



LAPTOP COMPUTERS

CITY OF WINSTON-SALEM ADVERTISEMENT FOR BIDS

Pursuant to Section 143-129 of the General Statutes of North Carolina, sealed bids endorsed **LAPTOP COMPUTERS** to be furnished to the Winston-Salem Transit Authority will be received by the City/County Purchasing Department in Suite 324, City Hall Building, 101 North Main Street, Winston-Salem, NC until 9:00 am, Tuesday, February 6, 2018 at which time they will be publicly opened and read.

Instructions for submitting bids and complete specifications may be obtained during regular office hours, Monday – Friday, 8:00 a.m. to 5:00 p.m. at the same location, or by contacting TaWanna Gates via email tawannag@cityofws.org or phone 336-747-6938. The City reserves the right to reject any or all proposals.

INVITATION TO BID

Bids Will Be Opened

@9:00 AM, Tuesday, February 6, 2018

Notice to Bidders

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

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

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

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

City Rights and Options

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

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

Public Records

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

Familiarity with Laws and Ordinances

The submission of a bid on the equipment requested herein shall be considered as a representation that the bidder is familiar with all federal, state, and local laws, ordinances, rules and regulations which affect those engaged or employed

in the provision of such services, or equipment used in the provision of such services, or which in any way affects the conduct of the provision of such services; and no plea of misunderstanding will be considered on account of ignorance thereof. If the bidder discovers any provisions in the IFB documents that are contrary to or inconsistent with any law, ordinance, or regulation, it shall be reported to the City in writing without delay.

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

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

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

Ethics Policy / Code of Conduct

The City of Winston-Salem has established guidelines for ethical standards of conduct for City representatives and to provide guidance in determining what conduct is appropriate in particular cases. City representatives should maintain high standards of personal integrity, truthfulness, honesty, and fairness in carrying out public duties; avoid any improprieties in their roles as public servants including the appearance of impropriety; and never use their position or power for improper personal gain. In establishing an ethics policy, the City of Winston-Salem desires to protect the public against decisions that are affected by undue influence, conflicts of interest, or any other violation of these policies as well as promote and strengthen the confidence of the public in their governing body. For a complete review of the City Policy click the following link.

<http://www.cityofws.org/Home/Departments/Purchasing/Articles/Bids>

Equal Employment Opportunity / ADA

The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, national origin, political affiliation, gender, age or disability. The contractor shall comply with all applicable laws and regulations regarding the American with Disabilities Act (www.ADA.gov) as amended from time to time and all rules and regulations promulgated thereunder and other laws and regulations pertaining to equal employment. The Contractor hereby agrees to indemnify the Owner from and against all claims, suits, damages, costs, losses and expenses in any manner arising out of or connected with the failure of the contractor, its subcontractors, agents, successors, assigns, officers or employees to comply with the provisions of the ADA or rules and regulations promulgated thereunder. The Contractor agrees to act affirmatively in its employment and promotion practices, and in the general treatment of its employees.

Stimulation of the Local Economy

In an effort to stimulate the local economy, foster development and promote efficiency in the provision of city services and the completion of various city projects, the City of Winston-Salem has undertaken an initiative to strongly encourage all parties contracting with the City of Winston-Salem to evaluate their internal operations and hiring practices and, where appropriate, to initiate efforts to stimulate the local economy by hiring applicants and contractors from the Winston-Salem/Forsyth County Area and by utilizing minority and women contractors and service providers. Such efforts to stimulate the local economy may be accomplished by posting job vacancies with the North Carolina Employment Security Commission, the Piedmont Triad Regional Council of Governments, and the Winston-Salem Urban League; and utilizing the State of North Carolina Office for Historically Underutilized Business database

(<https://www.ips.state.nc.us/IPS/vendor/SearchVendor.aspx?hobtain>) or other local resources such as the City of Winston-Salem M/WBE Program to identify Winston-Salem/Forsyth County based contractors and subcontractors. Stimulation of the local economy requires a collaborative effort of both the public and private sector. The city is committed to taking reasonable steps to achieve said goal.

E-Verify

Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if the Contractor utilizes a subcontractor, the Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

Iran Divestment Act

Contractor hereby certifies that it is not on the North Carolina State Treasurer's list of persons engaging in business activities in Iran, prepared pursuant to NCGS § G.S. 147-86.58, nor will Contractor utilize on this agreement any subcontractor on such list. This list, along with additional information about the Iran Divestment Act, is available on the Treasurer's Office site: <https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.aspx>.

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I. INVITATION TO BID SUMMARY

Winston-Salem Transit Authority (WSTA) and the City of Winston-Salem are accepting proposals for the "Winston-Salem Transit Authority the provision of **Laptop Computers** (hereon called "Project"), as specified within the Scope of Work, from qualified bidders, manufacturers, etc. having the specific products and experience identified in the Invitation to Bid (IFB).

The successful Bidder will be responsible for providing the scope of services outlined herein. This Project is funded through a combination of Federal Transit Administration grants and local matching funds.

The term City also includes WSTA.

II. OBJECTIVE:

This Invitation to Bid (IFB) is issued for the expressed purpose of WSTA and the City to, by evaluation of proposals; select a Vendor for procurement of the items listed in Section VI (Scope of Works and Equipment Specifications.)

Issuance of a Purchase Order (P.O.) is contingent upon the Vendor's agreement to provide the quantity of materials listed and deliver them according to the delivery timelines herein given. By submission of a proposal, Vendors agree to meet all the terms and conditions herein stated, whether federal or local.

