



**60 Washington Ave, Suite 200
Bremerton, WA 98337
Ph: 360-479-6960**

REQUEST FOR QUALIFICATIONS

M/V Solano Refurbishment SOW

RFQ KT 21-707

April 10, 2019

Proposals are due April 26, 2021 @ 2:00 P.M.

Kitsap Transit, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat., 252.42 U.S.C. 2000d to 2000-4 and Title 49, Code of Federal Regulations Department of Transportation, subtitle A, of the Secretary, Part 21, nondiscrimination in federally assisted programs of the DOT issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

Kitsap Transit reserves the right to reject any and all Proposals without cause and to waive any informalities or irregularities.



Section 1: Announcement

Advertisement Post Date: April 10, 2021

Kitsap Sun; Kitsap Transit Website: www.kitsaptransit.com; OMWBE;

Request for Qualifications

KT # 21-707 M/V Solano Refurbishment SOW

Scope of Work: The Work consists of providing Kitsap Transit with a Bid level Ship Work Breakdown Structure scope of work (SOW) and any associated plans, specifications and drawings necessary for Kitsap Transit to issue a competitive solicitation to refurbish the MV Solano before putting the vessel into revenue service.

Kitsap Transit, at its sole discretion, shall have the right to Contract with the Awarded Firm for Construction Management services as well.

Bidding Documents: Plans, specifications and addenda for this project are available on-line through Kitsap Transit's Website www.kitsaptransit.com. Bidders must email Patrick Rogers at patrickr@kitsaptransit.com to be placed on the Plan Holder's List in order to receive automatic email notifications of future addenda and additional project information through the bid phase.

Pre-Proposal Meeting: A Pre-Proposal conference is not being offered. All requests for clarifications will need to be submitted in writing by the date listed below.

Questions and Request for Clarifications: All questions, requests for information, and Pre-Bid material substitutions, must be submitted in writing and received by **5:00 PM April 20, 2021** at: Kitsap Transit, Attn: Patrick Rogers, 60 Washington Ave., Ste. 200, Bremerton, WA 98337; or e-mail: patrickr@kitsaptransit.com.

Plan Holder's List: Email Patrick Rogers at patrickr@kitsaptransit.com to have your firm added to the Plan Holder's List to automatically receive updates, addenda and other project information.

Time for Completion: The Contractor shall commence the Work under this Contract effective upon receipt of a written Notice to Proceed and shall continue in good faith and effort to Final Completion status within **sixty (60)** Calendar Days of said Notice.

Proposal Due Date: Bids will be received via email until **2:00 PM on April 26, 2021**. When the official clock reads 2:00:01 PM, Proposals are considered late and will not be considered for award.

EQUAL OPPORTUNITY: It is Kitsap Transit's policy to ensure full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person on the basis of race, color, national origin or sex in the provision of benefits and services resulting from Federally assisted programs of the Department of Transportation and in the Award and administration of all Contracts. Small and women or minority owned Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26 are encouraged to submit Proposals.

Section 2: Instructions to Proposers

Kitsap Transit is a public transportation benefit area (PTBA) with administrative offices located at 60 Washington Ave., Suite 200, Bremerton, Washington 98337. RFQ's are being solicited from qualified sources. Copies of the Request for Qualifications may be obtained by contacting Patrick Rogers, Purchasing Coordinator, at patrickr@kitsaptransit.com or via KT's website <http://www.kitsaptransit.com/agency-information/procurement>. Proposers downloading the RFQ from the website must contact Patrick Rogers at the email above to be placed on the Plan Holders list to receive addenda/clarifications.

This RFQ provides details about what is required when submitting a Proposal for the Work, how KT will evaluate the Proposals, and what will be required of the Consultant in performing the Work. This RFQ also gives the estimated dates in Section 2, for the various events in the submission process. While these dates are subject to change, prospective Consultants must be prepared to meet them as they currently stand.

Other sections of the RFQ will cover general submission instructions, project overview, proposal and project schedule, consultant qualifications and experience, evaluation criteria, contract terms and federal clauses.

Kitsap Transit shall use qualifications-based competitive proposal procedures (i.e., Brooks Act procedures) when contracting for A&E services as defined in 40 U.S.C. Section 1102 and U.S.C. Section 5325(d). Services subject to this requirement are program management, construction management, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.

Qualifications-based competitive proposal procedures require that:

- (1) A Proposer's qualifications be evaluated;
- (2) Price is excluded as an evaluation factor;
- (3) Negotiations are conducted with only the most "highly qualified" Proposer; and
- (4) Failing agreement on price, negotiations with the next most highly qualified Proposer be conducted until a contract award can be made to the most highly qualified Proposer whose price is fair and reasonable to the grantee.

2.1 Proposal Due Date

Sealed Proposals must be emailed NO LATER THAN **2:00 P.M.**, on **April 26, 2021** and the subject line must read: **RFQ KT #21-707 M/V Solano Refurbishment SOW. Proposals shall be in PDF or Word format.** Late proposals will be rejected. Faxed and emailed proposals will NOT be accepted.

Proposals shall be addressed as shown above with the name and address of the Proposer and the name of the project plainly written on cover page of the Proposal. A complete proposal shall include:

1. Firms' Proposal
2. Bidder's Affidavit (Exhibit A)
3. Addenda Acknowledgement Form (Exhibit D)

Kitsap Transit may refuse to consider a Proposer who it determines to have an unsatisfactory record of performance and/or integrity in connection with the proposal/bidding or performance phase of any previous contract.

Proposals will not be publicly opened and the information contained in all proposals will be kept strictly confidential until a Contract is fully executed.

2.2 Requests for Information (RFI), Communications and Addenda

Proposers who seek to obtain information, clarification, or interpretations from contacts other than the KT Purchasing Coordinator are advised that such material is used at the Proposer's own risk. KT will not provide binding oral interpretations, explanations, or instructions as to the meaning or interpretation of the solicitation documents. This process will be the only opportunity for Proposers to ask questions. Kitsap Transit staff will not answer questions regarding this RFQ verbally. All questions must be submitted in writing, via USPS or email.

To be given consideration, any and all communications requesting information, material substitutions, clarifications, and inquiries concerning this solicitation must be email NO LATER THAN **5:00 P.M.** on **April 20, 2021** to be considered in an Addendum

2.3 Plan Holders List:

All prospective Proposers are required to register as "Plan Holders" to receive addenda or clarifications regarding the solicitation. It is recommended that Proposers notify Patrick Rogers of their intent to submit a proposal and register with Kitsap Transit's Plan Holders List in order to receive electronic or facsimile notification of issued Addenda. Proposers that do not register will not be notified of Addenda and will need to periodically check for Addenda on KT's website at <http://www.kitsaptransit.com/agencyinformation/procurement> during the Proposal period and before submitting your Proposal.

All submitted proposals and attachments become the property of KT and shall remain in effect for at least ninety (90) days after Proposal Due Date. The accepted Proposal shall remain in effect until the Contract is fully executed and will then become a part of the Contract, including any addenda and all attachments.

2.4 Restriction of Future Contracting

The Awarded Vendor, and any sub-consultants, will be precluded from competing for the follow-up work associated with the Contract. Also, any company that the Awarded Vendor has a financial interest in will also be precluded from competing for any follow-up work.

2.5 Payment

Kitsap Transit is a public agency. KT cannot pay for services that have not been received. Therefore, we cannot provide a deposit or advance payment.

At the execution of the contract KT will issue a contract for the full value of the project. Payments will be made against that total upon successful completion and acceptance of the total or a portion of the work and receipt of an invoice from the Contractor.

All payments to Contractor shall be remitted by US mail.
Invoices shall be mailed to:

Kitsap Transit,
Attn: Accounts Payable
60 Washington Ave, Suite 200
Bremerton WA 98337

No payment, whether monthly or final, to the Contractor for any services shall constitute a waiver or release by KT of any claims, rights, or remedies it may have against the Contractor under this Contract or by law, nor shall such payment constitute a waiver, remission, or discharge by KT of any failure or fault of the Contractor to satisfactorily perform the services as required under this Contract.

