REQUEST FOR PROPOSALS

WATER AND WASTE-WATER RISK RESILIENCE ASSESSMENTS AND EMERGENCY RESPONSE PLANS CONSULTING

RELEASE DATE: APRIL 18, 2019

DUE DATE: 5:00 P.M., FRIDAY, MAY 17, 2019
1. INTRODUCTION

The Fayetteville Public Works Commission (hereafter referred to as PWC) is soliciting proposals for qualified Consultants to assist PWC in the development of its Risk and Resilience Assessment for our Water and Water-Water Facilities to ensure compliance with the America’s Water Infrastructure Act of 2018 (Section 1433). The selected consultant will review existing PWC infrastructures and assist PWC in conducting an assessment of its system as described in Section 1433 of the America’s Water Infrastructure Act of 2018. In conjunction with the review, the consultant will provide recommendations regarding the development of strategies and resources to improve the resilience of the overall Water/Waste-Water systems, including the physical and cybersecurity systems. Consultant will also assist by developing plans and procedures that can be implemented, and identification of equipment that can be utilized, in the event of a malevolent act or natural hazard that threatens the ability of PWC to deliver safe drinking water. The consultant will also assist PWC with its certification to the Environmental Protection Agency that a Risk and Resilience Assessment of its system has been completed in accordance with Section 1433 of America’s Water Infrastructure Act of 2018. The Certification is due no later than March 21, 2020.

The consultant shall have extensive education and experience with developing Emergency Action Plans (EAP’s) for Water and Waste Water Facilities, knowledge of the Clean Water Act, the Safe Drinking Water Act (SDWA), and the Water Infrastructure Finance and Innovation Act. Experience with Physical Security at Treatment Facilities is essential. The consultant must have working knowledge and experience with SCADA Systems and understanding of Cyber Security for Water and Waste Water Facilities.

The consultant should have direct participation in real-world response and recovery operations. They must be able to work with diverse and disparate groups with strong opinions and passionate perspectives while continuing to move forward toward completing the objectives and tasks.

**Project Objectives:**

**Primary Tasks:**

- Identify risk to the system from malevolent acts (terrorist or intentional acts) and natural hazards (extreme weather)
- The resilience of the pipes and constructed conveyances, physical barriers, source water, water collection and intake, pretreatment, treatment, storage and distribution facilities, electronic, computer, or other automated systems (including the security of such systems) utilized by the system
- The monitoring practices of the system
- The financial infrastructure of the system
2. The assessment and evaluation of capital and operational needs for risk and resilience management of the system. **BACKGROUND**

PWC is a publicly owned, locally operated utility and governed by a Board of Commissioners appointed by the Fayetteville City Council. We have provided electric, water and sewer services to the citizens of Fayetteville, NC and Cumberland County since 1905. PWC provides world-class service through more than 650 employees, two (2) Water Treatment Facilities, two (2) Water Reclamation Facilities. The two (2) Water Treatment Facilities have a combined treatment capacity of producing approximately 48 million gallons per day, and the two (2) Water Reclamation Facilities has a combine total of 46 million gallons per day.

3. **PROPOSAL DUE DATE AND TIME/SUBMISSION REQUIREMENTS**

3.1 Fayetteville Public Works Commission will accept proposals until **5:00 p.m., Friday, May 17, 2019** in the Procurement Department, 1st floor, PWC Administration Building, 955 Old Wilmington Road, Fayetteville, NC 28301. Proposals received after the stated date and time will not be considered and will be returned to the bidder unopened.

3.2 Bidders shall plainly mark the proposals with the following information: Bidder’s name and address, bid title and bid due date and time.

3.3 Proposals may be mailed or delivered in person or by express mail to the PWC Procurement Office, Attention: Mark Cannady, Procurement Supervisor, 1st floor, PWC Administration Building, 955 Old Wilmington Road, Fayetteville, NC 28301. Electronic (fax or e-mail) proposals will be accepted.

4. **QUESTIONS/ADDENDA**

Questions regarding this Request for Proposal shall be submitted in writing to the Attention of Mark Cannady, Procurement Supervisor, by fax at (910) 483-1429, or by e-mail to mark.cannady@faypwc.com, no later than **5:00 p.m., Wednesday, May 8, 2019**. Questions, and their corresponding answers, will be provided to all vendors.