III. INTRODUCTION

A. COMMUNITY PROFILE

The City of Winston-Salem, the fifth largest city in North Carolina, is the county seat of Forsyth County and located in the Piedmont Triad region. The City is approximately 132 square miles in area with a 2014 population of approximately 239,270 people. The total adopted budget for FY 2015-16 is approximately \$415 million. Winston-Salem is governed by an eight-member City Council whose members are elected by ward and a Mayor elected at large and operates under a Council/City Manager form of government.

B. AGENCY BACKGROUND

The Winston-Salem Transit Authority (WSTA) provides transportation services to Winston-Salem residents and visitors with service Monday through Saturday throughout the Winston-Salem community and limited Sunday service. WSTA is dedicated to providing the public with the highest quality transit system possible. WSTA was created in 1972 when the City of Winston-Salem assumed operations from the Safe Bus Company. WSTA is governed by an eight-person board comprised of representatives appointed by the City Council of Winston-Salem, upon the recommendation of the Mayor. Each WSTA board member serves for a term of three years.

C. GENERAL INVITATION TO BID (IFB) SUBMITTAL INFORMATION

North Carolina General Statute (N.C.G.S.) 143-132(a) requires a minimum of three competitive bids be received for formal purchase contracts over \$90,000. Should this be the case and fewer than the required three bids be offered, this IFB may be re-advertised and at the second offering, less than three bids may be accepted and an award made.

The preparation of proposals is at the total expense of the bidder. There is no expressed or implied obligation for the City to reimburse responding bidders for any expense incurred in the preparation of bid proposals in response to this IFB. All bid proposals submitted to the City shall become properties of the City and will not be returned. The City reserves the right to reject any or all bid proposals, in whole or part, to waive any informality in any proposal, and to accept the bid proposal which, in its discretion, is in the best interest of the City.

Bids must be submitted in accordance with the form prescribed by the City of Winston-Salem in Sections IV, V and VI of this IFB. Failure to respond in this manner may render the bid ineligible for further consideration.

For a complete list of the City's IFB submittal terms and conditions, legal statements and Federal Requirements, please refer to Section VIII of this Invitation for Bid.

Bid Proposals are to be delivered in a sealed envelope labelled with the name of the company submitting the bid proposal and bid name "WSTA Laptop Computers and Ancillary Equipment IFB# IF18143 with bid time and date to:

U.S. Mail address: City/County Purchasing Department Post Office Box 2511 Winston-Salem, North Carolina 27102	FedEx and hand-delivery address: City/County Purchasing Department 101 N. Main Street, 324 City Hall Winston-Salem, North Carolina 27101
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Bid Proposals MUST include the following:
(Attachments "C", for bids exceeding \$100,000)

- Information as outlined in Sections IV and V and VI of this IFB
- Attachment A (Proposal Signature Form signed in ink, no reproductions)
- Attachment B (Price Sheet)
- Attachment C (Certification Regarding Lobbying for bids exceeding \$100,000)
- Addenda to IFB, if issued

D. QUESTIONS

Questions and all correspondence regarding this IFB should be submitted by e-mail to TaWanna A. Gates at tawannag@cityofws.org by **12:00 Noon, Tuesday, January 16, 2018**. Should any questions require an answer or any part of the IFB be changed; an addendum will be issued. Any addenda becomes a part of this IFB. Bidders are responsible for contents of addenda regardless of receipt or acknowledgement.

IV. PROPOSAL OUTLINE TO BE SUBMITTED

The proposal shall be organized and submitted with the following elements:

1. Cover Page and Table of Contents
2. Executive Summary:
Provide a brief summary describing the bidder's ability to provide the materials and shipping requested a history of the bidder's background and experience on similar project scope. Any other information called for by this invitation to bid which the bidder deems relevant, including restating any exceptions to this invitation to bid. This summary should be brief and concise.
3. Questionnaire/Response to Scope of Work (Price Sheet).
Bidder shall provide responses and information to fully satisfy each item in the Questionnaire. Each question item should be presented before the bidder's response.
4. Required forms and attachments noted herein.

V. QUESTIONNAIRE

A. Company and General Information

1. Company name and address.
2. Letter of transmittal signed by an individual authorized to bind the bidder, stating that the bidder has read and will comply with all terms and conditions of the IFB.
3. General information about the primary contact that would be able to answer questions about the bid. Include name, title, telephone number and email address of the contact.

B. Qualifications and Experience of the Firm

1. Describe your firm's history and organizational structure. Include the size of the firm, location of offices, years in business, and number and position titles of staff that will be or could be involved with this Project.
2. What is the primary business of the parent company and/or affiliates?
3. Which office(s) of your organization will have primary responsibility for managing this account? List the members of your team who will be responsible for providing the products and services and for ongoing support.
4. What is your firm's experience providing the products and services requested? Describe comparable projects performed by your firm in the last five years.
5. Comment on other areas that may make your firm uniquely different from competitors.

C. Price

1. Provide your price for the proposed work in the base price sheets attached in **Exhibit B. Price quotes should be itemized.**
2. Outline of billing and payment expectations, including timing and method of payment. WSTA/City standard payment terms are Net 30.
3. Describe any other required fees not previously detailed above.
4. Unit prices are not to include North Carolina sales or use tax. Such will be invoiced separately and paid at that time.

D. References

List the name, address and telephone number of references from at least three (3) recent similar projects. Include a brief description of the work provided for each reference.

E. Delivery Schedule

Include a delivery schedule for the equipment requested in this IFB.

F. Liability

The successful proposer agrees to insure all materials while in transit and to make right any damage incurred during shipping (F.O.B. Destination). WSTA/City assumes no liability until materials are unloaded and in the possession of WSTA/City.

VI. Scope of Work and Equipment Specifications

The City is soliciting bids for computers and ancillary equipment as specified in this section. A successful bid is contingent upon the Proposer's ability to provide the equipment as specified in this section. Equipment shall be delivered to the Winston-Salem Transit Authority located at 1060 North Trade Street, Winston-Salem, North Carolina.

