this firm to assure that applicants are employed, and that employees are treated during employment, without regard to an individual's race, color, religion, age, sex, marital status, national origin or ancestry, present or past history of mental disability, mental retardation, learning disability or physical disability, including but not limited to, blindness except in the case of a bona fide occupational qualification or need. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training. This policy and practice applies to all persons.

This firm will implement, monitor, enforce and achieve full compliance with this Affirmative Action Policy Statement in conjunction with the applicable federal and state laws, and applicable regulations and executive orders.

1. Civil Rights Act of 1964, as amended
2. Presidential Executive Order 11246, as amended
3. Title 23 U.S.C. 140
4. Title 49 C.F.R. Part 26
5. Governor's Executive Orders #3 and #17
6. Connecticut Fair Employment Practices Act
7. Americans with Disabilities Act of 1990
8. Public Act No. 91-58
9. Specific Equal Employment Opportunity Responsibilities
10. Required Contract Provisions Federal Aid Construction Contracts
11. A (76) Affirmative Action Requirements
12. Training Special Provision
13. Minority Business Enterprises as Subcontractors
14. Standard Federal Equal Employment Opportunity Construction Contract Specification
15. Nondiscrimination Act

In implementing this policy and ensuring that equal opportunity is being provided to protected class members, each time a hiring opportunity occurs this firm will contact and request referrals from minority and female organizations, referral sources, and media sources. All advertising will emphasize that the firm is "An Affirmative Action/Equal Opportunity Employer".

In order to substantiate this firm's efforts and affirmative action's to provide equal opportunity, the firm will maintain and submit, as requested, documentation such as referral request correspondence, copies of advertisements utilized and follow-up documentation to substantiate that efforts were made in good faith. This

firm will maintain internal EEO/affirmative action audit procedures and reporting, as well as record keeping systems.

It is understood by me, including the Equal Employment Opportunity Officer and supervisory and managerial personnel that failure to effectively implement, monitor and enforce this firm's affirmative action program and failure to adequately document the affirmative actions taken and efforts made to recruit and hire minority and female applicants, in accordance with our affirmative action program in each instance of hire, will result in this firm being required to recommit itself to a modified and more stringent affirmative action policy program, prior to receiving approval. It is recognized that an approved affirmative action program is a prerequisite for performing services for the contracting agency.

Managers and supervisors are being advised of their responsibilities to ensure the success of the Affirmative Action Program. The ultimate responsibility for the Affirmative Action Program rests with the Chief Executive Officer. However, the day-to-day duties are hereby designated to _____ (Name), this individual has been designated as the Equal Employment Opportunity Officer of this firm and will report directly to the Chief Executive Officer in these matters.

This Affirmative Action Policy Statement has my whole-hearted support. In addition, each manager and supervisor, as well as all employees, who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the equal employment opportunity in each grade and classification of employment.

Signature of Chief Executive Officer

Date

**VENDOR COMPLIANCE
DMV MOTOR CARRIER AND SAFETY REQUIREMENTS**

All vehicles utilized in the performance of this contract that have a DOT number must be provided below. **VTD/NVCOG** will run a check on each number to ensure that they are appropriately authorized to operate in the State of Connecticut. **VTD/NVCOG** will not conduct business with contractors that are not approved by the State of Connecticut DMV.

| Company Name Vehicle Is Registered | DOT Number |
|---|-------------------|
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I attest that there are no other vehicles other than those contained on the list above that will be used either by myself (the prime contractor submitting the original bid response) or by any of my subcontractors. I further understand that VTD/NVCOG will run a DOT vehicle number check, which will be reviewed as part of this bid submittal.

PLEASE NOTE: The Primary Vendor is responsible for all of its agents and subcontractors with regards to compliance with applicable legal requirements. This responsibility extends to driver qualifications as well as vehicle safety; such documents **MUST** be included with the successful Proposers submittal.

Firm Name: _____

Address: _____

Authorized by: _____

Signature: _____

Title: _____

Date: _____

**VALLEY TRANSIT PROPOSAL SUBMISSION PAGE
FOR RFP #08-18 "Propane autogas systems"**

SUBMITTED BY _____

TO: Valley Transit District/Naugatuck Valley Council of Governments

The undersigned hereby declares that he/she has carefully read and examined the Advertisement and the Request and has decided to provide services and equipment in conformance to the specifications and requirements of the RFP #08-18 and any addendum thereto at the price stated in the attached Proposal and or any final Proposal offered.

I additionally certify that we are fully licensed and insured and have the proper equipment, systems, and personnel to handle the project as documented in this procurement document.

My Company also agrees and understands that in the event that **VTD/NVCOG** is required to purchase such services and/or equipment from another Vendor for any reason due to my company's failure to perform in accordance with the terms and conditions of this contract, my company will be charged the total cost of the other Vendor(s) to perform the service, plus \$100.00 (per occurrence) to cover administrative fees and costs.