2.6 Disadvantaged Business Enterprise Goal

The purpose of the Disadvantaged Business Enterprise (DBE) overall goal is to achieve a “level playing field” for ready, willing and able DBEs seeking to participate in federally-assisted contracts. Kitsap Transit’s DBE goal for federal fiscal year 2021 is 2.93%, the full text of which may be found at <http://www.kitsaptransit.com/agency-information/procurement>.

2.7 Title VI

It is the policy of Kitsap Transit to assure that no person shall, on the grounds of race, color, national origin and sex, as provided by Title VI of the Civil Rights Act of 1964, be excluded from participation in, be denied the benefits of, or otherwise be discriminated against under any of its federally funded programs and activities. See http://www.kitsaptransit.com/uploads/pdf/projects/executedtitlevi_june2011.pdf for the full text of the above Civil Rights statements.

2.8 Calendar of Events

The following is the approximate RFQ procurement schedule from issuance through Project start-up. This time schedule is fixed through Questions / Request for Clarifications Deadline. Based upon the number and nature of the questions received, the Contracts Administrator may modify the remainder of the schedule. KT will notify all Proposers of any schedule changes by written Addendum.

<u>Activity</u>	<u>Date</u>
Request for Qualifications Published	April 9, 2021
Written Questions / Request for Clarifications Deadline	April 20, 2021 at 5:00 P.M.
Proposal Due Date	April 26, 2019 NO LATER THAN 2:00 P.M.
Transit Board Award of Contract	May 4, 2021
Final Award Notice mailed to Proposers	May 3, 2021

*Dates are approximate

2.9 General Information for Proposers

Proposers must be fully insured and registered to conduct business in the State of Washington and licensed for business in their state of residence. Policies of insurance, as outlined in Section 7.5 shall be obtained and kept in force for the duration of the Contract.

By submitting a Proposal in response to this solicitation, Proposers agree to be bound by all legal requirements and contract terms and conditions contained in this RFQ. Failure to include any of requested information and properly completed forms and documents may be cause for immediate rejection of the proposal.

Except as otherwise provided for herein, Proposals that are incomplete or that are conditioned in any way or contain erasures, alterations, or items not called for in the proposal or that are not in conformance with the law, may be rejected as non-responsive.

KT reserves the right to accept or reject any and all submitted proposals, portions or parts thereof; to waive informalities and minor irregularities in proposals; to decline award based on available funding for the Contract; and to award in whole or in part to the most responsive and responsible Proposer, whichever is in the best interest of KT.

In consideration for KT's review and evaluation of its proposal, the Proposer waives and releases any claims against KT arising from any rejection of any or all proposals, including any claim for costs incurred by Proposers in the preparation of proposals submitted in response to this solicitation.

If KT determines that collusion has occurred among Proposers, none of the proposals of the participants in such collusion will be considered. KT's determination shall be final.

KT may obtain clarification of any point in submitted proposals or request additional information, if necessary, to properly evaluate proposals. Proposers must be prepared to present necessary evidence of experience, ability, service facilities and financial standing to satisfactorily meet the requirements set forth or implied in the Proposal. Failure of a Proposer to respond to such a request for additional information or clarification may result in rejection of that proposal.

2.10 Cancellation or Extension

KT reserves the right to cancel this solicitation or extend the Proposal Due Date and time, by written Addendum, at any time *prior to* the set Proposal Due Date and time, or in the event only a single proposal or no proposals are received. If a Proposer pursues a protest or a request for reconsideration, its proposal is deemed extended until KT executes the Contract, or until the protest or request for reconsideration is withdrawn by the Proposer.

2.11 Modifications

Proposers will not be allowed to alter proposals *after* the Proposal Due Date and time. Submitted proposals may only be changed if a written request is received by KT *before* the set Proposal Due Date and time. Such requests must be signed by an individual authorized to submit proposals on behalf of the firm. All proposal modifications shall be made in writing, executed and submitted in the same form and manner as the original proposal. Nothing in this section shall be construed to permit the Proposer to alter its proposal *after* it has been submitted pursuant to the terms of this solicitation.

2.12 Withdrawal

Proposers will not be allowed to withdraw proposals *after* the Proposal Due Date and time unless the award is delayed for a period exceeding ninety (90) days. Any proposal not so timely withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days, to provide KT the services described herein, or until one or more of the proposals have been approved by KT, whichever occurs first.

2.13 Award

Kitsap Transit reserves the right to make award within ninety (90) calendar days from the Proposal Due Date. Should award, in whole or part, be delayed beyond the period of ninety (90) days, such award shall be conditioned upon Proposer's acceptance.

Submitted Proposals shall be conclusive evidence to KT that the Proposer has thoroughly examined and understands all requirements of the Proposal and the work to complete the Contract. The failure or neglect of a Proposer to receive or examine any proposal document or any part thereof, work site, statutes, regulations, ordinances or resolutions shall in no way relieve the Proposer from the obligations with respect to its Proposal or to the Contract. No claim for additional compensation shall be allowed which is based upon a lack of knowledge thereof. KT will not be responsible for any costs incurred by Proposers in preparing, submitting, or presenting their response to this RFQ.

All proposals and submissions become the property of KT and are subject to public disclosure, unless certain provisions as described in Section 6 pertain.

2.14 Validity of a Protest

Kitsap Transit Protest and Appeals policy, **Attachment C**, is provided for reference.

Proposers are advised that to be considered a valid protest, subject matter can only address issues associated with this Proposal process. Accordingly, the protest cannot be associated with, or challenge the recommendations of, KT staff or its Evaluation Committee. A protest can only be put forth that KT staff did not follow their own policies or procedures that govern procurement and, accordingly, a Proposer was unfairly treated. The protest cannot challenge KT staff or the Evaluation Committee's recommendation of a potentially successful Proposer.

2.15 Non-Submittal/No Bid

If you determine not to submit a Proposal in response to this RFQ, KT would appreciate your completing and returning the "No Bid Form" (**See Attachment A**). Please state the reason why a proposal could not be submitted at this time. Information gathered will provide insight into how we can improve our process, conditions, or specifications to reach our goal of creating a competitive, level playing field for all potential Proposers. The "No Bid Form" may be sent via USPS, fax or email.

END OF SECTION 2

Section 3: General Scope of Work

The scope of work requires the Proposers to review the latest US Coast Guard Report, evaluate the current condition of the MV Solano and other available information to develop a Ship Work Breakdown Structure scope of work and all associated drawings necessary for Kitsap Transit to competitively bid the refurbishment of the vessel.

The following list of Tasks is a general overview of the Work that is to be completed. The list of Tasks is not to be considered exhaustive and Consultants will be expected to perform all Work necessary to provide Kitsap Transit with a comprehensive set of deliverables.

TASK 1

Review existing reports, documents, plans and the existing condition of the M/V Solano to develop a Bid level Ship Work Breakdown Structure scope of work that will be used to solicit construction Bids later this year.

- Review existing condition reports that will be supplied to the Awarded Vendor
- Survey the existing conditions of the M/V Solano
- Review recommendations for repair for Kitsap Transit Staff and Operators
- Meet with Kitsap Transit staff to determine the extent of the desired refurbishment

TASK 2

Develop and revise Ship Work Breakdown Structure scope of work and necessary drawings

- Develop Ship Work Breakdown Structure scope of work based on the findings in Task #1
- Present scope of work to Kitsap Transit and revise as required
- Provide Kitsap Transit a finalized scope of work to be include in construction procurement documents

TASK 3

Engineer's Opinion of Cost

- Based on the finalized scope of work, Awarded Vendor will supply an Engineer's Opinion of Cost

TASK 4

Pre-Construction Period Services

- Provide Kitsap Transit guidance and answers for questions received during the construction solicitation period
- Review solicitation period submittal and provide expert opinion in regard to the submittals

TASK 5 (Optional)

Construction Period Services

If it is determined that Kitsap Transit will move forward with refurbishment construction, Kitsap Transit reserves the right to engage the Consultant for Construction Period Services. If Kitsap Transit exercises the Construction Period Services option, a scope of work will be developed and a negotiated cost proposal will presented to the Project Manager for approval.