QUANTITIES ARE SUBJECT TO CHANGE. WSTA/City reserves the right to change the actual number of computers and ancillary equipment in the Project. Furthermore, additional items may be required before conclusion of the project. As a result, all proposers shall include detailed and itemized price quote (with cost per unit information) for the purchase and delivery of additional equipment. Any and all additional purchases shall be based on the unit prices submitted with the bid.

A. PROJECT MANAGEMENT

As the project is paid for by Federal Transit Administration (FTA) grants and local transit funds, the Bidder shall ensure that the project will be in compliance with all FTA rules and regulations and shall assist in providing all necessary information and documentation for invoicing and grant management purposes.

B. SPECIFICATIONS—Computers and Ancillary Equipment

The following specifications serve as minimum guidelines. However, it is the Bidder's responsibility to ensure the project is in full compliance as required with the Federal Transit Administration (FTA), Transportation Development Act (TDA) and Americans with Disabilities Act (ADA) requirements. FTA provisions include, but are not limited to, the standard federal solicitation provisions included in Section VII. The products must also be structurally sound.

The following equipment is to be provided to the Winston-Salem Transit Authority. **HP ZBOOK15 G4** or an approved equal. Quantities and technical specifications are as follows:

Quantity. 20

HP IDS i7-7700HQ 15 G4 Base NB PC

Windows 10 Pro 64 US

Adobe Acrobat DC and Microsoft Office Professional 2016

NVIDIA Quadro M1200 4GB Graphics

No Webcam

15.6 inch FHD (1920x1080) Anti-Glare LED SVA slim

16GB (2x8GB) DDR4 2400

1TB SATA-3 Three Layer Cell Solid State Drive

Intel 8265 ac 2x2 NVP +Bluetooth 4.2 WW

HP It4120 LTE HSPA+ EVDO Gobi 4G Foxconn

No Service Provider AMER

Fingerprint Reader

9 Cell 90 WHR Long Life

150 Watt Smart Slim AC Adapter

C5 1.0m Power Cord US

3/3/3 Warranty US

NovPro AMT supported

DIB HP Mobile USB DVDRW NonLS

DIB HP Business Top Load Case

Country Localization US

Dual Point Backlit spill-resistant US

EStar Enable IOPT

Core i7 G7 Label

Laptop Carry bag with each laptop

PART 1-PRODUCTS

1.0 DELIVERY

It shall be the responsibility of the Bidder to make all arrangements for delivery and unloading of the shelters, furnishing, materials and equipment. WSTA/City will coordinate with Bidder for receipt and unloading of shipments at WSTA.

Materials shall be delivered to 1060 North Trade Street, Winston-Salem, North Carolina 27101. Individual items shall be wrapped and secured so as to protect them during delivery and storage. All risks of loss or damage to the materials and equipment during shipment as a result of fire, theft, water, malicious mischief or other cause shall be borne by the Bidder (F.O.B. Destination) until receipt of and acceptance of the equipment by the City.

Receipt of goods by WSTA/City shall be inspected at time of delivery to determine if shipment is complete. Inspection of goods shall precede payment in full. The City reserves the right to uphold its Buyer's rights under the provisions of the Uniform Commercial Code and/or North Carolina General Statute § 25-2.

VII. EVALUATION OF BIDS

WSTA/City designated staff will evaluate bid proposals received. During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarification from those that submit proposals. Any and all changes in the IFB will be made by written addendum, which shall be issued by the City to all prospective bidders who have been issued or obtained copies of the IFB from the City. Submission of a proposal indicates bidder acceptance of the conditions contained in this IFB.

Bids will be judged on the Bidder's ability to provide the products and services that meet the requirements set forth in this document. The City reserves the right to make such investigations as it deems necessary to determine the ability of the Bidder to provide the products and services to meet a satisfactory level of performance in accordance with the City's requirements. Interviews and presentations by one, several, or all of the bidders may be requested by evaluators if deemed necessary to fully understand and compare the bidder's capabilities and qualifications. The adequacy and clarity of the proposal will influence its evaluation. The City will use the criteria listed below in determining which proposal best meets the needs of the City. The City shall be the sole determiner of suitability to the City's needs. Once required information is verified, proposals will be evaluated on the basis of the following criteria:

A. Equipment Specifications (50%)

B. Total Proposed Cost (50%)

Errors and Omissions:

Once bid proposals are opened, Bidders will not be allowed to make changes to its submittal nor will changes be allowed due to errors and/or omissions within these instructions and specifications. Full instruction will always be given when errors or omissions are discovered.

VIII. TERMS AND CONDITIONS

GENERAL: All bids are subject to the provisions of the attached General Contract Terms and Conditions. All bid responses will be controlled by the Terms and Conditions included by The City of Winston-Salem. Bidder terms and conditions included as a part of published price lists, catalogs, and/or other documents submitted as a part of the bid response are waived and will have no effect either on the bid, or any contract which may be awarded as a result of this bid. **The attachment of any other terms and conditions may be grounds for rejection.**

Bidder specifically agrees to the conditions set forth in this paragraph by signature of the "BID" contained herein. Pursuant to G.S. 143-48 and Executive Order No. 77, the State invites and encourages participation in this procurement by a business owned by minorities, women, and the handicapped.

WARRANTY: Bidder guarantees goods and equipment offered in this bid to be free from any and all defects in material and workmanship for the period offered by the manufacturer and in no case for less than one (1) year, and shall cover the cost of replacement, service, parts, and shipment to and from points of service in total. This warranty shall continue when the City installs the materials/equipment as it relates to manufacturer defect.

