

REQUEST FOR PROPOSALS (RFP) #18-6013-23
ULTRA-LOW SULFUR DIESEL FUEL SUPPLY FOR KCATA AND JOHNSON COUNTY TRANSIT

Date: December 14, 2018

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Buyer

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November 16, 2018

REQUEST FOR PROPOSALS (RFP) #18-6013-23

ULTRA-LOW SULFUR DIESEL FUEL SUPPLY FOR KCATA AND JOHNSON COUNTY TRANSIT

The Kansas City Area Transportation Authority (KCATA, ATA, Authority) is soliciting sealed proposals from qualified vendors to supply #2D Ultra Low Sulfur Diesel (ULSD) fuel, meeting the qualification and specifications listed herein, for Transit and service vehicles. These proposals will enable the Authority to “lock in” volumes at fixed pricing on periodic terms and outline the costs of all markups relative to fuel purchased on either fixed or rack pricing. Further, these proposals will provide fixed costs per gallon of winter blend additive, should it be requested. The winter blend is typically requested for deliveries from November 1st through February 28th.

The quantities indicated in this RFP are estimates that pertain to the total aggregate quantities that may be ordered throughout the stated contract period including option years. These quantities may change during the initial term of the contract and any subsequent option years due to the mix of diesel and CNG vehicles contained in the KCATA fleet and the service level required for that fleet. The estimates do not indicate single order amounts unless otherwise stated. The KCATA makes no guarantees about single order quantities or total aggregate order quantities.

The term of this contract (if issued) will be for two (2) years with three (3) one-year options.

Proposers may submit pricing proposals for ULSD in accordance with the conditions of this RFP and any other pricing options the vendor would like to propose. KCATA is requesting pricing for rack pricing and fixed pricing and an alternative pricing option. KCATA reserves the right to select the proposal(s) it deems to be in the Authority’s best interest.

The Proposer shall be an independent, duly licensed and/or certified Firm possessing the staff, experience, equipment, resources and financial soundness to successfully provide all needed services. Proposers are subject to all terms, conditions, and provisions of this document, including Affirmative Action and Equal Employment Opportunity regulations. Proposers should read and understand the requirements of this Request for Proposal. Proposers should certify that they are not on the Comptroller General’s list of ineligible contractors. The Proposer, and all employees and agents of the Proposer shall fully comply with all local, state and federal laws and/or mandates applicable to the goods and services to be furnished.

Questions (technical, contractual, or administrative) must be directed in writing to via email to Rebecca Clyma at rclyma@kcata.org. Questions and requests for clarifications will be received until 2:00 p.m. Friday, January 11, 2019. As required, KCATA’s response to these submissions will be in the form of an Addendum.

Proposals must be submitted before 2:00 p.m. on Friday, January 25, 2019. Please reference proposal #18-6013-23 on the submittal cover. Proposals received via facsimile or electronic mail will not be considered. Proposals not meeting specified delivery and method of submittal may not be opened or considered responsive. Proposals must be mailed or delivered to:

Kansas City Area Transportation Authority
Attn: Rebecca Clyma
Procurement Department
1350 East 17th Street
Kansas City, Missouri 64108

Submission of a proposal shall constitute a firm offer to the KCATA for one hundred twenty (120) days from the date of closing. This RFP does not commit the KCATA to award a contract, to pay any cost incurred in preparation of a proposal, or to procure or contract for services. Proposer shall read and understand the requirements of this proposal covered in the sections listed under the Table of Contents of this document.

The KCATA reserves the right to accept or reject any or all proposals received, to interview or negotiate with any qualified individual or firm, to modify this request, or cancel in part or in its entirety the RFP if it is the best interest of the KCATA.

Following an initial review and screening of all timely and responsive proposals, highly qualified Proposers may be invited to interviews as necessary at their own expense. Those selected Proposers will be informed as to exact date and time if invited for interviews and discussion. Proposer(s) may also be required to submit written responses to questions regarding its proposal. All contractual agreements are subject to final approval by the Kansas City Area Transportation Authority's Board of Commissioners. A twelve (12) month contract term with the possibility of four (4) one-year extensions is anticipated for award to the selected and approved Proposer if successful negotiations are held.

No person or entity submitting a proposal in response to this RFP nor any officer, employee, agent, representative, relative or consultant representing such a person (or entity) may contact through any means, or engage in any discussion concerning the award of this contract with any member of KCATA's Board of Commissioners or any employee of KCATA (excluding Procurement staff) during the period beginning on the date of proposal issue and ending on the date of the selection of a Contractor. Any such contact would be grounds for disqualification of the Proposer.

Gaylord Salisbury, II
Director of Procurement

TABLE OF CONTENTS

Page

SECTION 1. PROPOSAL CALENDAR	6
SECTION 2. SCOPE OF WORK	7
2.1 Introduction and Purpose	7
2.2 Scope.....	7
2.3 Term.....	7
2.4 Definitions	7
2.5 Fuel Specifications.....	7
2.6 Delivery.....	8
2.7 Substitute Suppliers.....	8
2.8 Fuel Sample Analysis.....	9
2.9 Contract Pricing Structure.....	9
2.10 Price Change/Adjustments.....	11
SECTION 3. PROPOSAL INSTRUCTIONS	12
3.1 General Information.....	12
3.2 Reservations	12
3.3 Proposer's Responsibilities	12
3.4 Authorization to Propose.....	13
3.5 Withdrawal & Incomplete Proposals.....	13
3.6 Modification of Proposals	13
3.7 Unbalanced Proposal	13
3.8 Protests.....	13
3.9 Disclosure of Proprietary Information	14
3.10 Disadvantaged Business Enterprise (DBE) Requirements	15
SECTION 4. PROPOSAL SUBMISSION, EVALUATION AND AWARD	20
4.1 Proposal Format	20
4.2 Volume I – Cost Proposal	21
4.3 Volume II – Technical Proposal	21
4.4 Volume III - Contractual	23
4.5 Proposal Evaluation Criteria.....	25
4.6 Presentations/Interviews/Written Responses	26
4.7 Consultant Selection	26
ATTACHMENTS	
Attachment A Proposal Submittal Checklist.....	27
Attachment B Sample Contract/Terms and Conditions.....	28
Attachment C Cost/Price Proposal.....	47
Attachment D Vendor Registration Form.....	49
Attachment E Affidavit of Civil Rights Compliance	51
Attachment F-1 Guidelines for Workforce Analysis/EEO-1 Report	53
Attachment F-2 KCATA Workforce Analysis/EEO-1 Report	54
Attachment G Letter of Intent to Subcontract	55
Attachment H-1 Affidavit of Primary Participants Regarding Employee Eligibility Verification	56
Attachment H-2 Affidavit of Lower-Tier Participants Regarding Employee Eligibility Verification	57

NO PROPOSAL REPLY FORM

RFP #18-6013-23

ULTRA-LOW SULFUR DIESEL FUEL SUPPLY FOR KCATA AND JOHNSON COUNTY TRANSIT

To assist KCATA in obtaining good competition on its Requests for Proposals, we ask that if you received an invitation but do not wish to propose, please state the reason(s) below and return this form to Rebecca Clyma, KCATA's Procurement Department, 1350 East 17th Street, Kansas City, MO 64108. This form may also be submitted via facsimile at (816) 346-0336 or email at rclyma@kcata.org.

This information will not preclude receipt of future invitations unless you request removal from the Proposer's List by so indicating below.

Unfortunately, we must offer a "No Proposal" at this time because:

____ 1. We do not wish to participate in the proposal process.

____ 2. We do not wish to propose under the terms and conditions of the Request for Proposal document. Our objections are:

____ 3. We do not feel we can be competitive.

____ 4. We do not provide the services on which Proposals are requested.

____ 5. Other: _____

____ We wish to remain on the Proposer's list for these services.

____ We wish to be removed from the Proposer's list for these services.

FIRM NAME

SIGNATURE

SECTION 1
PROPOSAL CALENDAR

RFP Advertised and Issued.....	December 14, 2018
Questions, Comments and Requests for Clarifications Due to KCATA	January 11, 2019
KCATA's Response to Questions, Comments and Requests for Clarification.....	January 16, 2019
RFP Closing.....	January 25, 2019
Interviews (Tentative and as Required).....	February 8, 2019scope
Contract Award/Notice to Proceed	April, 2019 (tentative)

SECTION 2

SCOPE OF SERVICES

2.1 Introduction and Purpose

The Kansas City Area Transportation Authority (KCATA, ATA, Authority) is soliciting sealed proposals from qualified vendors to supply #2D Ultra Low Sulfur Diesel (ULSD) fuel, meeting the qualification and specifications listed herein, for Transit and service vehicles. These proposals will enable the Authority to “lock in” volumes at fixed pricing at periodic terms and outline the costs of all markups relative to fuel purchased on either fixed or rack pricing. Further, these proposals will provide fixed costs per gallon of winter blend additive, should it be requested. The winter blend is typically requested for deliveries from November 1st through February 28th.

2.2 Scope

Although no minimum amounts are guaranteed, it is estimated that KCATA will purchase approximately One Million, Two Hundred Thousand (1,200,000) gallons of ULSD and that Johnson County Transit will purchase approximately Four Hundred Thousand (400,000) gallons of ULSD annually. Proposer is responsible for all labor, equipment and materials and supervision necessary to supply and deliver to the product F. O. B. KCATA and Johnson County Transit. The quantities indicated in this RFP are estimates that pertain to the total aggregate quantities that may be ordered throughout the stated contract period including option years. These quantities may change during the initial term of the contract and any subsequent option years due to the mix of diesel and CNG vehicles contained in the KCATA fleet and the service level required for that fleet. The estimates do not indicate single order amounts unless otherwise stated. The KCATA makes no guarantees about single order quantities or total aggregate order quantities.

2.3 Term

The term of this contract (if issued) shall be for two (2) years with three (3) one-year options.

2.4 Definitions

Where the words “Authority”, “KCATA” and “ATA” are used, reference is made to the Kansas City Area Transportation Authority. Where the term “Johnson County Transit” is used, reference is made to Johnson County, KS. The terms “vendor”, “contractor” and “proposer” are used herein interchangeably, to reference the firms submitting proposals. The terms “proposal” and “bid” are also used interchangeably herein and it is understood that once the Authority accepts the same, the document will be incorporated as part of the contract contemplated by this procurement.

2.5 Fuel Specifications

All fuel supplied through this contract must comply with applicable governmental and industry standards and specifications including the following minimum specifications for #2 Ultra-Low Sulfur Diesel.

ASTM Classification of Diesel Fuel Oil

	ASTM Method	#2 D, S15 ASTM-D-975
Flash Pt.; of Min.	D86	52
Carbon residue on 10% distillation	D4530	0.35
Water & Sediment; 5 by Volume; Max.	D2709	0.05
Ash; % by Wt.: Max	D482	0.01
Distillation, F 90 % Pt.; Maximum Minimum	D86	260 216
Viscosity at 100° F. Centistokes-Min. Max.	D445	1.9 4.1
Sulfur; 5 by weight	D5453	0.0015
Cetane No; Min	D976	41

2.6 Delivery

Delivery shall be made to KCATA's storage tanks at 1350 East 17th Street, Kansas City, Missouri 64108 and to Johnson County Transit's storage tanks at 1701 W. 56 Highway, Olathe, KS 66061. Deliveries will be required for KCATA tanks on the average of two (2) to four (4) bulk truck loads per week. Deliveries may be required for Johnson County Transit tanks between three and five times per month. KCATA and Johnson County will request fuel deliveries by fax or email and will require confirmation of orders by vendor. Each load is to consist of seven to nine thousand (7,000-9,000) gallons per delivery of #2-D Ultra Low Sulfur Diesel. The number of gallons delivered and charged to KCATA and Johnson County, KS will be determined based on fuel adjusted to a 60-degree temperature.

All deliveries will occur on weekdays, between the hours of 8:30 a.m. and 4:30 p.m. Prompt delivery is essential in the performance of this contract. Delivery of quantities as large as 16,000 gallons must be made within 24 hours after an order is placed. Emergency deliveries will be received any time – 24 hours/day. Contractor must address and coordinate the scheduling of fuel deliveries with KCATA's or Johnson County's staff, as necessary, in order to accommodate organizational holiday schedules.

The successful vendor shall provide a copy of the metered pipeline ticket, with fuel temperature noted, at time of product delivery to both KCATA and Johnson County Transit. KCATA shall make semi-monthly payments to Contractor for delivered quantities based on certified delivery tickets and adjusted for temperature variations. It will be the contractor's responsibility to notify KCATA or Johnson County immediately of any delays in delivery. Separate invoicing for Johnson County and KCATA is required. Contact the KCATA Business Analyst at 816-346-0291 and Johnson County's responsible party at 913-715-8222.