Any changes to the specifications will be made in the form of an Addendum and will be supplied to all prospective bidders.

Bidders are expressly prohibited from contacting any PWC official or employee associated with this Request for Proposals, except in the manner noted in this section. Violation of this provision is grounds for the immediate disqualification of the bidder.
5. VENDOR RESPONSIBILITIES

5.1 The vendor shall provide and maintain insurance throughout the life of the project as follows:

- **Worker’s Compensation Insurance** if required by State law; and
- **Automobile Liability Insurance** on any owned, non-owned or rented vehicles with limits of at least $1,000,000 per occurrence combined single limit bodily injury and property damage.
- **Commercial General Liability Insurance** with a combined single limit of liability of not less than $1,000,000 for each occurrence of bodily injury and/or property damage and an annual aggregate of liability of not less than $1,000,000 for bodily injury and/or property damage, and an annual aggregate of liability of not less than $1,000,000 for Completed Operations and Products Liability.
- **Additional Insured.** PWC, its officials, employees and agents shall be named an additional insured in the Comprehensive Automobile and Commercial Liability Insurance policies and the Commercial General Liability coverage shall be written on an “Occurrence” basis.

5.2 The vendor shall agree to protect, indemnify and hold harmless PWC, its agents, officers and employees from and against any and all losses resulting directly or indirectly from negligent acts, errors, or omissions of the vendor, or vendor’s agents, officers, employees, and subcontractors, in the performance of services under this contract.

5.3 The vendor shall ensure that any subcontractors engaged in work under this project are included as insured’s under its policies OR shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

5.4 All insurance policies shall be written by insurers licensed and lawfully authorized to underwrite and transact business in the State of North Carolina and must have an A.M. Best rating of not less than A-VII.

5.5 Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to:
5.6 The insurance requirements outlined shall be maintained in force by the vendor throughout the term of this contract without lapse, and in no manner should deviate from these requirements. In the event vendor fails to maintain insurance as outlined herein, PWC may, at its option, but not at the responsibility of PWC, obtain the required insurance at the expense of the vendor.

5.7 Public Works Commission, its officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to PWC, its officials, employees or volunteers.

5.8 The vendor shall submit, with their proposal, the names of any and all subcontractors expected to work on this project. PWC reserves the right to accept or reject any proposed subcontractor.

6. VENDOR PROPOSED SOLUTION

Incomplete proposals or proposals inconsistent with the recommended format may be disqualified from consideration.

6.1 The vendor shall include a cover letter signed by an authorized individual who commits to the terms and conditions of the company’s proposal. It must be stated in the cover letter that they agree to the terms and conditions.

6.2 The vendor shall include a description of their company and background. Vendor shall provide a list of three (3) references for which similar services were performed. Please provide contact name, title, phone number, and email address. References will be contacted.

6.3 The vendor shall include a statement of qualifications to demonstrate their ability to perform to proposal requirements. Also, include the names of any subcontractors expected to be engaged for this project and their credentials with the estimated percentage of the project that each sub-contractor will perform before and after acceptance.

6.4 The vendor shall provide a full description of the services and processes that will be undertaken to complete the project in the most efficient, timely and
comprehensive manner. The description of implementation services should outline in detail the implementation approach towards and include an implementation plan and project schedule.

6.5 Vendor must comply with all federal, state, and local laws, ordinances, rules, orders and regulations relating to performance of the contracted work.

6.6 The vendor shall provide sample reports that exemplify data produced through their analysis process.

6.7 This RFP and the vendor’s response will consist of the final contract terms and conditions between vendor and the Public Works Commission.

6.7.1 The terms and conditions of this RFP will preempt those of other documents unless exceptions are noted herein. Thus, all variances, substitutions, exclusions, exceptions and clarifications to the RFP’s requirements and specifications, and terms and conditions, must be listed in this section if they are to be considered as part of the final agreement, regardless if they appear elsewhere in your response. Each shall identify the applicable section/sub-section number(s) it references.

PWC reserves the right to accept or reject any variances, substitutions, exclusions and exceptions.

7. PROPOSAL CONDITIONS

7.1 Submission of a proposal indicates explicit acceptance by the vendor of the conditions contained in this request. PWC reserves the right to reject without prejudice or explanation any or all responses. PWC reserves the right to waive informalities. PWC reserves the right to amend the specifications of this Request for Proposal and request new proposals at any time prior to award of contract. The decision of PWC shall be final.