This Proposal shall remain in effect for ninety (90) days after the deadline for submitting Proposals.

Firm Name: _____

Address: _____

Authorized by: _____

Signature: _____

Title: _____

Date: _____

VTD/NVCOG
CODE OF ETHICS POLICY

STATEMENT OF POLICY

VTD/NVCOG operates a public service, using public funds and facilities. As such, all employees have a responsibility to safeguard public assets and maintain the highest standards of ethical conduct in their performance of public business. The Company's adopted Code of Ethics is consistent with the policies established by the Connecticut Department of Transportation for its employees.

ACCEPTANCE OF GIFTS OR GRATUITIES

No employee shall, either individually or as a member of a group, directly or indirectly, solicit or accept any gift or gratuity from any person or organization with whom he/she has, has had, or may expect to have, a business relationship which would cause, or create the appearance of, a conflict with or influence the performance of the employee's duties.

It is especially important that employees who are in any way involved in making or recommending procurement decisions, in writing specifications for Comp[any purchases, or in reviewing the performance of Company suppliers or contractors, exercise special care to avoid even the appearance of a conflict of interest.

This policy extends to the solicitation or acceptance of special treatment or personal discounts from outside vendor, as well as specific items of value.

Any offers of gifts, gratuities, personal discounts, or other special favors to Company employees must be courteously, but firmly, refused or returned. When it is necessary to do so, employees should, for their own protection, document their actions, citing this policy.

CONFLICT OF INTEREST

No employee shall, either individually (or as a member of a group), directly or indirectly, solicit the sale of tickets for a charitable event or accept any gift for the benefit of a charitable organization from any person or organization with whom **VTD/NVCOG** has, has had, or may expect to have, a business relationship which would cause, or create the appearance of, a conflict with or influence the performance of **VTD/NVCOG**.

USE OF PUBLIC FACILITIES

Personal use of Company facilities, vehicles, equipment, supplies, and services is strictly prohibited. Company facilities, equipment, supplies and services shall be used only for proper business purposes.

No employee shall allow any private obligation of employment or enterprise to take precedence over his/her responsibility to the Company.

No employee shall accept employment, or have, either directly or indirectly, a financial interest in any enterprise doing business with **VTD/NVCOG** which could cause, or create the appearance of, a conflict with or influence the performance of the employee's duties with the Company. If an employee is in the position of dealing on behalf of the Company with another firm in which he/she has such a financial interest, responsibility should be delegated to another employee. As a general policy, employees in a position to influence Company business decisions must maintain an "arms' length" relationship at all times when dealing with outside interests.

All employees are also required to comply with Sections 1 – 79 through 1 – 89 of the CGS entitled Code of Ethics for Public Officials and are additionally advised that certain political activities governed by the Federal Hatch Act and CT Statue 5-266a may also result in a conflict of interest for **VTD/NVCOG** employees.

PENALTIES

Given the Company's overriding responsibility for the proper use of public funds and facilities, employees found to be in violation of the foregoing policies will be subject to discipline, including possible immediate discharge.

For questions, contact VTD/NVCOG

SECTION VII

**STATE OF CONNECTICUT REQUIRED
FORMS & CLAUSES**

REQUIREMENTS OF THE STATE OF CONNECTICUT

The Agreement between the VTD, NVCOG and the Connecticut Department of Transportation has specific provisions that are passed on to all third party contractors including, but not limited to, Civil Rights, Nondiscrimination, Affirmative Action/Equal Employment Opportunities, Disadvantaged Business Enterprise, Governors' Executive Orders, Code of Ethics, and all applicable federal regulations. These provisions and all applicable appendices of the Agreement are herein incorporated by reference and made a part of this contract.

Signed:

Authorized Corporate Official

Date

**CONNECTICUT DEPARTMENT OF TRANSPORTATION
POLICY STATEMENT**

POLICY NO. F&A-19
April 17, 2006

SUBJECT: Policy on Disadvantaged Business Enterprise Program

The Connecticut Department of Transportation (ConnDOT) is committed to the effective implementation of the Disadvantaged Business Enterprise (DBE) Program as defined in Title 49, Code of Federal Regulations (CFR) Part 26. This program will be executed in accordance with the regulations of the United States Department of Transportation (DOT) as a condition of receiving DOT funding.

It is the policy of ConnDOT to:

- a) Ensure nondiscrimination in the award and administration of DOT-assisted contracts in ConnDOT's highway, transit and airport financial assistance programs;
- b) Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- c) Ensure that ConnDOT's DBE Program is narrowly tailored in accordance with applicable law;
- d) Ensure that only firms which fully meet this part's eligibility standards are permitted to participate as DBEs;
- e) Help remove barriers to the participation of DBEs in DOT-assisted contracts; and
- f) Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

ConnDOT will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract. ConnDOT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. ConnDOT shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

In administering the DBE Program, ConnDOT will not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, national origin, or sex.