2.7 Substitute Suppliers

If the Contractor fails, for any reason, to supply fuel to KCATA or Johnson County Transit pursuant to

the terms of this proposal, at the time and in the amounts which KCATA or Johnson County requests, then KCATA shall have the right to purchase from any substitute source the amount of fuel due from the Contractor. If such substitute fuel is purchased, KCATA shall have the right, at its option, to either recover from the Contractor as liquidated damages or offset against the price due for fuel subsequently supplied by the Contractor, any amount by which the cost of such substituted fuel exceeds the contract price which would have been applicable. KCATA shall also have the right to recover the cost of any incidental expenses reasonably incurred by KCATA in making such substituted purchase(s) and the amount of any consequential damages allowable by law.

2.8 Fuel Sample Analysis

Deliveries of diesel under this contract are subject to a fuel analysis to determine compliance with the fuel specifications. KCATA will have fuel samples analyzed by an independent laboratory. This provision does not, in any manner, relieve the supplier of its responsibilities to deliver fuel in accordance with these specifications. If the analysis reveals that the diesel does not meet the specifications, KCATA may terminate the contract for default, withhold payment for the delivered fuel and/or require the Contractor to remove the fuel from the tank.

2.9 Contract Pricing Structure

Proposals should be submitted for the pricing structure described below in #1, and an alternative pricing structure may be submitted as described in #2 that follows:

1. Fixed Pricing and Rack Pricing Combination

KCATA will purchase diesel fuel one of two ways – either on fixed pricing for future fuel delivery for a specific time period, or off the daily spot market (rack) price in Kansas City. KCATA must be provided the option of purchasing fuel under either method at KCATA's sole discretion. A Contract will result from this RFP and govern the markup by the supplier on rack prices, on the New York Mercantile Exchange (NYMEX) price in fixed-price contracts.

Mark-ups will remain constant for the period for which they are proposed. Mark-ups should be rounded back to four (4) decimal places. Proposers are required to clearly itemize the elements comprising their mark-up.

A. Fixed Pricing is the most common method of purchasing fuel used by KCATA.

This method allows KCATA to enter a contract with the supplier at a fixed-price for delivery of a specific amount of ULSD for a specific month(s) in the future when KCATA determines that such prices are advantageous. KCATA reserves the right to purchase future contracts in other than 42,000 gallon lots. KCATA has been able to lock-in prices for fuel delivery as far as 18-months into the future, depending on how far out the NYMEX was trading.

The Proposer will quote a fixed mark-up to be added to the NYMEX price per gallon for #2 ULSD for a specific month in the future. The sum of the total mark-up and the NYMEX price will be the locked-in price for delivery of fuel in the specified month(s). The NYMEX price at the time of verbal agreement between the supplier and KCATA will be used. KCATA will use the CME group pricing as displayed through internet posting for quoted NYMEX price for verification of reasonableness of the NYMEX price used in individual quotes.

Fixed mark-up proposals to be added to the NYMEX price for #2 ULSD should include the following on a per gallon basis:

- Differentials:
 - Geographical differential for supplying to the Kansas City marketplace (Group III – Midwest)
 - Any other differential not addressed above
- For KCATA, additional price per gallon for supplying winter additive
- For Johnson County, additional price per gallon for supplying a 70% - 30% winter blend of #2 ULSD and #1 Diesel with winter additive
- Supplier's margin or profit
- Delivery or transporting from the terminal to KCATA's fuel tanks at 1350 E. 17th Street, Kansas City, Missouri 64108
- Delivery or transporting from the terminal to Johnson County's fuel tanks at 1701 W. 56 Highway, Olathe, KS 66061.
- Other markups necessary to get a gallon of #2 ULSD from the New York harbor (as quoted on NYMEX) into KCATA or Johnson County owned tanks.

A contract amendment, or a "locked agreement", will be entered when agreement is reached on a total fixed-price per gallon for delivery of a specific amount of #2 ULSD fuel for a specific future time period. Therefore, over the term of the Contract, there will most likely be multiple amendments for differing time periods. The locked agreement may be as simple as a confirmation from the supplier stating the locked price per gallon, number of gallons, and month(s) of delivery, signed in agreement by KCATA.

The Contractor will be asked to notify KCATA when diesel fuel prices can be locked at or below a certain price for future time periods.

- B. Rack Pricing. KCATA reserves the right to not lock prices and to pay the spot market prices at the terminal on the day of fuel delivery, plus a fixed mark up from the supplier as stated in the Contract. The spot market price will be reasonable for the Kansas City market on a daily basis. The awarded Contractor will supply to KCATA, at no cost to KCATA, a subscription to OPIS reports for the Kansas City market area, for the term of the contract. The reports will show the OPIS daily and monthly averages for ULSD for the Kansas City market area.

The Proposer is asked to identify the refiner from which KCATA diesel will be pulled, the terminal location and the refiner's rack price on specific dates for comparison of rack prices.

The fixed markup on the rack price should include the following:

- Additional price per gallon for supplying winter blend
- Supplier's markup or profit
- Delivery or transporting from the terminal used by the supplier to KCATA's fuel tanks at 1350 East 17th Street, Kansas City, Missouri 64108.
- Delivery or transporting from the terminal used by the supplier to Johnson County's fuel tanks at 1701 W. 56 Highway, Olathe, KS 66061.
- Other markups not addressed above that are necessary to get a gallon of #2 ULSD delivered

from the terminal into KCATA or Johnson County owned tanks.

2. Alternative Pricing Proposals

KCATA may consider alternative pricing structures proposed by suppliers, so long as the requirements for fixed pricing and rack pricing are met. Alternative pricing proposals may be as simple as proposing revisions to the pricing structure described in #1 above, or may be an altogether different pricing structure. Please state if only proposing revisions to the pricing structure as set forth in #1 above.

In proposing an alternative pricing structure, please keep in mind KCATA's goal of avoiding, or at least foreseeing, budget overages in fuel purchases by being able to lock-in prices for the future when such prices are favorable.

Alternative pricing proposals shall include and itemize all direct and indirect costs associated with execution and performance of the terms of this solicitation. The Proposer should provide a narrative description of the alternative pricing along with examples so that KCATA can obtain a full understanding of the proposed pricing.

2.10 Price Change/Adjustments

The Contractor must notify KCATA's Procurement Department by telephone within 24 hours of a price change. This must be followed up with a written confirmation of the price change, delivered to the Procurement Department within 72 hours after verbal notification. Failure by the Contractor to notify KCATA both by telephone and in writing within the specified time frames will result in delayed payments

SECTION 3.
PROPOSAL INSTRUCTIONS

3.1 General Information

- A. The terms “solicitation” and “Request for Proposals” and “RFP” are used interchangeably, and the terms “offer” and “proposal” are used interchangeably. The terms “Proposer,” “Contractor” and “Offer or” are also used interchangeably.
- B. Interested firms may submit proposals until 2:00 p.m. on. Proposals received after the time specified may not be considered for award. Proposals received via facsimile (fax) or electronic mail (e-mail) will not be considered. Proposals must be delivered or mailed to KCATA’s Procurement Department at 1350 E. 17th Street, Kansas City, MO 64108 to the attention of Rebecca Clyma.
- C. In cases where communication is required between Proposers and the KCATA, such as requests for information, instruction, and clarification of specifications, such communication shall be forwarded in writing directly to Rebecca Clyma at rclyma@kcata.org by the indicated deadline. The subject line of electronic communications must reference the RFP number and title.
- D. Submitting a proposal constitutes a firm offer to KCATA for one hundred twenty (120) days from the closing date.
- E. KCATA is not responsible for any cost or expense that may be incurred by the Proposer before the execution of a contract, including costs associated with preparing a proposal or interviews.

3.2 Reservations

- A. KCATA reserves the right to waive informalities or irregularities in proposals, to accept or reject any or all proposals, to cancel this RFP in part or in its entirety, and to re-advertise for proposals if it is in the best interest of the Authority. KCATA shall be the sole judge of what is in its best interest with respect to this RFP.
- B. KCATA also reserves the right to award a contract solely on the basis of the initial proposal without interviews or negotiations. Therefore, offers should be submitted to KCATA on the most favorable terms possible, from a technical standpoint.

3.3 Proposer’s Responsibilities

- A. By submitting a proposal, the Proposer represents that:
 - 1. The Proposer has read and understands the RFP and the proposal is made in accordance with the RFP requirements and instructions;
 - 2. The Proposer possesses the capabilities, resources, and personnel necessary to provide efficient and successful service to KCATA; and
 - 3. It is authorized to transact business in the State of Missouri.

- B. Before submitting a proposal, the Proposer should make all investigations and examinations necessary to ascertain site or other conditions and requirements affecting the full performance of the contract.

3.4 Authorization to Propose

If an individual doing business under a fictitious name makes the proposal, the proposal should so state. If the proposal is made by a partnership, the full names and addresses of all members of the partnership must be given and one principal member should sign the proposal. If a corporation makes the proposal, an authorized officer should sign the proposal in the corporate name. If the proposal is made by a joint venture, the full names and addresses of all members of the joint venture should be given and one authorized member should sign the proposal.

3.5 Withdrawal & Incomplete Proposals

- A. Proposals may be withdrawn upon written request received by KCATA before proposal closing. Withdrawal of a proposal does not prejudice the right of the Proposer to submit a new proposal, provided the new proposal is received before the closing date.
- B. Incomplete proposals may render the proposal non-responsive.

3.6 Modification of Proposals

Any proposal modifications or revisions received after the time specified for proposal closing may not be considered.

3.7 Unbalanced Proposals

KCATA may determine that an offer is unacceptable if the prices proposed are materially unbalanced. An offer is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work.

3.8 Protests

- A. The following protest procedures will be employed for this procurement. For the purposes of these procedures, "days" shall mean business days of KCATA administrative personnel which are days other than a Saturday, Sunday or legal holiday observed by KCATA for such administrative personnel.
 - 1. **Pre-Submittal.** A pre-submittal protest is received prior to the proposal due date. Pre-submittal protests must be received by the Authority, in writing and addressed to KCATA's Director of Procurement, no later than five (5) days before the bid closing date.
 - 2. **Post-Submittal/Pre-Award.** A post-submittal/pre-award protest is a protest against making an award and is received after receipt of proposals but before award of a contract. Post-submittal protests must be received by the Authority, in writing and addressed to the KCATA's Director of Procurement, no later than five (5) days after the bid closing date.

3. **Post-Award.** Post-Award protests must be received by the Authority, in writing and addressed to KCATA's Director of Procurement, no later than five (5) days after the date of the Notice of Intent to Award.
- B. KCATA's Director of Procurement shall respond in writing within five (5) days from the date of the written request. If the protester is not satisfied with the response of the Director of Procurement, the protester may appeal in writing to KCATA's Chief Financial Officer within five (5) days from the date of the Director of Procurement's response.
 - C. The Chief Financial Officer will decide if the protest and the appeal (if any) have been given fair and reasonable consideration, or if additional consideration is warranted. The Chief Financial Officer's response will be provided within ten (10) days after receipt of the request. The Chief Financial Officer's decision is final and no further action on the protest shall be taken by the KCATA.
 - D. By written notice to all parties, KCATA's Director of Procurement may extend the time provided for each step of the protest procedures, extend the date of notice of award, or postpone the award of a contract if deemed appropriate for protest resolution.
 - E. Protesters shall be aware of the Federal Transit Administration's (FTA) protest procedures with the FTA Regional Office (ref: FTA Circular 4220.1F) If federal funding is involved, FTA will review protests from a third party only when: 1) a grantee does not have a written protest procedure or fails to follow its procedure or fails to review a complaint or protest; or 2) violations of specific federal laws or regulations have occurred.
 - F. An appeal to FTA must be received by FTA's regional office within five (5) working days of the date the protester learned or should have learned of KCATA's decision. Protests shall be addressed to: Regional Administrator, FTA Region 7, 901 Locust, Room 404, Kansas City, Missouri, 64106.

3.9 Disclosure of Proprietary Information.

- A. A proposer may restrict the disclosure of scientific and technological innovations in which it has a proprietary interest, or other information that is protected from public disclosure by law, which is contained in the proposal by:
 1. marking each page of each such document prominently in at least 16-point font with the words "Proprietary Information;"
 2. printing each page of each such document on a different color paper than the paper on which the remainder of the proposal is printed; and
 3. segregating each page of each such document in a sealed envelope, which shall prominently display, on the outside, the words "Proprietary Information" in at least 16-point font, along with the name and address of the Proposer.
- B. After either a contract is executed pursuant to this RFP, or all proposals are rejected, the proposals will be considered public records open for inspection. If access to documents marked "Proprietary Information," as provided above, is requested under the Missouri Sunshine Law, Section 610 of the Revised Statutes of Missouri, the KCATA will notify the Proposer of the request

and the Proposer shall have the burden to establish that such documents are exempt from disclosure under the law. Notwithstanding the foregoing, in response to a formal request for information, the KCATA reserves the right to release any documents if the KCATA determines that such information is a public record pursuant to the Missouri Sunshine Law.

