



REQUEST FOR PROPOSAL
Number RFP #19-01

Issued: November 19, 2018

Description:

EXECUTIVE SEARCH FIRM

Procurement Manager

Darryl Grayson (205) 521-0144

Request for Proposals are available at: www.maxtransit.org

Deadline for Questions:

December 6, 2018 10:00 a.m. CST

Responses to Questions Posted by:

December 10, 2018 by 5:00pm

Proposals are Due:

December 21, 2018 10:00 a.m. CST

Proposals delivered to the BJCTA Post Office Box, faxed, emailed, or received after 10:00 a.m. CST, **will be considered non-responsive and will be rejected.**

Only send Proposals by air courier, messenger service, hand-delivery or US Postal Service to:

BJCTA
Attn: Darryl Grayson
Contracts & Procurement Manager
1801 Morris Avenue
Birmingham, AL 35203

Pre-Bid Conference: None

COMPANY NAME: _____ PHONE #: _____

ADDRESS: _____ FAX #: _____

CITY/STATE/ZIP CODE: _____ E-MAIL: _____

DUNS NUMBER _____

Notice is hereby given that the Birmingham-Jefferson County Transit Authority (BJCTA), doing business as "MAX" requires the services of a qualified contractor to provide the services of an expert executive search firm to recruit, screen and recommend highly qualified candidates. This "Best Value" Request for Proposals (RFP) anticipates a single contract award resulting from this solicitation. Proposers must demonstrate a history and track record in the successful placement of executive/officer level personnel within large scale public sector organizations in positions involving substantial managerial, fiscal, technical and political complexities. There is a preference for firms that have comparable executive placement experience with transit or transportation service organizations.

If you have any technical, contractual, or administrative questions please e-mail them to dgrayson@bjcta.org no later than **December 6, 2018 at 10:00 a.m. (CST)**. BJCTA will provide written responses will be available on our website no later than **December 6, 2018 at 10:00 a.m. (CST)** also as specified on the cover page of this document. Responses to questions and addendum(s) will only be made available at www.bjcta.org.

Proposers shall acknowledge receipt of all addenda in writing by completing **Attachment A**. Failure to acknowledge receipt of an addenda(s), to complete the proposal, and to return all requirements below by **December 19, 2018 at 10:00 a.m. (CST)** shall be considered non-responsive and rejected by BJCTA.

Send one original and three copies to:

ATTN: PROCUREMENT DEPT.
Birmingham-Jefferson County Transit Authority (BJCTA)
1801 Morris Avenue 2nd Floor
Birmingham, AL 35203

The lower left corner of the address label should include:
RFP # 19-01 EXECUTIVE SEARCH FIRM

Proposals must be received by U.S. Postal Service or some other shipping services, or hand-delivered to BJCTA before the due date as specified on the cover page of this document. Any proposal received after the deadline shall be considered non-responsive and rejected, and BJCTA reserves the right to reject any or all proposals and to waive any irregularities or informalities in any Proposal or in the Proposal procedure.

Conditional Proposals and any Proposer taking exception to any provision in this RFP will be considered non-responsive. Proposals may be withdrawn by written request to the BJCTA prior to proposal due date. No Proposer may withdraw a Proposal to BJCTA for a period of 120 days after the due date.

This RFP does not commit BJCTA to award a Contract or to pay any cost incurred in reparation of a Proposal. If awarded, the submitted proposal will be included with the contractual agreement between the successful proposer and BJCTA.

The BJCTA reserves the right to cancel the RFP or to issue a subsequent RFP.

Protest

FOR COMPLETE PROTEST PROCEDURES:

<http://www.maxtransit/procurement-protest-procedures/>

Article I. INSTRUCTIONS TO PROPOSERS

1.1 **Equipment.** The Proposer shall at its own expense furnish all labor, supplies, equipment and machinery necessary to fulfill the Scope of Services.

