

REQUEST FOR PROPOSALS (RFP 18-28)

ADA Compliance SERVICES

FINAL: November 20, 2018



6100 Southport Road
Portage, Indiana 46368
(219) 763-6060
www.nirpc.org

Requests for alternate formats of this document may be directed to cbrown@nirpc.org.
TTY users may also dial Relay Indiana at 711.

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1. PROCUREMENT OVERVIEW

1.1. Description

The Commission is in need of an ADA Compliance Service Contractor for monitoring the ADA compliance of all the Commission's Subrecipient Operators. The Commission is seeking to enter into a contract for professional services with an experienced and qualified consultant to provide these services.

1.2. Background

The Commission is a multi-purpose, area-wide planning agency representing local governments within Lake, Porter, and La Porte counties in Indiana. It is governed by a board of fifty-three Commissioners, all being elected officials. The 1,520 square mile planning area has a population of 771,815 according to the 2010 decennial census.

The Commission is a unit of government and besides being the regional council of local governments, it is the designated Metropolitan Planning Organization for transportation planning and programming in Northwest Indiana. For information please visit the Commission's website at www.nirpc.org.

1.3. Method of Procurement

The method of procurement will be Competitive Negotiation.

1.4. Solicitation Schedule

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| Release date: | Tuesday, November 20, 2018 |
| Deadline for inquiries: | Friday, November 30, 2018, by 12:00 PM CT |
| Deadline for submittals: | Friday, December 14, 2018, by 12:00 PM CT |
| Interview dates: | Tuesday, December 18, 2018 Wednesday, December 19, 2018 |
| Award date: | Friday, December 21, 2018 |

1.5. Contact

Lisa Todd, Procurement Coordinator
Northwestern Indiana Regional Planning Commission
6100 Southport Road
Portage IN 46368
P: 219-763-6060 ext. 161
F: 219-762-1653
ltodd@nirpc.org

2. INSTRUCTIONS TO PROPOSERS

2.1. Inquiries

Any question related to this solicitation shall be directed to the contact whose name appears herein. The Proposer shall not contact or ask questions of the department or agency for which the requirement is being procured. Questions shall be submitted in writing or by e-mail. Any correspondence related to a solicitation should refer to the appropriate Solicitation number, page and paragraph number. Oral interpretations or clarifications will be without legal effect. Only questions answered by formal written solicitation amendment will be binding. All questions and answers will be shared with the mail/e-mail list and posted on the Commission's website.

It is the interested parties' responsibility to contact whose name appears herein and get added to the mail/e-mail list. If the interested party is not on that mail/e-mail list, they will not be sent any addendums, questions, answered, and etc. This can be done by submitting an email to Lisa Todd, Procurement Coordinator, with the subject line:

RFP 18-28 – ADA Compliance Services.

All questions and clarifications are due by 12:00 a.m. CST on Friday, November 30, 2018 with subject line: **RFP 18-28 ADA Compliance Services.**

2.2. Instructions for Submittal

Proposers must include the following information in the order outlined below in their submission of Proposal(s). If there are items that are not covered below use your own discretion and add those items on a separate page. The Proposal(s) must include and are to be evaluated on the basis of:

- 1.** Name of Proposer;
- 2.** Full address of Proposer's principal office;
- 3.** Proposer's email address;
- 4.** Proposer's telephone number;
- 5.** Name(s) telephone number(s) email(s) and addresses if different from above, of primary contact(s) in the Proposer's organization with responsibility for responding to this solicitation and to whom matters regarding this solicitation should be directed;
- 6.** Indicate whether the Proposer is an individual, partnership, corporation, or joint venture. If the Proposer is a consortium, joint venture, or team, indicate the entity responsible for the Proposal(s);
- 7.** If a partnership, list the names and addresses of the partners; if a corporation, list the names of the officers and directors, and the State of incorporation; if a joint venture, list the names and addresses of the ventures and, if any venture is a corporation, partnership, or joint venture, list the same information for each corporation, partnership, and joint venture;
- 8.** A referral list of present customers must be included in the Proposal(s);
- 9.** Showing of qualifications and experience, including past work with planning agencies;
- 10.** Show a understanding of the scope of work being proposed;
- 11.** A schedule of fees to be charged;
- 12.** Completion of all Exhibits.