3.10 Disadvantaged Business Enterprise (DBE) Requirements

- A. It is the policy of KCATA and the United States Department of Transportation (USDOT) that Disadvantaged Business Enterprises (DBE's) and Small Business Enterprises (SBE's), as defined herein and in the Federal regulations published as 49 CFR Part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of KCATA to:
1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
 2. Create a level playing field on which DBE's/SBE's can compete fairly for DOT-assisted contracts;
 3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
 4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility are permitted to participate as DBE's;
 5. Help remove barriers to the participation of DBE's in DOT assisted contracts;
 6. To promote the use of DBE's in all types of federally assisted contracts and procurement activities; and
 7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.
- B. Certified Minority Owned Business Enterprises (MBE's), Woman Owned Business Enterprises (WBE's), Small Business Enterprises (SBE's) and DBE firms are encouraged to submit proposals as prime or subcontractors.
- C. **Non-discrimination.** Proposers shall not discriminate on the basis of race, color, national origin, or sex in the performance of this project. The Proposer shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Proposer to carry out these requirements is a material breach of the resulting contract, which may result in the termination of the contract or such other remedy as KCATA deems appropriate.
- D. **DBE Certification.** DBE firms may participate as prime Contractors, subcontractors or suppliers. KCATA will only recognize firms that are certified as DBEs under the DOT guidelines found in 49 CFR Part 26. Firms must be certified as a DBE by a member of the Missouri Regional Certification Committee, which includes KCMO, MoDOT, City of St. Louis, Metro in St. Louis or KCATA. A list of certified firms may be found at www.modot.mo.gov/ecr/index.htm.
- E. **DBE Participation Credit.** DBE firms may participate as Prime Contractors, Subcontractors or Suppliers.

The following shall be credited towards achieving the goals, except as provided herein:

1. The total contract dollar amount that a qualified DBE Prime Contractor earns for that portion of work on the contract that is performed by its own workforce, is performed in a category in which the DBE is currently certified and is a commercially useful function as defined by the Program.
 2. The total contract dollar amount that a Prime Contractor has paid or is obligated to pay to a subcontractor that is a qualified DBE; and
 3. Subcontractor participation with a lower tier DBE subcontractor; and
 4. Sixty percent (60%) of the total dollar amount paid or to be paid by a Prime Contractor to obtain supplies or goods from a supplier who is not a manufacturer and who is a qualified DBE. If the DBE is a manufacturer of the supplies, then one hundred percent (100%) may be credited, to be determined on a case-by-case basis.
 5. NO CREDIT, however, will be given for the following:
 - a. Participation in a contract by a DBE that does not perform a commercially useful function as defined by the Program; and
 - b. Any portion of the value of the contract that a DBE Subcontractor subcontracts back to the prime contractor or any other contractor who is not a qualified DBE; and
 - c. Materials and supplies used on the contract unless the DBE is responsible for negotiating the price, determining quality and quantity, ordering the materials and installing (where applicable) and paying for material itself; and
 - d. Work performed by a DBE in a scope of work other than that in which the DBE is currently certified.
- F. **Good Faith Efforts.** Failure to meet the contracted DBE participation commitment without documented evidence of good faith efforts may result in termination of the contract.
1. In evaluating good faith efforts, KCATA will consider whether the Proposer has performed the following, along with any other relevant factors:
 - a. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations. Copies of the solicitation efforts (dated facsimiles, advertisements, emails) must be submitted.
 - b. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

- c. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - d. Negotiating in good faith with interested DBEs.
- 2. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- 3. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, include DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- 4. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- 5. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the KCATA or contractor.
- 6. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- 7. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- 8. In determining if the Contractor did use good faith efforts in securing DBE Participation, KCATA may request copies of each DBE and non-DBE subcontractor quote in the event a non-DBE subcontractor was selected over a DBE for work on the contract.

G. **Request for Modification, Replacement or Termination of Disadvantaged Business Enterprise (DBE) Project Participation.** Contractor is responsible for meeting or exceeding the DBE commitment it has proposed for the project and as amended by any previously approved Request for DBE Modification/Substitution. Any Change Orders or amendment modifying the amount Contractor is to be compensated will impact the amount of compensation due to DBEs for purposes of meeting or exceeding the Proposer commitment. Contractor shall consider the effect of a Change Order or amendment and submit a Request for Modification/Substitution if the DBE commitment changes.

1. **Termination Only for Cause** - Once the contract has been awarded; Contractor may not terminate a DBE subcontractor without KCATA's prior written consent. This includes, but is not limited to, instances in which a Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.
2. **Good Cause** - Good cause includes the following circumstances:
 - a. The listed DBE subcontractor fails or refuses to execute a written contract; or
 - b. The listed DBE subcontractor fails or refuses to perform the work of its normal industry standards. Provided, however, that the good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Prime Contractor; or
 - c. The listed DBE subcontractor fails or refuses to meet the Prime Contractor's reasonable, nondiscriminatory bond requirements; or
 - d. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness; or
 - e. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1200 or applicable state law; or
 - f. The DBE subcontractor is not a responsible contractor; or
 - g. The listed DBE subcontractor voluntarily withdraws from the project and provides the Prime Contractor written notice of its withdrawal;
 - h. The listed DBE is ineligible to receive DBE credit for the type of work required;
 - i. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
 - j. Other documented good cause that compels KCATA to terminate the DBE subcontractor. Provided the good cause does not exist if the Prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Prime Contractor can self-perform the work for which the DBE contractor was engaged or so that the Prime Contractor can substitute another DBE or non-DBE contractor.

3. Before submitting its request to terminate or substitute a DBE subcontractor, the Prime Contractor must give notice in writing to the DBE subcontractor, with a copy to KCATA, of its intent to request to terminate and/or substitute, and the reason for the request.
4. The Prime Contractor must give the DBE five days to respond to the Prime Contractor's notice and advise the KCATA and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why KCATA should not approve the Prime Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the response period may be shortened.

SECTION 4.
PROPOSAL SUBMISSION, EVALUATION AND AWARD

The intent of the RFP is to encourage submittals that clearly communicate the Proposers' qualifications for the Project. Proposals should provide information in a concise, and well written, well organized manner containing only information relevant to this Project. All proposals should follow the format specified below as this will assist the evaluation committee. Firms are encouraged to submit only proposal material that is relative to the services and scope cited. Including extra marketing materials and publications is discouraged.

4.1 Proposal Format

- A. The originals of all Volumes shall be unbound. All copies of Volumes I and II shall be separately bound and all copies and originals shall have the RFP number and name, the Offeror's identity, volume number and volume title printed on the cover page.
- B. Volumes shall be submitted in the following order:
 - 1. **Volume I: Cost Proposal** – One (1) unbound original and one (1) copy.
 - 2. **Volume II - Technical Proposal.** One (1) unbound original (labeled/stamped Original) and six (6) copies.
 - 3. **Volume III – Contractual.** One (1) original of the completed, signed submittals as specified in Section 4.4 below and in Attachment B, "Proposal Checklist."
- C. Proposers are asked to submit a complete copy of their proposal (Volumes I, II and III) in .pdf format on a compact disc or flash drive, which will be retained by KCATA. Each volume shall be a separate pdf document, and the disc or flash drive shall not be password protected.
- F. The proposal package shall be delivered, in a sealed envelope, to:

Rebecca Clyma, Buyer
KCATA – Procurement Department
1350 East 17th Street
Kansas City, MO 64108
- G. The outside of each package shall be clearly marked, "RFP #18-6013-23 Ultra Low Sulfur Diesel Fuel Supply
- H. Proposals may be hand delivered, sent via overnight carrier, or mailed via USPS. Electronic or faxed copies will not be accepted.
- I. All hand deliveries must be made through KCATA's Shipping/Receiving Department. Please allow ample time to navigate through KCATA's secured entrance and parking areas.

4.2 Volume I – Cost Proposal

- KCATA anticipates awarding a contract that will allow the purchase of fuel requirements under both rack and fixed pricing structures.
- B. **The Cost/Price Proposal shall be submitted in a separate, sealed envelope and labeled as such. No price information is to be included in the Technical Proposal.**
- C. The costs/prices included in the cost/price proposal must be fair and reasonable and should include all items of labor, materials, and other costs necessary to perform the contract. Any items omitted from this RFP which are clearly necessary for the completion of the work being proposed should be considered part of the work though not directly specified or called for in this RFP.

4.3 Volume II - Technical Proposal

- A. The Technical Proposal page limit is 30 pages. The Proposer may choose to allocate pages between any of the evaluation criteria as long as the Proposal does not exceed 30 pages. If a Proposer submits a proposal exceeding this limit, KCATA will consider the pages up to the allowable number and discard all subsequent pages.
- B. One page is defined as one side of a single, 8-1/2 x 11" page, with 11-point minimum font size for the substantive text. Any page over this size will be counted as two (2) pages. Any page or partial page with substantive text, tables, graphics, charts, résumés, etc. will be counted as one (1) page. Proposers may use their discretion for the font size of other materials (e.g. graphics, charts)
- C. The following are excluded from the page count:
- Title Page
 - Table of Contents
 - Letter of Transmittal
 - Tabs or Indices
 - Additional Lists of References
 - Resume and background information (please do not include any more than 3 pages per individual)
 - Required forms, certifications, financial data, etc.
 - Vendor Registration Form
 - Subcontractor Utilization Form
 - Affirmative Action Information
 - Letters of Certification
- D. Each technical proposal should enable the evaluation committee to make a thorough evaluation and arrive at a sound determination that the proposal meets KCATA's requirements. Each technical proposal must be so specific, detailed and complete as to clearly and fully demonstrate that the Proposer has a thorough knowledge and understanding of the requirements and has valid and practical solutions for technical problems. Statements which paraphrase the requirements or state that "standard procedures will be employed" are inadequate to demonstrate how the Proposer will comply with the requirements of this procurement.
- E. To achieve a uniform review process and obtain the maximum degree of compatibility, technical

proposals must be organized as follows:

1. **Letter of Transmittal**

The letter should be addressed to Rebecca Clyma, Buyer, and signed by a corporate officer with authority to bind the firm. The letter must contain the following:

- a. Name of lead firm and all proposed team members, including all sub-consultants
- b. List of key personnel that will be associated with this project
- c. Proposed working relationship among firms identified (i.e., Prime, Sub-consultant)
- d. Acknowledgement of Receipt of Addenda (if any)
- e. A statement that the Principal in Charge and the key Individuals identified in the Proposal will be available and committed to the Project for its duration and that none of the neither the project manager of key personnel be removed or replaced without the prior approval of KCATA.
- f. Briefly state the firm's understanding of the services to be performed and make a positive commitment to provide services and specified

2. **Title Page.** Show the RFP Number and title, the name of the firm, address, telephone number(s), email address, fax number(s) and date.

3. **Table of Contents.** Clearly identify the materials submitted by section and page number.

4. **General Business Background.** Provide a brief synopsis of the Proposer's and major sub-consultants businesses, including when and where incorporated, major business activities, and a listing of the Officers of the Company. State whether the firm is local, regional or national and how long the firm has been in existence under current ownership/management and where the offices are located. Identify and state how long the firm has provided the types of services requested in this RFP. Proposers and sub-consultants shall provide financial status and credit worthiness statement. This may be a current Dunn and Bradstreet Rating or two most recent years of audited financial statements.

5. **Project Manager and Key Personnel Experience and Qualifications**

- a. This section should demonstrate the Proposer's experience, skills and qualifications and professional certifications of the Principal-In-Charge and other key personnel identified to work on the major components and tasks of the Project.
- b. Describe in detail direct experience in successfully completing transit planning and feasibility studies of similar size and complexity. Describe direct experience implementing government-funded and regulated projects with multiple stakeholders, meeting schedules, budgets and extensive federal reporting requirements. Detail any added services that the Proposer will provide that are not specifically requested in this RFP.

- c. Provide resumes (please limit to no more than two (2) pages per individual) for the proposed Principal-In-Charge, Project Manager, and all personnel considered vital to provide the deliverables specified. Include this information for each sub-consultant.
- d. Identify primary office location for the Project Manager and key staff members. Define typical response time to requests for unscheduled/unforeseen meetings and coordination efforts that may arise during the project.

6. **Fuel Program Management**

- a. This section should describe how the work will be performed to fulfill the scope of the project and its requirements and demonstrate the intended approach to perform the tasks necessary to successfully complete the Project. Each of the tasks within the scope should be organized and presented independently yet align with the overall requirements established by KCATA. Items to address and include: project management approach, quality control plan, start-up plan, work plan and project schedule. State management approach and techniques required for the implementation and control of the work.
- b. Provide an organizational chart depicting how the project will be staffed in all functional areas. Indicate number of employees of each type. If applicable, state how project staff will be supported by regional or national staff and reporting relationships between project staff, other firms' management staff and subcontractors. A statement addressing availability and commitment of the Project Manager, Key Personnel and vital resources for the Project shall be provided.

4.4 **Volume III – Contractual**

- A. **Financial Condition of the Firm.** In this section the Proposer must submit information demonstrating that it is financially sound and has the necessary financial resources to perform the contract in a satisfactory manner. The Proposer is required to permit KCATA to inspect and examine its financial statements. The Proposer shall submit the firm's most recent unaudited financial statements as well as two (2) years of its most recent audited annual financial statements. These statements consist of Statement of Financial Position (Balance Sheet), Results of Operations (Income Statement), Statement of Cash Flow, and Statement of Retained Earnings, and applicable footnotes. Supplementary financial information may be requested as necessary. **Financial statements from subcontractors are not required.**
- B. **Disclosure of Investigations/Actions.** Proposer must provide a detailed description of any investigation or litigation, including administrative complaints or other administrative proceedings, involving any public-sector clients during the past five (5) years including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, the disposition.