1.2 **Personnel.** The Proposer shall represent that it has, or will secure at its own expense, all personnel required in performing this RFP. Such personnel shall not be employees of or have any contractual relationship with the BJCTA. All the services required hereunder will be performed by or on behalf of the Proposer. All personnel engaged in performing this RFP shall be fully qualified and shall be authorized, if applicable, under state and local law to perform such services. All personnel should be hired in compliance with Birmingham and surrounding municipalities' law on illegal immigration, Birmingham and surrounding municipalities Act 2011-535, as amended.

1.3 **Tax Exempt**

The Proposer recognizes that the BJCTA is exempt from the payment of Federal, State and local taxes, and that such taxes are included in the RFP price. The BJCTA will furnish a Proposer with the necessary tax-exempt certificates.

1.4 **Familiarity**

The submission of an RFP shall constitute an acknowledgement that the Proposer has thoroughly examined and is familiar with the RFP in every detail, agrees with all the conditions.

1.5 **Inspection**

All supplies, equipment, and machinery furnished in performance of the Scope of Services shall be subject to inspection at any time by the BJCTA.

1.6 **Indemnification**

The Proposer shall expressly agree and covenant that it will defend, hold and save harmless, and indemnify the officers, directors, servants, agents, and employees of the BJCTA from liability of any nature or kind in connection with the work to be performed under the Contract, whether arising out of any act or omission of the Proposer or any employee, agent, or independent contractor of the Contractor.

1.7 **Insurance**

The Proposer shall maintain insurance during the performance of the Contract from one or more insurance companies licensed in the State of Birmingham and surrounding municipalities to provide the following forms of insurance, said insurance companies to be reasonably satisfactory to the BJCTA. Upon the execution of a Contract, the Proposer shall furnish the BJCTA with certificates of insurance showing that the BJCTA has been listed as an additional insured. All insurance is to remain in full force and effect until all work under the Contract has been satisfactorily completed and accepted by the BJCTA.

- a. Workers' Compensation
 - Employers' Liability \$500,000
 - All States Endorsement Statutory
 - Voluntary Compensation Statutory
- b. Public Liability and Property Damage
 - 1. \$100,000 for bodily injuries to or death of one person in any one occurrence.
 - 2. \$500,000 for bodily injuries to or death of two or more persons in any one occurrence.

3. \$100,000 for damage to or destruction of property in any one occurrence.

c. Errors and Omissions Insurance

1.8 **Documentation of Project Costs**

All costs charged to the project, including any approved services contributed by the BJCTA or others shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and propriety of the charges.

1.9 **Audit and Inspection**

The Proposer shall permit the Secretary of Transportation and the Comptroller General of the United States, or any of their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records with regard to the Contract, and to audit the books, records, and accounts pertaining to such Contract.

1.10 **Immigration**

The Proposer agrees to comply with Birmingham and surrounding municipalities Act 2011-535, as amended, the Beason-Hammon Birmingham and surrounding municipalities Taxpayer and Citizen Protection Act.

1.11 **Pre-Award Information**

Before making a determination of responsibility, the BJCTA Procurement Manager shall possess or obtain information sufficient to satisfy the applicable standards and requirements for responsibility set forth in this section.

a) The BJCTA Procurement Manager shall obtain information regarding the responsibility of a prospective contractor "Proposer" whose offer is in the competitive range. The Proposer shall promptly supply information requested by the Contracting Officer regarding its responsibility. If the Proposer fails to supply the information requested, BJCTA shall make a determination of non-responsiveness based upon the lack of available information.

b) The BJCTA Procurement Manager shall use the following sources of information, listed in priority order to support responsibility determinations:

(1) General Services Administration publication titled "System for Award Management" ("SAM"), formerly the "Excluded Parties List System." The results of the search will be printed and placed in the BJCTA contract file;

(2) Written records and experience data, including verifiable knowledge of Authority personnel, and other sources, i.e.: publications, suppliers, subcontractors, and customers of the prospective contractor, financial institutions, government agencies, and business and trade associations. Contract Administrators and other Authority personnel who become aware of circumstances casting doubt on a contractor's ability to perform a contract successfully shall promptly inform the Procurement manager and furnish the relevant information in writing; and

(3) Information supplied by the Proposer, including proposal information, questionnaire replies, financial data, information on production equipment and personnel information.