No contractor, subrecipient, or subcontractor shall discriminate on the basis of race, color, national origin, or sex in the performance on any DOT-assisted contract. Contractors shall carry out the 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 will result in a material breach of the contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of the agreement. The DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE Program whose conduct is subject to such action. The DOT may refer to the United States Department of Justice, for prosecution under 18 United States Code (USC) 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable federal statutes.

The Manager of Contract Compliance has been designated as the DBE Liaison Officer. In that capacity, the Manger of Contract Compliance is responsible for implementing all aspects of the DBE Program.

This DBE Program Policy Statement is distributed to all ConnDOT managers and to the DBE and non-DBE community. The Policy Statement is also available on the ConnDOT web site.

(This Policy Statement supersedes Policy Statement No. F & A – 19 dated May 12, 2003.)

SMALL BUSINESS ENTERPRISE (SBE) CERTIFICATION

To be eligible for the State of Connecticut's SBE certification a company must meet the legal definition of a small business or that of a minority owned firm:

SMALL BUSINESS ENTERPRISE (SBE):

- Been doing business under the same ownership or management and has maintained its principal place of business in Connecticut for at least one year immediately prior to the date of application;
- Gross revenues not exceeding \$15,000,000 during its most recent fiscal year; and,
- 51% ownership held by a person(s) who exercises the operational authority over daily affairs of the business and has the power to direct policies and management and receives beneficial interests of the business.

MINORITY BUSINESS ENTERPRISE (MBE):

- A small business (must meet the above-stated SBE criteria) with at least 51% ownership by one or more minority person(s) who exercises operational authority over daily affairs of the business, has the power to direct management and policies, and receives the beneficial interests of the business.
- A minority is a person(s) who is American Indian, Asian, Black, Hispanic, has origins in the Iberian Peninsula, a woman, or an individual with a disability.

- Yes; My Company is certified by the State of Connecticut as a SBE; attach a copy of the SBE Certification.
- No; My Company is not certified by the State of Connecticut as a SBE.

SBE CERTIFICATION

The contractor hereby acknowledges that **VTD/NVCOG** has established a contract goal of **zero percent (0%)** for this project. No further action is required.

Firm Name: _____

Signature: _____

Title: _____

Date: _____

NOTE: This form is to be submitted with the Proposal. Please attach the names and addresses of any and all SBE eligible subcontractors who will perform work on this project, and the approximate dollar amounts to be paid to them. If there is no participation then this must be indicated on the form; the form executed and returned with this Proposal.

DBE CERTIFICATION

DISADVANTAGED BUSINESS ENTERPRISE CERTIFICATION

1. Policy – It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 C.F.R. part 26 shall have the maximum opportunity to participate in the performance or contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 C.F.R. Part 26 applies to this agreement.

2. DBE Obligation – The supplier or contractor agrees to ensure that disadvantaged business enterprises as defined in 49 C.F.R. part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard all recipients or contractors shall take necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure that disadvantages business enterprises have the maximum opportunity to compete and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, creed, color, national origin, age or sex in the award and performance of DOT-assisted contracts.

- Yes; My Company is certified by the State of Connecticut as a DBE; attach a copy of the DBE Certification.
- No; My Company is not certified by the State of Connecticut as a DBE.

DBE CERTIFICATION

The contractor hereby acknowledges that **VTD/NVCOG** has established a contract goal of **zero percent (0%)** for this project. No further action is required.

Firm Name: _____

Address: _____

Authorized by: _____

Signature: _____

Title: _____

Date: _____

NOTE: This form is to be submitted with the Proposal. Please attach the names and addresses of any and all DBE eligible subcontractors who will perform work on this project, and the approximate dollar amounts to be paid to them. If there is no participation then this must be indicated on the form; the form executed and returned with this Proposal.

EXECUTIVE ORDERS

This Agreement is subject to the provisions of Executive Order No 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms, Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this agreement as if they had been fully set forth in it. For complete text of said documents, please go to: http://www.das.state.ct.us/Purchase/Info/Executive_Orders.pdf

ENVIRONMENTAL LAW COMPLIANCE

The Second party shall be responsible to comply with all federal and state environmental laws and regulations pertaining to the operation of transit motor buses and/or facilities managed by the Second Party, including but not limited to, pollutants emissions control, storage and/or disposal of waste, fluids, fuels, oil, and chemicals in general. The Second Party shall be responsible to comply with OSHA regulations. The Second Party will hold the State and **VTD/NVCOG** harmless of any lawsuits and/or fines with respect to any environmental and/or OSHA regulations violations.