C. **Debarment**

1. The Proposer must certify that is not included in the "U. S. General Services Administration's List of Parties Excluded from Federal Procurement or Non-Procurement Programs."
2. The Proposer agrees to refrain from awarding any subcontractor of any amount (at any tier) to a debarred or suspended subcontractor, and to obtain a similar certification from any subcontractor (at any tier) seeking a contract exceeding \$25,000.
3. The Proposer agrees to provide KCATA with a copy of each conditioned debarment or suspension certification provided by a prospective subcontractor at any tier, and to refrain from awarding a subcontract with any party that has submitted a conditioned debarment or suspension certification until FTA approval is obtained.

D. **Lobbying**

1. Pursuant to Public Law 104-65, the Proposer is required to certify that no Federal funds were used to influence or attempt to influence an officer or employee of any Federal department or agency, a member of Congress or State legislature, an officer or employee of Congress or State legislature, or an employee of a member of Congress or State legislature regarding the project(s) included in this contract.
2. Proposers who use non-Federal funds for lobbying on behalf of specific projects or proposals must submit disclosure documentation when these efforts are intended to influence the decisions of Federal officials. If applicable, Standard Form-LLL, "Disclosure Form to Report Lobbying", is required with the Proposer's first submission initiating the KCATA's consideration for a contract. Additionally, Disclosure forms are required each calendar quarter following the first disclosure if there has been a material change in the status of the previous disclosure. A material change includes: 1) a cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; 2) a change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or 3) a change in the officer(s) or employee(s) or Member(s) contacted to influence or attempt to influence a covered Federal action.
3. The Proposer is required to obtain the same certification and disclosure from all subcontractors (at all tiers) when the Federal money involved in the subcontract is \$100,000 or more. Any disclosure forms received by the Proposer must be forwarded to the KCATA.

E. **Employee Eligibility Verification**

1. The Proposer is required by sworn affidavit and provision of documentation, to affirm its enrollment and participation in a Federal work authorization program with respect to employees working in connection with the contracted services.
2. The Proposer shall also affirm that it does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under Federal law to work in the United States as defined in 8 U.S.C. §1324a(h)(3).

3. The Proposer is required to obtain the same affirmation from all subcontractors at all tiers.

F. Proposer Status and Affirmative Action

1. Vendor Registration. All firms doing business with the KCATA shall complete a Vendor Registration Form (Attachment E). However, proposers that have previously submitted a form within the past two (2) years need not submit a Vendor Registration Form. It is the vendors' responsibility to keep a current Form on file with the KCATA Procurement Department.
2. Affirmative Action Compliance.
 - a. Contractors and subcontractors agree to comply with Federal Transit Law, specifically 49 U.S.C. 5332 which prohibits discrimination, including discrimination in employment and discrimination in business opportunity.
 - b. Firms that have not filed an Affirmative Action compliance certification with the KCATA in the past two (2) years must submit the following documents:
 - i. The enclosed Certificate of Affirmative Action Compliance (Attachment F). In lieu of this form, a current Certificate of Affirmative Action compliance from a local government agency may be submitted.
 - ii. A completed Workforce Analysis Report Form AA1, Part 2 (Attachment G-2). A current EEO-1 provided to another governmental agency may be substituted.
 - c. For questions on these requirements, or for assistance in completing the forms, please contact Maurice Gay, KCATA's Contract Vendor Specialist Coordinator at (816) 346-0366 or via email at mgay@kcata.org.

4.5 Proposal Evaluation Criteria

Proposals will be evaluated by a Selection Committee on the basis of the following criteria which are listed in descending order of importance:

- A. Price(s) and other factors affecting KCATA's total cost for the purchase of diesel fuel.
- B. Vendor performance record with emphasis on awarding to only established, reputable distributors and dealers.
- C. Review of evidence presented by the vendor confirming its experience, equipment, financial standing and ability to serve KCATA for both routing and emergency delivery needs.
- D. Proposal merit which includes compliance with solicitation requirements, quality and clarity of content and thoroughness of proposal.

4.6 Presentations/Interviews/Written Responses

Highly-qualified Proposers submitting responsive and responsible proposals may be invited to interview with the evaluation committee at their own expense. The evaluation committee may also require a Proposer(s) to submit written responses to questions regarding its proposal. Proposers selected for interview will be notified.

4.7 Consultant Selection

Based on the evaluation process described above, the Evaluation Committee will determine the best-qualified firm/team for this project and contract negotiations will begin immediately with the selected firm. If negotiations are successful, the Evaluation Committee will recommend the best-qualified firm/team to KCATA's Board of Commissioners for final authorization. If KCATA fails to reach an agreement with the top-ranked team, the KCATA will enter into negotiations with the subsequent firms/teams.

ATTACHMENT A

PROPOSAL SUBMITTAL CHECKLIST DOCUMENT/FORM REQUIREMENTS

The following forms are required to be submitted as part of proposal. Your Proposal may be considered non-responsive if you fail to submit the required documents for Prime and all sub-consultants at the closing date/time. The electronic copy of these forms can be obtained by going to:

http://www.kcata.org/about_kcata/entries/vendor_forms

Volume I: Cost Proposal:

- One (1) original and one (1) unbound copy in a separate, sealed envelope and clearly marked as "Volume I – Cost Proposal"

Volume II: Technical Proposal:

- One (1) unbound original and six (6) copies

Volume III: Contractual:

- Attachment E Vendor Registration (if not already registered with KCATA)
- Attachment F Affidavit of Civil Rights Compliance
- Attachment G-2 KCATA EEO-1/Workforce Analysis Report (for Prime and Subs
- Attachment H Letter of Intent to Subcontract with DBE Firm (if applicable)
- Attachment I.1 Affidavit of Primary Participants Regarding Employee Eligibility Verification
- Attachment I.2 Affidavit of Lower-Tier Participants Regarding Employee Eligibility Verification, if applicable
- Attachment J.1 Certification of Primary Participant Regarding Debarment, Suspension, and Other Responsibility Matters
- Attachment J.2 Certification of Lower-Tier Participants Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion, if applicable
- Attachment K.1 Certification of Primary Participants Regarding Restrictions on Lobbying
- Attachment K.2 Certification of Lower-Tier Participants Regarding Restrictions on Lobbying, if applicable
- Prime Contractor - Financial Statements for Past Two (2) Years (Not Required for Subcontractors)

ATTACHMENT B
CONTRACT #18-6013-23
ULTRA-LOW SULFUR DIESELFUEL SUPPLY FOR KCATA AND JOHNSON COUNTY TRANSIT

THIS CONTRACT (the "Contract"), made and entered into as of the ____ day of _____, 20**18**, by and between the **Kansas City Area Transportation Authority ("KCATA")**, a body corporate and politic, and a political subdivision of the States of Missouri and Kansas, with offices at 1350 East 17th Street, Kansas City, Missouri, and _____ ("**Contractor**"), with offices at _____.

NOW, THEREFORE, in consideration of the covenants and conditions to be performed by the respective parties hereto and of the compensation to be paid as hereinafter specified, the KCATA and the Contractor agree as follows:

1. EMPLOYMENT OF CONTRACTOR.

This Contract is entered into for the purpose of engaging the Contractor as an independent contractor by KCATA in accordance with that certain bid submitted by the Contractor dated _____, a copy of which is attached hereto as Appendix D and incorporated herein by reference ("Bid").

2. SCOPE OF CONTRACT.

The Contractor shall provide the products, equipment, materials and/or work services consistent with the Request for Proposal (RFP) solicited by the KCATA, dated _____ entitled "_____" (sometimes referred to as the "Project" or the "Work"), which is incorporated herein by reference. The Contractor hereby agrees to provide the (insert description of products and/or services) as needed at the firm, fixed prices stated in the Appendix **C** attached hereto for the KCATA in accordance with the specifications of the scope of contract provided in the Contract Documents herein.

3. TERM.

The term of this contract agreement shall be for a period of two (2) year(s) beginning May 1, 2019 and expiring on April 30, 2021 with three (3) one-year extension options. **The services and/or deliverables to be performed** shall commence upon receipt of a notice to proceed from the KCATA. Work in process prior to expiration of the contract agreement shall be completed and as construed by KCATA to be within the "contract term."

4. CONTRACT SUM.

The KCATA shall pay the Contractor in current funds for the provision of products and the performance of the services (Appendix B to this Contract), subject to (a) the terms and conditions of the Contract and (b) any KCATA authorized additions or deductions by "Change Order," if applicable, as provided in this Contract. The contractor shall be paid for the work performed at the rates set out in the Contractor's **Cost Proposal / Bid Response** (Appendix **C**). It is anticipated that the funds to be paid the Contractor under this contract shall not exceed the sum of _____ Dollars (\$_____).

Annual funding for subsequent years of the contract and extension options, if exercised, will be based on KCATA's anticipated needs and in accordance with the rates established herein.

5. ORDER OF PRECEDENCE

In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

- A. Specific written amendments or modifications/change orders to the executed Contract;

- B. KCATA's Standard Terms and Conditions;
- C. Executed Contract and any attachments incorporated by reference
- D. Contractor's Proposal; and
- E. KCATA's RFP and Scope of Work, including any attachments incorporated by reference.

6. MISCELLANEOUS PROVISIONS.

The following Appendices are attached hereto by reference as part of this Contract. This Contract and any amendments issued hereafter, constitute the entire Contract between the KCATA and the Contractor.

- Appendix A. Contract Terms and Conditions; and
- Appendix B. Scope of Work; and
- Appendix C. Cost Page Submitted by Contractor.

IN WITNESS WHEREOF, the parties hereto for themselves, their successors and permitted assigns, executed this Contract Agreement as of the day and year first above written.

**CONTRACTOR'S NAME
(CONTRACTOR)**

**KANSAS CITY AREA TRANSPORTATION
AUTHORITY (KCATA)**

By _____
Name of Authorized Signer
Title of Authorized Signer

By _____
_____, Chairman of the Board

By _____
_____, Secretary of the Board

APPENDIX A CONTRACT TERMS AND CONDITIONS

1. ACCEPTANCE OF SERVICES/DELIVERABLES – NO RELEASE

Acceptance of any portion of the services and/or deliverables prior to final acceptance shall not release the Contractor from liability for faulty workmanship, or for failure to fully comply with all of the terms of this Contract. KCATA reserves the right and shall be at liberty to inspect all work products at any time during the Contract term, and shall have the right to reject all services or deliverables which do not conform with the conditions, Contract requirements or specifications; provided, however, that KCATA is under no duty to make such inspection, and Contractor shall (notwithstanding any such inspection) have a continuing obligation to furnish all services and deliverables in accordance with the instructions, Contract requirements and specifications. Until delivery and acceptance, and after any rejections, risk of loss will be on the Contractor, unless loss results from negligence of KCATA.

2. AGREEMENT IN ENTIRETY

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by all parties.

3. ASSIGNMENT

- A. The Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of KCATA. In the event of KCATA's consent to assignment of this Contract, all of the terms, provisions and conditions of the Contract shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representative.
- B. **Piggyback.** The KCATA reserves the right to assign Options on this Contract to other transit operators. If assigned, a statement shall be issued from KCATA authorizing the option assignment which shall be sent to the Contractor and transit operator. A separate Contract or Purchase Order will be entered into between the transit operator and Contractor. KCATA will not be responsible for any contracts related to assigned options exercised; provided, however, KCATA shall not be relieved from any duties or responsibilities under this Contract except and to the extent such duties and responsibilities are assumed by the assignee transit operator under separate contract between the assignee transit operator and Contractor.

4. BANKRUPTCY

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail, written notification of the bankruptcy to the KCATA official identified in the "Notification and Communication" section. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of KCATA Contract numbers against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

5. BREACH OF CONTRACT; REMEDIES

- A. If the Contractor shall fail, refuse or neglect to comply with any terms of this Contract, such failure shall be deemed a total breach of contract and the Contractor shall be subject to legal recourse by KCATA, plus costs resulting from failure to comply including the KCATA's reasonable attorney fees, whether or not suit be commenced.

- B. The duties and obligations imposed by this Contract and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law or equity. No action or failure to act by KCATA shall constitute a waiver of any right or duty afforded under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

6. CHANGES

KCATA may at any time, by a written order, and without notice to the Contractor, make changes within the general scope of this Contract. No such changes shall be made by the Contractor without prior written approval by KCATA. If any such change causes an increase or decrease in the Contract sum, or the time required for performance of this Contract, whether changed or not changed by such order, an equitable adjustment shall be made by written modification. Any Contractor's claim for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change. Nothing in this clause shall excuse the Contractor from proceeding with this Contract as changed.