2.3 Submission

Each Responder must submit seven (7) hard-copy sets of the Proposal(s), including one signed original, plus the contents of the Proposal(s) on one flash drive (in either MD-Word or Adobe PDF format), in a sealed envelope marked on the outside as follows: **RFP 18-28 ADA Compliance Services**

2.4 Evaluation and Vendor Selection

2.4.1 Proposal Evaluation

Proposal(s) will be subject to an initial review by the Procurement Coordinator. Interested Proposers shall be deemed responsive if they conform to the essential requirements of this document which includes the specifications, terms, and conditions to be met.

All submitted Proposal(s) will then be reviewed by the Commission and a short list of proposals scoring highest on the criteria (through application of the evaluation criteria) will be developed. Where there are apparent deficiencies, ambiguities and uncertainties present in the Proposal(s), the Commission may engage in discussions, in the manner most appropriate (either via writing or verbally), with interested Proposers for the sole purpose of addressing these deficiencies, ambiguities, and uncertainties.

Proposers who are on the short list may be asked to make an oral presentation to the Commission. Final selection of the successful Proposer, in this case, will be made after oral presentations are received from each Proposer on the short list.

Notwithstanding the above, the Commission reserves the right to select one Proposer based on the original submission of the Proposals, without negotiations with any Proposers or without oral presentations.

2.4.2 Evaluation Criteria

The contract for this engagement shall be awarded to the Proposer that exhibits excellent qualifications and price competitiveness. The Commission expects the Proposer to provide knowledgeable, service oriented, and cost-effective services.

The following criteria will be used in evaluating responsive Proposer(s) submitted in response to this Solicitation. The relative importance is shown in ascending order:

2.4.3 Interviews, if necessary

After evaluating the Proposal(s), the Commission may wish to interview the top scoring respondents. A relatively short notice will be given to those that would be invited to give a presentation; therefore this notification of the date is given in advance.

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|---|----|
| Ability and history in providing ADA Compliance Services for other similar agencies | 25 |
| Demonstrated understanding of the scope of work. | 25 |
| At minimum, the technical competence to perform the work specified in the RFP | 15 |

| | |
|--|----|
| Past record of performance | 15 |
| Price competitiveness | 10 |
| Responsiveness to solicitation specifications and instructions for submittal | 5 |
| Disadvantaged Business Enterprise (DBE) Involvement | 5 |

Notwithstanding the above, the Commission reserves the right to select one Proposer based on the original submission of the Proposals, without negotiations with any Proposers or without oral presentations.

2.5 Deadline

All Proposal(s) must be received at the Commission by ***Friday, December 14, 2018 at 12:00 PM CT***. No Proposal(s) will be accepted after this time and date. The Commission reserves the right to reject any or all Proposal(s) received.

3 GENERAL CONDITIONS

3.1 Definitions

Proposal(s): Proposal(s) may refer to a quote, proposal, sealed bid, or set of qualifications that is to be submitted by the Proposer.

Proposer: Proposer shall refer to a firm, agent, company, or person submitting a Proposal(s) to the Commission.

Contract: Refers to an agreement between the Proposer and the Commission in which a set of terms and conditions and a scope of work are agreed upon after evaluations have determined a competitive Proposer.

The Commission: The Commission refers to the Northwestern Indiana Regional Planning Commission.

Solicitation: Refers to this document.

3.2 Budget

The dollar amount available for this project shall not exceed **\$13,000**. Proposers(s) are under no obligation to approach the maximum amount set for the project, however the Commission will not be able to make an award, if the dollar amount set for this project is exceeded.

The price to be quoted in any proposal submitted shall include all items of labor, materials, equipment, delivery and other costs necessary to fully complete the scope of the work specified in this solicitation, including any deliverables. Any additions, deletions or variations from the specifications must be noted when the proposal is submitted. It will be assumed that all requirements are either met or exceeded. The proposer guarantees that the proposal submitted is not a product of collusion with any other individual or group of individuals, and further guarantees that no effort has been made to fix the proposal price of any proposer or to fix any overhead, profit or cost element of any proposal.

The Commission is exempt from payment of all Federal, State and local taxes in connection with the purchase. Said taxes must not be included in proposal prices. The Commission will provide the necessary tax exemption certificates to the proposer upon request.