PUBLICATION OF REPORTS

The ownership of all data and material collected under this Agreement shall be vested in the Second Party and the State/**VTD/NVCOG**. All reports shall be submitted to **VTD/NVCOG** for review prior to publication. The following statement should appear on the cover or title page of any published report prepared under the terms of this Agreement:

*"Prepared in cooperation with the U.S. Department of Transportation (including its participating agencies), Connecticut Department of Transportation and **VTD/NVCOG**. The opinions, findings and conclusions expressed in this publication are those of the Second Party and do not necessarily reflect the official views or policies of the **VTD/NVCOG**, Connecticut Department of Transportation and/or the U.S. Department of Transportation."*

JURISDICTION AND FORUM LANGUAGE

This Agreement shall be governed, interpreted and construed under and in accordance with the laws of the State of Connecticut, whether or not its conflict of laws principles would dictate otherwise. This Agreement shall be deemed to have been made in Hartford, Connecticut.

The Second Party irrevocably consents with respect to any claims or remedies at law or in equity, arising out of or in connection with this Agreement to the jurisdiction of the Connecticut Superior Court (except as otherwise required by law or that Agreement), and, with respect to any claim between the Parties, to venue in Judicial District of Hartford-New Britain at Hartford or the United States Federal Court, District of Connecticut, and irrevocably waives any objections that it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such court or on the basis of forum non conveniens or otherwise. Nothing herein shall be construed to waive any of the States or **VTD/NVCOG**'s immunities.

LITIGATION

The Second Party agrees that the sole and exclusive means for the presentation of any claim against the State arising from or in connection with this Agreement shall be in accordance with Chapter 53 of the Connecticut General Statutes (Claims against the State) and the Second Party further agrees not to initiate legal proceedings in any State or Federal Court in addition to, or in lieu of, said Chapter 53 proceedings.

FREEDOM OF INFORMATION ACT

The State is entitled to receive a copy of records and files related to the performance of the Second Party under this Agreement, and such records and files may be subject to the Freedom of Information Act and may be disclosed by the State pursuant to the Freedom of Information Act. No request to inspect or copy such records or files shall be valid unless the request is made to the State in accordance with the Freedom of Information Act. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of Sections 1-205 and 1-206 of the Connecticut General Statutes.

RIGHT TO INSPECT RECORDS

By way of its agreement with the Connecticut Department of Transportation, **VTD/NVCOG** agrees to include in all its subcontracts a provision to the effect the subcontractor agrees that the State, the U.S. Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives, shall, until the expiration of three (3) years after the final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontractor. The term "subcontractor" as used in this clause excludes work not exceeding \$25,000.00.

The period of access and examination described above, for records which relate to (1) appeals for disputes, (2) litigation of the settlement of claims arising out of the performance of this contract, or (3) costs and expenses in relation to the performance of this contract to which exception has been taken by the State, the Comptroller General or any of their duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of.

INSURANCE TYPES AND THRESHOLDS

Insurance. With respect to the services performed by the Contractor under the terms of this agreement and also those performed for the Contractor by its subcontractor(s), the Contractor will be required to carry, and shall ensure that its subcontractor(s) carry, the insurance coverage included in paragraphs (a), (b) and (c) below, for the duration of this agreement, and any supplements thereto, with **VTD and NVCOG** being named as an additional insured party for paragraphs (a) and (b) below, at no direct cost to **VTD/NVCOG**. In the event the Contractor secures excess/umbrella liability insurance to meet the minimum requirements specified in paragraph (a) and/or (b) below, **VTD and NVCOG** shall be names as an additional insured.

