



INVITATION FOR BIDS

PASSENGER WAITING SHELTERS FOR HENDERSON COUNTY PLANNING DEPARTMENT

ISSUED BY: HENDERSON COUNTY PLANNING DEPARTMENT
100 N. KING ST.
HENDERSONVILLE, NC 28792
PHONE: (828) 694-6552
LEE STEVENS, PLANNER III
lstevens@hendersoncountync.gov

PROPOSALS ARE TO BE MAILED TO THE ABOVE ADDRESS OR DELIVERED
TO THE PLANNING DEPARTMENT OFFICE AND EMAILED TO THE ABOVE
ADDRESS

**HENDERSON COUNTY, NORTH CAROLINA
PLANNING DEPARTMENT**

**REQUEST FOR FORMAL BIDS AND PROPOSALS FOR
PASSENGER WAITING SHELTERS FOR HENDERSON COUNTY
PLANNING DEPARTMENT**

Pursuant to General Statutes of North Carolina, Section 143-129, and the Code of Federal Regulations, 2 CFR Part 200, as applicable, sealed bids and proposals, subject to the conditions and specifications herein, are invited to furnish the following equipment, materials, services, or repair work. **All bids will be received by the Henderson County Planning Department until 3:00 p.m. local time on Friday, January 24, 2025, AT 3:00 PM LOCAL TIME, at which time they will be publicly opened and read.**

TERMS: Net 30 Days
DELIVERY: ASAP - Bidder Specify Best Delivery

HENDERSON COUNTY, N. C.
Janna Bianculli, Senior Planner

POSITIVELY NO BIDS CONSIDERED UNLESS SUBMITTED ON THIS FORM

NOTICE TO BIDDERS: All tax imposed upon any article on which you are bidding shall be shown as separate items and in no case included with price bid. Failure to comply with these conditions will be considered grounds for rejection.

		<p>Passenger Waiting Shelters for Henderson County Planning Department per the attached minimum specifications. Brasco International Inc. Slimline Model SL510-C (small) and Slimline Model SL516-C (large) or equal. (Must be approved through NCDOT PEP. See details in Standards)</p> <p>BID SHOULD BE SUBMITTED INCLUSIVE OF SHIPPING/FREIGHT COSTS – FOB HENDERSONVILLE, NC. ADDITIONAL FREIGHT CHARGES WILL NOT BE ALLOWED.</p> <p><u>BIDDERS PLEASE NOTE:</u></p> <ol style="list-style-type: none">1. <u>Standards and SPECIFICATIONS-</u> BID PAGES 5 THROUGH 72. <u>PROTEST PROCEDURES</u> BID PAGE 83. <u>TERMS AND CONDITIONS-</u> BID PAGES 10 THROUGH 124. <u>REQUESTS FOR APPROVED EQUALS</u> DEADLINE: January 24, 2025 BID PAGE 75. <u>QUESTIONS DEADLINE:</u> EOD January 17, 20256. <u>QUESTIONS TO BE ANSWERED BY:</u> EOD January 21, 2025			
Company Name		Bid Submitted By (Signature)			
Address		Printed Name and Title			
City State Zip		Email Address			
Telephone No.		Fax No.			
Web Address		Federal Taxpayer ID No.			
Delivery _____ calendar days after receipt of order		Payment Terms: Net _____ Discount: _____ % Net _____			