SPECIFICATIONS: Manufacturer's name and catalog numbers used in this bid is representative of the equipment desired. Brand names are incidental. Approved equals will be considered.

BID EVALUATION: The City of Winston-Salem reserves the right to reject any bid on the basis of the function, compatibility with user requirements, as well as cost. The City of Winston-Salem reserves the right to award this contract to a single overall bidder on all items, or to make awards on the basis of individual items or groups of items, whichever shall be considered by The City of Winston-Salem to be most advantageous or to constitute its best interest. Bidders should show unit prices, but are requested to offer a lump sum price. The City of Winston-Salem will not be bound by oral discussions during evaluation process. Responsible purchasing agent should approve all contact regarding this award.

CANCELLATION: The City of Winston-Salem may terminate/cancel this contract at any time by providing written notice to the bidder at least thirty (30) days before the effective date of termination/cancellation.

SERVICE: Adequate and satisfactory availability of repair parts and supplies, and ability to meet warranty and service requirements are necessary. The City of Winston-Salem reserves the right to satisfy itself by inquiry or otherwise as to bidder's capability in this regard.

SPECIAL INTEREST GROUP DEFINITIONS: Women Owned (51% owned and controlled by Women). Handicapped Owned (51% owned & controlled by a Physically Handicapped Person). Minority Owned (At least 51% of which is owned and controlled by a minority group member (Black, Asian, Hispanic, American Indian)).

BID RESULTS: Bid results can be obtained by contacting TaWanna A. Gates at tawannag@cityofws.org. Such results will be released once staff has made their selection and intends to award a purchase order contract. ***THE CITY OF WINSTON-SALEM WILL NOT BE BOUND BY ORAL DISCUSSION REGARDING THIS REQUEST FOR PROPOSALS.****

ACCEPTANCE AND REJECTION: The City of Winston-Salem reserves the right to reject any and all bids, to waive any informality in bids, and unless otherwise specified by the bidder, to accept any item in the bid. If either a unit price or extended price is obviously in error or the other is obviously correct, the incorrect price will be disregarded.

TIME FOR CONSIDERATION: Unless otherwise indicated on the first page of this document, the offer shall be valid for 60 days from the date of bid opening.

TAXES: The following taxes shall NOT be included in any bid prices: (a.) **FEDERAL:** Generally, states and political subdivisions are exempt from such taxes, as excise and transportation. Exemption is claimed under Registry No. 56-70-0047K as provided by Chapter 32 of the Internal Revenue Code. (b.) **STATE:** Bid prices are not to include any sales, use, import, or personal property taxes. To the extent applicable, they are to be invoiced as a separate item(s).

PRICE ADJUSTMENTS: All prices offered herein shall be firm and not subject to increase.

INVOICES: It is understood and agreed that orders will be shipped at the established bid prices submitted by the Bidder. Invoicing additional amounts shall render the purchase order subject to cancellation. However, applicable North Carolina sales tax shall be invoiced as a separate item.

PAYMENT TERMS: Payment terms are Net 30 days after receipt of correct invoice or acceptance of goods, whichever is later.

AFFIRMATIVE ACTION: The successful bidder will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without discrimination by reason of race, color, religion, sex, national origin, or physical handicap.

CONDITION AND PACKAGING: Unless otherwise indicated in the bid, it is understood and agreed that any item offered or shipped on this bid shall be new and in first class condition, that all containers shall be new and suitable for storage or shipment, and that prices include standard commercial packaging.

SPECIFICATIONS: Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and successful bidder will be held responsible thereof. Deviations must be explained in detail on attached sheet(s). **The bidder shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable.**

SAFETY STANDARDS: All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization, such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters' Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type(s) of devices offered and furnished. Further, all items furnished by the successful bidder shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

All bidders must comply with *North Carolina Occupational Safety and Health Standards for General Industry, 29CFR 1910*. Construction bidders must comply with *North Carolina Occupational Safety and Health Standards for the Construction Industry, 29CFR 1926*. In addition, bidders shall comply with all applicable occupational health and safety and environmental rules and regulations. Bidders shall effectively manage their safety and health responsibilities including:

(a.) **Accident Prevention**

Prevent injuries and illnesses to their employees and others on or near their job site. Bidder managers and supervisors shall ensure employer's personnel safety by strict adherence to established safety rules and procedures.

(b.) **Environmental Protection**

Protect the environment on, near, and around their work site by compliance with all applicable environmental regulations.

(c.) **Employee Education and Training**

Provide education and training to all bidders employees before they are exposed to potential workplace or other hazards as required by specific OSHA Standards.

INFORMATION AND DESCRIPTIVE LITERATURE: Bidders are to furnish all information requested.

Further, as may be specified elsewhere, each bidder must submit with his proposal descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous bid does not satisfy this provision. Bids, which do not comply with these requirements, will be subject to rejection.

PROMPT PAYMENT DISCOUNTS: Bidders are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.

AWARD OF CONTRACT: As directed by statute, qualified bids will be evaluated and acceptance made of the bid most advantageous to the City of Winston-Salem as determined upon consideration of such factors as: Product Specification and Price. However, past performance, references; and product quality and durability will be considered before making an award. Unless otherwise specified by the City or the bidder, the City reserves the right to accept any items or groups of items on a multi-item bid.

The City reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, or other factors deemed by the City of Winston-Salem to be pertinent or peculiar to the purchase in question.

GOVERNMENTAL RESTRICTIONS: In the event any Governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship or performance of the items offered on this proposal prior to their delivery, it shall be the responsibility of the successful bidder to notify The City of Winston-Salem Purchasing Department at once, indicating in his letter the specific regulation which required such alterations. The City of Winston-Salem reserves the right to accept any such alterations, including any price adjustments; or to cancel the contract.