- (a) Commercial General Liability Insurance, including Contractual Liability Insurance, providing for a total limit of not less than One Million Dollars (\$1,000,000) single limit for all damages arising out of bodily injuries to, or death of all persons in any one accident or occurrence, and for all damages arising out of injury to, or destruction of, property including the loss of use thereof in any one accident or occurrence. Subject to that limit per accident or occurrence, the policy shall provide a total or aggregate coverage of Two Million Dollars (\$2,000,000) for all damages arising out of bodily injuries to death of all persons in all accidents or occurrences, and out of injury to or destruction of property during the policy period.
- (b) Automobile Liability:
 1. **Non-Transit Motor Vehicle Insurance (Automobile Liability)** The operation of all motor vehicles, including those hired or borrowed, used in connection with this Agreement shall be covered by Automobile Liability Insurance providing for a total limit of not less than One Million Dollars (\$1,000,000) for all damages arising out of bodily injuries to or death of all persons in any one accident or occurrence, and for all damages arising out of injury to or destruction of property in any one accident or occurrence. IN cases where an insurance policy shows an aggregate as part of the automobile liability coverage, the aggregate limit must be at least Two Milling Dollars (\$2,000,000).
 2. **Non-State-Owned Transit Vehicles** The operation of all motor vehicles, which are not State-owned vehicles, including those hired, leased or borrowed, used in connection with this Agreement shall be covered by Automobile Liability Insurance providing for a total limit of not less than (a) One Million Dollars (\$1,000,000) for vehicles with a seating capacity of ten (10) or less passengers, (b) One Million Five Hundred Thousand Dollars (\$1,500,000) for vehicles with a seating capacity of eleven (11) through fourteen (14) passengers, and (c) Five Million dollars (\$5,000,000) for vehicles with a seating capacity of fifteen (15) passengers or more, for all damages arising out of bodily injuries to or death of all persons in any one accident or occurrence, and for all damages arising our of injury to or destruction of property in any one accident or occurrence.
 3. **State-owned Transit Vehicles, Equipment and Property** All State-owned vehicles, equipment and/or facilities are and shall remain insured by the State under the terms and conditions in effect in accordance with the State insurance policy(ies).
- (c) With respect to all operations the Contractor performs and all those performed for the Contractor by subcontractors, the Contractor shall carry, and shall ensure that its subcontractor(s) carry, Workers' Compensation Insurance, and as applicable, insurance required in accordance with the U.S. Longshore and Harbor Workers' Compensation Act, in accordance with the requirements of the laws of the State of Connecticut and the laws of the United States respectively.
- (d) In conjunction with the above, the Contractor agrees to furnish to **VTD/NVCOG** a Certificate of Insurance on a form acceptable to **VTD/NVCOG**, fully executed by an insurance company or companies satisfactory to **VTD/NVCOG**, for the insurance policy or policies required hereinabove, which policy or policies shall be in accordance with the terms of said Certificate of Insurance.
- (e) The Contractor shall produce, within five (5) business days, a copy, or copies of all applicable insurance policies requested by **VTD/NVCOG**. In providing said policies, the Contractor may redact provisions of the policies that it deems to be proprietary. This provision shall survive the suspension, expiration, or termination of this Agreement.

(f) If the Contractor elects to be self-insured rather than acquiring coverage from an insurance company, the Contractor shall ensure to **VTD/NVCOG** that it is adequately protected. The Second Party shall submit a notarized statement from an authorized representative providing the following information:

- 1) That the Contractor is self-insured
- 2) That the Contractor has established a reserve fund that satisfies the minimum requirements set forth in the Agreement for the payments of claims.
- 3) That the Contractor shall indemnify and hold **VTD/NVCOG** harmless.
- 4) The name, title, and address of the person to be notified in the event of a claim.

If requested by **VTD/NVCOG**, the Contractor must provide any additional evidence of its status as a self-insured entity. If such self-insurance program is acceptable to **VTD/NVCOG**, in its sole discretion, then the Contractor shall assume and all claims as a self-insured entity.

Please mail or hand carry certificates to:

Valley Transit District

41 Main Street

Attn: Mark Pandolfi

Derby, CT 06418

Purchase orders **WILL NOT** be issued without receipt of properly executed insurance certificates.

STATE OF CONNECTICUT REQUIRED AFFIDAVIT OF SUSPENSION AND DEBARMENT

The State of Connecticut Department of Transportation requires that this certification be included in each subcontract Agreement to which it is a party, and further, to require said certification to be included in any lower tier subcontracts and purchase orders:

The Proposer certifies by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by the State of Connecticut or Federal department or agency.

Additionally the Proposer agrees to insure that the following certification be included in each subcontract Agreement to which it is a party in any lower tier subcontract and purchase order.

If the Proposer or any lower tier participant is unable to certify any of the statements in this certification, such prospective participant shall attach an explanation to its proposal.

I have fully informed myself regarding the accuracy of the statement made in this affidavit.

Firm Name: _____

Address: _____

Authorized by: _____

Signature: _____

Title: _____

Date: _____

ELIGIBLE CONTRACTORS CERTIFICATE

_____, hereby certifies that it **IS / IS NOT** (circle one) included on
(Name of Firm)
the U.S. Comptroller General's Consolidated List of Ineligible Contractors.

Firm Name: _____

Signature: _____

Title: _____

Date: _____

**CONNECTICUT REQUIRED CONTRACT/AGREEMENT
PROVISIONS DATED MARCH 6, 1998
"SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES"**

1. General

- A. Equal employment Opportunity Requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246, Executive Order 11375, the Railroad Revitalization and Regulatory Reform Act of 1976 and other U.S. Department of Transportation nondiscrimination legislation are set forth in this Required Contract/Agreement Provision. The requirements set forth in these special provisions shall constitute the specific affirmative action requirements for project activities under this contract (or agreement) and supplement the equal employment opportunity requirements set forth in other related contract provisions.
- B. "Company" refers to any entity doing business with the Connecticut Department of Transportation and includes but is not limited to the following:

| | |
|----------------|---|
| Contractors | Vendors (where applicable) |
| Subcontractors | Suppliers of Materials (where applicable) |
| Consultants | Municipalities (where applicable) |
| Subconsultants | Utilities (where applicable) |