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GENERAL CONDITIONS

1. All bids and proposals shall be for furnishing apparatus, supplies, materials, equipment, and/or work and services in accordance with the applicable plans and specifications prescribed by Henderson County. From the date shown until the date of opening the proposals, the plans and specification of one proposed work and/or a complete description of the apparatus, supplies, materials or equipment, and/or work and services are and will continue to be on file in the Planning Department of Henderson County 100 N. King St. Hendersonville, NC 28792 8:00 am-4:30 pm.
2. The County reserves the right to evaluate all bids, especially where there is a wide range in specifications, or to reject any and all bids and proposals, and further specifically reserves the right to make the award and/or awards in the best interest of the County.
3. Time, in connection with discount offered, will be computed from date of delivery of the supplies or materials on delivery at destination when final inspection and acceptance are at those points, or from date correct invoice is received if latter is later than the date of delivery. Guaranteed maximum price must be shown in all bids.
4. In case of default of the contractor, the County may procure the articles or services from other sources and hold the contractor responsible for any excess cost occasioned thereby.
5. Payment by County is due thirty days after delivery in Hendersonville and inspection unless otherwise specifically provided, subject to any discounts allowed.

BID

In compliance with the above request for bids, and subject to all the conditions thereof, the undersigned offers and agrees, if this bid is accepted within 60 days from the date of the opening, to furnish any or all of the items upon which prices are quoted, at the price set opposite each item, and unless otherwise specified, within 30 days after receipt of order, deliver F.O.B. Hendersonville, NC unless there is a discount note on the bid page.

Bidder: _____ **Address:** _____ **Zip:** _____

By: _____ **Title:** _____
(Authorized to sign bids)

Telephone Number: _____

Date: _____

MAILING INSTRUCTIONS

1. Bidder to submit a complete, fully executed bid document along with any addenda in a sealed envelope.
2. If mailed, bid should be forwarded by certified U. S. Postal Service. Please address and mark your bid as shown below.

HENDERSON COUNTY PLANNING DEPARTMENT
100 N. KING ST. HENDERSONVILLE, N. C. 28792
BID REQUEST NO. PDTD-01-2024 PASSENGER WAITING SHELTERS
TO BE OPENED 3:00 P.M. LOCAL TIME January 24, 2025

3. If forwarded other than by U.S. Postal Service, delivery must be made directly to Henderson County, Planning Department, 100 N. King St., Hendersonville, North Carolina 28792. Please ensure Bid is in a Sealed Envelope inside the Courier's Envelope/Box.

1.0 **Standards**

Henderson County can only accept bids supplying shelters that have been accepted through the NCDOT Product Evaluation Program (PEP) and, at the time of bid submittal, listed on the Approved Products List. Henderson County is not responsible for any additional fees associated with gaining product acceptance through the NCDOT Product Evaluation Program (PEP). Provide evidence with the Bid that any product not on the Approved Products List has been submitted to NCDOT. If the vendor is selected as the approved bidder, it will be dependent on NCDOT approval for the Approved Products list.



The dimensions used in the following specifications are minimum/nominal sizes. Bidders must quote using their manufacturing standards, which must meet or exceed these minimum standards.

2.0 **Scope of Work**

Henderson County desires a shelter model similar to the general appearance of the existing shelters, as shown above. Particularly, any proposed shelter design should be of similar size, roof design, and color.

The work specified shall consist of the design, fabrication, and delivery of exterior-grade Passenger Waiting Shelters and shall include structural aluminum frames with glazed rear, side, and roof assemblies, as well as all required hardware for installation. The shelter frame shall be designed to be stable with or without wall and roof glazing. All connections and glazing containment shall be tamper-proof. Shelters are to be modular in design with minimum number of parts for quick and easy installation. Shelter roofs must be prefabricated for ease of installation and be shipped complete. Bidders are to provide examples of installation instructions with bids.