7.2 The vendor shall supply the following:

7.2.1 A single point of contact through proposal acceptance. PWC will communicate solely through this contact regarding all issues through acceptance.

7.2.2 Resumes of key team members assigned to the project. Team members should represent relevant and diverse knowledge and expertise.
7.2.3 The vendor’s single point of contact after acceptance. PWC will communicate solely through this contact regarding all issues after acceptance.

7.2.4 These contacts must be willing and able to assume full account responsibility and act as an agent of the vendor.

7.2.5 Clearly define and detail customer responsibilities before, during and after the assessment, both prior to acceptance, and after acceptance.

8. RFP COMMUNICATION

Communication regarding this Request for Proposal shall only be made in writing to the Attention of Mark Cannady, Procurement Supervisor, by fax at (910) 483-1429, or by e-mail to mark.cannady@faypwc.com. Verbal communications will not be binding upon PWC.

9. VENDOR CONTACT

9.1 Communication regarding this Request for Proposal via any medium other than the designated fax number or e-mail address, including phone, personal visits, etc., is prohibited.

9.2 Violation of this provision constitutes grounds for the immediate disqualification of the vendor from consideration in the award of the bid.

10. CONSIDERATION OF REJECTION AND WITHDRAWAL OF PROPOSAL

10.1 Correspondence

After deposit of the proposal with the Public Works Commission, no proposal may be withdrawn by the vendor for a period of 90 days after the opening of the proposals. Until that time, the proposal will remain firm and irrevocable or any required bond will be forfeited.

10.2 A proposal may be rejected if the vendor fails to:

- Submit their proposal in the format specified.
- Supply the minimum information requested in the RFP.
- Submit all addenda, addenda responses and templates.
- Submit their proposal by the date and time required.
- Submit a cost proposal with unbundled, detailed, itemized pricing.
• Provide truthful and accurate information in its proposal.

10.3 No Acceptance

PWC reserves the right to reject any or all proposals, to waive any informalities in proposals, and to accept any proposal deemed most favorable to PWC. PWC specifically reserves the exclusive right to reject any or all proposals and to waive any technical defects in proposals.

10.4 Competency of Vendor

PWC shall make such investigation as it deems necessary to determine the ability of the vendor to perform the work, and/or provide the goods or services required by this RFP. Upon request, the proposer shall furnish evidence satisfactory to PWC that it has the necessary facilities, ability, and financial resources to fulfill the specifications and conditions of the contract.

10.5 Similar Project Experience

As part of their proposal, vendor shall include a list of at least three (3) references similar in size and scope completed over the past three (3) years. Information provided shall include client name, address, phone number and contact name. Failure to provide this information may result in disqualification of the proposal from consideration.

11. NORTH CAROLINA FREEDOM OF INFORMATION ACT

All proposals received by PWC shall be considered public information subject to lawful disclosure under the North Carolina Freedom of Information Act. Any proposal material deemed by the vendor to constitute either proprietary or trade secret material shall be designated as such, and each sheet or section of a sheet containing such material shall be so marked by the vendor. In addition, it shall be the sole responsibility of the vendor to demonstrate to a court of competent jurisdiction that their designation is proper. PWC shall not make public any material determined by the court to be proprietary or trade secret. Vendor hereby agrees to indemnify and hold PWC free and harmless from any claims, suits, damages, penalties or expenses arising out of vendor's proprietary or trade secret designation.

12. ERRORS

When an error is made in extending prices, the correct extension of the unit price times the quantity will govern. Carelessness in quoting prices, or in preparation of the proposal otherwise, will not relieve the vendor. Erasures in proposals must be explained over signature of the vendor.
13. WORK/CHANGE ORDERS

After project award, work will be authorized by either a PWC purchase order or formal contract, whichever is deemed to be in the best interest of PWC. Change orders are required for any changes in scope to the project that add, delete or modify any billable component(s). Each work/change order will contain the date of issue and a unique number used for identification and cross-reference purpose on invoices.