- C. The Company will work with the Connecticut Department of Transportation and the federal government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract or agreement.
- E. The Company and all their subcontractors or subconsultants holding subcontracts or subagreements of \$10,000 or more on federally assisted projects and \$5,000 or more on state funded projects, will comply with the following minimum specific requirement activities of equal employment opportunity. The Company will physically include these requirements in every subcontract or subagreement meeting the monetary criteria above with such modification or language as is necessary to make them binding on the subcontractor or subconsultant.
- F. These Required Contract Provisions apply to all state funded and/or federally assisted projects. activities and programs in all facets of the Connecticut Department of Transportation operations resulting in contracts or agreements.

2. Equal Employment Opportunity Policy

The Company will develop, accept and adopt as its operating policy and Affirmative Action Plan utilizing as a guide the Connecticut Department of Transportation Affirmative Action Plan Guideline.

3. Equal Employment Opportunity Officer

The Company will designate and make known to the State Department of Transportation contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

4. Dissemination of Policy

- A. All members of the Company's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Company's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of

employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

- (1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less than once every six (6) months thereafter, at which time the Company's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable Company Official.
 - (2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable Company official covering all major aspects of the Company's equal employment opportunity obligations within thirty (30) days following their reporting for duty with the Company.
 - (3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate Company official in the Company's procedures for locating and hiring protected class group employees.
- B. In order to make the Company's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the Company will take the following actions:
- (1) Notices and posters setting forth the Company's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - (2) The Company's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

5. Recruitment

- A. When advertising for employees, the Company will include in all advertisements for employees the notation: "An Equal Opportunity Employer". All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- B. The Company will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the Company will, through its EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the Company for employment consideration.

In the event the Company has a valid bargaining agreement providing for exclusive hiring of all referrals, the Company is expected to observe the provisions of that agreement to the extent that the system permits the Company's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the Company to do the same, such implementation violates Executive Order 11246, as amended.)

- C. The Company will encourage its present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in the areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. Personnel Actions

Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoffs, and termination, shall be taken without regard to race, color, religion, sex, or national origin, etc. The following procedures shall be followed:

- A. The Company will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- B. The Company will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practice.
- C. The Company will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Company will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective actions shall include all affected persons.
- D. The Company will promptly investigate all complaints of alleged discrimination made to the Company in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Company will inform every complainant of all of his avenues of appeal.
- E. The general contact provision entitled A(76) Affirmative Action Requirements is made part of this document by reference. In conjunction with this contract provision, only the job categories will change in order to be comparable with the job categories utilized by the Company proposing to do business with the Connecticut Department of Transportation. The goals and timetables will remain the same throughout the contract provision.

7. Training and Promotion

- A. The Company will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- B. Consistent with the Company's work force requirements and as permissible under Federal and State regulations, the Company shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contact performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the Training Special Provision is provided under this contract, this subparagraph will be superseded.
- C. The Company will advise employees and applicants for employment of available training programs and entrance requirements for each.
- D. The Company will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8. Unions

If the Company relies in whole or in part upon unions as a source of employees, it will use its best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the Company either directly or through an association acting as agent will include the procedures set forth below:

- A. The Company will use its best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- B. The Company will use its best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin, etc.
- C. The Company is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the Company, the Company shall so certify to the Connecticut Department of Transportation and shall set forth what efforts have been made to obtain such information.
- D. In the event the union is unable to provide the Company with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the Company will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex or national origin, etc. making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that there shall be no excuse that the union with which the Company has a collective bargaining agreement providing for exclusive referral failed to refer minority employees). In the event the union referral practice prevents the Company from meeting the obligations pursuant to Executive Order 11246, as amended, and these provisions, such Company shall immediately notify the Connecticut Department of Transportation.

9. Subcontracting

- A. The Company will use its best efforts to solicit Bids from and to utilize minority group subcontractors, or subcontractors with meaningful minority group and female representation among their employees. Companies shall obtain a list of applicable Disadvantaged Business Enterprise firms from the Division of Contract Compliance.
- B. The Company will use its best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.
- C. The General Contract Provisions entitled "Minority Business Enterprises as Subcontractors" is made part of this document by reference and its requirements are applicable to all entities proposing to do business with the Connecticut Department of Transportation.

10. Records and Reports

For the duration of the project, the company will maintain records as are necessary to determine compliance with the Company's equal employment opportunity obligations and Affirmative Action requirements. Additionally, the company will submit all requested reports in the manner required by the contracting agency.

- A. The number of minority and non-minority group members and women employed in each work classification on the project.
- B. The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to Companies which rely on whole or in part on unions as a source of their work force).
- C. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and
- D. The progress and efforts being made in securing the services of minority and female owned businesses.