3.0 Technical Data

- 3.1 Shelters shall conform to the dimensions indicated and meet the following specifications:
- 3.2 Small shelter shall be Slimline Series Model SL510-C (referenced in picture in Section 1), as manufactured by Brasco International, Inc., or “Approved Equal.” Large shelters shall be Slimline Series Model SL516-C as manufactured by Brasco International, Inc., or “Approved Equal”.
- 3.3 Shelters shall be approximately 5’ x 10’ for small shelters, and 5’ x 16’ for the large shelter.
 - 3.3.1 Structures shall be constructed of powder-coated aluminum.
 - 3.3.2 Glass shall be ¼” clear tempered safety glass.
 - 3.3.3 Roof shall be hip style constructed of standing seam powder coated aluminum with 2 ½” fascia/gutter system that is leakproof. Fasteners to assemble the roof shall be concealed.
 - 3.3.4 Tuber columns shall be 2-1/2” x 2-1/2” x 1/8” aluminum
 - 3.3.5 Clear height shall be 84 1/8”.
 - 3.3.6 Front open area shall be 106-1/2”
 - 3.3.7 Outer dimension shall be 111 1/2” x 30-1/4”.
 - 3.3.8 Shelter shall include partial length HDPE bench with backrest to ensure a minimum 30” x 48” clear floor area, complying with ADA requirements.
 - 3.3.9 Wall connections shall be fastened by ¼” internal clip held to tube columns by ¼” x 3/8” galvanized aluminum flat drive rivets.
 - 3.3.10 Ground clearance shall be a minimum of 8”.
 - 3.3.11 Anchor shoes shall be fastened to the ground using a stainless-steel wedge anchor bolt, nut, and washers.
 - 3.3.11.1 Anchor shoes shall be 4” H x 6” W. Corner anchor shoes shall be 6” x 6” and intermediate anchor shoes shall be 3.5” x 6”. Bottom plate shall be a minimum thickness of .375”.
 - 3.3.11.2 Columns shall be capable of fastening to anchor shoe by means of two (2) domed drive rivets with stainless steel pins.
 - 3.3.12 The shelter shall be designed to withstand minimum vertical and horizontal wind load of 90 MPH. The Roof shall be designed to withstand minimum dead load of 25 PSF.

4.0 Quality Assurance

- 4.1 Manufacturer shall have a minimum of 5 years experience in the design and manufacture of Pre-Fabricated exterior grade shelters.
- 4.2 Shelters shall be structurally engineered.
- 4.3 Manufacturer shall meet the IBC 2012 Code for these shelters and North Carolina State Building Code for Accessibility.
- 4.4 All glazing shall conform to the American National Standards Institute (ANSI) Safety Standard for Architectural Glazing Materials Z79.1-1975.
- 4.5 Shelter shall conform to the standards of the Aluminum Association.

5.0 Requests for Approved Equals

Requests for approved equals shall be supported by complete technical documentation, which shall include descriptive literature, assembly instructions, and detailed drawings that clearly show dimensions, joining details, alloy, temper, finish, and thickness of all members. Detailed specifications shall also accompany such request.

- A. Shop drawings and product data must be submitted with requests for approved equals.
- B. Requests of approved equals must be submitted no later than 3 p.m., January 24, 2025.
- C. Bidder must submit a statement of certification from the manufacturer that materials meet or exceed the specifications contained in this Request for Bids and Proposals
- D. Bidder may be required to submit finish samples as well as wall and roof glazing samples during the evaluation process.

Any addenda issued as a result of this Request for Approved Equals process will be sent at least 10 days before opening date of bid, even if this requires an extension of the bid opening date. Bidders will be required to sign all addenda and return with their bid packages. Any bids received without signed addenda may be considered non-responsive.

6.0 Warranty

Manufacturer shall provide detailed warranty statement with bid. A minimum one year warranty is required. Manufacturer shall maintain inventory of replacement parts for ten years after delivery of shelter.

7.0 Quantity

Henderson County shall have the option to buy shelters from the winning bidder at a guaranteed price over a three (3) year period beginning in fiscal year 2025. Henderson County will retain the right to purchase up to fourteen (14) shelters between January 24, 2025 (Fiscal Year 2025) and June 30, 2028 (Fiscal Year 2028). Henderson County will not be required to purchase a minimum number of shelters, but the maximum number of shelters to be purchased under this contract is fourteen (14).

PROTEST PROCEDURES

PURPOSE

FTA funding requires a bid protest procedure to be in place.