14. PROJECT PLAN

PWC requires that each bidder prepare a detailed plan outlining the primary tasks, estimated hours, responsibility, major deliverables, and timing. Bidder shall provide this plan with an anticipated start date of no later than August 1, 2019. At a minimum, the RFP response will cover the following areas:

- Experience developing Emergency Action Plans for Water and Waste Water Facilities;
- Understanding of the water/waste water treatment process;
- Specific action plans developed for risk and resilience assessments;
- Understanding of SCADA Systems;
- Facilitation of groups toward goal setting and task accomplishment;
- Experience in coordinating, facilitating and leading planned Emergency Response Plans;
- Communication skills with diverse groups including individuals with very limited emergency response backgrounds or experience.

15. PROJECT MANAGEMENT

The vendor must provide a full description of the services and processes that will be performed during the program management process in the most efficient, timely and comprehensive manner.

The vendor shall assign a single Project Manager dedicated and available for the entire duration of the project. The Project Manager may only be replaced upon approval by, or at the request of PWC.

At a minimum, the vendor’s Project Manager shall be responsible for the following:

- Identify and prioritize the most critical elements of each facility.
- Describe the consequences of the loss of critical facilities or functions.
- Define the type or types of terrorism acts that could happen and evaluate the likelihood of what type or types of actions that could be conducted such as:
physical damage; chemical, biological or radiological damage; disruption of the interdependency system, such as electrical, transportation, etc.

- Define the likelihood of the treat sources such as terrorist, internal, or vandalism.
- Define the type or types of natural hazards that could impact PWC and evaluate the likelihood that the PWC could be affected by the hazard.
- Prioritize the hazards.
- Document the process used to determine the type of hazard and likelihood of the occurrence.
- Develop or identify the system and facility characteristics.
- Identify important facilities, processes and assets.
- Inventory of systems protection elements and assess their capabilities and reliability.
- Describe the methodology that will be used to develop the Vulnerability Assessment and the Emergency Response Plan.
- Conduct a natural Hazard Risk Analysis.
- Develop recommendations for hazard mitigation strategies.
- Provide protocols for Continuity of Operations and Recovery.

16. PROJECT DELIVERABLES

1. Action Plan, including project phases, major tasks, responsibilities to be undertaken by PWC/Vendor, and milestone objectives.

2. Weekly or bi-weekly project conference calls to be held throughout the project, with meeting agendas and minutes provided by the vendor.

3. Ongoing action item list maintained by the vendor.

4. The vendor will provide a template and procedure for formal reporting of issues by the customer.

5. Final Business Report that summarizes the engagement.

17. E-VERIFY

Contractor/Vendor hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. Contractor/Vendor further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a).
Contractor/Vendor hereby pledges, attests and warrants through execution of this Agreement that Contractor/Vendor complies with the requirements of Article 2, Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by Contractor/Vendor shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement.

18. **IRAN DIVESTMENT ACT**
As mandated by N.C.G.S. 147-86.59(a), Contractor/Vendor hereby certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. Contractor/Vendor further certifies that in accordance with N.C.G.S. 146-86.58(b) that it shall not utilize any subcontractor found on the State Treasurer's Final Divestment List. Contractor/Vendor certifies that the signatory to this Purchase Order authorized by the Contractor/Vendor to make the foregoing statement.

19. **UTILIZATION OF SMALL BUSINESS CONCERNS**
1) Definitions. As used in this contract –
   a) HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
   b) Service-disabled veteran-owned small business concern –
      i) Means a small business concern -
         (1) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
         (2) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
      ii) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16). Small business concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. Small disadvantaged business concern, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that –
      iii) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by –
         (1) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and
(2) Each individual claiming economic disadvantage has a net worth not exceeding $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

iv) The management and daily business operations of which are controlled (as defined at 13 CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

c) Veteran-owned small business concern means a small business concern –

i) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

ii) The management and daily business operations of which are controlled by one or more veterans.

d) Women-owned small business concern means a small business concern –

i) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

ii) Whose management and daily business operations are controlled by one or more women.

2) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

3) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

4) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.
5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include –

a) HUBZone small business database search application Web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm; or http://www.sba.gov/hubzone;

b) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or

c) The SBA HUBZone Help Desk at hubzone@sba.gov.

20. ADDITIONAL TERMS AND CONDITIONS

DISCLAIMER OF FEDERAL GOVERNMENT OBLIGATIONS OR LIABILITY

The Contractor, and any subcontractors acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this 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 Contractor, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract. It is further agreed that the clause shall be included in each subcontract and shall not be modified, except to identify the subcontractor who will be subject to its provision.