- (1) All such records must be retained for a period of three (3) years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State Department of Transportation and the U.S. Department of Transportation including consultant firms.
- (2) If on-the-job training is being required by the "Training Special Provision", the Company will be required to furnish a Monthly Training Report and Supplement Report (1409) for each trainee.

11. Affirmative Action Plan

- A. Contractors, subcontractors, Vendors, suppliers, and all other Companies with contracts, agreements or purchase orders completely state funded will submit an Affirmative Action Plan if the contract value is \$5,000 or over.
- B. Contractors, subcontractors, Vendors, suppliers, and all other Companies with federally assisted contracts, agreements, or purchase orders valued at \$10,000 or more will submit an Affirmative Action Plan.
- C. Companies with contracts, agreements, or purchase orders with total dollar value under that which is stipulated in A and B above shall be exempt from the required submission of an Affirmative Action Plan unless otherwise directed by the Division of Contract Compliance.

CIVIL RIGHTS

The Second Party shall comply with the Regulations of the United States Department of Transportation (Title 49, Code of Federal Regulations, Part 21) issued in implementation of Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4, and Appendix CR attached hereto, both of which are hereby made a part of this Agreement.

- (a) For the purposes of this section, "Minority Business Enterprise" means any small contractor or supplier of materials fifty-one percent or more of capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise and (3) who are members of a minority, as such term is defined in subsection (a) of Conn. Gen. Stat. §32-9n; and "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations. "Good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements.

For purposes of this section, "Commission" means the Commission on Human Rights and Opportunities.

- (b)(1) The Second Party agrees and warrants that in the performance of the contract such Second Party will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation or physical disability, including, but not limited to, blindness, unless it is shown by such Second Party that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut. The Second Party further agrees to take affirmative action to insure that applicants with job related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, or physical disability, including, but not limited to, blindness, unless it is shown by such Second Party that such disability prevents performance of work involved; (2) the Second Party agrees, in all solicitations or advertisements for employees placed by or on behalf of the Second Party, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Second Party agrees to provide each labor union or representative of workers with which such Second Party has a collective bargaining agreement or other contract or understanding and each vendor with which such Second Party has a contract or understanding, a notice to be provided by the Commission advising the labor union or workers' representative of the Second Party's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Second Party agrees to comply with each provision of this section and Conn. Gen. Stat. §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Conn. Gen. Stat. §§46a-56, 46a-68e and 46a-68f; (5) the Second Party agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Second Party as they relate to the provisions of this section and Section 46a-56. If the contract is a public works contract, the Second Party agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works project.
- (c) Determination of the Second Party's good faith efforts shall include but shall not be limited to the following factors: The Second Party's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- (d) The Second Party shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its "good faith efforts".
- (e) The Second Party shall include the provisions of subsection (b) of this section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions

shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Second Party shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Conn. Gen. Stat. §46a-56, provided if such Second Party becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Second Party may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

- (f) The Second Party agrees to comply with the regulations referred to in this section as they exist on the date of this contract and as they may be adopted or amended from time to time during the term of this contract and any amendments thereto.

Nondiscrimination (Sexual Orientation). The Second Party shall comply with the following:

- (a) Pursuant to Section 4a-60a of the Connecticut General Statutes, (1) The Second Party agrees and warrants that in the performance of the contract such Second Party will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the state of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Second Party agrees to provide each labor union or representative of workers with which such Second Party has a collective bargaining agreement or other contract or understanding and each vendor with which such Second Party has a contract or understanding, a notice to be provided by the commission on human rights and opportunities advising the labor union or workers' representative of the Second Party's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Second Party agrees to comply with each provision of this section and with each regulation or relevant order issued by said commission pursuant to section 46a-56 of the general statutes; (4) the Second Party agrees to provide the commission on human rights and opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Second Party which relate to the provisions of this section and Conn. Gen. Stat. sec. 46a-56.
- (b) The Second Party shall include the provisions of subsection (a) of this section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of commission. The Second Party shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanction for noncompliance in accordance with section 46a-56 of the general statutes; provided, if such Second Party becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the commission, the Second Party may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