3.3 Right of Rejection

The Commission reserves the right to postpone the closing/opening date for its own convenience and to reject any or all Proposal(s) for any reason.

3.4 Proposer Responsibility

The Proposer shall have the responsibility of satisfying all parts of this solicitation. It is the desire of the Commission to procure goods and services of the finest quality. No advantage shall be

taken by the Proposer in the omission of any part of detail that would be necessary to fully satisfy all work required in this solicitation.

3.5 Familiarization of Scope of Work

Before signing a contract, each Proposer shall familiarize itself with the Scope of Work, laws, regulations, and other factors affecting performance of work. It shall carefully correlate its observations with requirements of the solicitation and contract and otherwise satisfy itself as to the expense and difficulties attending the performance of the work. The signing of a Contract will constitute a representation of compliance by the Proposer. There will be no subsequent financial adjustment, other than that provided by the Contract, for lack of such familiarization.

3.6 Responsive Proposal(s)

The Commission shall award contracts only to responsible/responsive Proposers who possess the potential to perform successfully under the terms and conditions of the Request for Proposals. The Proposer shall affirmatively demonstrate its responsibility and, when necessary, the responsibility of any proposed Sub-Contractors.

If information obtained by the Commission clearly indicates that the Proposer is not responsive and the Commission has doubts about the productive capability or financial strength of a Proposer that cannot be resolved affirmatively, a determination that the Proposer is non-responsive shall be rendered.

3.7 Insurance Requirements

The Proposer shall procure and maintain for the duration of this contract insurance against claims for injuries to persons or damage to property that may arise from or in connection with performance of the work hereunder by the Proposer, his agents, representatives, employees, or Sub-Contractors.

All insurance coverage required to be maintained or provided by the Proposer must be with insurance companies licensed and admitted by the State of Indiana. All comprehensive general liability must name Northwestern Indiana Regional Planning Commission, and all agents, employees, and board members for the agency, as additional named insured's. Certificates of Insurance shall be submitted to the Commission before the first day of the contract and when carriers or coverage limits change.

All insurance costs shall be at the expense of the Proposer. Failure to maintain all insurance coverage for the duration of the project as listed above may result in immediate termination of contract.

3.8 Protest Procedures

Proposal protests based upon restrictive specifications or alleged improprieties in a solicitation that are apparent prior to bid opening must be received by the Commission, in writing, three (3) working days prior to the deadline date for submission of bids.

Protest of a decision concerning a contract award made by the Commission must be received by the Contracting Officer in writing within five (5) working days after the date of the contract award.

A protest shall include the name and address of the protestor, the bid/proposal number, the grounds for the protest, and any supporting documentation. The Commission shall notify the protestor, in writing and in a timely manner, of its receipt of the protest.

If the protest is received prior to the bid/proposal opening, all interested parties may be notified and the opening of bids/proposals may be postponed. If the protest is received after a contract award, the award may be withheld until a local decision is rendered concerning the protest.

The Contracting Officer will review the protest with any supporting documents submitted. The Contracting Officer shall perform an investigation of the protest. The Contracting Officer then presents the results of the investigation to the Finance and Personnel Committee of the NIRPC Board. The Finance and Personnel Committee will review the results and provide a recommendation to the Board. The Board shall make a decision regarding the protest and notify the Contracting Officer of the result. The Contracting Officer shall notify all affected parties of such decision in writing.

3.9 Eligibility

Proposers must not be on the U.S. Government Excluded Parties List System of ineligible firms. The successful Proposer will be required to comply with all applicable Equal Employment Opportunity laws and regulations.

4 SCOPE OF WORK

4.1 Introduction and Purpose

The Commission is in need of an ADA Compliance Service Contractor for monitoring the ADA compliance of all the Commission's Subrecipient Operators. The Commission is seeking to enter into a contract for professional services with an experienced and qualified consultant to provide these services.