PROTEST PROCEDURES

Protests related to this procurement must be addressed to Fayetteville Public Works Commission, 955 Old Wilmington Road, Fayetteville, NC 28301 and shall be received, in writing, within five (5) calendar days of bid award. Responses will be supplied not later than seven (7) calendar days following receipt of said protest. A protester must exhaust all administrative remedies before pursuing a protest with the Federal grantor agency. Reviews of protests by the Federal grantor agency are limited to:

(1) Violations of federal law or regulations and the standard of this section (violations of state or local law will be under the jurisdiction of state and local authorities) AND

(2) Violations of the grantee’s protest procedures for failure to review a complaint or protest. Protests received by the Federal grantor agency other than those specified above will be referred to the grantee.
ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325
18 CFR 18.36 (i)
49 CFR 633.17

The following access to records requirements apply to this Contract:

Where the Purchaser is not a State but a local government and is the Federal Recipient or a subgrantee of the Federal Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the Federal grantor agency, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the Federal grantor agency or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

Where any Purchaser which is the Federal grant recipient or a sub grantee of the Federal grant recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Federal grantor agency and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the Federal grantor agency, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
FEDERAL CHANGES

49 CFR Part 18

Contractor shall at all times comply with all applicable Federal regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Commission and the Federal grantor agency, 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.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.
49 U.S.C. 5307

(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 Federal 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, the Government reserves the right to impose the penalties of 18 
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. It is further agreed that the clauses shall not 
be modified, except to identify the subcontractor who will be subject to the provisions.

CIVIL RIGHTS

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 
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 
the Federal grantor agency 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 
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 
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 the Federal grantor agency 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 the Federal grantor agency 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 the Federal grantor agency may issue.

3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance, modified only if necessary to identify the affected parties.

**ENERGY CONSERVATION REQUIREMENTS**

42 U.S.C. 6321 et seq.

49 CFR Part 18

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.

**COMPLIANCE WITH FEDERALLY REQUIRED CLAUSES AND REQUIREMENTS**

Contractor (bidder) is responsible for ensuring its compliance with all applicable Federal requirements. Additionally, Contractor is responsible for ensuring that subcontractors, at as many tiers of the Project as required, perform in accordance with the terms, conditions and specifications of the contract, including all applicable Federal requirements. Upon request of the City of Fayetteville or the Federal government, Contractor shall provide evidence of the steps it has taken to ensure its compliance with the Federal requirements, as well as evidence of the steps it has taken to ensure
subcontractor performance, and/or submit evidence of subcontractor's compliance, at all tiers.

**AMERICANS WITH DISABILITIES ACT (ADA)**

Americans with Disabilities Act (ADA). The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements the Federal Government. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.

**PRIVACY ACT**

5 U.S.C. 552

(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.

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.

**CIVIL RIGHTS REQUIREMENTS**

29 CFR Part 1630, 41 CFR Parts 60 et seq.

The Recipient agrees to comply with all applicable civil rights laws and implementing regulations including, but not limited to, the following:

a. **Nondiscrimination in Federal Public Transportation Programs.** The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each sub recipient at any tier of the Project, with the provisions of 49 U.S.C. § 5332,
which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

b. **Nondiscrimination – Title VI of the Civil Rights Act.** The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each sub recipient at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Recipient also agrees to comply with any applicable implementing Federal directives that may be issued.

c. **Equal Employment Opportunity.** The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier of the Project and each sub recipient at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and implementing Federal regulations and any subsequent amendments thereto. Except to the extent FTA determines otherwise in writing, the Recipient also agrees to comply with any applicable Federal EEO directives that may be issued. Accordingly:

1. **General.** The Recipient agrees as follows:

   a. The Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

   b. If the Recipient is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. Failure by the Recipient to carry out the terms of that EEO program shall be treated as a violation of the Grant Agreement or Cooperative Agreement. Upon notification to the Recipient of its failure to carry out the approved EEO program, the Federal Government may impose such remedies as it considers appropriate, including termination of Federal assistance in accordance with Section 11 of this Master Agreement, or other measures that may affect the Recipient's eligibility to
obtain future Federal assistance for transportation Projects.