7. CIVIL RIGHTS

- A. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 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, age, sex, sexual orientation, gender identity, national origin or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing regulations that the Federal Transit Administration (FTA) may issue.
- B. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Contract:
1. Race, Color, Creed, National Origin or Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal opportunity requirements of the 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 Contract. 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, age, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 2. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S.EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, and U.S. Department of Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, 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.
 3. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12102 *et seq.*, the Architectural

Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and the Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- C. Contractor understands that it is required to include this Article in all subcontracts. Failure by the Contractor to carry out these requirements or to include these requirements in any subcontract is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the KCATA deems appropriate, including but not limited to withholding monthly progress payments and/or disqualifying the Contractor from future bidding as non-responsible.

8. CONFLICTS OF INTEREST (ORGANIZATIONAL)

In accordance with 2 C.F.R. § 200.112, the Contractor certifies that it has no other activities or relationships that would make the Contractor unable, or potentially unable, to render impartial assistance or advice to KCATA, or that would impair the Contractor's objectivity in performing work under this Contract, or that would result in an unfair competitive advantage to Contractor or to another third party performing the Project work.

9. CONTINUITY OF SERVICES

- A. The Contractor recognizes that the services under this Contract are vital to the KCATA and must be continued without interruption and that, upon contract expiration, a successor, either the KCATA or another contractor may continue them. The Contractor agrees to (1) furnish phase in-training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. The Contractor shall, upon KCATA's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this Contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan and shall be subject to KCATA's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

10. CONTRACTOR'S PERSONNEL

All of the services required hereunder shall be performed by the Contractor or under its supervision and all personnel engaged in the services shall be fully qualified and authorized under state and local law to perform such services. Any change in the key personnel, as described in the contractor's proposal, shall be subject to the written approval of KCATA; such approval shall not be unreasonably withheld. The parties agree that at all times during the entire term of this Contract that the persons listed in Contractor's proposal shall serve as the primary staff person(s) of Contractor to undertake, render and oversee all of the services of this Contract subject to KCATA's right to remove personnel. KCATA reserves the right to require the Contractor to remove any personnel and or subcontractors for any cause provided such request for removal shall be documented in writing to Consultant.

11. CONTRACTOR'S RESPONSIBILITY

No advantage shall be taken by the Contractor or its subcontractor of the omission of any part or detail which goes to make the equipment complete and operable for use by KCATA. In case of any variance, this specification shall take precedence over Contractor's or subcontractor's own specifications. The Contractor shall assume responsibility for all materials and services used whether the same is manufactured by the Contractor or purchased ready made from a source outside the Contractor's company.

12. Delivery

- A. Delivery shall be made to KCATA's storage tanks at 1350 East 17th Street, Kansas City, Missouri 64108 and to Johnson County Transit's storage tanks at 1701 W. 56 Highway, Olathe, KS 66061. Deliveries will

be required for KCATA tanks on the average of one (1) to two (2) bulk truck loads per weekday. Deliveries may be required for Johnson County Transit tanks between three and five times per month. KCATA and Johnson County will request fuel deliveries by fax or email and will require confirmation of orders by vendor. Each load is estimated to consist of seven to nine thousand (7,000-9,000) gallons per delivery of #2-D Ultra Low Sulfur Diesel. The number of gallons delivered and charged to KCATA will be determined based on fuel adjusted to a 60-degree temperature.

All deliveries will occur on weekdays, between the hours of 8:30 a.m. and 4:30 p.m. Prompt delivery is essential in the performance of this contract. Delivery of quantities as large as 16,000 gallons must be made within 24 hours after an order is placed. Emergency deliveries will be received any time – 24 hours/day. Contractor must address and coordinate the scheduling of fuel deliveries with KCATA's staff in order to accommodate KCATA'S holiday schedule.

The successful vendor shall provide a copy of the metered pipeline ticket, with fuel temperature noted, at time of product delivery to both KCATA and Johnson County Transit. KCATA shall make semi-monthly payments to Contractor for delivered quantities based on certified delivery tickets and adjusted for temperature variations. It will be the contractor's responsibility to notify KCATA immediately of any delays in delivery. Contact the KCATA Business Analyst at 816-346-0291.

B. Substitute Suppliers

If the Contractor fails, for any reason, to supply fuel to KCATA or Johnson County Transit pursuant to the terms of this proposal, at the time and in the amounts which KCATA or Johnson County requests, then KCATA shall have the right to purchase from any substitute source the amount of fuel due from the Contractor. If such substitute fuel is purchased, KCATA shall have the right, at its option, to either recover from the Contractor as liquidated damages or offset against the price due for fuel subsequently supplied by the Contractor, any amount by which the cost of such substituted fuel exceeds the contract price which would have been applicable. KCATA shall also have the right to recover the cost of any incidental expenses reasonably incurred by KCATA in making such substituted purchase(s) and the amount of any consequential damages allowable by law.

13. DISPUTE RESOLUTION

- B.** Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement shall be decided by KCATA's Director of Procurement, who shall reduce the decision to writing and mail or otherwise furnish a copy to the Contractor. The decision of the Director of Procurement shall be final and conclusive unless within ten (10) days from the date of receipt of such copy the Contractor mails or otherwise furnishes a written appeal addressed to the Chief Financial Officer, with a copy to the Director of Procurement. The determination of such appeal by the Chief Financial Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, arbitrary, or not supported by substantial evidence. In connection with any appeal proceeding under this clause the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, and unless otherwise directed in writing by KCATA, the Contractor shall proceed diligently with performance in accordance with the Director of Procurement's decision.
- C.** The duties and obligations imposed by the Contract and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the KCATA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or

failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

14. EMPLOYEE ELIGIBILITY VERIFICATION

- A. To comply with Section 285.500 RSMo, *et seq.*, the Contractor is required by sworn affidavit and provision of documentation, to affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. The Contractor shall also affirm that it does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. §1324a(h)(3). The Contractor is required to obtain the same affirmation from all subcontractors at all tiers with contracts exceeding \$5,000.
- B. A federal work authorization program is any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and control Act of 1986 (IRCA), P.L.99-603.

15. GOVERNING LAW; CHOICE OF JUDICIAL FORUM

This Contract shall be deemed to have been made in, and be construed in accordance with, the laws of the State of Missouri. Any action of law, suit in equity, or other judicial proceeding to enforce or construe this Contract, respecting its alleged breach, shall be instituted only in the Circuit Court of Jackson County, Missouri.

16. HEADINGS

The headings included in this Contract are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of intent of any provision, and shall not be construed to affect, in any manner, the terms and provisions hereof of the interpretation or construction thereof.

17. INDEPENDENT CONTRACTOR

- A. The parties agree that the Contractor is an independent contractor under this Contract. Under no circumstance shall the Contractor be considered an agent, employee or representative of KCATA and KCATA shall not be liable for any claims, losses, damages, or liabilities of any kind resulting from any action taken or failed to be taken by the Contractor.
- B. The Contractor shall furnish adequate supervision, labor, materials, supplies, security, financial resources and equipment necessary to perform all the services contemplated under this Contract in an orderly, timely, and efficient manner.

18. INSPECTION OF SERVICES

- A. The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the services provided in the performance of the Contract. "Services" as used in this clause, includes services performed, quality of the work, and materials furnished or used in the performance of services.
- B. The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the project. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Authority during contract performance and for as long afterwards and the Contract requires.
- C. The Authority has the right to inspect and test all services called for by this Contract to the extent practicable at all times and places during the term of the Contract. The Authority shall perform inspection and tests in a manner that will not unduly delay the work.

- D. If any of the services performed do not conform to Contract requirements, the Authority may require the contractor to perform the services again in conformity with Contract requirements for no additional fee. When the defects in performance cannot be corrected by re-performance, the Authority may:
1. Require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; or
 2. Reduce the Contract Sum accordingly.
- E. If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Authority may:
1. By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Authority that is directly related to the performance of the work; or
 2. Terminate the Contract for default.

19. INSURANCE

- A. The insurance required in this Contract shall be written for not less than any limits of liability required by law or by those set forth below, whichever is greater, and shall include blanket contractual liability insurance as applicable to the Contractor's obligations under the Liability and Indemnification section below. All policies, except Professional Liability policies, shall name KCATA, its commissioners, officers, and employees as additional insureds. Explosion, collapse and underground coverage shall not be excluded. The insurance should be written with companies acceptable to KCATA and the companies should have a minimum A.M. Best's insurance rating of A-(VIII). An exception to the minimum A.M. Best rating is granted for Workers Compensation exposures insured through the Builders' Association of Self Insurance Fund (BASIF).
- B. The Contractor shall be required to furnish to KCATA certificates verifying the required insurance and relevant additional insured endorsements prior to execution of the Contract, and thereafter furnish the certificates on an annual basis. The certificates (with the exception of Professional Liability and Workers Compensation coverage) shall specifically state that:
1. Contractual liability coverage is applicable; and
 2. The Kansas City Area Transportation Authority, its commissioners, officers and employees are named as additional insureds (Named Insureds) on the policies covered by the certificate; using this specific wording: **Kansas City Area Transportation Authority, its commissioners, officers, and employees are named as additional insureds as respects general liability and where required by written contract. Any coverage afforded the certificate holder as an additional insured shall apply as primary and not excess or contributing to any insurance or self-insurance in the name of the certificate holder, and shall include a waiver of subrogation.**
- C. Further, from time to time and whenever reasonably requested by KCATA, the Contractor shall represent and warrant to KCATA (1) the extent to which the insurance limits identified below have been, or may be, eroded due to paid or pending claims under the policies; and (2) the identity of other entities or individuals covered as an additional insured on the policies. Further, the Contractor shall confirm that the insurers' obligation to pay defense costs under the policies is in addition to, and not part of the liability limits stated in the policies.
- D. All such insurance, with the exception of Professional Liability coverage, shall contain endorsements that the policies may not be canceled or amended or allowed to lapse by the insurers with respect to KCATA its commissioners, officers and employers by the insurance company without thirty (30) days prior notice to KCATA in addition to the Named Insured (s) and that denial of coverage or voiding of the policy for failure of Contractor to comply with its terms shall not affect the interest of KCATA, its commissioners, officers and employees thereunder.

E. The requirements for insurance coverage are separate and independent of any other provision hereunder.

1. **Worker's Compensation:**

- a. State: Missouri and/or Kansas – Statutory
- b. Employer's Liability: Bodily Injury by Accident -- \$500,000 Each Accident
Bodily Injury by Disease -- \$500,000 Each Employee
Bodily Injury by Disease -- \$500,000 Policy Limit

The Contractor and any subcontractor shall maintain adequate workers' compensation insurance as required by law to cover all employees during performance of services, or during delivery, installation, assembly or related services in conjunction with this Agreement.

2. **Commercial General Liability:**

Bodily Injury and Property Damage to include Products and Completed Operations:

- \$1,000,000 Each Occurrence
- \$2,000,000 General Aggregate (per project)
- \$1,000,000 Personal and Advertising Injury
- \$50,000 Fire Damage
- \$5,000 Medical Expenses
- 2 Years (Completed Operations)

Contractor shall procure and maintain at all times during the term of the KCATA purchase order or the Contract commercial general liability insurance for liability arising out of the operations of the Contractor and any subcontractors. The policy(ies) shall include coverage for the Contractor's and subcontractors' products and completed operations for at least two (2) years following project completion, or as otherwise noted. The policy(ies) shall name as an additional insured, in connection with Contractor's activities, the KCATA, its commissioners, officers, and employees. Using ISO Form CG 20 10 11 85 (or OCG20 26 0704 in the case of a Blanket Endorsement), or such other additional insured forms acceptable to KCATA. The Insurer(s) shall agree that its policy(ies) is primary insurance and that it shall be liable for the full amount of any loss up to and including the total limit of liability without right of contribution from any other insurance or self-insurance KCATA may have.

3. **Auto Liability:**

Bodily Injury and Property Damage: \$1,000,000 Combined Single Limit

The policy(ies) shall include automobile liability coverage for all vehicles, licensed or unlicensed, on or off the KCATA premises, whether the vehicles are owned, hired or non-owned, covering use by or on behalf of the Contractor and any subcontractors during the performance of work under this Contract.

4. **Professional Liability Insurance**

Professional Liability Limit: \$1,000,000 Each Occurrence
\$1,000,000 Annual Aggregate

Where applicable, the Contractor shall obtain professional liability insurance covering any damages caused by an error, omission or any negligent acts of the Contractor or its employees with regard to performance under this Agreement.

5. **Pollution**

Pollution Liability Limit: \$1,000,000 Each Occurrence
\$1,000,000 Annual Aggregate

Where applicable, the Contractor shall obtain and keep in effect during the term of the Contract, Pollution Liability Insurance covering their liability for bodily injury, property damage and environment damage, including clean up and remediation costs arising out of the work or services to be performed under this contract. Coverage shall apply to the above for premises and operations, products and completed operations and automobile liability. Automobile liability coverage may be satisfied by utilizing ISO Endorsement CA 9948 or equivalent.