4.2 Requirements

The contractor shall be responsible to NIRPC for monitoring the ADA compliance of all NIRPC Subrecipient Operators. This monitoring shall be accomplished as set forth herein. This shall include Subrecipient Operators of Fixed Route Service, Complimentary Paratransit and Demand Response Service. Current NIRPC Subrecipient Operators who shall be monitored by the third-party contractor are:

- a. North Township Dial-a Ride Service (Demand Response)
- b. Southlake County Community Services (Demand Response)
- c. Porter County Community Services (Demand Response)
- d. Opportunity Enterprises (Demand Response)
- e. City of East Chicago (Fixed Route and Complimentary Paratransit)
- f. City of Valparaiso (Deviated Fixed Route and Commuter Service)
- g. La Porte TransPorte (Demand Response)

NIRPC's contract with the Contractor shall provide for reviews of Subrecipient Operator compliance with ADA requirements pertaining to transit services. The contractor will create and disseminate information on the American with Disabilities Act and provide technical assistance to subrecipients.

NIRPC will require that the Contractor perform at least one on-site review for each of NIRPC's Subrecipient Operators. If a Subrecipient Operator contracts with a third party for the operation of transit services, the Contractor shall also conduct an on-site review of that third party.

NIRPC will participate in activities by attending review meetings, commenting on technical reports, maintaining frequent contact with the contractor, approving key decisions and activities, and redirecting activities if needed.

Pursuant to FTA requirements regarding compliance with the ADA, NIRPC will require that the Contractor utilize an appropriate checklist to review Demand Response Subrecipient Operators' compliance with ADA requirements.

Likewise, NIRPC will require that the Contractor utilize an appropriate checklist similar to review Complimentary Paratransit and Fixed Route System Subrecipient Operators' compliance with ADA requirements.

NIRPC shall also require as part of each review that the Contractor investigate and report on the status of Subrecipient Operator's adoption and implementation of procedures to ensure that interested persons, including persons with sensory or cognitive disabilities, can obtain information as to the existence of transit services accessible to individuals with disabilities in accordance with all applicable laws and regulations, including 29 C.F.R & 32.27.

As part of each review, NIRPC will require that the Contractor investigate and report on the status of each Demand Response Subrecipient Operator's maintenance of the records and/or procedures necessary to make a valid determination that they conform to the ADA. The contractor shall specifically investigate and report on the status of Subrecipient Operator's maintenance of the following records and/or procedures:

- a. Daily vehicle inspection reports, including documentation of lift inspections and inspection results;
- b. Lift-related equipment service and maintenance records;
- c. Records demonstrating that the Subrecipient Operator's maintenance staff is adequately trained with regard to the maintenance and repair of lift-related equipment, securement devices, and any other accessibility features;
- d. Records demonstrating that the Subrecipient Operator's drivers are adequately trained in the operation of vehicle accessibility features such as wheelchair lifts, ramps, and securement devices;
- e. Records indicating that the Subrecipient Operator has a complaint and appeal procedure that is responsive to Rider complaints, and which includes the maintenance of complaint logs, a system for tracking complaint resolution, and a system demonstrating compliance with the Subrecipient Operator's complaint procedure;
- f. Records indicating that the Subrecipient Operator has and utilizes an appropriate reservation and scheduling process and system;
- g. An on-going mechanism for the participation of individuals with disabilities in the continued development and assessment of services for persons with disabilities including a mechanism to ensure that the Subrecipient Operator is responsive to input from persons with disabilities eligible to receive transportation services from the Subrecipient Operator; and
- h. Methods of informing the public and soliciting input from the public concerning services, proposed changes in service and the opportunity for participation in the development and assessment of services for persons with disabilities

As part of each review, NIRPC will require that the Contractor investigate and report on the status of each Fixed Route and Complimentary Paratransit Subrecipient Operator's maintenance of the following records and/or procedures necessary to make a determination that the Subrecipient Operator complies with all applicable laws and regulations pertaining to the ADA, including but not limited to the following:

- a. Daily vehicle inspection reports, including documentation of lift inspections and inspection results;
- b. Vehicle fleet records, including fleet composition records;
- c. Records demonstrating that the Subrecipient Operator's maintenance staff is adequately trained concerning the maintenance and repair of lift-related equipment, securement devices, and any other accessibility features;
- d. Records demonstrating that the Subrecipient Operator's drivers are adequately trained in the operation of vehicle accessibility features such as wheelchair lifts, ramps, and securement devices;
- e. Trip records, including trip denial lists, missed trip lists, and daily vehicle logs;
- f. Records indicating that the Subrecipient Operator has a complaint and appeal procedure that is responsive to all Rider complaints, and which includes the maintenance of complaint logs, a system for tracking complaint resolution, and a system demonstrating compliance with the Subrecipient Operator's complaint procedure;