DELIVERABLES

- ✓ Ship Work Breakdown Structure scope of work
- ✓ Engineer's Opinion of Cost

Project Timeline

The consultant must provide a schedule and proposed timeline for deliverables with their RFQ response documents.

END OF SECTION 3

Section 4: Proposal Content

Content and completeness are most important. Clear and effective presentations are preferred, with elaborate, decorative or extraneous materials strongly discouraged. The proposal shall be submitted in an 8 ½” by 11” format with foldouts from this basic size utilized as necessary. Proposal submittal requirements are described below.

All proposals must be submitted as specified on the proposal pages, which follow. Any attachments must be clearly identified. To be considered, the proposal must respond to all parts of the RFQ. Any other information thought to be relevant, but not applicable to the enumerated categories, should be provided as an appendix to the proposal. If publications are supplied by a proposer to respond to a requirement, the response should include reference to the document number and page number. Proposals not providing this reference will be considered to have no reference material included in the additional documents.

Proposal Requirements

This section describes mandatory descriptions and submittals that must be addressed in or included with each proposal. Failure to address or include all items discussed in this section may subject the proposal to immediate rejection. KT will be the final authority in determining the responsiveness of a proposal. The RFQ will be evaluated based on the criteria listed in the evaluation criteria.

One (1) electronic copy shall be submitted via email to patrickr@kitsaptransit.com . The Proposal should be attached to the email and presented in PDF or Word format. Kitsap Transit will not accept proposals that require third party access, password protection, ZIP files, or other file formats. Proposals submitted in alternate format will be rejected.

Proposers must submit their Proposal without a Cost Proposal.

To facilitate a uniform review process and obtain the maximum degree to comparability, respondents are required to organize proposals in the following manner. *Proposals that deviate from this organizational structure or are missing key information elements may be considered non-responsive.*

1. Letter of Transmittal addressed to the Purchasing Coordinator as follows:

Mr. Patrick Rogers, Purchasing Coordinator
Kitsap Transit
60 Washington Ave. Suite 200
Bremerton, WA 98337

The letter of transmittal must include:

- Project title
- Name of respondent
- Location of the respondent
- Brief description of respondent’s proposal
- Note any exception that the Proposer takes with the terms and conditions of the solicitation
- Identify Proposer’s Project Manager
- Be signed, wet or electronic, by a person authorized to bind the Proposer to a Contract with Kitsap Transit

2. Understanding and Approach:

The Proposal shall address the Scope of Work outlined in the RFQ and describe how the Proposer intends to carry out the tasks. A project schedule shall be provided outlining specific tasks to be performed, key milestone dates, and individuals responsible for each task. Describe the Proposer's project management techniques for ensuring that the work is accomplished in accordance with established standards and schedules.

3. Technical Capacity and Past Experience:

Proposer shall provide a narrative summary of the overall qualifications of the proposed team and how those skills will be used to complete the project. The narrative shall include specific examples from past projects demonstrating these qualifications. Proposer should demonstrate how the team will be arranged and how specific roles and responsibilities will be assigned and managed.

Proposer shall demonstrate how proposed team member's specific skills will lead to a positive outcome for Kitsap Transit. Provide sufficient detail to convey to members of the Evaluation Committee, the firm's knowledge of the subjects and skills necessary for the completion of the contract and any other services necessary to complete the Project.

Proposer shall provide a brief description, one page maximum, of similar projects that the team has completed in the past. Kitsap Transit prefers projects that were wood vessel refurbishment or major refits. Include a summary of the work performed, the organization for which the work was performed, primary point of contact, dollar value of the final construction and the scope of the Proposer's efforts.

4. Key Personnel:

Proposer shall provide a brief resume or similar description for the key staff members who will be assigned to this project, including their specific responsibilities and individual qualifications. The resume shall include a minimum of two (2) similar projects that each team member has worked on and a description of their roles and responsibilities. Proposer shall also provide similar information for all sub-consultants that will be utilized for this project.

Proposers must identify a Project Manager, who may not be removed/substituted from the project without written approval from Kitsap Transit. The Proposer will describe the Project Manager's experience, expertise, knowledge, capabilities and resources as they pertain to managing this project's scope of work. The Proposer shall provide a description of three (3) similar projects that the Project Manager acted as either the Project Manager or was a key team leader; including the name of the client organization, primary client contact information, description of the project and time period the work was completed.

END OF SECTION 4

Section 5: Evaluation of Proposals

Award of this contract shall be determined through the evaluation process as described below and in the following section, provided the proposal is responsive in all respects to the procurement requirements.

KT will establish an evaluation committee responsible for (1) reviewing all proposals and (2) conducting the evaluation and interviews described in this RFQ. KT reserves the right to reject or accept any and all proposals, to waive any minor irregularities in proposals or procedures, and to request additional information from Proposers at any stage of the evaluation.

Proposer qualifications will be evaluated by the Evaluation Committee based on the criteria below with a possible maximum score of 100 points for each Statement of Qualifications (SOQ).

5.0 Evaluation Criteria

The most highly qualified Proposer will be selected using the weighted criteria below.

1. Understanding and Approach	200
2. Technical Capacity and Past Experience	500
3. Key Personnel	300
Total	1000

5.1 Evaluation Committee Recommendations

The Evaluation Committee shall consist of qualified Kitsap Transit staff or other persons selected by Kitsap Transit to conduct evaluations of proposals. The committee will evaluate all responsive proposals based upon the information and references contained in the proposals as submitted.

5.2 Pre-Award Conference

If deemed necessary, in KT's sole discretion, the Proposer determined to be the most highly qualified firm shall participate in a pre-award conference conducted by KT to clarify and discuss issues of concern and interest to both parties.

5.3 Rejection of Proposals

KT may reject any Proposal that is not in the required format, does not address all the requirements of this RFQ, or that KT believes is not in the interest of the Agency to consider or to accept. In addition, KT may cancel this RFQ, reject all the Proposals, and seek to do the Work through a new RFQ or by other means.

END OF SECTION 5

Section 6: Proposal as Public Records

By submitting a proposal, the Proposer has thereby agreed to the provision of this Section. Except to the extent permitted by Washington State public disclosure laws RCW Chapter 42.56, KT will regard proposals as public records which will be available for public inspection and/or copying following contract award, regardless of any markings or notices contained in the proposal documents. Information will not be released by KT *prior to* contract award in order to protect the integrity of the procurement process, unless otherwise required by law. All proposals will remain confidential until a contract is awarded and fully executed by all parties involved.

If a Proposer considers portions of its proposal to be protected under Washington State law, the Proposer shall clearly identify and mark such portions as "CONFIDENTIAL" or "PROPRIETARY" and submit such portions in a sealed envelope separate from the rest of the proposal. It is not usually reasonable or legally defensible to mark an entire proposal as "confidential" or "proprietary". Marking the entire proposal as such will not be honored and the proposal may be rejected as non-responsive. KT shall not release or divulge such information to third parties without the consent of the Proposer, unless required to do so by applicable law or order of a court of competent jurisdiction. If a member of the public demands to review portions of a proposal marked "Confidential", KT will notify the affected Proposer of the request and the date that such records will be released unless the Proposer obtains a court order enjoining that disclosure.

It will be the responsibility of the Proposer to protect the confidentiality of any information submitted in the Proposal and the Proposer shall take such legal actions as it may determine to be necessary to protect its interest. If the Proposer has not commenced such action within five (5) calendar days after receipt of the notice, KT will make the requested portions available to the Requestor. The Proposer, asserting that portions of its proposal are legally protected, will assume all liability and responsibility for any information declared confidential and shall defend and hold KT harmless for any cost, penalties, and/or fees (including reasonable attorney fees) incurred in any action regarding the disclosure of said information. KT assumes no responsibility or liability for any losses or damages which may result from the information contained in the proposal.

By submitting a proposal, the Proposer has thereby agreed to the provision of this Section.

END OF SECTION 6

Section 7: General Provisions

These General Provisions are complementary to the Contract which is required to properly define and delineate the responsibilities and rights of the parties to this Contract.