PROCEDURE

Any party which is a prospective bidder, offeror, or contractor that may be aggrieved by the solicitation must submit a written protest within five (5) calendar days prior to the opening of the Request for Bids and Proposal.

Any party which is an actual bidder, offeror, or contractor that may be aggrieved by the award of a contract must submit a written protest within five (5) days of the County transmitting via fax or email the announcement of intent to award.

The protest must be addressed to the Henderson County Planning Department, 100 N. King St., Hendersonville, NC 28792 or emailed to Lee Stevens, Planner III, at lstevens@hendersoncountync.gov and must include all the following information:

1. Name, address, telephone number, facsimile number, and e-mail of the protester.
2. Signature of the protester or authorized agent.
3. The bid name and number.
4. A detailed statement of the legal and factual grounds of protest, including copies of relevant documents.
5. Any supporting exhibits, evidence, or documents to substantiate any claims.
6. All information establishing that the protester is an interested party for the purpose of filing a protest.
7. The form of relief requested

After careful consideration of all relevant information and consultation with the County Attorney, the Senior Planner or County Attorney shall make a written decision.

Any and all costs incurred by a protesting party in connection with a protest shall be the sole responsibility of the protesting party.

**HENDERSON COUNTY PLANNING DEPARTMENT
TERMS AND CONDITIONS FOR
PASSENGER WAITING SHELTERS**

1. **SUMMARY:** Bidders, please note: this request for bids and proposals includes provisions for Henderson County to purchase **up to 13 small passenger** waiting shelters and **1 large passenger** waiting shelter on an as-needed basis through the period of **June 30, 2028**, at quoted prices, contingent upon funding for a **maximum of 14 total shelters** purchased during the life of the contract. Bids are to be submitted in accordance with the enclosed standards, specifications, and Terms and Conditions, all of which require doing all that is necessary, proper, or incidental to furnishing the materials identified herein. All things not expressly stated in the attached specifications or Terms and Conditions but involved in carrying them out must be included in bidder's proposal as though they were specifically stated.
2. **PURCHASE OF ADDITIONAL REQUIREMENTS:** The County reserves the right to purchase additional quantities of materials specified herein during the period of firm pricing through June 30, 2028.

Henderson County requests the option of purchasing up to: 13 small shelters and 1 large shelter on an as-needed basis through the period of June 30, 2028 at quoted prices, contingent upon funding.

2. **NOTICE TO BIDDERS:** All bids are subject to the provisions of the Terms and Conditions specific to this Request for Bid, the Standards, and the Specifications. Henderson County objects to and will not evaluate or consider any additional terms and conditions submitted with a bidder response. This applies to any response appearing in or attached to the document as part of the bidder's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS;** no Conditional bids will be accepted. By execution and delivery of a proposal, the bidder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect. It shall be the bidder's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
3. **ISSUING OFFICE:** This bid request is issued by the Henderson County Planning Department, 100 N. King St., Hendersonville, North Carolina 28792. All correspondence and procedural inquiries should be made to this address. Telephone number 828-694-6557, Fax number 828-697-4533.
4. **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the Henderson County Planning Department. Any and all revisions to this document shall be made only by written addendum from the Henderson County Planning Department. **Therefore, no oral statements by any person shall modify or otherwise affect the terms, conditions, or specifications stated in this request for bids and proposals.** The bidder is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source are of no effect. All Addenda will be posted to the County's Bid Page (<https://www.hendersoncountync.gov/rfps>) and it is the responsibility of each bidder to check the site before submitting your sealed bid.

Technical questions should be directed to Lee Stevens, Planner III, at lstevens@hendersoncountync.gov, and will be addressed in an addendum.

5. **MINOR DEVIATIONS/EXCEPTIONS TO SPECIFICATIONS:** Minor deviations from the provisions of these specifications may be considered to permit manufacturers to follow their standard manufacturing processes; however, all proposed minor deviations must be explained in detail and submitted within the "approved equals" process as outlined on Page 7.
6. Henderson County reserves the right to postpone bid openings for its convenience.