- g. Records indicating that the Subrecipient Operator has and utilizes an appropriate reservation and scheduling process and system;
- h. Vehicle maintenance records, including maintenance logs, and results of maintenance inspections;
- i. An ongoing mechanism for the participation of individuals with disabilities in the continued development and assessment of services to persons with disabilities as required under 49 C.F.R. & 37.137;
- j. Methods of informing the public and soliciting the input from the public concerning services, proposed changes in service, and the opportunity for participation for individuals with disabilities in the continued development and assessment of services to persons with disabilities;
- k. Records ensuring that Riders are not prioritized based on the sources of payment for transportation services, age or purpose of trip.

With respect to each review, NIRPC shall require the Contractor to prepare a report summarizing the process and outcome of the review of each Subrecipient Operator. The Contractor will be required to attach a copy of the completed checklist utilized in each review. The checklist will indicate the date(s) on which the review was conducted and list the names of the personnel conducting the review as well as the names of the primary contact(s) (representatives) of the entity being reviewed. The report shall clearly indicate any deficiency or issue with ADA regulations, a recommended corrective action and timetable for any deficiency or issue and any response made by the Subrecipient Operator to finding a deficiency or issue. The contractor will be required to submit both the report and the attached checklist to NIRPC within sixty (60) days of the last day of the on-site review. NIRPC shall maintain a file of all reviews conducted and organized according to the Subrecipient Operator and review date. These files shall be kept for a minimum of three years after the completion date of the review and be available for public review in accordance with Indiana law.

1. The term of this agreement shall commence on **January 1, 2019** and unless terminated by the parties pursuant to the provisions contained herein, shall continue for a period of one year terminating on **December 31, 2019** with the option to extend for two (2) additional one year periods.
2. The Contractor shall provide the identified goods and services as noted in the **Section 3.2 Budget** for a total cost not to exceed \$13,000.
3. The Contractor agrees to keep confidential any and all proprietary information of NIRPC, its Subrecipient Operators, and their subcontractors. All data and research findings will be contained in the Contractor's report. The Contractor will prepare a draft of all required reports and submit the entire draft to the NIRPC. The final version of any report required herein will be given to the NIRPC.

Transit services accessible to individuals with disabilities in accordance with all applicable laws and regulations, including 29 C.F. R & 32.27.

5 GENERAL TERMS AND CONDITIONS ASSOCIATED WITH FTA CONTRACTS

The following general terms and conditions will govern the basic Agreement and are a part thereof.

1. FINANCIAL ASSISTANCE:

The work provided for in this Contract (Agreement) is financed, in part, through financial assistance received from the Federal Transit Administration (FTA) of the U.S. Department of Transportation under the authority provided by the Surface Transportation Act of 1982, as amended, the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, the Transportation Efficiency Act for the 21st Century (TEA-21), and Safe, Accountable, Flexible, and Efficient Transportation Equity Act - A Legacy for Users (SAFETEA-LU). As such it is subject to a grant agreement between FTA and the Commission which will be furnished to Contractor upon request. The Contractor is required to comply with all terms and conditions prescribed for third party contracts in the grant agreement between FTA and the Commission.

2. CONTRACTS AMENDMENTS:

Any proposed change in this Agreement shall be submitted to the Commission for its prior approval, and when approved the Commission will make the change by a written contract modification. The Commission may at any time by written order, and without notice to the sureties, make changes, within the general scope of this contract in one or more of the following: (1) drawings, designs, or specifications; (2) methods of shipment or packing; and (3) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both; and the contract shall be modified in writing accordingly. The Contractor must request an adjustment under this clause within 15 days from the date of receipt of the notification change. The Commission may decide to act upon the Contractor's request for adjustment at any time prior to final payment under the contract, provided the facts warrant such action.