M/WBE: Pursuant to General Statute 143-48 and Executive Order #77, The City of Winston-Salem invites and encourages participation in this procurement process by businesses owned by minorities, women, and the handicapped.

PATENTS AND COPYRIGHTS: The Bidder shall hold and save The City of Winston-Salem, its officers, agents, and employees, harmless from liability of any kind, including costs and expenses on account of any patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this contract, including use by the government.

PATENT AND COPYRIGHT INDEMNITY: Bidder will defend or settle, at its own expense, any action brought against Customer to the extent that it is based on a claim that the product(s) provided pursuant to this agreement infringe any U.S. copyright or patent; and will pay those costs, damages and attorney's fees finally awarded against Customers in any such action attributable to any such claim, but such defense, settlements and payments are conditioned on the following (1) that Bidder shall be notified promptly in writing by Customer of any such claim; (2) that Bidder shall have sole control of the defense of any action on such claim and of all negotiations for its settlement or compromise; (3) that Customer shall cooperate with Bidder in a reasonable way to facilitate the settlement of defense of such claim; (4) that such claim does not arise from Customer modifications not authorized by the Bidder or from the use of combination of products provided by the Bidder with products provided by the Customer or by others; and (5) should such product(s) become, or in the Bidder's opinion likely to become, the subject of such claim of infringement, then Customer shall permit Bidder, at Bidder's option and expense, either to procure for Customer the right to continue using the product(s), or replace or modify the same so that it becomes non-infringing and performs in a substantially similar manner to the original product; or (c) upon failure of (a) or (b) despite the reasonable efforts of the Bidder for a sold product or licensed software, return the price paid for the licensed software and any product dependent thereon.

ADVERTISING: Bidder agrees not to use the existence of this contract or the name of The City of Winston-Salem as a part of any commercial advertising without prior approval of The City of Winston-Salem Purchasing Department.

EXCEPTIONS: All proposals are subject to the terms and conditions outlined herein. All responses will be controlled by such terms and conditions and the submission of other terms and conditions, price catalogs, and other documents as part of a Bidder's response will be waived and have no effect on this Invitation for Bid or any other contract that may be awarded resulting from this solicitation. The submission of any other terms and conditions by a Bidder may be grounds for rejection of the Bidder's proposal. The Bidder specifically agrees to the conditions set forth in the above paragraph by affixing his name on the signatory page contained herein.

CONFIDENTIAL INFORMATION: As provided by statute and rule, The City of Winston-Salem will consider keeping trade secrets which the bidder does not wish DISCLOSED. Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the bidder. Cost information shall not be deemed confidential. In spite of what is labeled as a trade secret, the determination whether it is or not will be determined by North Carolina law.

ACCESS TO PERSONS AND RECORDS: The City Auditor shall have access to persons and records as a result of all contracts or grants entered into by the City in accordance with General Statute 147-64.7.21.

INSPECTION AT BIDDER'S SITE: The City of Winston-Salem reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective bidder prior to contract award, and during the contract term as necessary for The City of Winston-Salem's determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract.

AVAILABILITY OF FUNDS: Any and all payments of compensation of this specific transaction, continuing or any renewal or extension are dependent upon and subject to the allocation of appropriation of funds to the City for the purpose set forth in this agreement.

GOVERNING LAWS: All contracts, transactions, agreements, etc., are made under and shall be governed by and construed in accordance with the laws of the State of North Carolina.

ADMINISTRATIVE CODE: Bids, proposals, and awards are subject to applicable provisions of the North Carolina Administrative Code.

ORDER OF PRECEDENCE: In cases of conflict between specific provisions in this bid, the order of precedence shall be: (1) federal special terms and conditions specific to this bid, (2) federal specifications, (3) City of Winston-Salem General Contract Terms and Conditions, and (4) City of Winston-Salem Bid Terms and Conditions.

CLARIFICATIONS/INTERPRETATIONS: Any and all questions regarding this document must be addressed to the contact named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from The City of Winston-Salem Purchasing Department. The bidder is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source is of no effect.

SITUS: The place of all contracts, transactions, agreements, their situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

FEDERAL REQUIREMENTS AND SPECIAL CONDITIONS

1. General

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Act, as amended. References include, but are not limited to, the Master Agreement FTA MA(11), dated October 1, 2004; FTA Circular 4220.1E, dated June 19, 2003; "Best Practices Procurement Manual", updated March 13, 1999 with revisions through February, 2001; 49 CFR Part 18 (State and Local Governments) and 49 CFR Part 19 (Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and any subsequent amendments or revisions thereto.

NOTE: "BIDDER" AND "CONTRACTOR" ARE USED SYNONYMOUSLY

2. Federal Changes

The Contractor understands that Federal laws, regulations, policies, and related administrative practices applicable to this contract may be modified, amended or promulgated from time to time during the term of this contract. The Contractor agrees and shall comply with the most recent of such Federal requirements that will govern this contract at any particular time, unless the Federal Government determines otherwise. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the contract is executed and may apply to this contract. The Contractor's failure to so comply shall constitute a material breach of this contract. The following identifies, but is not limited to, the federal requirements that shall apply to this contract.

3. Notification of Federal Participation

In the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the Recipient agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract. (Public Law 102-141)

4. Conflict of Interest

No employee, officer, board member, or agent of the grantee shall participate in the selection, award, or administration of a contract supported by Federal Transit Administration (FTA) funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or her partner, or an organization that employs, or is about to employ any of the above, has a financial or other interest in the firm selected for award.