(3) Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate participation by DBEs in the Project and assures that each third party contractor at any tier of the Project and each sub recipient at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable. Therefore:

c. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., and with implementing Federal regulations that prohibit discrimination on the basis of sex that may be applicable.

d. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and with implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.

e. Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public
accommodations be accessible to individuals with disabilities. In addition, the Recipient agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;


(8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

(9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

(10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(11) Federal civil rights and nondiscrimination directives implementing the foregoing regulations.

f. **Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections.** To the extent applicable, the Recipient agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1174 et seq., with the Comprehensive Alcohol Abuse and Alcoholism
Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4581 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd-3 and 290ee-3, and any subsequent amendments to these acts.


i. Other Nondiscrimination Laws. The Recipient agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting discrimination that are applicable, except to the extent the Federal Government determines otherwise in writing.

**LOBBYING**

**Applicability to Contracts**

Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

**Mandatory Clause/Language**

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]

Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.


CLEAN AIR

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FEMA.

CLEAN WATER

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and
understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FEMA.

RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

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 Fayetteville Public Works Commission’s Director of Legal, Risk, and Procurement Services. 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 Fayetteville Public Works Commission’s Director of Legal, Risk, and Procurement Services. 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 Fayetteville Public Works Commission’s Director of Legal, Risk, and Procurement Services shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between Fayetteville Public Works Commission 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 in which Fayetteville Public Works Commission is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder 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 the Fayetteville Public Works Commission, (Architect) 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 thereunder, except as may be specifically agreed in writing.

**CONTRACTOR ASSURANCE**

The Contractor, by submitting a proposal, shall adhere to all the applicable Federal provisions listed above. Failure to comply with Federal provisions shall be considered a breach of contract.

**DEBARMENT AND SUPENSION**

The Contractor, by submitting a proposal, certifies that to the best of its knowledge that they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department agency; have not within a three (3)-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining attempting to obtain, or performing a public transaction or contract under public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction or records, making false statements, or receiving stolen property; are not presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in the above statements of this section; have not within a three (3)-year period preceding this application/proposal had one or more public transactions terminated for default.

**DRUG-FREE WORK PLACE**

The Contractor, by submitting a proposal, shall adhere Federal Drug Free Workplace requirements as outlined in 2 C.F.R. 182.

Contractor shall make good faith efforts to maintain a drug-free workplace, publish workplace statement and establish drug-free awareness programs for employees. Contractor should take action concerning who are convicted of violating drug statutes in the workplace. Contractor shall contact Fayetteville Public Works Commission if Contractor cannot adhere to the requirements of the Federal Regulations noted above. Failure to comply provisions shall be considered a breach of contract.
FORM OF EXCEPTIONS

Bidder shall identify each exception or deviation from the specifications. The omission of exceptions implies complete compliance with the Bid Documents and Specifications.

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Note to Proposers: All costs proposed are to be inclusive of labor, materials, equipment, incidents, etc. necessary to provide the scope of services outlined in this RFP for the below listed hourly rates. Rates proposed are also to include all expenses, including general overhead, equipment, field overhead, profit, travel per diem, all necessary food, water, restroom and lodging facilities needed to provide these services.

<table>
<thead>
<tr>
<th>Position Descriptions</th>
<th>Hourly Rate¹</th>
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<tbody>
<tr>
<td>Program Manager</td>
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<td>Technical Assistance Liaison</td>
<td>$___________</td>
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<tr>
<td>Training Specialist</td>
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<tr>
<td>Other Personnel: (If Applicable)</td>
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<td>Estimated Assessment Fees (If Applicable)</td>
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<td>Estimated Certification Fees (If Applicable)</td>
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<td>Other Associated Fees: (If Applicable)</td>
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¹ Hourly rates listed in response to the above rate table may be decreased through negotiation in any contracted entered into as a result of this RFP, including the original contract and renewals, but cannot be increased.
BIDDER INFORMATION

Name of Company______________________________

Address______________________________

________________________________________

Phone No.______________________________ Fax No.______________________________

E-Mail Address______________________________

Federal I.D. No.______________________________

SDBE, Minority or Woman Owned Business Enterprise _____Yes _____No

Bid Submitted By: ____________________________

(Name Printed Out)

________________________________________

(Signature)

Title:______________________________

Date:______________________________