Change Order Procedures: Within 15 days after receipt of the written change order to modify the contract, the Contractor shall submit to the Contracting Officer a detailed price and schedule proposal for the work to be performed. This proposal shall be accepted or modified by negotiations between the Proposer and Contracting Officer. At that time, both parties shall execute a detailed contract modification in writing. All changes in the contract that either increase or decrease the cost of, or the time required for the performance of any part of the work under this contract, thereby affecting the contract price or delivery schedule, shall be resolved by mutual agreement between the Proposer and the Commission. Disagreements that cannot be resolved through negotiations shall be resolved in accordance with the contract disputes provisions of FTA Guidelines. Regardless of any disputes, the Contractor shall proceed with the work ordered, provided the Commission has obtained the prior concurrence of FTA.

Notice of the acceptance of the change order will be made by the issuance of a Commission change order form to the Contractor. The Contractor will be required to evidence its acceptance of the change order by endorsing and returning to the Commission the change order form within 10 days of its receipt thereof. The acceptance of the change order will bind the Contractor on his part to finish and deliver at his adjusted proposal price in accordance with conditions of said accepted proposal and specifications. The contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting, and specification or other change not properly ordered by written modification to the contract.

Price Adjustment for Regulatory Changes: If a price adjustment is indicated, either upward or downward, it shall be negotiated between the Commission and the Contractor for changes that are mandatory as a

result of legislation or regulations that are promulgated and become effective between the date of proposal acceptance and the date of manufacture. Such price adjustment may be audited, where required.

3. CONTRACT TERMINATION PROVISIONS:

The following provisions have been developed by the Northwestern Indiana Regional Planning Commission in accordance with 49 CFR Part 18 and FTA Circular 4220.1F

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

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

Termination for Default: If the Contractor does not deliver the goods or services provided by this solicitation in accordance with the provisions contained herein, or if the Contractor fails to perform in the manner called for with regard to other provisions of a contract awarded in conjunction with this solicitation, the Commission may notify the Contractor of its intention to terminate this contract for default. The Proposer shall be allowed fifteen (15) calendar days after receipt of the notice of intent to terminate for default in which to rectify the problems that were cause for such notice. Termination shall be effected by serving a final notice of termination on the Contractor setting forth the manner in which the Contractor may be paid for only items delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

Opportunity to Cure: The Commission in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30 days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the Commission's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor or written notice from Commission setting forth the nature of said breach or default, the Commission shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the Commission from also pursuing all available remedies against Contractor and its sureties for said breach or default.

4. ACCESS TO RECORDS AND REPORTS:

The following access to records requirements apply to this Agreement:

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

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

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

5. FEDERAL CHANGES:

Pursuant to 49 CFR Part 18, Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (6) dated October, 1999) between the Commission and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.

6. NO GOVERNMENT OBLIGATION TO THIRD PARTIES:

The Commission 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 Commission, the Contractor, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the Agreement. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

7. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND 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. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

8. CIVIL RIGHTS REQUIREMENTS:

Civil Rights - Pursuant to 29 U.S.C. § 623, 42 U.S.C. § 2000; 42 U.S.C. § 6102, 42 U.S.C. § 12112; 42 U.S.C. § 12132, 49 U.S.C. § 5332; 29 CFR Part 1630, 41 CFR Parts 60 et seq.; the following requirements apply to the underlying contract:

Nondiscrimination: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Age: In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans

with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

9. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS:

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 CFR 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 recipient deems appropriate.

The (prime) contractor shall not terminate a DBE subcontractor for convenience and then perform that work with its own forces or its affiliate.

Prime contractors must make payment to subcontractors for satisfactory performance of their contracts no later than 30 days from the receipt of each payment made by the Commission to the prime contractor.

If retainage is withheld by from the subcontractor, prompt and full payment must be made by the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Commission. When the Commission has made an incremental acceptance of a portion of a prime contract or a progress payment, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

Any delay or postponement of payment to subcontractors may only take place for good cause. Any such delay or postponement requires the prior written approval of the Commission.

If any of these conditions are not met, the Commission reserves the right to withhold payment until the Commission is satisfied that these conditions are met.

The contractor agrees to place this clause in all subcontracts.

10. ENERGY CONSERVATION REQUIREMENTS:

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. These requirements are set forth in 42 U.S.C 6321 et . seq. and 49 CFR Part 18.

11. FLY AMERICA REQUIREMENTS:

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

12. STATE AND LOCAL LAW DISCLAIMER:

State and Local Law Disclaimer – The Contractor hereby agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the U.S. Department of Transportation, the State of Indiana and local governments.

14. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS:

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT). Whether or not expressly set forth in the preceding contract provisions, all contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Commission requests which would cause the Commission to be in violation of the FTA terms and conditions.

15. NOTIFICATION OF FEDERAL PARTICIPATION:

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, the recipient agrees to specify the amount of federal assistance to be used in financing that acquisition of goods and services and to express that amount of that federal assistance as a percentage of the total cost of that third party contract.

16. VETERANS EMPLOYMENT:

Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a construction project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in 5 U.S.C. section 2108) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

6 EXHIBITS

6.1 NON-COLLUSION AFFIDAVIT

NON-COLLUSION AFFIDAVIT

The undersigned Proposer, being duly sworn on oath, says that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person from Proposing not to induce anyone to refrain from Proposing, and that this Proposal is made without reference to any other Proposal and without any agreement, understanding or combination with any other person in reference to such Proposing. He further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee, gift, commission or thing of value on account of such sale.

Proposer

Signature of Proposer

6.2 DBE PROGRAM COMPLIANCE

49 CFR PART 26

The following Proposal conditions apply to this United States Department of Transportation assisted contract. Submission of a proposal by a prospective Contractor shall constitute full acceptance of these Proposal conditions.

REQUIRED CONTRACT CLAUSES (49 CFR 26.13)

UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES

Northwestern Indiana Regional Planning Commission will ensure that the following clauses are included in each DOT assisted contract and subcontract:

- I) Policy - It is the policy of the Northwestern Indiana Regional Planning Commission that Disadvantaged Business Enterprises shall have the maximum practicable opportunity to participate in the performance of contracts. Consequently, the DBE requirements of 49 CFR Part 26, do apply to this agreement. Proposers shall use sufficient and reasonably good faith efforts to carry out this policy in the award of their subcontracts to the fullest extent, consistent with the efficient performance of this contract.
- II) DBE Obligation - The contractor agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26, Subpart D, have the maximum opportunity to participate in the performance of contracts and subcontracts. In this regard, all contractors shall take necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin or sex.
- III) Contract Goal - If the contractor is not a DBE, then the Proposer/proposer agrees that the DBE goal for this Contract will be met by subcontracts or by joint ventures with DBE's. The goal set forth for this Contract is 7.13% of the final Contract price, including amendments and modifications. The amount of DBE participation will be determined by the dollar value of the work performed and/or supplies furnished by DBE firms as compared to the total value of all work performed and/or supplies furnished under this Contract. The contractor shall have met this goal if the contractor's DBE participation meets or exceeds this goal.

In cases where work is added to the contract by modification such that additional DBE participation is necessary to meet this goal, the Contractor shall increase the participation of one or more firms listed on the —Schedule of DBE Participation|| or submit additional DBE firms to meet the goal. In cases where work is deleted from the Contract, the goal shall be applicable to the new Contract amount. The Contractor shall be permitted to meet the goal by revising its DBE participation, provided, however, that the revision shall not result in DBE participation that is less than the original goal.

- IV) Compliance - All Proposers, potential contractors, or sub-contractors for this contract are hereby notified that failure to carry out the policy and the DBE obligation, as set forth above, shall constitute a breach of contract which may result in non-selection; termination of the contract; or such other remedy as deemed appropriate by Northwestern Indiana Regional Planning Commission. Agreements between a Proposer/proposer and a DBE, in which the DBE promises not to provide sub-contracting quotations to other PROPOSERS/PROPOSERS, are prohibited.
- V) Sub-contract Clauses - All Proposers and potential contractors hereby assure that they will include the above clauses in all sub-contracts which offer further sub-contracting opportunities.

VI) Acceptable Good Faith Efforts - "Good faith efforts" means efforts to achieve a DBE goal or other requirements of the Northwestern Indiana Regional Planning Commission's DBE Program Plan which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the goal program requirement. If any Proposer fails to meet the DBE goals for this solicitation, the Proposer shall submit, with the Proposal, proof of good faith efforts, using the guideline listed in Appendix A of 49 CFR 26, along with a written statement of efforts made and reasons for not meeting said goals.

6.2.1 General Instructions

IMPORTANT! READ CAREFULLY!

All Proposers/contractors shall complete and submit, with their Proposals, DBE Forms 1, 2, and 3.