5. Lobbying

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 (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 comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. ***The requisite lobbying certification (attach Standard Form-LLL if necessary) is included (ATTACHMENT A) and must be executed for contracts of \$100,000 or more and prior to the award of the contract.***

6. Contracting with Disadvantaged Business Enterprises

The Federal Fiscal Year goal has been set for the grantee or sub-grantee in an attempt to match projected procurements with available qualified disadvantaged businesses. The goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established as set forth by the Department of Transportation Regulations 49 C.F.R. Part 26, January 29, 1999, and authorized by:

- a) Titles I, III, V and VI of ISTEA, Pub. L. 102-240, or
- b) Federal transit laws in Title 49, U.S. Code, or
- c) Federal transit laws in Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178 amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, THE City of Winston-Salem may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

Policy-It is the policy of the Department of Transportation and the City of Winston-Salem that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 applies to this Contract. The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not

discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts. The grantee or sub-grantee shall promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of procurement activities is encouraged.

DBE obligation-The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, the grantee or sub grantee may declare the contractor noncompliant and in breach of contract.

The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with grantee or sub grantee DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of grantee or sub grantee and will be submitted to grantee or sub grantee upon request. The grantee or sub grantee will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. Assistance may include the following upon request:

- Identification of qualified DBE
- Available listing of Minority Assistance Agencies
- Holding bid conferences to emphasize requirements

7. Civil Rights

Contractors and subcontractors shall assure and comply with all requirements of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sect. 2000d; 49 U.S.C. Sect. 5332; and DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act", 49 C.F.R. part 21, and any implementing requirements FTA may issue.

8. Equal Employment Opportunity

The contractor or any sub-contractor may not discriminate against any employee or applicant for employment, because of race, color, age, creed, sex, or national origin. The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, or national origin. 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.

9. Access Requirements of Individuals with Disabilities

Contractors shall agree to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. Subsection 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. Section 794; 49 U.S.C. Section 5301(d); and the following Federal regulations including any amendments thereto:

- (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;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board/ U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F. R. Part 38;
- (4) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities." 28 C.F.R. Part 36;
- (6) U.S. GSA regulations "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) 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;
- (8) U.S. Federal Communications Commission regulations "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 49 C.F.R. Part 64, Subpart F;
- (9) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. part 609;
- (10) Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards." 36 C.F.R. Part 1194; and
- (11) Any implementing requirement FTA may issue.

10. Clean Air Act

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

11. Clean Water

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

12. Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended 42 U.S.C. subsection 4321 et seq. in accordance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994, FTA statutory requirements on environmental matters at 49 U.S.C. section 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq. and joint FHWA FTA regulations, "environmental Impact and Related procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622; and when promulgated, FHWA/FTA joint regulations, "NEPA and Related Procedures for Transportation Decision-making, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 1420 and 49 C.F.R. Part 623.

13. Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Sect. 6321 et seq.

14. Recycled Products

The Recycled Products requirement applies 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 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. These requirements flow down to all contractor and subcontractor tiers. 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. These items include:

Paper and paper products; excluding building and construction paper grades.

Vehicular products:

- (a.) Lubricating oils containing re-refined oil, including engine lubricating oils, hydraulic fluids, and gear oils, excluding marine and aviation oils;
- (b.) Tires, excluding airplane tires;
- (c.) Reclaimed engine coolants, excluding coolants used in non-vehicular applications.

Construction products:

- (a.) Building insulation products, including the following items:
 - (1.) Loose-fill insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite, and perlite;
 - (2.) Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);
 - (3.) Board (sheathing, roof decking, wall panel) insulation, including but not limited to structural fiberboard and laminated paperboard products, perlite composite board, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and
 - (4.) Spray-in-place insulation, including but not limited to foam-in-place polyurethane and polyisocyanurate, and spray-on cellulose.
- (b.) Structural fiberboard and laminated paperboard products for applications other than building insulation, including building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayments, and roof overlay (coverboard).
- (c.) Cement and concrete, including concrete products such as pipe and block, containing coal fly ash or ground granulated blast furnace (GGBF) slag.
- (d.) Carpet made of polyester fiber for use in low- and medium-wear applications.
- (e.) Floor tiles and patio blocks containing recovered rubber or plastic.

Transportation products:

- (a.) Traffic barricades and traffic cones used in controlling or restricting vehicular traffic.

Park and recreation products:

- (a.) Playground surfaces and running tracks containing recovered rubber or plastic.

Landscaping products:

- (a.) Hydraulic mulch products containing recovered paper or recovered wood used for hydroseeding and as an over-spray for straw mulch in landscaping, erosion control, and soil reclamation;
- (b.) Compost made from yard trimmings, leaves, and grass clippings for use in landscaping, seeding of grass or other plants on roadsides and embankments, as a mulch under trees and shrubs, and in erosion control and soil reclamation.

Non-paper office products:

- (a) Office recycling containers and office waste receptacles;
- (b) Plastic desktop accessories;
- (c) Toner cartridges;
- (d) Binders; and
- (e) Plastic trash bags.

15. Cargo Preference

46 U.S.C. 1241(b)(1) and 46 CFR Part 381 impose cargo preference requirements in contracts and subcontracts in which equipment, materials or commodities may be transported by ocean vessel in carrying out the project. If the Contractor has knowledge of or anticipates any equipment, materials or commodities that may be shipped by ocean vessel, the Contractor is obligated to inform the Department, so that additional requirements and clauses may be attached to this Contract.

16. Debarment and Suspensions

Executive Order 12549, as implemented by 49 CFR Part 29 prohibits FTA recipients and sub-recipients from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted contracts. Contractors are required to pass this requirement on to subcontractors seeking subcontracts over \$100,000. Thus, the terms "lower tier covered participant" and "lower tier covered transaction" include both contractors and subcontractors and contracts and subcontracts over \$100,000.