7.1 Conflicts of Interest

Current and Former Employees: KT seeks to eliminate and avoid actual or perceived conflicts of interest and unethical conduct by current and former KT employees in transactions with KT. Consistent with this policy, no current or former KT employee may contract with, influence, advocate, advise, or consult with a third party about a KT transaction, or assist with preparation of bids submitted to KT while employed by KT or after leaving KT's employment, if he/she was substantially involved in determining the Work to be done or process to be followed while a KT employee.

Organizational Conflicts of Interest

An organizational conflict of interest is a situation in which, because of other activities, relationships, or contracts, a contractor or subcontractor is unable, or potentially unable, to render impartial assistance or advice to KT; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage. KT will evaluate future procurements related to this Contract to determine if there is an organizational conflict of interest. If an organizational conflict of interest exists, KT may prohibit the contractor and any of its subcontractors from participating in such related procurements/projects.

7.2 Debarment and Suspension

Contractor must not be debarred or suspended in order to conduct business with KT. Upon the Proposal Due Date and for the full duration of the Contract, the Contractor will not be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or State department or agency or from bidding on any public contract; and shall not be presently indicted for, or otherwise criminally or civilly charged by, a governmental entity (federal, State or local) with commission of any of the offenses enumerated in below.

Within a three (3) year period preceding this proposal, Contractor shall not have been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract; Violation of federal or State anti-trust statutes; Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or had one or more public transactions (federal, State or local) terminated for cause or default. If it is later determined that the Contractor knowingly rendered an erroneous certification under the Affidavit submitted with its proposal, or failed to notify KT immediately of circumstances which made the original certification no longer valid, KT may immediately terminate the Contract.

7.3 Defective Materials or Services

When and as often as KT determines that the products or services furnished under the Contract are not fully and completely in accordance with any requirement of the Contract, KT may give written notice and description of such non-compliance to the Contractor. Within seven (7) calendar days of receiving such written notification, Contractor must supply KT with a written detailed plan of action that indicates the time and methods needed to bring the products or services within acceptable limits under the Contract. KT may reject or accept this plan at its discretion.

In the event this plan is rejected or the defect has not been remedied within thirty (30) days of Contractor's receipt of notice, the products or services will be deemed not accepted and returned to the Contractor at the Contractor's

expense. KT, in its sole discretion, may purchase a replacement from another source and charge-back the cost for such warranty replacement to the Contractor. This procedure to remedy defects is not intended to limit or preclude any other remedies available to KT by law, including those available under the Uniform Commercial Code, Title 62A RCW.

7.4 Subcontracts

Any Subcontractors and outside associates or consulting firms or individuals, including any substitutions thereof, required by the Contractor in connection with work to be provided under this Contract will be subject to prior authorization by KT. Each subcontract and a cost summary, therefore, shall be subject to review by KT prior to the Subcontractor proceeding with the work. The Contractor shall be responsible for the professional standards, performance, and actions of all persons and firms performing subcontract work. The Contractor shall be responsible for the completion and submission of any federally required forms that may be required of the Subcontractor. The Contractor, at the request and direction of KT, will provide copies of any written agreements showing their contractual relationship.

7.5 Insurance Requirements

The Contractor shall, at its sole cost and expense, obtain and maintain during the entire term of this Contract the minimum insurance set forth below. In the event the Contractor is a Joint Venture, these insurance requirements shall apply to each Joint Venture member separately. By requiring such minimum insurance, KT shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including without limitation, liability under the indemnity provisions of this Contract. Damages recoverable by KT shall not be limited to the amount of the required insurance coverage.

- Worker's Compensation Insurance in compliance with the laws of the State of Washington covering all CONSULTANT's employees who perform under this Agreement.
- Comprehensive Auto Liability Insurance on all vehicles used in connection with this Agreement whether owned, non-owned, or hired; with limits for bodily injury or death not less than \$100,000.00 per person and \$300,000.00 per occurrence, and property damage limits of not less than \$50,000.00; or in the alternative, not less than \$300,000.00 combined single limit coverage.
- Comprehensive General Liability Insurance with limits for bodily injury and property damage of not less than \$300,000.00 per incident and \$600,000.00 aggregate. A certificate of such insurance or a copy of such insurance policy or policies shall be provided to TRANSIT within one week after the execution of this Agreement. CONSULTANT' shall agree to give TRANSIT thirty (30) days written notice of cancellation in coverage below the limits set forth herein.
- Professional liability insurance appropriate to the Consultant's profession with limits of no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

Coverage in the minimum amount set forth herein shall not be construed to relieve CONSULTANT from liability in excess of such coverage. TRANSIT shall be specifically included as an additional insured in the insurance coverage required by this section.

Notwithstanding, TRANSIT reserves all claims or rights of action against CONSULTANT as if TRANSIT were not named in the subject policy or policies.

Taking into account the Scope of Work and Services to be performed by a Subcontractor, the Contractor shall prudently determine whether, and in what amounts, each Subcontractor shall obtain and maintain public liability,

professional liability, and any other insurance coverage. Any insurance required of Subcontractors shall, where appropriate and/or applicable, name KT as an additional insured.

The Contractor and its insurers shall endorse the required insurance policy (ies) to waive their right of subrogation against KT. The Contractor and its insurers also waive their right of subrogation against KT for loss of its owned or leased property or property under its care, custody and control.

No provision in this Section shall be construed to limit the liability of the Contractor for services not done in accordance with the Contract, or express or implied warranties. The Contractor's liability for the services shall extend as far as the appropriate periods of limitation provided by law and up to any legal limits.

The Contractor may obtain any combination of coverage or limits that effectively provides the same or better amounts and types of coverage as stipulated above, subject to review and approval by KT.

The Contractor warrants that this Contract has been thoroughly reviewed by the Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Contract.

7.6 Limitation of Liability

A. Non-conforming Services – For any services which fail to conform to the scope of the Contract and such failure is caused solely by the negligence of the Contractor, no charge will be invoiced to KT. If both parties are negligent, they agree to apportion between them the damage attributable to the actions of each.

B. Damages – Neither party will seek damages, either direct, consequential, or otherwise against the other in addition to the remedies stated herein.

3. Third Party Claims – In the event that either party is found liable for damages to third parties as a result of the performance of services under this Contract, each party will be financially responsible for the portion of damages attributable to its own acts and responsibilities under this Contract.

7.7 Taxes

Any Contract wholly for professional or other applicable services is generally not subject to Retail Sales Tax and therefore, the Consultant shall not collect Retail Sales Tax from Kitsap Transit on those Contracts. Any incidental taxes paid as part of providing the services shall be included in the payments under the contract. .

No adjustments will be made in the amount to be paid by KT under the Contract because of any misunderstanding or any lack of knowledge of the Proposer as to liability for, or the amount of, any taxes or assessments which the Proposer may be liable or responsible for by law.

7.8 Confidentiality

After the Proposal due date and until a Contract is awarded, no information will be discussed with the competitors or anyone outside the Evaluation Committee. No Proposer or other member of the public will be told of the rankings among Proposers, nor the number of firms within the competitive range. Proposers will only be told that their proposal was ranked within the competitive range. Names of firms, cost data, or other information from Proposers submitted in response to this RFQ shall remain strictly confidential until after contract award.

7.9 Contract Documents

The successful Proposer will receive an award package from KT that includes the Final Award Notice, two original duplicates of the Contract for signature, and other documents as required. Contractor must immediately sign and return all requested documents to KT within ten (10) calendar days, unless indicated otherwise, or KT may utilize KT 21-707

their right to cancel the award and go to the next highest scoring Proposer. Proposers should already have preparations in place to notify their insurance broker and/or bonding agent to immediately obtain the required documents. *A sample contract for services is provided to inform submitters of the expected terms and conditions required by Kitsap Transit. The contract is provided for information only and does not need to be returned with the proposal submission. (See Attachment D)*

7.10 Failure to Execute Contract

Should the awarded Contractor fail to execute the Contract within ten (10) days from the Final Award Notice date, KT may withdraw the award and present the award to the next highest scoring Proposer. Should events give rise to this instance, the Proposer failing to execute a contract may be removed from KT's bid list for any future contracting opportunities.