Each subcontractor listed on DBE Form 1 shall complete and sign DBE Form 2 and DBE Form 3 as a DBE Subcontractor.

Business Contractors seeking to participate as DBEs must be certified at the time of Proposal submittal. Northwestern Indiana Regional Planning Commission does not certify DBEs. Please check with your state's DBE office.

Proposers who fail to achieve the contract goal(s) stated in the Proposal document must provide (with the Proposal) an explanation as to why the goal was not achieved and documentation demonstrating that a "Good Faith Effort" was made by the Proposer as outlined in DBE Form 4.

Contractors may duplicate as many forms as needed. All DBE Program questions should be directed to the Northwestern Indiana Regional Planning Commission, the DBE Officer, Allen Hammond, 6100 Southport Road, Portage, Indiana 46368, 219-763-6060 x141.

DBE Forms 1, 2, and 3 must be submitted with the Proposal in order to be eligible to receive a contract award. If there are sub-contractors listed, the sub-contractor must fill out DBE Form 3. The Proposer must provide documentation and explanation as to why the DBE goal as was not achieved by filling out DBE Form 4.

6.3 DBE FORM 1 - SCHEDULE OF DBE PARTICIPATION

SCHEDULE OF DBE PARTICIPATION

Name of Proposer: _____

Project: ADA Compliance Services

Project No.: _____

Proposal No: 15-11

Total Proposal Amount: _____

| NAME OF DBE SUBCONTRACTOR | ADDRESS (COUNTY, STATE) | TYPE OF WORK SUBCONTRACTED | DBE | SUBCONTRACT VALUE |
|---------------------------|----------------------------|-------------------------------|-----|-------------------|
| | | | | \$ |
| | | | | \$ |
| | | | | \$ |
| | | | | \$ |
| | | | | \$ |
| | | | | \$ |
| | | | | \$ |

DBE PARTICIPATION TOTAL VALUE _____ \$

The attainment of DBE participation goals for this contract will be measured as a percentage of the total dollar value of the contract.

The undersigned will enter into a formal agreement with the DBE Subcontractors identified herein for work listed in this schedule conditioned upon execution of a contract with

Signature

6.4 DBE FORM 2 - DBE SUBCONTRACTOR IDENTIFICATION

DBE SUBCONTRACTOR IDENTIFICATION

(Reproduce as necessary)

I HEREBY DECLARE AND AFFIRM THAT I AM THE _____

(Title - Owner, President, etc.) and duly authorized representative of

_____ (Name of Firm) and I hereby declare and

affirm that I am a certified DBE.

(signed)

(printed)

This firm has current DBE certification from the following agencies and/or state(s):

A copy of the current certification letter notifying the firm that it has been DBE certified must be attached to this form.

6.5 DBE FORM 3 - LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR

LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR

TO: _____

(Name of General Contractor Proposing)

PROJECT: ADA Compliance Services

The undersigned intends to perform work in connection with the above project.

The status of the undersigned is confirmed on the attached DBE Contractor Identification (DBE FORM 2).

The undersigned is prepared to perform the following described work in connection with the above project:

(Specify in detail, work items or parts thereof to be performed)

at the following price: \$ _____.

The undersigned agrees to enter into a contract with you to perform the above work, if you are awarded the prime contract.

(Date)

(Telephone No.)

(Name of DBE Subcontractor)

(Firm Address)

By: _____
(Signature)

(City and State)

Name: _____
(Typed)

Title: _____

6.6 DBE FORM 4 - DBE UNAVAILABILITY CERTIFICATION

DBE UNAVAILABILITY CERTIFICATION

I, _____, _____

of _____, certify that on the dates below,

I invited the following DBE Subcontractor(s) to Proposal work items to be performed on ADA Compliance Services:

| <u>DATE OF REQUEST</u> | <u>DBE</u> | <u>NAME OF SUBCONTRACTOR</u> | <u>ITEMS SOUGHT</u> |
|------------------------|------------|------------------------------|---------------------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

The following Subcontractors submitted Proposals, which were not the low responsible Proposal:

- _____ \$ _____
- _____ \$ _____
- _____ \$ _____
- _____ \$ _____
- _____ \$ _____

End of DBE Forms

END OF DOCUMENT