1.12 **Proposal Format Instructions/Requirements**

The Proposer shall submit their proposal as follows:

a) Proposal Format

The original of Volumes I and 2 shall be unbound, all copies of Volumes 1 and 2, as well as Volume 3 will be separately bound and all copies shall have the RFP number, the Proposer's identity, volume number, and volume title printed on the cover page. Please also provide all the information on a USB drive. Volumes shall be submitted in the following order:

(1) Volume I – Cost/Price - One (1) original and One (1) copy of the cost/price proposal

(2) Volume II – Technical - One (1) original and One (1) copy of the technical proposal (Shall not include cost/price information)

(3) Volume III – Contractual - One (1) original and One (1) copy of the completed signed solicitation documents to include References, Certifications, Pre-Award Data, Certificate of Insurance and Amendments, if any.

b) Cost/Price Proposal. All information relating to cost or pricing data must be included in this volume. Under no circumstances shall cost or pricing data be included elsewhere in the Proposer's proposal.

c) Technical Proposal. The technical proposal shall enable BJCTA evaluating personnel to make a thorough evaluation and arrive at a sound determination as to whether or not the proposal will meet the specifications in accordance with the Authority's requirements. Technical proposals shall be specific, detailed, and complete and demonstrate that the Proposer has a thorough knowledge and understanding of the requirements. Proposer's shall avoid statements which paraphrase the specifications or attest that "standard procedures will be employed," are inadequate to demonstrate how it is proposed to comply with the requirements of the specifications, and this clause.

d) Contractual. Contractual documents shall contain a completed signed Solicitation, Offer and Award Form and include References, Certifications, Pre-Award Data, Certificate of Insurance and any amendments.

1.13 **Restriction on Disclosure and Use of Data**

The Authority shall provide all reasonable precautions to insure that proprietary, technical and pricing information remains within the review process. Proposers shall attach to any proprietary data submitted with the solicitation the following legend:

a) "This data furnished pursuant to this RFP shall not be disclosed outside the Authority, be duplicated, or used in whole or in part, for any purpose other than to evaluate the offer; provided that, if a contract is awarded on the basis of that offer, the Authority shall have the right to duplicate, use, and disclose this data, in any manner and for any purpose whatsoever.

b) This information does not limit the Authority's right to use information contained in this data if it is or has been obtained by the Authority from another independent legitimate source.

c) Except for the foregoing limitation, the Authority may duplicate, use, and disclose in any manner and for any purpose whatsoever and have others so do, all data furnished in response to this solicitation."

1.14 **Employment Restriction Warranty**

a) The Proposer warrants that it will not offer employment to any officer or employee of the Birmingham-Jefferson County Transit Authority (Authority) who has been involved, directly or indirectly, in any matter of financial interest to the Proposer until at least one (1) year after the officer or employee has ceased involvement in or responsibility for the matter.

b) The Proposer further warrants that it will not employ any Authority officer or employee who has had direct responsibility for any matter of financial interest to the Proposer within the year prior to the retirement or termination of the officer or employee until at least one (1) full year after such officer or employee has left the employment of the Authority.

c) The one (1) year requirement described in this provision may be waived at the discretion of the Authority if the employee or former employee has been subject to a Reduction in Force; in such case, BJCTA will provide the Proposer with a letter to that effect.

d) If a waiver is granted, or if a former employee of the Authority is eventually hired, the Proposer shall be responsible for ensuring that the former employee is not directly involved in negotiating or otherwise dealing with Authority on any particular matter over which such employee had responsibility during his or her period of employment at Authority.

e) Should the Proposer fail to comply with paragraphs (a), (b) or (d) above, BJCTA shall have the right to withhold payment in an amount not to exceed 2% of the total Contract amount as liquidated damages to the Authority, such withholding to be in addition to any other withholding under the terms of the Contract. Further, the BJCTA Procurement manager shall consider such violation in evaluating the Proposer's responsibility in connection with award of any future Authority Contract.