Instructions for Certification:

- (1) By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.
- (2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, (Recipient) may pursue available remedies, including suspension and/or debarment.
- (3) The prospective lower tier participant shall provide immediate written notice to (Recipient) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact (Recipient) for assistance in obtaining a copy of those regulations.
- (5) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by (Recipient).
- (6) The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
- (8) Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (9) Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, (Recipient) may pursue available remedies including suspension and/or debarment.

“Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction”

- (1.) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. §29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2.) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

17. Geographic Preference

Procurements shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographical preferences in evaluation or award of bids or proposals, except where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws.

18. Termination or Cancellation of Contract

Termination or cancellation of the contract, in whole or in part, may be determined by the project if it is in the best interest of the project. A notice of termination shall be delivered to the Contractor, specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. The Contractor shall be paid for work that has been performed and completed up to the time of termination. The Contractor shall promptly submit its termination claim to be paid. A 30 day notice of termination shall be required.

19. Breach of Contract

If the Contractor fails to make delivery of the equipment, supplies, or services within the specified terms of the contract, or fails to perform within the provisions of the contract, the contract may be terminated by reason of default or breach. A written notice of default or breach of contract shall be presented to the Contractor within three (3) working days of such failure. The Contractor will only be paid the contract price for equipment delivered and accepted in accordance with the requirements set forth in the contract. If it is determined 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 project, 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.

The project in its sole discretion may, in the case of breach of contract, allow the Contractor a specified period of time in which to correct the defect. In such case, the notice of termination will state the time period in which the correction is permitted and other appropriate conditions.

If Contractor fails to remedy to the project's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within twenty (20) days after written notice from the project setting forth the nature of said breach or default, the project 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 the project from also pursuing all available remedies against Contractor and its sureties for said breach or default.

20. Resolution of Disputes

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 the project. 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 authorized representative of the project. 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 authorized representative of the project shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

Claims for Damage-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 or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies-Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Winston-Salem 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 the (Recipient) 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 City of Winston-Salem 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.

21. Protest Procedures

All protests shall be filed, handled, and resolved in a manner consistent with the requirements of Federal Transit Administration (FTA) Circular 4220.1F Third Party Contracting Guidelines and the City of Winston-Salem's Protest Procedures below.

Current FTA policy states that: "Reviews of protests by FTA will be limited to a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation. Violations of federal law or regulations will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local officials." (FTA Circular 4220.1E, Section 7, paragraph I., Written Protest Procedures).

Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or time set for receipt of proposals shall be filed 15 days prior to bid opening or the time set for receipt of proposals. If the contract has been awarded, protests must be filed within 10 days after contract award or 5 days after the date the protester was given the opportunity to be debriefed, whichever date is later. To be filed on a given day, protests must be received by 4:30 p.m. current local time. Any protests received after that time will be considered to be filed on the next day. Incomplete submissions will not be considered filed until all information is complete. Unless the time limit for receiving the protest is extended for good cause, a protest that is received after the time limit will not be considered. All protests should be filed in writing with the Director of Transportation, Stuart Municipal Building Suite 307, 100 East First Street, Winston-Salem, NC 27101. No other location shall be acceptable. To be complete, protests **must** contain the following information:

1. The protester's name, address, telephone number, and fax number;
2. The solicitation/bid number;
3. A detailed statement of all factual and legal grounds for protests and an explanation of how the protester was prejudiced;
4. Copies of relevant documents supporting protester's statement;
5. A request for ruling by the City of Winston-Salem;
6. Statement as to form of relief requested;
7. All information establishing that the protester is an interested party for the purpose of filing a protest; and
8. All information establishing the timeliness of the protest.

All protests must be signed by an authorized representative of the protester.

When a protest is filed before an award, an award shall not be made until the matter is resolved unless based on written finding that: 1) the supplies or services are urgently required, or 2) delivery or performance would be unduly delayed by failure to make the award promptly, or 3) a prompt award would be in the best interest of the City. Should the City postpone the date of bid submission owing to a protest or appeal of the solicitation specifications, addenda, dates, or any other issue relating to the procurement, the City shall notify, via addendum, all parties who are on record as having obtained a copy of the solicitation documents that an appeal/protest has been filed, and the due date for the bid submission shall be postponed until the City has issued its final decision.

When a protest is filed within ten (10) days after an award or five (5) days after a debriefing date was offered to the protester under a timely debriefing request, whichever is later, performance shall be immediately suspended pending resolution of the protest. However, contract performance may continue, notwithstanding the protest, based on written finding that 1) contract performance would be in the best interest of the City, or 2) urgent and compelling circumstances that significantly affect the interests of the City will not permit waiting for a decision.

The Director of Transportation shall make a decision on the protest within ten (10) working days from the receipt of the protest. The written decision will respond to the issues raised by the protester and will address any other issues, which even if not raised by the protester, that may have been identified as being relevant to the fairness of the procurement process. The decision will be delivered to the protester by "Certified Mail, Return Receipt Requested." In extreme cases, it may take longer than ten (10) working days to issue a decision. In these cases, the protester and all other interested parties will be notified of the delay. Any decision rendered by the Director of Transportation may be appealed to the Assistant City Manager. The protester has the right within five (5) working days of receipt of determination to file an appeal restating the basis of the protest and the grounds of the appeal. In the appeal, the protester shall only be permitted to raise factual information previously provided in the protest or discovered subsequent to the Assistant City Manager's decision and directly related to the grounds of the protest. The Assistant City Manager's decision shall constitute the final administrative remedy of the City of Winston-Salem.

If the Assistant City Manager finds for the protester, one or more of the following remedies may be granted:

1. Terminate the contract.
2. Modify the requirement.
3. Issue a new solicitation.
4. Refrain from exercising options under the contract.