END OF SECTION 7

Section 8: Exhibits and Attachments

Exhibit A: Bidder's Affidavit

Exhibit B: Reserved

Exhibit C: Reserved

Exhibit D: Addenda Acknowledgement Form

Attachment A: No Bid Notice Form

Attachment B: Reserved

Attachment C: Protest and Appeal Policy

Attachment D: Sample Contract

END OF SECTION 8

EXHIBIT A

BIDDERS AFFIDAVIT

BIDDER'S AFFIDAVIT PROJECT KT #21-707

NON-COLLUSION

The Bidder affirms that, in connection with this Bid, the prices or cost data have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition and that the proposal herewith submitted is a genuine and not a sham or collusive Bid, or made in the interest or on behalf of any person not therein named; and further says that the said Bidder has not directly, or indirectly, induced or solicited any Bidder on the above Work or supplies to put a sham Proposal, or any other person or corporation to refrain from Bidding; and that said Bidder has not in any manner sought by collusion to secure to himself/herself an advantage over any other Bidders.

CONFLICTS OF INTEREST & ANTI-KICKBACKS

In regards to any performance of the Work or the provision of services or materials under the Contract resulting from this solicitation the Bidder affirms that:

1. It has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the services required to be performed under this Contract and that it shall not employ any person or agent having such interest. In the event that the Bidder, as Contractor, or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to Kitsap Transit and take immediate action to eliminate the conflict or to withdraw from said Contract as Kitsap Transit may require.
2. No officer, employee, Board member, agent of Kitsap Transit, or family member of same shall have or acquire any personal interest in this submittal, or have solicited, accepted or granted a present or future gift, favor, service, or other thing of value from or to any person involved in this submittal and that no such gratuities were offered or given by the Bidder or any of its agents, employees or representatives, to any official, member or employee of Kitsap Transit or other governmental agency with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the Award or performance of this Contract.

CONTINGENT FEES AND GRATUITIES

The Bidder affirms that in connection with this Bid:

1. No person or selling agency, except bona fide employees or designated agents or representatives of the Bidder, has been employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.
2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member or employee of Kitsap Transit or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

SEGREGATED FACILITIES

The Bidder certifies that their company does not and will not maintain or provide for their employees any segregated facilities at any of their establishments, and that they do not and will not permit their employees to perform their services at any location under its control where segregated facilities are maintained. The Bidder agrees that a breach of this certification will be a violation of the Equal Opportunity or Civil Rights clause in any Contract resulting from acceptance of this Bid. As used in this Certification, the term “segregated facilities” means any waiting rooms, Work areas, restrooms and washrooms, restaurants and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin because of habit, local custom, or otherwise.

DEBARMENT AND SUSPENSION

The Proposer shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment” 2 C.F.R part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)”, 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the bidder shall verify that its principles, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participating in any federally assisted Award;
- f) Disqualified from participating in any federally assisted Award.

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

The certification in this clause is a material representation of fact relied upon by Kitsap Transit. If it is later determined by Kitsap Transit that the bidder knowingly rendered an erroneous certification, in addition to remedies available to Kitsap Transit, the Federal Government may pursue available remedies afforded by 31 U.S.C. § 3802, including but not limited to suspension and/or debarment. The bidder agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from the offer. The bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

If Bidder is unable to certify to any of the statements in this certification, the Bidder shall attach an explanation to this Section.

Note: The penalty for making false statements in offers is described in 18 U.S.C. 1001.

THE BIDDER CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 USC SECTIONS 3802, *ET SEQ.*, ARE APPLICABLE THERETO.

Authorized Signature

Date

Printed Name & Title

Company Name

Subscribed and sworn to before me this _____ day of _____, 2021.

Notary Public in and for the State of _____,

residing in _____

Signature: _____

****THIS FORM MUST BE NOTARIZED AND SUBMITTED WITH YOUR BID****

EXHIBIT B

[Intentionally Left Blank]

EXHIBIT C

[Intentionally Left Blank]

Reserved

EXHIBIT D

**KITSAP TRANSIT
REQUEST FOR QUALIFICATIONS KT # 21-707
RFQ**

Proposal Addenda Acknowledgement

Receipt of Addenda number _____, _____, _____, is hereby acknowledged.

Proposer Company Name: _____


By: _____

Company Address:

Phone Number: (____) _____

ATTACHMENT A

NO BID NOTICE FORM

 <p style="text-align: center;">60 Washington Ave. Suite 200 Bremerton, WA 98337</p>	<p>IFB # KT 21-707</p>
<p>If your firm elects to not submit a response to this solicitation, please complete this form and return to: Patrick Rogers, Purchasing Coordinator.</p>	<p>M/V Solano Refurbishment SOW</p>

A response to the solicitation is not being submitted for the following reason(s):

- | | |
|---|--|
| <input type="checkbox"/> We do not provide the required goods or services | <input type="checkbox"/> Cannot meet delivery or response time requirements |
| <input type="checkbox"/> The project scope is too small | <input type="checkbox"/> Licensing restrictions (please explain below) |
| <input type="checkbox"/> The project scope is too large | <input type="checkbox"/> Insufficient time to prepare submittal |
| <input type="checkbox"/> Specifications are not sufficiently defined | <input type="checkbox"/> Cannot comply with contract terms and conditions (please specify below) |
| <input type="checkbox"/> Cannot handle due to present wor load | <input type="checkbox"/> Other reasons (please explain below) |

I/We wish to respond to similar services in the future <input type="checkbox"/> Yes <input type="checkbox"/> No	Authorized Company Official – Signature and Title	Date
Do not write in this space	Firm Name	
	Address	
	City	
	State	Zip Code
	Telephone Number	

ADDITIONAL REASONS / COMMENTS:

****Optional Use Form****

Attachment B

[Intentionally Left Blank]

[Reserved]

ATTACHMENT C

PROTEST AND APPEAL POLICY

A. Purpose

To establish policies for vendor or service provider complaints and protests to ensure fair and open competition.

B. Complaint Policy

Who May Submit a Complaint

A potential bidder demonstrating a substantial economic interest in Kitsap Transit's competitive bid process.

Timing of Complaint

Complaints must be received five business days prior to bid response deadline.

Basis of Complaint

Complaints must be based on the following criteria:

1. The solicitation unnecessarily restricts competition
2. The solicitation evaluation process is unfair or flawed
3. The solicitation requirements are insufficient to prepare a response

Complaint Form and Content

1. Complaints must be in writing
2. Complaints must be addressed to the Purchasing Coordinator
3. Complaints must clearly articulate the basis for the complaint
4. Complaints must include proposed remedy

Kitsap Transit Response to Complaint

The Purchasing Coordinator will respond to complaints in writing within three business days of receipt.

C. Protest and Appeal Policy

Who May Protest or Appeal

A potential bidder demonstrating a substantial economic interest in Kitsap Transit's competitive bid process.

Timing of Protest

A protest must be filed within five business days of the award of a contract or notice of apparent successful proposer/bidder, whichever is sooner.

Basis of Protest

Protests must be based on the following criteria:

1. A matter of bias, discrimination, or conflict of interest
2. Non-compliance with procedures described in the procurement documents
3. Error in computing scores

Protest Form and Content

1. Protests must be in writing
2. Protests must be addressed to the Purchasing Coordinator
3. Protests must clearly articulate specific grounds for the protest and include supporting documentation
4. Protests must include proposed remedy

Protest Procedure

A protest must be filed with Kitsap Transit’s Purchasing Coordinator within five business days of the award of a contract or notice of apparent successful proposer/bidder, whichever is sooner. Upon receipt of a timely written protest, the Purchasing Coordinator will consider the protest in accordance with established procedures and issue a written decision within five business days stating the reasons for the action taken and informing the allegedly aggrieved vendor or service provider (Protesting Vendor) of his/her right to appeal the decision.

Appeal Procedure

An appeal must be filed within five business days of the Purchasing Coordinator decision. The Finance Director and the procurements originating Department Director will consider the appeal and issue a written decision within five business days informing the Protesting Vendor of his/her right to further appeal the decision.

In the event the Protesting Vendor elects to continue the appeal process, a request for a second appeal must be filed within five business days of the decision of the first appeal. The Executive Director and general counsel will consider the appeal and issue a written decision within ten business days. The decision of the second appeal will be final and conclusive.