AFFIDAVIT OF NON-COLLUSION/CONFLICT OF INTEREST

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

1. That I am Offeror (if the Offeror is an individual), a partner in the offer (if the Offeror is a partnership), or an officer or employee of the Offeror corporation having the authority to sign on behalf (if the Offeror is a corporation);
2. That the attached offer has been arrived at by the Offeror independently, and has been submitted without collusion, and without any agreement, understanding, or planned common course of action with any other vendor of materials, supplies, equipment, or services described in this procurement document, designed to limit independent bidding or competition;
3. That the contents of the offer have not been communicated by the offer or it's employees or agents to any person not an employee or agent of the offer or it's surety or any bond furnished with the offer, and will not be communicated to any such person prior to the official awarding of this procurement; and
4. The Contractor shall not offer or provide gifts, gratuities, favors, entertainment or any other gratuities of monetary value to any official, employee or agent of **VTD/NVCOG** during the period of this contract or for one year thereafter.
5. Personal/Organizational conflict arises when (1) an employee, officer, agent or board member, (2) any member of his/her immediate family, (3) his/her partner, or (4) an organization that employs, or intends to employ any of the listed, participate in selection, award or administration of federally funded contracts and have financial or other interest in a firm competing for or selected for award. To the best of my knowledge and belief no affiliation exists relevant to possible organizational or personal conflicts of interest.
6. The Offeror shall disclose, to the best of his/her knowledge, any State employee, **VTD/NVCOG** employee, or member of the State legislature or any relative of such who is an officer or director of, or has a material interest in, the Offeror's business, who is in a position to influence this procurement.

| Name | Relationships |
|-------|---------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

7. That I have fully informed myself regarding the accuracy of the statement made in the affidavit.

Firm Name: _____

Address: _____

Authorized by: _____

Signature: _____

Title: _____

Date: _____

Subscribed and sworn to me this _____ day of _____, 20____ .

Notary Public

My commission expires _____, 20____ .

If the Offeror is unable to complete this form then it needs to disclose and attach to this form a detailed statement fully disclosing any exceptions and why it believes, in light of the interest(s) identified that performance of the proposed contract can be accomplished in an impartial and objective manner.

VTD/NVCOG reserves the right to request more information, to disqualify the Offeror, to contract with the Offeror if it is in **VTD/NVCOG**'s best interest and include appropriate provision to mitigate or avoid such conflict in the contract awarded. Refusal to provide the disclosure or representation or any additional information required, may result in disqualification of the Offeror for award. If nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. If after award the Contractor discovers a conflict of interest with respect to the contract awarded as a result of this solicitation, which could not reasonably have been know prior to award, an immediate and full disclosure shall be made in writing to **VTD/NVCOG**. The disclosure shall include a full description of the conflict, a description of the action the contractor has taken, or proposes to take, to avoid or mitigate such conflict. **VTD/NVCOG** may, however, terminate the contract for convenience if he or she deems that termination is in the best interest of the **VTD/NVCOG**.

LOBBYING

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - 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 VTD/NVCOG.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

Federal Required Clauses

6. Energy Conservation Requirements

**42 U.S.C. 6321 et seq.
49 CFR Part 18**

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.

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.

12. Federal Changes

49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

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 Master Agreement between Purchaser 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.

15. Recycled Products

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

Applicability to Contracts

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

These requirements flow down to all to all contractor and subcontractor tiers.

Model Clause/Language

No specific clause is mandated, but FTA has developed the following language.

Recovered Materials - 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.

19. No Government Obligation to Third Parties

Applicability to Contracts

Applicable to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language

While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

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

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

20. Program Fraud and False or Fraudulent Statements and Related Acts

**31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307**

Applicability to Contracts

These requirements are applicable to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

1. 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.
2. 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.
3. 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.

21. Termination
49 U.S.C. Part 18
FTA Circular 4220.1E

Applicability to Contracts

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

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

- a. **Termination for Convenience (General Provision)** The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.
- b. **Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

- c. **Opportunity to Cure (General Provision)** The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) 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 (Recipient) 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 (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

- e. **Termination for Convenience (Professional or Transit Service Contracts)** The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. **Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

- g. **Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

- h. **Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for

completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

- i. **Termination for Convenience or Default (Architect and Engineering)** The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

- j. **Termination for Convenience of Default (Cost-Type Contracts)** The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

22. Government-Wide Debarment and Suspension (Nonprocurement)

49 CFR Part 29 Executive Order 12549

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Clause Language

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

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

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

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

23. Privacy Act

5 U.S.C. 552

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Model Clause/Language

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

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

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.

24. Civil Rights Requirements
29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shorten the lengthy text.

Civil Rights - 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.

28. Disadvantaged Business Enterprise (DBE)

49 CFR Part 26

Background and Applicability

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

Disadvantaged Business Enterprises

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is ___ %. A separate contract goal [**has not**] been established for this procurement.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **NVCOG/VTD** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. ***{If a separate contract goal has been established, use the following}*** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][Offerors] must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (see 49 CFR 26.53(3)). ***{If no separate contract goal has been established, use the following}*** The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

e. The contractor must promptly notify **NVCOG/VTD**, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of **NVCOG/VTD**.

30. Incorporation of Federal Transit Administration (FTA) Terms

FTA Circular 4220.1E

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (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 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 (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

A complete list of Federal Transit Administration (FTA) required clauses can be found on NVCOG's website at:

<http://nvcogct.org/sites/default/files/FTA%20Clauses%20for%20PO%20for%20FTA-funded%20purchases.pdf>