7. **BID INQUIRIES:** Questions of a general nature (i.e., Can your bid response be faxed? Has your bid been received? Is a bid tabulation available? etc.) can be answered by any member of our Planning Transportation Division staff. Questions of a more specific nature (regarding Special Terms and Conditions or bid specifications) should be directed to the individual identified on page 1 (ISSUED BY).

Our office hours are Monday through Friday, 8:00 a.m. – 4:30 p.m. Telephone 828-697-4819.

8. **NONCONFORMING TERMS AND CONDITIONS:** A bid response that includes terms and conditions that do not conform to the terms and conditions in this bid document is subject to rejection as non-responsive. Henderson County reserves the right to permit the bidder/vendor to withdraw nonconforming terms and conditions from its bid response prior to a determination by Henderson County of non-responsiveness.
9. **BIDDER SUBMITTALS:** Bidder must furnish all information requested herein, including descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous bid will not satisfy this provision. Bids which do not comply with these requirements will be subject to rejection. All documents submitted should bear the name of the bidder.
10. **PREPARATION OF FORMS:** All bids must be submitted on the forms provided. Figures should be written in ink or typewritten. Any changes to the original bid should be made in ink and initialed by the person signing the bid. NOTE: If there are discrepancies between the unit price quoted and extensions, the unit price will prevail.
11. **EXPENSES INCURRED IN PREPARING BID:** Henderson County accepts no responsibility for any expense incurred by the bidder in the preparation and presentation of a bid. Such expenses shall be borne exclusively by the bidder.
12. **TAX EXEMPTIONS:** Henderson County is not exempt from Federal Excise Tax or State and Local Sales Tax. Sales tax should not be included in bid prices but may be added as separate items to the invoices.
13. **SUBMITTALS:** Bidders are to submit one (1) original bid package and one (1) copy. Packages should be mailed to the Henderson County Planning Department, 100 N. King St., Hendersonville, NC 28792.
14. **VENDOR APPLICATION:** Bidders must provide a recent W-9 to qualify for vendor payment.
15. **DELIVERY:** Delivery shall be made F.O.B. Destination (Freight Prepaid and Allowed): 100 N King St. Hendersonville, NC 28792 c/o Janna Bianculli.
16. **BID OPENING:**
- i. Adequate Number of Bids: Due to the federal funding involved in this project, the contract cannot be awarded on the first attempt unless at least 3 competitive bids are received. If three bids are not received the bids submitted shall not be opened and the project shall be readvertised. After readvertisement, the County will be able to award the contract as long as at least one responsive, responsible bid has been received.
 - ii. Should the adequate number of bids be submitted, bids will be opened and read at the time and place shown on the enclosed Bid Proposal Form. No official award will be made at the Bid Opening. All bidders are welcome to attend the bid opening. **LATE BIDS WILL NOT BE OPENED OR ACCEPTED.**
17. **EVALUATION AND SELECTION OF BIDS:**

The NC General Statute controlling formal purchases by local governments §143-129 includes selection standards for awards. The provision reads, “All contracts shall be awarded to the lowest responsible bidder, taking into consideration quality, performance, and the time specified in the bids for performance of the contract.”

Henderson County reserves the right to accept or reject any or all bids and proposals and further specifically reserves the right to make the award or awards in the best interest of Henderson County.

The permitting offices will also need to approve the sealed engineering drawings within two weeks. “Time is of the essence” for this process, and if approval is not received, the County will move to the next apparent low bidder, etc.