5. Award a contract consistent with statutes and regulations.
6. Amend the solicitation provisions that gave rise to the protest and continue with the procurement.
7. Such other remedies as the decision-maker may determine are necessary to correct a defect.

The bidder may withdraw its protest or appeal at any time before the Assistant City Manager issues a final decision.

A protester must exhaust all administrative remedies with the City before pursuing a protest with the Federal Transit Administration (FTA). However, if the protester believes that the City of Winston-Salem failed to review the complaint or protest or failed to follow its own protest procedures, the protester may file an appeal to the FTA office below:

Regional Administrator
Federal Transit Administration, Region IV
230 Peachtree N.W.
Atlanta, GA 30303

The protester must file with the FTA no later than five (5) working days after the Assistant City Manager's final decision is rendered, with a concurrent copy of the appeal to the Assistant City Manager. The submission to the FTA should include the name and address of the protester, a statement of the grounds for protest and any supporting documentation, a copy of the local protest filed with the City of Winston-Salem, and a copy of the Assistant City Manager's decision.

The City of Winston-Salem will submit to the FTA any required information requested in order for the FTA to make a determination, including a copy of these protest procedures, a description of the process followed concerning the protest in question and any supporting documentation. The City of Winston-Salem will provide to the protester any material submitted to the FTA.

22. Non-construction Employee Protection Requirements

Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C Sections 327 through 333 are mandated under DOL regulation 29 C.F.R. Section 5.5.

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

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

(3) Withholding for unpaid wages and liquidated damages-The Project shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from

any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

23. No Federal Government Obligations to Third Parties

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.

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.

24. False or Fraudulent Statements and Claims

- (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. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 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.

25. Reporting, Record Retention, and Access

The following access to records requirements apply to this Contract:

- (1.) In accordance with 49 C. F. R. 18.36(i)(10), the Contractor agrees to provide the Purchaser, the N.C. Department of Transportation, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- (2.) Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, an hospital or other non-profit organization and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C.F.R.19.48(d), the Contractor agrees to provide the Purchaser, the N.C. Department of Transportation, the FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- (3.) Where any Purchaser which is the FTA Recipient or a sub grantee of the FTA 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 Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- (4.) 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.
- (5.) 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 FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.36(i)(11).

26. State and Local Disclaimer

The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

27. 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 4220.1D, dated April 15, 1996, and any amendments thereto, 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.

28. Hold Harmless

Except as prohibited or otherwise limited by State law, the Contractor agrees to indemnify, save, and hold harmless the Solicitor/Purchaser of this Purchase Contract and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any negligent or willful acts or omissions by the Contractor, or the officers, agents, employees, or subcontractors of the Contractor, or the failure to perform or comply with any of the provisions of the Purchase Contract.

29. Seat Belt Usage

Pursuant to Executive Order No. 13043, April 16, 1997, 23 U. S. C. § 402, the Contractor is encouraged to adopt on the job seat belt use policies and programs for its employees when operating company owned, rented, or personally-operated vehicles and include this provision in any third party subcontracts entered into under this project.

30. Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

31. 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.

32. Veterans Employment

The contractor agrees to give hiring preference, to the extent practicable, to veterans as defined in Section 2108 of Title 5) who have the requisite skills and abilities to perform the construction work required under this contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, individual with a disability or former employee. [FTA C 4220.1F, IV, 2 c (1)].

33. Conformation with ITS Architecture and Standards

To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation System (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other Federal requirements that may be issued.

REQUIRED FORMS CHECKOFF LIST

The following information and attachments are to be submitted with your bid:

Submit attachments "C" if bid exceeds \$100,000

- Information as outlined in Sections IV, V and VI of this IFB
- Attachment A (Proposal Signature Form)
- Attachment B (Price Sheet)
- Attachment C (Certification Regarding Lobbying) applicable for purchases exceeding \$100,000

ATTACHMENT A

PROPOSAL SIGNATURE PAGE

The undersigned certifies that they have read and understood all the provided bid documents, the Detailed Specifications, and agree to the terms and conditions stated herein.

This bid shall be signed by a representative who is authorized to bind the bidding organization, with the signature notarized.

Date

Company

Authorized Signature *required*

Email Address

Printed Name and Title

Telephone Number

Street Mailing Address

City, State, Zip Code

On this day of , 20__ , before me _____(name) appeared and, being duly sworn, did execute the foregoing proposal, and did so state that he/she was properly authorized by (name of company) to execute the proposal and did so on his/her free act and deed.

Notary Public My Commission Expires (SEAL)

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

Please check in the appropriate space if your business:

- ___ is a woman-owned business, or we
- ___ is not a woman-owned business
- ___ is a minority-owned business
- ___ is not a minority-owned business

Please check the box below if it applies to your business is

- Black
- Hispanic
- Native American Indian
- Asian American, including Indian Subcontinent and Pacific Islands
- Socially and economically disadvantaged
- Disabled

**ATTACHMENT B
PRICE SHEET**

The following equipment is to be provided to the Winston-Salem Transit Authority. Quantities and technical specifications are indicated herein. Proposer will provide unit and total costs for items specified in the space provided.

		<u>Unit Cost</u>	<u>Total Cost</u>
Quantity	<u>20</u>	_____	_____

Specifications:

Laptops

HPZ BOOK15G4 including laptop carry bag

ATTACHMENT C

CERTIFICATION REGARDING LOBBYING

(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 persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq .)]
 - 3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.
- This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transactions imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

Date Signature of Contractor's Authorized Official

Name and Title of Contractors Authorized Official

State of _____ County of _____

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

Notary Public

My Appointment Expires