1.15 **Award**

Authority will make a single award resulting from this solicitation.

1.16 **Basis for Best Value Award**

a) Award Will Be Made to the Proposer

(1) Whose offer, based on integrated assessment of the evaluation criteria, is found to be the most advantageous to the Authority after a selection committee completes the technical review and price ("best value"); and

(2) The Authority deems responsive and responsible in accordance with the BJCTA Procurement Procedures Manual.

b) Best Value Determination

(1) The technical merit of the proposal is significantly more important than the price, and the price must be fair and reasonable.

(2) Price becomes more important as proposals become more technically equivalent.

c) Proposers are advised that award may be made without discussion or any contact with the Proposers concerning the offers received. Therefore, offers should be submitted initially on the most favorable terms that the Proposer can submit to the Authority.

1.17 **Proposal Evaluation Criteria**

Technical proposals will be evaluated based on the following criteria in descending order of importance:

a) Experience Record

BJCTA requires that the Proposer possess recruiting expertise and a proven track record in filling executive-level positions at all senior levels of urbanized transit organizations, and organizations involved in complex and dynamic public service delivery entities or large private corporations.

1. Number of executive-level placements achieved in the transit and/or transportation sectors, or public service delivery entity, or private corporations over the past thirty-six (36) months, providing

- Position title
- Position level
- Marketing/Sourcing Profile per position
- Job Description demonstrating similar scope and complexity of role
- Organization (name, size, industry)
- Type of Search (Retained/Contingent)
- Interviewed Candidate Pool (number & diversity)
- Date of award and date of placement

2. Number and percent of total placements and annual earnings attributable to placements at executive levels

3. Number and percent of placements in transit and/or transportation sectors or public service delivery entities vs private corporations

4. Number of required replacements in the past thirty-six (36) months

- Position title
- Position level
- Organization
- Reason for Replacement

5. Description of searches conducted on behalf of Executive Boards

b) Key Personnel

Proposing Agency should identify a project /account manager who will be responsible for the overall administration of the Agreement and for ensuring that the contract services will be implemented as required by BJCTA.

Proposer shall submit a resume for the proposed account manager. Resume shall be complete, concise and accurate, featuring all relevant job experience over that past 10 years in recruiting executive level positions in areas such as transportation and/or transit industries and/or public service delivery entity or private corporations and applicable educations and certifications.

c) Sourcing Methodology

Proposer shall identify its methodology for the performance of the task order. The work plan should include:

1. A detailed description of the methodology for filling the positions:
Executive Director (see attached job descriptions).

2. a timeline clearly indicating how much time the Proposer will need to execute the search methodology once the target date is set by the BJCTA Board of directors..
3. Description of any proprietary tools or substantial procedural innovations used by the Proposer on similar projects that may be used for the BJCTA search

d) Organizational Profile

A concise description of the Proposer including:

1. organizational structure, subsidiary companies, identification of principals or parent companies
2. length of time in business
3. office location(s) and
4. size and overall number of personnel by discipline

If the Proposer is a joint venture, the Proposer shall furnish this information for each entity forming the joint venture and clearly indicate the reason for the joint venture as it directly applies to the project

1.18 **Ratings for Proposal Evaluation Criteria**

Each criterion will be rated using the Adjectival scoring method as follows:

Definition of Adjective Rankings:

Exceptional - Exceeds specified performance or capability in a beneficial way to BJCTA, and has no weakness.

Acceptable - Meets evaluation standards, weakness is correctable.

Marginal - Fails to meet evaluation standard; however, any significant deficiencies are correctable. Lacks essential information to support a proposal.

Unacceptable - Fails to meet an acceptable evaluation standard and the deficiency is uncorrectable. Proposal would have to undergo a major revision to become acceptable. Demonstrated lack of understanding of BJCTA's requirements or omissions of major areas.

A rating of "Acceptable" is required to be eligible for award consideration. Proposer is cautioned to be aware of this standard when preparing your Proposal.