Failure to Comply with Requirements

Failure to comply with the protest and appeal requirements will render a protest or an appeal untimely or inadequate and may result in rejection thereof.

Protests to the Federal Transit Administration

When the award is funded in part by Federal Transit Administration (FTA) funds, the vendor or service provider may appeal to the FTA pursuant to FTA Regulations. Protests made to the FTA will be limited to Kitsap Transit’s (1) failure to have followed its protest procedures, (2) failure to review a complaint or protest, or (3) violations of Federal law or regulation. Any protest to the FTA must be made in accordance with the following guidelines:

1. A protest must be filed with the FTA no later than five business days after the Protesting Vendor exhausts Kitsap Transits protest and appeal procedures.
2. A protest to FTA must be filed in accordance with FTA Circular 4220.1F, as amended.

Exhausted Administrative Remedies

A Protesting Vendor may not commence litigation prior to exhausting all administrative remedies. Failure to exhaust all administrative remedies shall constitute an absolute waiver of the Protesting Vendor rights, if any, to commence litigation.

ATTACHMENT D

SAMPLE KITSAP TRANSIT

CONSULTANT AGREEMENT

KT # XX-XXX

{Project Name}

KITSAP TRANSIT

60 Washington Ave., Ste. 200
Bremerton, Washington 98337
(360) 824-4905
(360) 377-7086 Facsimile

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KITSAP TRANSIT

SAMPLE CONSULTANT AGREEMENT

THIS AGREEMENT, made and entered into in duplicate this ___ day of _____, 2017, by and between KITSAP TRANSIT, a Washington municipal corporation, hereinafter referred to as "TRANSIT", and _____, hereinafter referred to as "CONSULTANT."

WITNESSETH:

WHEREAS, TRANSIT desires to have certain services and/or tasks performed as hereinafter set forth requiring specialized skills and other supportive capabilities, hereinafter referred to as the "Project," and

WHEREAS, CONSULTANT represents that CONSULTANT is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, TRANSIT and CONSULTANT agree as follows:

ARTICLE 1 **OVERALL PROJECT**

1.1 RELATIONSHIP OF PARTIES

The CONSULTANT covenants with TRANSIT to furnish the CONSULTANT's reasonable skill and judgment in furthering the interests of TRANSIT. The CONSULTANT shall furnish memos, reports, spreadsheets or other appropriate documents, and use the consultant's best effort to perform the work in this Agreement in an expeditious and economical manner consistent with the interest of TRANSIT. The CONSULTANT shall endeavor to promote harmony and cooperation with the other governmental parties and agencies involved with the Project, TRANSIT, and other persons or entities essential to the Project.

1.2 GENERAL SCOPE OF SERVICES

CONSULTANT shall perform such services and accomplish such tasks, including the furnishing of all materials, documentation, and equipment necessary for full performance thereof, as are identified and designated as CONSULTANT responsibilities throughout this Agreement and as detailed in exhibits attached hereto and incorporated herein.

Exhibit X: Request for Qualification, Project KT #17-578

Released: xx/xx/2017

Exhibit X: Addenda X, Project KT #17-578

Released: xx/xx/2017

Exhibit X: Consultant's Response to RFQ KT #17-578

Issued: xx/xx/2017

1.3 TERM OF THE AGREEMENT

CONSULTANT shall not begin work under the terms of this Agreement until authorized by the signing of this Agreement. The services under this Agreement are directly related to and shall be coordinated with the Project Schedule. The time for completion is _____.

The established completion time shall not be extended because of any delays attributable to CONSULTANT, but may be extended by TRANSIT in the event of a delay attributable to TRANSIT or because of unavoidable delays caused by an Act of God, governmental actions or other conditions beyond the control of CONSULTANT.

ARTICLE 2

GENERAL PROVISION

2.1 ASSIGNMENT/SUBCONTRACTING

- A. CONSULTANT shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of TRANSIT, and it is further agreed that said consent must be sought in writing by CONSULTANT not less than seven days prior to the date of any proposed assignment. TRANSIT reserves the right to reject without cause any such assignment.
- B. TRANSIT permits subcontracts for those items of work as shown in EXHIBIT (X) attached hereto and made a part hereof. The parties understand that subconsultants may be added or deleted during the course of the Agreement. EXHIBIT (X) may be amended as the need arises, upon mutual agreement of the parties, without a formal amendment to this Agreement. All terms, conditions, covenants and performances contained herein by and between the CONSULTANT and TRANSIT shall be required of the subconsultant and made part of any subconsultant agreement.

2.2 ATTORNEYS FEES AND COSTS

If any legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the covenants, terms, conditions, OR provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and costs incurred in such action or proceeding.

2.3 CHANGES

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing, and signed by both parties. Such amendments shall be attached to and made a part of this Agreement.

CONSULTANT shall not incur additional cost which would modify the amount of the compensation established in EXHIBIT (X), except as TRANSIT may specifically authorize in writing.

CONSULTANT shall make all such changes and revisions in the completed work of this Agreement as are necessary to correct errors appearing therein, when required to do so by TRANSIT, without additional compensation therefore.

2.4 COMMUNICATIONS

Communications in connection with this Agreement shall be in writing and shall be delivered personally; or by facsimile, or by regular, registered, or certified mail addressed to the TRANSIT Representative designated to receive such communications. Communications shall be considered received at the time actually received by the addressee. Telephone calls may be used to expedite communications but shall not be official communication unless confirmed in writing. All telephone communication shall be directed to the Project Manager (designated representative) as appropriate.

2.5 DISPUTE RESOLUTION

TRANSIT's Protest and Appeal Procedures (ATTACHMENT C of the RFQ) are to be used for the resolution of disputes.

2.6 JURISDICTION

- A. This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

- B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Kitsap County, Washington.

2.7 RESERVED

2.8 MEDIATION

As a condition precedent to the hearing of any trial or arbitration, the Parties shall submit any and all disputes between them to non-binding mediation with the assistance of an experienced mediator. The Parties shall each designate a representative with full settlement authority who will participate for at least four hours in mediation. The Parties shall share equally all expenses, exclusive of attorney's fees, associated with the mediation.

2.9 NOTICE

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the last page of this Agreement.

2.10 REQUESTS FOR ARBITRATION

Requests for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A request for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the request for arbitration be made after the date when institution of legal or equitable proceedings based on such claims, dispute or other matter in question would be barred by the applicable statutes of limitations.

The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

2.11 SEVERABILITY

- A. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is held by the courts to be illegal, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision, which may conflict therewith, shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

2.12 TERMINATION

- A. **TERMINATION FOR CONVENIENCE:** The performance of work under this Agreement may be terminated by TRANSIT in accordance with this clause in whole, or from time-to-time in part, whenever TRANSIT shall determine that such termination is in its best interests. Any such termination shall be effected by delivery to the CONSULTANT of a Notice of Termination specifying the extent to which performance of service under the Agreement is terminated, and the date upon which such termination will become effective.

After receipt of a Notice of Termination, and except as otherwise directed by TRANSIT, the CONSULTANT shall stop work under the Agreement on the date and to the extent specified in the Notice of Termination.

Settlement of claims by the CONSULTANT under this Termination of Convenience clause shall be in accordance with the provisions set forth in the Federal Acquisition Regulations, except that wherever the word "Government" appears it shall be deleted and the words "KITSAP TRANSIT" shall be substituted in lieu thereof.

- B. **TERMINATION FOR DEFAULT:** TRANSIT may, by written notice of default to the CONSULTANT, terminate the whole or any part of this Agreement if the CONSULTANT fails to perform the services within the time specified herein or any extension thereof; or if the CONSULTANT fails to perform any of the provisions of the contract, or so fails to make progress as to endanger performance of this Agreement in accordance with

its terms, and in either of these two circumstances does not cause such failure to be corrected within a period of ten (10) business days (or such longer period as TRANSIT may authorize in writing) after receipt of notice from TRANSIT specifying such failure.