18. **CONTRACT/AWARD:** Pursuant to the laws governing public contracts in North Carolina, the successful bidder’s/vendor’s response to this Request for Bid and any addenda thereto, plus the issuance of a Henderson County Purchase Order for the proposed goods and/or services shall constitute a binding contract. Please note that only NCDOT Approved Products List Shelters will be awarded.
19. **INDEMNIFICATION:** The bidder/vendor covenants to save, defend, keep harmless, and indemnify Henderson County and all of its officers, departments, agencies, agents, and employees from and against all claims, loss, damage, injury, fines, penalties and cost - including court costs and attorney's fees, charges, liability, and exposure, however, caused - resulting from, arising out of, or in any way connected with the bidder’s/vendor’s negligent performance or nonperformance of the terms of the contract.
20. **ASSIGNMENT:** During the performance of the contract, the bidder/vendor shall not assign, transfer, convey, sublet, or otherwise dispose of any award or any or all of its rights, title, or interest therein without the prior written consent of Henderson County.
21. **All bids shall be made firm for no less than ninety (90) days.** There will also be a 2 week time frame after notification for the apparent low bidders to become listed on the NCDOT Approved Products List. Time is of the essence for this process.
22. **EQUIVALENT EQUIPMENT:** Bids are allowed for equivalent equipment. Equivalent equipment is defined as bids containing equipment that is not identical by manufacturer and model or bids which have substantially different specifications, albeit compliant, to what is outlined within the bid specifications. When bids are submitted that contain equivalent equipment, the bidder must submit documentation for review as a part of the bid to show that the product meets or exceeds the specifications of the item(s) referenced in the specifications. It shall be the responsibility of the bidder to show that the equipment is equivalent and conforms to the specifications contained herein. Bidders may submit multiple bids on various manufacturers’ brands/models.
23. **NC E-Verify Requirements**
Bidders must attest and affirm that they are aware and in full compliance with Article 2 of Chapter 64 (NCGS64-26(a)) relating to the E-Verify requirements by executing and submitting the Federal Transit Administration Contract Clauses statement included in this Invitation for Bids as ATTACHMENT B. E-Verify is a Federal program. More information can be accessed via this link: <https://www.e-verify.gov/employers>

Federal Transit Administration Contract Clauses

1. Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation-adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
When federal funds are expended by Henderson County, Henderson County reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.
2. Termination for cause and for convenience by the grantee or subgrantee, including the manner by which it will be affected and the basis for settlement. (All contracts in excess of \$10,000)

When Henderson County expends federal funds, Henderson County reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor, in the event vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. Henderson County also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if Henderson County believes, in its sole discretion that it is in the best interest of Henderson County to do so. The vendor will be compensated for work performed and accepted and goods accepted by Henderson County as of the termination date if the contract is terminated for convenience of Henderson County. Any award under this procurement process is not exclusive, and Henderson County reserves the right to purchase goods and services from other vendors when it is in the best interest of Henderson County.

3. **FEDERAL FUNDS:** The source of funds for this contract is Federal Transit Administration Section 5307; therefore, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable). To the extent these provisions apply and conflict with provisions of North Carolina law, these provisions shall control. It shall be the responsibility of the contractor to determine whether these provisions apply.

a. No Government Obligation to Third Parties

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

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

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the

penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

c. Access to Records and Reports

- i. Record Retention.** The Contractor will retain and will require its subcontractors of all tiers to retain, complete, and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records. (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- ii. Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts, and reports required under this Contract for a period of not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- iii. Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information, including such records and information the contractor or its subcontractors may regard as confidential or proprietary, related to performance of this contract in accordance with 2 CFR § 200.337.
- iv. Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

d. Changes to Federal Requirements

Federal requirements that apply to the County or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the County's Underlying Agreement, including any information incorporated by reference and made part of that Underlying Agreement; and Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

e. Equal Employment Opportunity

During the performance of this contract, the contractor agrees as follows:

- i.** The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- ii. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- iii. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- iv. The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- v. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- vi. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- vii. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- viii. The contractor will include the provisions of paragraphs (i.) through (viii.) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

f. Disadvantaged Business Enterprise (DBE)