6. Umbrella or Excess Liability

Umbrella or Excess Liability Limit: \$1,000,000 Each Occurrence
 \$1,000,000 Aggregate (per project)

Where applicable, the Contractor shall obtain and keep in effect during the term of the contract, Umbrella or Excess Liability Insurance covering their liability over the limit for primary general liability, automobile liability, and employer's liability.

20. LIABILITY AND INDEMNIFICATION

- A. **Contractor's Liability.** Contractor shall be liable for all damages to persons (including employees of Contractor) or property of any type that may occur as a result of any act or omission by Contractor, any subcontractors, or sub-subcontractor, their respective agents or anyone directly employed by any of them or anyone for whose acts any of them may be liable or arising out of any product provided or services rendered under this Agreement.
- B. **Subrogation.** Contractor, its agents and any subcontractor hereby waive and relinquish any right of subrogation or claim against KCATA, its commissioners, senior leaders and employees arising out of the use of KCATA's premises (including any equipment) by any party in performance of this Agreement.
- C. **Indemnification.**
1. To the fullest extent permitted by law, Contractor agrees to and shall indemnify, defend and hold harmless KCATA, its Commissioners, officers and employees from and against any and all claims, losses, damages, causes of action, suits, liens and liability of every kind, (including all expenses of litigation, expert witness fees, court costs and attorney's fees whether or not suit be commenced) by or to any person or entity (collectively the "Liabilities") arising out of, caused by, or resulting from the acts or omissions of Contractor, subcontractors, or sub-subcontractors, their respective agents or anyone directly or indirectly employed by any of them in performing work under this Contract, including consequential damages, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, so long as such Liabilities are not caused by the sole negligence or willful misconduct of a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.
 2. In claims against any person or entity indemnified under this section, by an employee or Contractor, subcontractor or sub-subcontractor or anyone directly or indirectly employed by any of them, the indemnification obligation shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, subcontractor, or sub-subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts. If any action at law or suit in equity is instituted by any third party against Contractor arising out of or resulting from the acts of Contractor in performing work under this Contract, Contractor shall promptly notify KCATA of such suit.
 3. If any action at law or suit in equity is instituted by any third party against KCATA or its commissioners, officers or employees arising out of or resulting from the acts of Contractor, a subcontractor or sub-

subcontractor, their respective agents or anyone directly or indirectly employed by any of them in providing products, equipment or materials, or in performing work or services under this Contract, and if Contractor has failed to provide insurance coverage to KCATA against such action as required herein or otherwise refuses to defend such action, KCATA shall have the right to conduct and control, through counsel of its choosing, the defense of any third party claim, action or suit, and may compromise or settle the same, provided that KCATA shall give the Contractor advance notice of any proposed compromise or settlement.

4. KCATA shall permit Contractor to participate in the defense of any such action or suit through counsel chosen by the Contractor, provided that all fees and expenses of such counsel shall be borne by Contractor. If KCATA permits Contractor to undertake, conduct and control the conduct and settlement of such action or suit, Contractor shall not consent to any settlement that does not include as an unconditional term thereof the giving of a complete release from liability with respect to such action or suit to KCATA. Contractor shall promptly reimburse KCATA for the full amount of any damages, including fees and expenses of counsel for KCATA, incurred in connection with any such action.

21. LICENSING, LAWS AND REGULATIONS

- A. The Contractor shall, without additional expense to KCATA, be responsible for obtaining any necessary licenses and permits, and for complying with all federal, state, and municipal laws, codes, and regulations applicable to the providing of products, equipment or materials, or the performance of the Services, under this Contract.
- B. The Contractor shall comply with all applicable and current rules, regulations and ordinances of any applicable federal, state, county or municipal governmental body or authority, including but not limited to those as set forth by the Environmental Protection Agency, the Missouri Department of Natural Resources, the Kansas Department of Health and Environmental, the FTA, the Department of Transportation, and the City of Kansas City, Missouri.

22. NOTIFICATION AND COMMUNICATION

- A. Communications regarding technical issues and activities of the project shall be exchanged with Bill Spies KCATA's Director of Maintenance, at (816) 346-0308 or via e-mail at bspies@KCATA.org.
- B. Issues regarding the contract document, changes, amendments, etc. are the responsibility of KCATA's Procurement Department. All notices and communications on all matters regarding this Contract may be given by delivery or mailing the same postage prepaid, addressed to the following:

If to KCATA: Rebecca Clyma, Buyer
Kansas City Area Transportation Authority
1350 East 17th Street
Kansas City, MO 64108

If to Contractor: _____

- C. The Contractor shall notify KCATA immediately when a change in ownership has occurred or is certain to occur.
- D. The addresses to which notices may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

23. PROHIBITED INTERESTS

- A. No board member, officer, employee or agent of KCATA or of a local public body who has participated or will participate in the selection, award, or administration of this Contract, nor any member of his or her immediate family, business partner or any organization which employs, or intends to employ any of the above during such period, shall have any interest, direct or indirect, in this Contract or the proceeds thereof, to any share or part of this Contract, or to any benefit arising there from. This shall not be construed to prevent any such person from owning stock in a publicly owned corporation.
- B. No member of, or delegates to, the Congress of the United States shall be admitted to any share or part of the Contract, or to any benefit arising there from. This shall not be construed to prevent any such person from owning stock in a publicly-owned corporation.

24. PROHIBITED WEAPONS AND MATERIALS

- A. Missouri Revised Statutes, Section 571.107 (R.S.Mo. §571.107) allows government units and businesses to prohibit persons holding a concealed carry endorsement from carrying concealed firearms on its premises. Accordingly, KCATA has adopted the following rules prohibiting weapons, whether concealed or not, and whether or not the individual carrying the weapon has an endorsement or permit to carry.
- B. No weapon, including firearms concealed or not, or other instrument intended for use as a weapon, or any object capable of inflicting serious bodily injury upon another person or property may be carried in or on any facility or property of KCATA, including vehicles of contractors parked on KCATA property or leased facilities, or vehicles used in transporting KCATA customers, even if a person has a permit to carry a concealed weapon, unless authorized in writing to do so by KCATA. For the purposes hereof, a weapon shall include, but not be limited to, a firearm, knife, sword, mace, or any instrument of any kind known as blackjack, billy club, club, sandbag and metal knuckles.
- C. No explosives, flammable liquids, acids, fireworks, other highly combustible materials, radioactive materials or biochemical materials may be carried on or in any KCATA property, facility or vehicle, including vehicles of contractors parked on KCATA property or leased facilities, or vehicles used in transporting any KCATA customer, except as authorized in writing by KCATA.
- D. Any contractor, subcontractor, employee or agent thereof, who has a firearm or other weapon, including those used for recreational purposes, in his/her possession, including on his/her person, in a vehicle on an KCATA facility, in a vehicle carrying KCATA customers, or accessible such as in first aid kits, toolboxes, purses, lunch or carrying bags, etc., at any time while performing KCATA contracted services or on KCATA property, including parking lots, concealed or not, shall be immediately prohibited from performing any further KCATA work, even if the person has a permit to carry a concealed weapon.
- E. Any KCATA contractor, subcontractor, employee or agent thereof, while performing KCATA contracted services or on any KCATA property or facilities, who has in his/her possession, carries, transports, displays, uses, flourishes, or threatens another person with a weapon, radioactive material, biochemical material or other dangerous weapon, object or material, which has the capability of inflicting bodily injury, shall be immediately prohibited from performing any further KCATA work and reported to local law enforcement authorities.

25. RECORD RETENTION AND ACCESS

- A. The Contractor agrees that, during the course of this agreement and any extensions thereof, and for three years thereafter, it will maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to this Contract in accordance with 2 C.F.R. §§ 200.333. In the event of litigation or settlement of claims arising from the performance of this Contract, the Contractor agrees to maintain same until such litigation, appeals, claims or exceptions related thereto have been disposed of.

- B. The Contractor shall permit KCATA, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, as applicable, the City of Kansas City, Missouri, to inspect all work, materials, construction sites, payrolls, and other data and records, and to audit the books, records, and accounts of the Contractor relating to its performance under this Contract.
- C. 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, and to include this clause in all subcontracts.

26. REQUESTS FOR PAYMENT

- A. Invoices requesting payment shall be submitted directly to KCATA's Procurement Department. All invoices shall be numbered, dated and submitted in duplicate, and contain full descriptive information of materials or services furnished. Invoices for deliveries made to Johnson County shall be submitted in the same format as those submitted for KCATA deliveries. All invoices and correspondence shall reference KCATA's Contract number. Separate invoices shall be submitted for each purchase order or work (task) order.
- B. Payment by KCATA will be made within the later of 1) 30 days after receipt of a proper invoice, or 2) 30 days after KCATA's acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.
- C. All final invoices shall be submitted to KCATA within 90 days of project completion or contract termination. Invoices submitted more than 90 days after project completion or contract termination will not be valid and will not be paid. Contractor indemnifies and holds KCATA harmless for any suit filed for payment of invoices submitted after 90 days of project completion or contract termination.

D. Subcontractor Payments.

- 1. Prompt Payment. The Contractor shall establish procedures to ensure timely payment of amounts due pursuant to the terms of its subcontracts. The Contractor shall pay each DBE and non-DBE subcontractor for satisfactory performance of its contract, or any billable portion thereof, in accordance with the timing set forth in any applicable laws or no later than 30 days, whichever is less, from the date of the Contractor's receipt of payment from the Authority for work by that subcontractor.
- 2. Prompt Return of Retainage. If retainage is withheld from subcontractors, the Contractor is required to return any retainage payment to its DBE and non-DBE subcontractors in accordance with the timing set forth in any applicable laws or no later than 30 days, whichever is less, from the date of receipt of the retainage payment from the Authority related to the subcontractor's work. Any delay or postponement of payment from said time frame may occur only for good cause following written approval from KCATA.
- 3. The Contractor shall certify on each payment request to the Authority that payment has been or will be made to all subcontractors. Lien waivers may be required for the Contractor and its subcontractors. The Contractor shall notify KCATA on or before each payment request, of any situation in which scheduled subcontractor payments have not been made.
- 4. If a subcontractor alleges that the Contractor has failed to comply with this provision, the Contractor agrees to support any Authority investigation, and if deemed appropriate by the Authority, to consent to remedial measures to ensure that subcontractors are properly paid as set forth herein.
- 5. The Contractor agrees that the Authority may provide appropriate information to interested subcontractors who inquire about the status of Authority payments to the Contractor.
- 6. Nothing in this provision is intended to create a contractual obligation between the Authority and any subcontractor or to alter or affect traditional concepts of privity of contract between all parties.

27. RIGHT TO OFFSET

KCATA, without waiver or limitation of any rights, may deduct from any amounts due Contractor in connection with this Contract, or any other contract between Contractor and KCATA, any amounts owed by Contractor to KCATA, including amounts owed by Contractor pursuant to Contractor's obligation to indemnify KCATA against third party claims arising out of Contractor's performance of work under this Contract.

28. SEAT BELT USE POLICY

Contractor agrees to comply with terms of Executive Order No. 13043 "Increasing Seat Belt Use in the United States" and is encouraged to include those requirements in each subcontract awarded for work relating to this Agreement.

29. SEVERABILITY

If any clause or provision of this Contract is held to be invalid illegal or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Contract shall continue in full force and effect.

30. SUBCONTRACTORS

- A. **Subcontractor Approval.** None of the work or services covered by this Contract shall be subcontracted without the prior written approval of KCATA. The only subcontractors approved for this Contract, if any, are listed in an appendix to this Contract. Any substitutions or additions of subcontractors must have the prior written approval of KCATA as set forth herein.
- B. **DBE/SBE Subcontractor Employment.** See Disadvantaged Business Enterprise Provisions.
- C. **Subcontractor Payments.** See Requests for Payment Provisions.
- D. **Adequate Provision(s) in Subcontract(s).** Any subcontracts related to this Contract must contain adequate provisions to define a sound and complete agreement. In addition, all subcontracts shall contain contractual provisions or conditions that allow for:
 - 1. Administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms, including sanctions and penalties as may be appropriate.
 - 2. Termination for cause and for convenience including the manner by which it will be effected and the basis for settlement.
 - 3. The following provisions if included in this Contract:
 - Acceptance of Material – No Release
 - Agreement in Entirety
 - Assignment
 - Bankruptcy
 - Breach of Contract; Remedies
 - Changes
 - Civil Rights
 - Conflicts of Interest
 - Continuity of Services
 - Contractor's Personnel
 - Contractor's Responsibility
 - Delivery
 - Dispute Resolution
 - Employee Eligibility Verification
 - Environmental Regulations
 - Governing Law: Choice of Judicial Forum

- Headings
- Independent Contractor
- Inspection of Services
- Insurance
- Liability and Indemnification
- Licensing, Laws and Regulations
- Notification and Communication
- Prohibited Interests
- Prohibited Weapons and Materials
- Record Retention and Access
- Requests for Payment
- Right to Offset
- Seat Belt Use Policy
- Severability
- Subcontractors
- Suspension of Work
- Taxpayer Identification Number (TIN)
- Termination
- Texting While Driving and Distracted Driving
- Unavoidable Delays
- General Provisions

- E. The Contractor will take such action with respect to any subcontractor as KCATA or the U.S. Department of Transportation may direct as means of enforcing such provisions of this contract.
- F. KCATA reserves the right to review the Contractor's written agreement with its subcontractors (DBE and non-DBE) to confirm that required federal contract clauses are included.
- G. KCATA may perform random audits and contact minority subcontractors to confirm the reported DBE participation.