1.19 **Price Proposal Evaluation**

The Authority will evaluate price proposals for reasonableness, completeness, and realism as appropriate. Each Proposer's cost will be evaluated in terms of the following which are equal in importance:

(1) Submittal of proposed prices for both the Base and the Options, if any, failure to do so will necessitate rejection of the proposal;

(2) Any offer which is materially unbalanced may be rejected. An unbalanced offer is one which is based on prices that are significantly overstated for some items and understated for other items;

(3) The Authority will compare the price proposals to the Authority estimate and otherwise determine reasonableness by performing a price analysis if adequate competition exists. A cost analysis will be performed if adequate price competition

does not exist, to ascertain whether or not the proposed price is fair and reasonable; and

(4) In accordance with the Federal Acquisition Regulation 15.804-3, the Proposer shall provide certified cost or pricing data as requested by the BJCTA Procurement manager.

1.20 **Definitions for Technical Evaluation**

Clarifications:	Communications with a Proposer for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal. Unlike discussions, clarifications do not give the Proposer an opportunity to revise or modify its proposal, except to the extent that correction of apparent clerical mistake results in revisions.
Discussions:	Oral or written communications including negotiations between the Authority and a Proposer (other than clarifications) that; involves information essential for determining the acceptability of the proposal or to cure identified defects in the proposal.
Deficiencies:	Defects in the proposal which preclude acceptance. Involves any part of the Proposer's proposal which would not satisfy the Authority's minimum requirements established in the solicitation. Included failures to meet specifications, submit information, or questionable technical or management approaches. Items disclosed during discussions, evaluated in two categories: material-basis for rejection because further discussions would be meaningless; curable –may be corrected by clarifications or discussions and brought into the competitive range.
Weakness:	Includes ambiguities, lack of complete descriptions, errors in interpretation, inadequate information, all of which are considered curable in discussions. An excessive number of clarifications may in itself constitute a weakness.
Strengths:	Elements of the proposal that exceed the minimum requirements of the solicitation and provide an identified benefit to the Authority.

1.21 **Type of Contract**

The Authority will award a Firm Fixed Price Contract for a retained fee based on first year annual salary. The successful new hire candidate must accept BJCTA's offer and start employment before the retained fee is earned. Expenses must be pre-approved and submitted to the BJCTA Procurement/Contracting Officer.

1.22 **Language and Currency**

As regards this solicitation and the resultant contract:

a) All communications (oral, written, electronic and otherwise including but, not limited to software coding) shall be in the English language.

b) All pricing shall be in United States dollars.

1.23 **Federal/State/Local Sales Taxes**

a) The Authority is exempt under this solicitation from all Federal, State of Birmingham and surrounding municipalities, City of Birmingham, and local taxation.

b) This provision supersedes any language pertaining to payment of taxes that may appear elsewhere in this solicitation.

c) The Authority's tax exempt number: EX21506

1.24 **Third Party Contracting Guidance**

This document is intended to be, and shall be interpreted to be, consistent with FTA Circular 4220.1F, Third Party Contracting Guidance.

1.25 **Best Practices Procurement Manual**

This document is intended to be, and shall be interpreted to be, consistent with the Best Practices Procurement Manual published by the FTA.

EXECUTIVE DIRECTOR JOB SUMMARY

The Executive Director is expected to serve as the “face of public transit in Birmingham,” as well as key spokesperson and partnership builder for the Association; building coalitions among natural allies, transit users and others. He or she will provide the leadership and focus required to effectively mobilize stakeholders. The executive director is also responsible for the administrative functions of the association. The Executive Director will manage the day-to-day operations, formulate and recommend policy, oversee all financial matters of the Association, provide information and materials necessary to effectively present the Association’s policies and priorities at all levels of government and within the private sector, and provide leadership in positioning transit at the local, regional, and state levels.