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the County deems appropriate, which may include, but is not limited to:

-
1. Withholding monthly progress payments;
 2. Assessing sanctions;
 3. Liquidated damages; and/or
 4. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the County makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, the contractor shall utilize the specific DBEs listed unless the contractor obtains the County's written consent; and that, unless the County's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

g. Incorporation Of Federal Transit Administration (FTA) Terms

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause a violation of the FTA terms and conditions.

h. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by Henderson County, the vendor certifies that during the term of an award for all contracts by Henderson County resulting from this procurement process, the vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

i. Buy America

(Only for Contracts above \$150,000)

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. This clause is applicable to any contract in excess of \$150,000.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (Attachment D) with all bids on FTA-funded contracts, except those subject to a general waiver. The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as

nonresponsive. This requirement does not apply to lower tier subcontractors.

- j. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**— Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. 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 must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- i.** The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that: No 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 on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
 - ii.** If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) 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 on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and
 - iii.** He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 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 and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person making an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

- k. Notice to FTA and US DOT Inspector General of Information Related to Fraud, Waste,**
- If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.
- i.** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
 - ii.** Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
 - iii.** The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving

assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

l. Prompt Payment to Subcontractors

The Contractor is required to pay all Subcontractors for all work that the Subcontractor has satisfactorily completed, no later than thirty (30) business days after the Contractor has received payment from the County. In addition, all Retainage amounts must be paid by the Contractor to the Subcontractor no later than forty-five (45) business days after the Subcontractor has, in the opinion of the VP Construction, satisfactorily completed its portion of the Work. A delay in or postponement of payment to the Subcontractor requires good cause and prior written approval of the General Manager, Purchasing.

The Contractor is required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes. The County will not pay the Contractor for work performed unless and until the Contractor ensures that the Subcontractors have been promptly paid for the work they have performed under all previous payment requests, as evidenced by the filing with the County of lien waivers, canceled checks (if requested), and the Contractor's sworn statement that it has complied with the prompt payment requirements.

m. Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

n. Safe Operation of Motor Vehicles

i. Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel who operate company owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company owned" and "company leased" refer to vehicles owned or leased either by the Contractor or County.

ii. Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer and driving a vehicle the driver owns or rents, a vehicle

o. ADA Access

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as

amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

p. Prohibited Telecommunications/Surveillance Services/Equipment

The County is prohibited from obligating or expending loan or grant funds to: procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractor shall not provide covered telecommunications equipment or services in the performance of the Contract. As described in Public Law 115-232, section 889, covered telecommunications equipment is:

- i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- ii. video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes;
- iii. Telecommunications or video surveillance services provided by such entities or using such equipment; and
- iv. telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

ATTACHMENT A

CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY and VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTION

(To be submitted with all bids exceeding \$25,000.)

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement extends to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor), certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

SIGNATURE _____ TITLE _____

COMPANY _____

DATE _____

State of _____ County of _____

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

Notary Public _____ My Appointment

Expires _____

ATTACHMENT B

Federal Transit Administration Contract Clauses

The vendor agrees to comply with all federal, state, and local laws, rules, regulations, and ordinances, as applicable. It is further acknowledged that the vendor certifies compliance with all provisions, laws, acts, regulations, etc., as specifically noted above in the Terms and Conditions.

Vendor's Name/Company Name: _____

Address, City, State, and Zip Code: _____

Phone Number: _____ Fax Number: _____

Printed Name and Title of Authorized Representative: _____

Email Address: _____

Signature of Authorized Representative: _____

Date: _____

ATTACHMENT C

APPENDIX A, 31 C.F.R. PART 21 – CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for 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.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Consultant's Authorized Official

Name and Title of Consultant's Authorized Official

Date

ATTACHMENT D

CERTIFICATION REGARDING BUY AMERICA

In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron or manufactured products, use the certifications below.

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

Certificate of Non-Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____