31. SUSPENSION OF WORK

KCATA may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work under this agreement for the period of time that KCATA determines appropriate for the convenience of KCATA.

32. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Contractor is required to provide its TIN, which is the number required by the IRS to be used by KCATA in reporting income tax and other returns. The TIN provided by the Contractor is [REDACTED].

33. TERMINATION

- A. **Termination for Convenience.** The KCATA may terminate this Contract, in whole or in part, at any time by written notice to the Contractor when it is in KCATA's best interest. The Contractor will only be paid the Contract price for supplies delivered and accepted, or work or services performed in accordance with the manner of performance set forth in the Contract.
- B. **Funding Contingency.** If this Contract is subject to financial assistance provided by the U.S. Department of Transportation, the Contractor agrees that withdrawal or termination of such financial assistance by the U.S. DOT may require KCATA to terminate the agreement.
- C. **Termination for Default.**

1. If the Contractor does not deliver supplies in accordance with the contract delivery schedule or according

to specifications, or if the Contract is for services, and the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any other provisions of the Contract, KCATA may terminate this Contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth cost of the Contract.

2. If the termination is for failure of the Contractor to fulfill the contract obligations, KCATA may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by KCATA. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, KCATA, 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.

- D. **Opportunity to Cure.** KCATA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the written notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to KCATA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the time period permitted, KCATA 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 KCATA from also pursuing all available remedies legal and non-legal against Contractor and its sureties for said breach or default.
- E. **Waiver of Remedies for any Breach.** In the event that KCATA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by KCATA shall not limit KCATA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.
- F. **Property of KCATA.** Upon termination of this Contract for any reason, and if the Contractor has any property in its possession or under its control belonging to KCATA, the Contractor shall protect and preserve the property or pay KCATA full market value of the property, account for the same, and dispose of it in the manner KCATA directs. Upon termination of this Contract for any reason, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to KCATA's Project Manager all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Contract, whether completed or in process.

34. TEXTING WHILE DRIVING AND DISTRACTED DRIVING

Consistent with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. Section 402 note, and DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, the Contractor agrees to promote policies and initiatives for its employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to encourage each subcontractor to do the same.

35. UNAVOIDABLE DELAYS

- A. A delay is unavoidable only if the delay was not reasonably expected to occur in connection with or during the Contractor's performance, and was not caused directly or substantially by acts, omissions, negligence, or mistakes of the Contractor, the Contractor's suppliers, or their agents, and was substantial and in fact

caused the Contractor to miss delivery dates, and could not adequately have been guarded against by contractual or legal means.

- B. **Notification of Delays.** The Contractor shall notify the Director of Procurement as soon as the Contractor has, or should have, knowledge that an event has occurred which will cause an unavoidable delay. Within five (5) days, the Consultant shall confirm such notice in writing furnishing as much as detail as is available.
- C. **Request for Extension.** The Consultant agrees to supply, as soon as such data is available, any reasonable proof that is required by the Director of Procurement to make a decision on any request for extension. The Director of Procurement shall examine the request and any documents supplied by the Consultant and shall determine if the Consultant is entitled to an extension and the duration of such extension. The Director of Procurement shall notify the Consultant of its decision in writing.
- D. It is expressly understood and agreed that the Consultant shall not be entitled to damages or compensation, and shall not be reimbursed for losses on account of delays resulting from any cause under this provision, except to the extent the Consultant's delay was attributable to KCATA's non-performance of its duties herein.

36. GENERAL PROVISIONS

- A. **No Third-Party Beneficiaries.** The parties do not intend to confer any benefit hereunder on any person, firm or entity other than the parties hereto.
- B. **Extensions of Time.** No extension of time for performance of any Contractor obligations or acts shall be deemed an extension of time for performance of any other obligations or acts.
- C. **Time of Essence.** Time is of the essence in Contractor's performance of this Agreement.
- D. **Time Periods.** A "business day" is a business working day of KCATA administrative personnel which are days other than a Saturday, Sunday or legal holidays observed by the KCATA for administrative personnel. If the time period by which any right or election provided under this Contract must be exercised, or by which any act required hereunder must be performed, expires on a day which is not a business day, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.
- E. **Binding Effect.** This Contract shall bind and inure to the benefit of the legal representatives, successors and permitted assigns of the parties.
- F. **Counterparts.** This Contract may be executed at different times and in two or more counterparts and all counterparts so executed shall for all purposes constitute one contract, binding on all the parties hereto, notwithstanding that all parties shall not have executed the same counterpart. And, in proving this Contract, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement is sought.
- G. **Interpretation; Update of Citations.** Unless otherwise specified herein, (a) the singular includes the plural and the plural the singular; (b) words importing any gender include the other genders; and (c) references to persons or parties include their permitted successors and assigns. The parties recognize and agree that many of the laws, regulations, policies, procedures and directives stated as governing the Contractor's performance of its work or services, or the supplying of products, equipment, or materials, pursuant to this Contract are subject to updating, amendment or replacement. Therefore, all such references in this Contract are agreed by the parties to be deemed to refer to the then current updated, amended or replacement form of such laws, regulations, policies, procedures and directives in effect at the applicable time during the term of this Contract and the same are hereby incorporated into this Contract by this reference.

- H. **When Effective.** Notwithstanding any provision contained in this Contract to the contrary, this Contract shall become effective only after the execution and delivery of this Contract by each of the parties hereto and no course of conduct, oral contract or written memoranda shall bind the parties hereto with respect to the subject matter hereof except this Contract.
- I. **Further Actions; Reasonableness and Cooperation by Parties; Time for Certain Actions.** Each party agrees to take such further actions and to execute such additional documents or instruments as may be reasonably requested by the other party to carry out the purpose and intent of this Contract. Except where expressly stated to be in a party's sole discretion, or where it is stated that a party has the ability to act in its sole judgment or for its own uses or purposes, wherever it is provided or contemplated in this Contract that a party must give its consent or approval to actions or inactions by the other party or a third party in connection with the transactions contemplated hereby, such consent or approval will not be unreasonably withheld or delayed. If no time period is set hereunder for a party to approve or consent to an action or inaction by the other party or a third party such approval shall be given or affirmatively withheld in writing within ten (10) business days after it is requested in writing or it shall be deemed given.
- J. **Survival.** In addition to any provisions expressly stated to survive termination of this Contract, all provisions which by their terms provide for or contemplate obligations or duties of a party which are to extend beyond such termination (and the corresponding rights of the other party to enforce or receive the benefit thereof) shall survive such termination.
- K. **Authority of Signatories.** Any person executing this Contract in a representative capacity represents and warrants that such person has the authority to do so and, upon request, will furnish proof of such authority in customary form.

37. FTA REQUIRED CLAUSES

A. Environmental Regulations.

- A. **Clean Air.** The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §7401-7671q *et seq.* The Contractor agrees to report, and to require each subcontractor at every tier receiving more than \$100,000 from this Contract to report any violation of these requirements resulting from any project implementation activity to KCATA. KCATA will in turn, report each violation as required to assure notification to FTA and the appropriate U.S. EPA Regional Office.
- B. **Clean Water.** The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251-1387 *et seq.* The Contractor agrees to report, and require each subcontractor at every tier receiving more than \$100,000 from this Contract to report, any violation of these requirements resulting from any project implementation activity to KCATA. The Contractor understands that KCATA will in turn, report each violation as required to assure notification to FTA and the appropriate U.S. EPA Regional Office

- C. **Energy Conservation.** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. The Contractor agrees to include the requirements of this clause in all subcontracts under this Contract.

Contractor's Initials _____

KCATA's Initials _____

KCATA's Initials _____

ATTACHMENT C
COST/PRICE PROPOSAL STRUCTURE #1 - KCATA
RFP #18-6013-23 ULTRA-LOW SULFUR DIESEL FUEL SUPPLY FOR KCATA AND JOHNSON COUNTY TRANSIT

DIESELFUEL FIXED PRICING – MARK-UP DIFFERENTIAL TO NYMEX #2 ULSD
 ALL AMOUNTS SHOULD BE STATED ON A PERGALLON BASIS ROUNDED TO NO MORE THAN FOUR (4) DECIMAL PLACES

DIFFERENTIALS	MAY-19	JUNE-19	JUL-19	AUG-19	SEPT-19	OCT-19	NOV-19	DEC-19	JAN-20	FEB-20	MAR-20	APRIL-20
Geographical location differential												
Suppliers margin												
Delivery/Transportation FOB @ KCATA												
Other (describe)												
Total Markup to NYMEX for Fixed Pricing												

ATTACHMENT C
COST/PRICE PROPOSAL STRUCTURE #1 -JOHNSON COUNTY
RFP #18-6013-23 ULTRA-LOW SULFUR DIESEL FUEL SUPPLY FOR KCATA AND JOHNSON COUNTY TRANSIT

DIESELFUEL FIXED PRICING – MARK-UP DIFFERENTIAL TO NYMEX #2 ULSD
 ALL AMOUNTS SHOULD BE STATED ON A PERGALLON BASIS ROUNDED TO NO MORE THAN FOUR (4) DECIMAL PLACES

DIFFERENTIALS	MAY-19	JUNE-19	JUL-19	AUG-19	SEPT-19	OCT-19	NOV-19	DEC-19	JAN-20	FEB-20	MAR-20	APRIL-20
Geographical location differential												
Suppliers margin												
Delivery/Transportation FOB @ JOHNSON COUNTY												
Other (describe)												
Total Markup to NYMEX for Fixed Pricing												

ATTACHMENT C – PAGE TWO
COST PROPOSAL STRUCTURE #2 - KCATA
RFP #18-6013-23 ULTRA-LOW SULFUR DIESEL FUEL SUPPLY FOR KCATA AND JOHNSON COUNTY TRANSIT
DIESEL FUEL RACK PRICING – MARK UP TO REFINERS RACK PRICE
ALL AMOUNTS SHOULD BE STATED ON A PER GALLON BASIS

	YEAR ONE PRICING	YEAR TWO PRICING	OPTION YEAR ONE PRICING	OPTION YEAR TWO PRICING	OPTION YEAR THREE PRICING
SUPPLIERS MARGIN					
DELIVERY/TRANSPORTING FOB @ KCATA					
OTHER (DESCRIBE)					
TOTAL MARK UP TO REFINERS RACK PRICE					

COST PROPOSAL STRUCTURE #2 – JOHNSON COUNTY
RFP #18-6013-23 ULTRA-LOW SULFUR DIESEL FUEL SUPPLY FOR KCATA AND JOHNSON COUNTY TRANSIT
DIESEL FUEL RACK PRICING – MARK UP TO REFINERS RACK PRICE
ALL AMOUNTS SHOULD BE STATED ON A PER GALLON BASIS

	YEAR ONE PRICING	YEAR TWO PRICING	OPTION YEAR ONE PRICING	OPTION YEAR TWO PRICING	OPTION YEAR THREE PRICING
SUPPLIERS MARGIN					
DELIVERY/TRANSPORTING FOB @ KCATA					
OTHER (DESCRIBE)					
TOTAL MARK UP TO REFINERS RACK PRICE					

The undersigned, acting as an authorized agent or officer for the Offeror, does hereby agree to the following:

1. The offer submitted is complete and accurate, including all forms required for submission in accordance with the terms and conditions listed in this Request for Proposals and any subsequent Addenda. The offeror shall immediately notify the KCATA in the event of any change.
2. We hereby agree to provide the services on which prices are listed above and in accordance with the terms and conditions listed in the KCATA RFP.

Company Name (Type/Print) _____ Date _____
 Authorized Signature _____ Title _____ Email Address _____

Name (Type/Print) _____ Telephone # _____ Fax # _____

ATTACHMENT D
KCATA VENDOR REGISTRATION FORM

Thank you for your interest in doing business with the Kansas City Area Transportation Authority. To be placed on the KCATA Registered Vendors List for goods and services, please complete this form **in its entirety** and return it to the KCATA Procurement Department. Submittal of this registration form will place your company on the KCATA Registered Vendor List, but does not guarantee a solicitation. The list will be periodically purged. If you do not receive solicitations, inquire to confirm that your company remains on our list. Current business opportunities can be found in the "Doing Business with KCATA" section of our website, www.kcata.org.

Firms are required to submit this information to KCATA once. However, it is your responsibility to notify KCATA of any changes to your business that may affect your registration (i.e. address, contact information).