If the Agreement is terminated in whole or in part for default, TRANSIT may procure, upon such terms and in such manner, as TRANSIT may deem appropriate, supplies or services similar or those so terminated. The CONSULTANT may be liable to TRANSIT for excess costs for such similar services and shall continue the performance of this Agreement to the extent not terminated under the provisions of this clause.

Except with respect to defaults of sub-consultants, the CONSULTANT shall not be liable for any excess costs if the failure to perform the Agreement arises out of cause beyond the control and without the negligence of the CONSULTANT. If the failure to perform is caused by the default of a sub-consultant, and if such default arises out of causes beyond the control of both the CONSULTANT and the sub-consultant, and without the negligence of either of them, the CONSULTANT shall not be liable for any excess costs for failure to perform, unless the services to be furnished by the sub-consultant were obtainable from other sources to provide the services required.

Payment for services and accepted by TRANSIT shall be at the price specified in the Agreement. TRANSIT may withhold from amounts otherwise due the CONSULTANT for services provided such sum as TRANSIT determines to be necessary to protect TRANSIT against loss because of outstanding liens or claims of former lien holders.

If, after Notice of Termination of this Agreement under the provisions of this clause, it is determined for any reason that the CONSULTANT was not in default under the provisions of this clause, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to Termination of Convenience of TRANSIT.

The rights and remedies of TRANSIT provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

2.13 TREATMENT OF ASSETS

Title to all property furnished by TRANSIT shall remain in the name of TRANSIT and TRANSIT shall become the owner of the work product and other documents, if any, prepared by CONSULTANT pursuant to this Agreement unless otherwise expressly provided herein.

ARTICLE 3 COMPENSATION, PAYMENTS AND RECORDS

3.1 ACCOUNTING RECORDS

The CONSULTANT shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this agreement; the accounting and control systems shall be satisfactory to TRANSIT. The CONSULTANT shall preserve records, books, correspondence, instructions, drawings, subcontracts, purchase orders, memoranda and other data relating to this Agreement for a period of three years after final payment, or for such longer period as may be required by law.

3.2 AUDIT AND INSPECTION OF RECORDS

TRANSIT, the State Auditor, the Comptroller General for the United States, or any of their duly authorized representatives, shall, until three (3) years after final payment under this Agreement or for any shorter period specified, have access to and the right to examine any of the CONSULTANT's directly pertinent books, documents, papers or other records involving transactions related to this Agreement, and may request copies of specific documents at no charge to TRANSIT. These same requirements apply for any subconsultant.

3.3 CHANGE ORDER PROCEDURE

A. Oral change orders are not permitted. No change in this Agreement shall be made unless Kitsap Transit's Project Manager (designated representative) gives his/her prior written approval thereto. The

CONSULTANT shall be liable for all costs resulting from, and/or for satisfactorily correcting, any specification change not properly ordered by written modification to the Agreement and signed by Kitsap Transit's Capital Development Director.

- B. Exhibit (X) includes a firm fixed fee price and the schedule for the work to be performed. This proposal is accepted and may be modified by negotiations between the CONSULTANT and Kitsap Transit's Project Manager. At that time, both parties shall execute a detailed modification in writing.

Disagreements that cannot be resolved within negotiations shall be resolved in accordance with the Agreements Dispute Resolution Clause (ATTACHMENT C of the RFQ).

- C. Any proposed change in this Agreement shall be submitted to Kitsap Transit, or designated members thereof, for prior written approval. Subject to this prior approval, Kitsap Transit's designated representative may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this agreement, and/or the drawings, designs or specifications.

If such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Agreement, whether changed or not changed by any such order, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified in writing accordingly. Any claim by the CONSULTANT for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the CONSULTANT of the notification of change; provided, however, that Kitsap Transit's designated representative, if she or he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

3.4 COMPENSATION AND METHOD OF PAYMENT

- A. Payments for services provided hereunder shall be made following the performance of such service, unless otherwise permitted by law and approved in writing by TRANSIT. No payment shall be made for any service rendered by CONSULTANT except for services identified and set forth in this Agreement.
- B. TRANSIT shall pay CONSULTANT for work performed under this Agreement compensation on a fixed fee not-to-exceed basis as described in EXHIBIT (X) attached hereto and made a part hereof.
- C. Payments shall be made following presentation of CONSULTANT invoices and progress report. Invoices shall be prepared monthly on the basis of the work described in EXHIBIT A estimated to be completed that month and at a percentage of the total cost of services to be performed.

Payments are due and payable within thirty (30) days from the date the CONSULTANT's invoice is received by the TRANSIT.

3.5 OWNERSHIP OF DOCUMENTS

The original documentation and data furnished to CONSULTANT by TRANSIT shall be returned. All designs, drawings, specifications, documents, and other work products prepared by CONSULTANT are instruments of service for this Agreement, and are property of TRANSIT. Reuse by TRANSIT or by others acting through or on behalf of TRANSIT of any such instruments of service not occurring, as a part of this Agreement shall be without liability or legal exposure to CONSULTANT.

The drawings, specifications and any other design and planning documents produced by or provided to the CONSULTANT, and other key professionals employed by the CONSULTANT shall become the property of TRANSIT, but the use of these documents shall be approved in writing by the CONSULTANT and reasonable request for release from liability by the CONSULTANT shall be granted by TRANSIT.

All designs, drawings, specifications, technical data and other documents or information produced by CONSULTANT in the performance of this Agreement shall be the sole property of TRANSIT, and TRANSIT is vested with all rights therein of whatever kind and however created, provided however any design documents not stamped and signed

by appropriate registered professional architects or engineers shall be deemed to be incomplete and requiring further review or design completion.

None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

TRANSIT shall not reuse any documents, reports, materials, or other subject matter provided by CONSULTANT hereunder for other than the project defined by the Agreement without prior written consent of CONSULTANT, which shall not be unreasonably withheld. TRANSIT shall, in any event, indemnify, defend and hold CONSULTANT harmless from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages and liability caused by, resulting from, or arising out of such reuse. CONSULTANT is not liable for TRANSIT or third party misuse of any documents, reports, records, plans, or materials prepared, procured, or produced in the rendition of services under this Agreement.

3.6 PATENT RIGHTS

Any patentable result arising out of this Agreement, as well as all information, designs, specifications, know-how, data, and findings shall be made available to the Government for public use, unless TRANSIT shall, in a specific case where it is legally permissible, determine that it is in the public interest that it not be so made available.

3.7 INDEPENDENT CONSULTANT RELATIONSHIP

A. The parties intend that an independent CONSULTANT/TRANSIT relationship will be created by this Agreement. TRANSIT is interested primarily in the results to be achieved; subject to the provisions herein, the implementation of services will lie solely with the discretion of CONSULTANT. No agent, employee, servant or representative of CONSULTANT shall be deemed to be an employee, agent, servant or representative of TRANSIT for any purpose, and the employees of CONSULTANT are not entitled to any of the benefits TRANSIT provides to its employees. CONSULTANT will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subconsultants or representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated, CONSULTANT is an independent consultant with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of TRANSIT and shall be subject to TRANSIT's general rights of inspection and review to secure the satisfactory completion thereof.

3.8 WARRANTY OF TITLE

CONSULTANT shall warranty to TRANSIT its successors and assigns, that the deliverables covered by the Agreement, when delivered to TRANSIT or to its successors or assigns, is free from all liens and encumbrances.

ARTICLE 4

TRANSIT PROVISIONS

4.1 PROCUREMENT OF, ARCHITECTURAL ENGINEERING, DESIGN, OR RELATED SERVICES

In acquiring architectural, engineering, design or related services, Transit agrees to comply with the requirements of 49 U.S.C. §5325(d), by contracting for architectural, engineering, design or related services in the same way as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. §§ 541 *et seq.*, or an equivalent qualifications-based requirement of the state. Provided a sufficient number of qualified firms are eligible to compete for the third party contract, geographic location may be a selection criterion. This section does not apply to the extent a state has adopted or adopts by law formal procedures for procuring those services.