Legal Entity Name:		Phone:	
Doing Business As:		Toll-free Phone:	
Physical Address:		Fax:	
City:		Email:	
State:	Zip:	Website:	
Contact Person Name:		Title:	
Contact Phone:		Contact Email:	
Mailing Address:		Phone:	
City:		Fax:	
State:	Zip:	Comments:	
Business Type:	<input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Other (Explain) _____		
If Incorporated, in Which State:		Federal Tax ID No:	
Years in Business:		Years in Business Under Current Name:	
Does your firm have a Data Universal Numbering System (DUNS) number as a Federal contractor? If so, please provide. DUNS numbers may be obtained free of charge from Dun & Bradstreet at 1-866-705-5711 or at www.fedgov.dnb.com/webform .			DUNS # _____
Annual Gross Receipts. This information is required by U. S. Department of Transportation and Vendors will be requested to update this information on a regular basis.	<input type="checkbox"/> Less than \$250,000	<input type="checkbox"/> \$250,000 to \$500,000	<input type="checkbox"/> \$500,000 to \$1 Million
	<input type="checkbox"/> \$1 Million to 5 Million	<input type="checkbox"/> \$5 Million to 10 Million	<input type="checkbox"/> More than \$10 Million
Standard Invoice Terms:	Due Days	Discount Days	Percent
PLEASE PROVIDE A DESCRIPTION OF THE GOODS AND SERVICES YOU ARE INTERESTED IN PROVIDING TO KCATA. Include the corresponding North America Industry Classification System (NAICS) Codes for your business type. For a listing of the codes visit U.S. Small Business Administration's website at http://www.sba.gov/content/small-business-size-standards . Description:			
NAICS CODE(S) :		NAICS CODE(S):	
NAICS CODE(S):		NAICS CODE(S):	

1. Is your firm a Disadvantaged Business Enterprise (DBE) based on the definitions and U.S. Department of Transportation certification guidelines in 49 CFR Part 26? If YES, submit a copy of a copy of your current certification from your state's UCP.	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> ENCLOSED
2. Is your firm a Small Business Enterprise (SBE) as defined by the U.S. Small Business Administration's Small Business Size Guidelines and 13 CFR 121? For further information on 13 CFR 121 and SBE designation refer to SBA's website at http://www.sba.gov/content/small-business-size-standards	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> ENCLOSED
3. Is your firm a Woman-Owned Business Enterprise (WBE) or Minority Owned Business Enterprise (MBE) certified by a nationally recognized organization? If YES, please provide a copy of your certification documentation.	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> ENCLOSED
4. Does your firm meet any of these other federal business classifications? If YES, please provide a copy of certification documents. <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"> <input type="checkbox"/> Service Disabled, Veteran Owned Business <input type="checkbox"/> HubZone Program Certified </div> <div style="width: 45%;"> <input type="checkbox"/> SBA 8(a) Certified Business <input type="checkbox"/> Other _____ </div> </div>			
DBE/SBE CERTIFICATION: The KCATA participates in the U. S. Department of Transportation's DBE and SBE programs. Certification in these programs is based on the regulations in 49 CFR Part 26. If your firm is interested in becoming a certified DBE or SBE, please contact KCATA's Contracting/Supplier Diversity Coordinator at (816) 346-0224 or via email at dadams@kcata.org			
WORKER ELIGIBILITY AFFIDAVIT: As required by §285.500 RSMo, et seq., any business contracting to perform work in excess of \$5,000 for the KCATA shall provide a sworn affidavit affirming: (1) its enrollment and participation in a federal work authorization program such as U. S. Department of Homeland Security's E-Verify, accompanied by corresponding documentation to evidence its enrollment in that program; and (2) that it does not knowingly employ any person who does not have the legal right or authorization under federal law to work in the United States. Prior to being awarded any contract with KCATA, you will be required to furnish proof of your firm's participation in such program.			
VENDOR CERTIFICATION: I certify that information supplied herein (including all pages attached) is correct and that neither the business entity nor any person in any connection with the business entity as a principal or officer, so far as known, is now debarred or otherwise declared ineligible from bidding for furnishing materials, supplies, or services to the Kansas City Area Transportation Authority or declared ineligible to participate in federally funded projects.			
Signature		Date	
Printed Name		Title	
The following documents must be returned: <ul style="list-style-type: none"> Completed Vendor Registration Form KCATA Workforce Analysis/EEO-1 Report Affidavit of Civil Rights Compliance (<i>found on KCATA's website as Attachment B</i>) <p style="text-align: center; margin-top: 10px;"> Return completed Vendor Registration Packet to Kansas City Area Transportation Authority, Procurement Department, 1350 East 17th Street, Kansas City, MO 64108 Fax: (816) 346-0336 or email: mgay@kcata.org </p> <p style="color: blue; margin-top: 10px;"><u>NOTE: Vendors will be required to submit a signed IRS W9 form prior to authorization of any purchase.</u></p>			
<i>A foreign corporation may not transact business in Missouri until it obtains a Certificate of Authority. To apply, you must use the forms provided by the Missouri Secretary of State's office, as required by law.</i>			

ATTACHMENT E
AFFIDAVIT OF CIVIL RIGHTS COMPLIANCE

STATE OF _____

COUNTY OF _____

On this ____ day of _____, 20____, before me appeared _____, personally known by me or otherwise proven to be the person whose name is subscribed on this affidavit and who, being duly sworn, stated as follows: I am the _____ (title) of _____ (business entity) and I am duly authorized, directed or empowered to act with full authority on behalf of the business entity in making this affidavit.

I hereby swear or affirm that the business entity complies with the following:

- A. **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, age, sex, sexual orientation, gender identity, national origin or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing regulations that the Federal Transit Administration (FTA) may issue.
- B. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Contract:
1. Race, Color, Creed, National Origin or Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42. U.S.C. §2000e, *et seq.*, and Federal transit laws at 49 U.S.C. §5332, the Contractor agrees to comply with all applicable equal opportunity requirements of the 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 Contract. 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, age, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 2. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commissioner (U.S.EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, and U. S. Department of Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F. R. part 90, 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.

3. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12102 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et eq.*, and the Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Affiant's Signature

Date

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

Notary Public Signature

Date

My Commission expires: _____

ATTACHMENT F-1
GUIDELINES FOR COMPLETING
KCATA WORKFORCE ANALYSIS/EEO-1 REPORT

Contractor shall apply the following definitions to the categories in the attached Workforce Analysis/EEO-1 Report form. Contractors must submit the Workforce/Analysis form to be considered for contract award. The form is also required for all subcontractors.

A. RACIAL/ETHNIC

1. **White** (not of Hispanic origin): All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
2. **Black** (not of Hispanic origin): All persons having origins in any of the Black racial groups of Africa.
3. **Hispanic**: All persons of Mexican, Puerto Rican, Cuban, Central or South American origin, regardless of race.
4. **ASIAN or PACIFIC ISLANDER**: All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.
5. **AMERICAN INDIAN or ALASKAN NATIVE**: All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

B. JOB CATEGORIES

1. **OFFICIALS and MANAGERS**: Includes chief executive officers, presidents, vice-presidents, directors and kindred workers.
2. **Professionals**: Includes attorneys, accountants and kindred workers.
3. **Technicians**: Includes computer programmers and operators, drafters, surveyors, highway technicians, inspectors and kindred workers.
4. **Sales Workers**: Includes contract sales representatives, purchasing agents, customer relations representatives and kindred workers.
5. **OFFICE and CLERICAL**: Includes secretaries, book-keepers, clerk typists, payroll clerks, accounts payable clerks, receptionists, switchboard operators and kindred workers.
6. **Craft Workers** (skilled): Includes mechanics and repairers, electricians, carpenters, plumbers and kindred workers.
7. **Operatives** (semi-skilled): Includes bricklayers, plaster attendants, welders, truck drivers and kindred workers.
8. **Laborers** (unskilled): Includes laborers performing lifting, digging, mixing, loading and pulling operations and kindred workers.
9. **Service Workers**: Includes janitors, elevator operators, watchmen, chauffeurs, attendants and kindred workers.

KCATA WORK FORCE ANALYSIS/EEO-1 REPORT ATTACHMENT F-2 -- KCATA WORKFORCE ANALYSIS /EEO-1 REPORT

Report all permanent, temporary, or part-time employees including apprentices and on-the-job trainees. Enter the appropriate figures on all lines and in all columns. All blank spaces will be considered zero. This form is also required for subcontractors and major suppliers on a project.

Job Categories	Number of Employees (Report employees in only one category)														
	Race/Ethnicity														
	Hispanic or Latino		Not Hispanic or Latino												Total Col A-N
			Male						Female						
	Male	Female	White	Black or African American	Native Hawaiian or Other Pacific Island-er	Asian	American Indian or Alaska Native	Two or more races	White	Black or African American	Native Hawaiian or Other Pacific Island-er	Asian	American Indian or Alaska Native	Two or more races	
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	
Executive/Senior-Level Officials and Managers															
First/Mid-Level Officials and Managers															
Professionals															
Technicians															
Sales Workers															
Administrative Support Workers															
Craft Workers															
Operatives															
Laborers and Helpers															
Service Workers															
TOTAL															
PREVIOUS YEAR TOTAL															
TYPE OF BUSINESS	<input type="checkbox"/> Manufacturing		<input type="checkbox"/> Wholesale		<input type="checkbox"/> Construction		<input type="checkbox"/> Regular Dealer		<input type="checkbox"/> Selling Agent		<input type="checkbox"/> Service Establishment		<input type="checkbox"/> Other		

Signature of Certifying Official

Company Name

Printed Name and Title

Address/City/State/Zip Code

Date Submitted

Telephone Number/Fax Number

ATTACHMENT G
LETTER OF INTENT TO SUBCONTRACT
(To be completed for Each DBE Subcontractor on Project)

Project Number _____

Project Title _____

_____ ("Prime Contractor") agrees to enter into a contractual agreement with _____ ("DBE Subcontractor"), who will provide the following goods/services in connection with the above-referenced contract:

(Insert a brief narrative describing the goods/services to be provided. Broad categorizations (e.g., "electrical," "plumbing," etc.) or the listing of the NAICS Codes in which DBE Subcontractor is certified are insufficient and may result in this Letter of Intent to Subcontract not being accepted.)

DBE Subcontractor is currently certified with the Missouri Regional Certification Committee (MRCC) to perform in the capacities indicated herein. Prime Contractor agrees to utilize DBE Subcontractor in the capacities indicated herein, and DBE Subcontractor agrees to work on the above-referenced contract in the capacities indicated herein, contingent upon award of the contract to Prime Contractor.

Signature: Prime Contractor

Signature: DBE Subcontractor

Print Name

Print Name

Title

Date

Title

Date

ATTACHMENT H-1
AFFIDAVIT OF PRIMARY PARTICIPANTS
COMPLIANCE WITH SECTION 285.500 RSMO, ET SEQ.
REGARDING EMPLOYEE ELIGIBILITY VERIFICATION

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 20____, before me appeared _____, personally known by me or otherwise proven to be the person whose name is subscribed on this affidavit and who, being duly sworn, stated as follows: I am the _____ (title) of _____ (business entity) and I am duly authorized, directed or empowered to act with full authority on behalf of the business entity in making this affidavit.

I hereby swear or affirm that the business entity does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. §1324a(h)(3).

I hereby additionally swear or affirm that the business entity is enrolled in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986, and that the business entity will participate in said program with respect to any person hired to perform any work in connection with the contracted services.

I have attached hereto documentation sufficient to establish the business entity's enrollment and participation in the required electronic verification of work program. I shall require that the language of this affidavit be included in the award documents for all sub-contracts exceeding \$5,000.00 at all tiers and that all subcontractors at all tiers shall affirm and provide documentation accordingly.

Affiant's signature

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

Notary Public

My Commission expires:

NOTE: An example of acceptable documentation is the E-Verify Memorandum of Understanding (MOU) – a valid, completed copy of the first page identifying the business entity and a valid copy of the signature page completed and signed by the business entity, the Social Security Administration and the Department of Homeland Security.

**ATTACHMENT H-2
AFFIDAVIT OF LOWER-TIER PARTICIPANTS
COMPLIANCE WITH SECTION 285.500 RSMO, ET SEQ.
REGARDING EMPLOYEE ELIGIBILITY VERIFICATION**

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 20____, before me appeared _____, personally known by me or otherwise proven to be the person whose name is subscribed on this affidavit and who, being duly sworn, stated as follows: I am the _____ (title) of _____ (business entity) and I am duly authorized, directed or empowered to act with full authority on behalf of the business entity in making this affidavit.

I hereby swear or affirm that the business entity does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. §1324a(h)(3).

I hereby additionally swear or affirm that the business entity is enrolled in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986, and that the business entity will participate in said program with respect to any person hired to perform any work in connection with the contracted services.

I have attached hereto documentation sufficient to establish the business entity's enrollment and participation in the required electronic verification of work program. I shall require that the language of this affidavit be included in the award documents for all sub-contracts exceeding \$5,000.00 at all tiers and that all subcontractors at all tiers shall affirm and provide documentation accordingly.

Affiant's signature

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

Notary Public

My Commission expires:

NOTE: An example of acceptable documentation is the E-Verify Memorandum of Understanding (MOU) – a valid, completed copy of the first page identifying the business entity and a valid copy of the signature page completed and signed by the business entity, the Social Security Administration and the Department of Homeland Security.