4.2 INFORMATION

TRANSIT shall provide full information in a timely manner regarding the requirements of the Project, including any additional information about its program which sets forth TRANSIT's objectives, constraints and criteria, including

preliminary space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

4.3 STATEMENT OF FINANCIAL ASSISTANCE

This Agreement is subject to receipt of financial assistance by TRANSIT from the Federal Transit Administration. TRANSIT shall arrange such assistance or other funding prior to authorizing the work of this Agreement to start. In the event the work of this Agreement is started and such financial assistance or other funding is not available, TRANSIT may terminate this Agreement in accordance with Article 2.12 Termination for Convenience.

4.4 TRANSIT’S DESIGNATED REPRESENTATIVE

TRANSIT shall designate a Project Manager who shall have express authority to bind TRANSIT with respect to all matters requiring TRANSIT approval or authorization. This representative shall have the authority to make decisions on behalf of TRANSIT subject to TRANSIT board approvals as required, concerning scope of work, schedules, review of budgets, and changes in the work of this Agreement without further formal TRANSIT action, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay of the CONSULTANT and the Project.

ARTICLE 5
INSURANCE PROVISIONS

CONSULTANT shall obtain and keep in force during the full term of this Agreement the following insurance coverage’s:

- 5.1.** Worker’s Compensation Insurance in compliance with the laws of the State of Washington covering all CONSULTANT’s employees who perform under this Agreement.
- 5.2** Comprehensive Auto Liability Insurance on all vehicles used in connection with this Agreement whether owned, non-owned, or hired; with limits for bodily injury or death not less than \$100,000.00 per person and \$300,000.00 per occurrence, and property damage limits of not less than \$50,000.00; or in the alternative, not less than \$300,000.00 combined single limit coverage.
- 5.3** Comprehensive General Liability Insurance with limits for bodily injury and property damage of not less than \$300,000.00 per incident and \$600,000.00 aggregate. A certificate of such insurance or a copy of such insurance policy or policies shall be provided to TRANSIT within one week after the execution of this Agreement. CONSULTANT shall agree to give TRANSIT thirty (30) days written notice of cancellation in coverage below the limits set forth herein. Coverage in the minimum amount set forth herein shall not be construed to relieve CONSULTANT from liability in excess of such coverage. TRANSIT shall be specifically included as an additional insured in the insurance coverage required by this section. Notwithstanding, TRANSIT reserves all claims or rights of action against CONSULTANT as if TRANSIT were not named in the subject policy or policies.
- 5.4** Professional liability insurance appropriate to the Consultant’s profession with limits of no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

ARTICLE 6
SCHEDULE

6.1 SCHEDULE FOR THE WORK

The work of this Agreement shall be commenced on signing of this Agreement. The services under this Agreement are directly related to and shall be coordinated with the Project Manager.

6.2 NOTIFICATION OF DELAY

The CONSULTANT shall notify the TRANSIT designated representative as soon as the CONSULTANT has, or should have, knowledge that an event has occurred, which will delay deliveries. Within five (5) calendar days, the CONSULTANT shall confirm such notice in writing, furnishing as much detail as possible.

ARTICLE 7

LABOR PROVISIONS

7.1 SAFETY AND HEALTH STANDARDS

CONSULTANT shall be responsible for safety of CONSULTANT's employees and shall cause its Subconsultants to be responsible for the safety of its employees. CONSULTANT is not responsible for the safety of any other person working on this Project.

7.2 DISADVANTAGED BUSINESS ENTERPRISES

A. In connection with the performance of this contract, CONSULTANT will cooperate with TRANSIT in meeting its aspirational goal with regard to the maximum utilization of disadvantaged businesses and will use good faith efforts to ensure that disadvantaged businesses shall have the maximum practicable opportunity to compete for subcontract work under this contract. The agency's overall goal for DBE participation is 2.93% for 2017.

B. Further, TRANSIT and CONSULTANT agree to ensure that disadvantaged businesses as defined in 49 CFR, Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, TRANSIT and CONSULTANT shall take all necessary and reasonable steps in accordance with 49 CFR, Part 23, to ensure that disadvantaged businesses have the maximum opportunity to compete for and perform contracts. TRANSIT and CONSULTANT shall not discriminate on the basis of race, color, religion, national origin, sex, disability, or age, and in employment or business opportunity. CONSULTANT shall complete Contractor Good Faith Effort DBE Certification on the signing of this agreement **and again at its completion.**

C. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance. The successful bidder/offeror will be required to complete a DBE participation report at the beginning of construction, completion of construction, and at times there is a change in DBE subcontractors.

D. **PROMPT PAYMENT:** The contractor is required to pay its Subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Kitsap Transit. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of the contract, the suspension of retainage of this contract or such other remedy as Kitsap Transit deems appropriate.

E. The contractor must report when a DBE subcontractor previously reported to Kitsap Transit to be performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform the work.

F. Kitsap Transit reserves the right to monitor reported DBE participation or the contractors required performance with respect to DBE's as Kitsap Transit deems appropriate.

ARTICLE 8

CONSULTANT PROVISIONS

8.1 CONSULTANT RESPONSIBILITY FOR QUALITY

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the CONSULTANT under this contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services which shall mean such services not meeting the standard of care as defined in Section 1.2 of this Agreement.
- B. Neither TRANSIT's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract.

8.2 COMPLIANCE WITH LAWS

- A. CONSULTANT, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs, accreditation, and licensing of individuals. The CONSULTANT shall comply with any other standards or criteria as described in this Agreement to assure quality of services.
- B. CONSULTANT specifically agrees to pay any applicable business and occupation (B&O) taxes, which may be due on account of this Agreement.
- C. This Agreement shall be governed by the pertinent requirements included in Federal Transit Administration Circular 4220.1F as amended and the attached CERTIFICATIONS

8.3 DEBARRED BIDDERS

Neither CONSULTANT, nor any officer or controlling interest holder of CONSULTANT, is currently, or has been previously, on any debarred bidders list maintained by the United States Government.

8.4 HOLD HARMLESS AND INDEMNIFICATION

CONSULTANT shall defend, protect, indemnify and hold harmless TRANSIT and its agents, employees and/or officers from and against any and all claims, suits, actions, damages, and liability whatsoever, which TRANSIT may incur by reason of any negligent act, action, neglect, omission or default on the part of CONSULTANT provided, however, that if such liability is caused by or results from the concurrent negligence of TRANSIT, its agents, employees, and/or officers, and CONSULTANT or its agents and employees, this provision shall be valid and enforceable only to the extent of CONSULTANT's negligence.

If a lawsuit subject to this hold harmless provision ensues, the CONSULTANT shall appear and defend that lawsuit at its own cost and expense to the extent of its negligence.

8.5 PAROL AGREEMENT

All prior or contemporaneous communications, representations or agreements, whether oral or written, with respect to the subject matter thereof which are inconsistent with this Agreement are hereby superseded. No amendment hereafter made between the Parties shall be binding on either Party unless reduced to writing and signed by an authorized representative of the Party sought to be bound thereby. No provision of this Agreement is intended or shall be construed to be for the benefit of any third party.

8.6 PROHIBITED INTEREST

No member, officer or employee of TRANSIT shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

8.7 SEVERABILITY

Should an part, term, or provision of this Agreement be decided by the Courts to be illegal or in conflict with any applicable statute or regulation, the validity of the remaining portions or provision shall not be affected thereby.

8.8 SUCCESSORS

TRANSIT and CONSULTANT respectively bind themselves, their partners, successors, assigns and legal representatives to the other party in respect to covenants, agreement and obligations contained in the Agreement. Neither party to the Agreement shall assign the Agreement as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

8.9 SURETIES

If at any time during the continuance of the Agreement, the sureties, or any of them, shall in the opinion of TRANSIT become untrustworthy, TRANSIT shall have the right to require additional and sufficient sureties, which the CONSULTANT shall furnish to the satisfaction of TRANSIT within ten (10) days after notice.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the exoneration of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first herein above written.

KITSAP TRANSIT

CONSULTANT

By: (SAMPLE AGREEMENT)
John W. Clauson

By: (SAMPLE AGREEMENT)

Its: Executive Director

Its: Principal

Address: 60 Washington Ave., Ste. 200
Bremerton, WA 98337

Address: _____
_____, WA _____

Date: _____

Date: _____