The Executive Director should demonstrate broad-based experience in management and coalition building. It is desirable that the Executive Director has an understanding of the Birmingham and surrounding municipalities and Federal legislative process. Because of the requirements relating to federal funding of a substantial portion of the cost of Association management, the Executive Director will not be expected, or allowed, to engage in lobbying activity as defined by the Federal Transit Administration (FTA); however, educating others, including elected officials, in the plusses of public transportation will be a key element of the job. Experience with public transportation issues is preferred, but not required.

The Executive Director position is considered full-time and will be required to enter into an independent contractor agreement with the Association. A copy of the contract the successful proposer will be required to execute is included. While BJCTA does not require this contract be the Executive Director’s sole client; we do require that this individual be publically recognized as the Executive Director of BJCTA.

FOCUS OF JOB AND SPECIFIC RESPONSIBILITIES:

The primary focus of the Executive Director’s job is to be the face of public transit in Birmingham and surrounding municipalities and the external face of BJCTA, as the organization representing public transit throughout the state. An additional responsibility is to oversee or provide the support services necessary to assure that the Association presents a professional image of public transit in Birmingham and surrounding municipalities and is effectively managed.

Specific responsibilities of the Executive Director include, but are not limited to:

1. Working in close collaboration with the Board, to develop a coalition building plan that will serve as a blueprint for achieving the goal of building awareness of the value of transit to all Birmingham and surrounding municipalities. The achievement of this goal by BJCTA will

provide greater value to members, and ultimately build membership and engagement. The plan should address these key areas:

- a. Building recognition of the value of transit to every Birmingham and surrounding municipality citizen.
 - b. Educating the key elements of Birmingham government in the value of public transit and its importance to the future of the state.
 - c. Building the BJCTA Brand
 - d. Outreach
 - e. Education
 - f. Strategic planning
2. Develop strategies for communicating, including social media.
3. Establishing and maintaining a collegial and cooperative working relationship with elected officials, advocates and other key stakeholders at the state and federal level, to ensure concise, coordinated and professional conveyance of the Association's key message and direction.
4. Administration of the Association's business plan and practices and administrative functions. Including such matters as:
 - a. Development and adherence to a financial plan and annual budget.
 - b. Accurate accounting and regular reporting of all revenues and expenditures.
 - c. Organization and direction of the Association's Annual Meeting, regular quarterly and such special meetings as the Board may schedule. The Executive Director will attend all such meetings, unless excused by the Board.
 - d. Assistance with organization and logistics for legislative events, and Transportation Day at the State Capitol, when such a day is scheduled,
 - e. When appropriate and approved by the Board, attendance at and support for American Public Transportation Association (APTA) Conferences and other events as directed or approved by the Board
 - f. Organization and record keeping of all Board actions.
 - g. Development and implementation of Association policies and procedures.
 - h. Providing analysis and evaluation of issues relevant to transit at the local, state, and national levels.
 - i. Maintenance of association documentation, including taxes, corporate documentation, any required lobbying certifications, and other legal documents.
 - j. Recruitment and retention of members.
 - k. Providing assistance to the Board Chair and other Board officers and members in carrying out the duties and responsibilities of their offices.
 - l. The Executive Director will be required to attend four regularly scheduled quarterly meetings of the Board of Directors.
 - m. In the case of any Board Meeting the Executive Director is responsible for all Board meeting logistics, with an eye toward running an efficient meeting with value for members.

The Executive Director will employ or contract with all staff necessary to carry out the duties and responsibilities of the Executive Director's job as set out in this RFP.

Article II. SCOPE OF SERVICES

REPRESENTATIONS AND CERTIFICATIONS

(NON-FEDERALLY FUNDED SUPPLY/SERVICE/CONSTRUCTION CONTRACTS)

REPRESENTATIONS

Instructions: Check or complete all applicable boxes or blocks on this form and submit it with your offer.

1. TYPE OF BUSINESS ORGANIZATION By submission of this offer, the Proposer represents that it operates as ☐ an individual, ☐ a partnership, ☐ a limited liability company, ☐ a joint venture, ☐ a nonprofit organization, or ☐ a corporation, incorporated under the laws of the State of _____.

2. AFFILIATION AND IDENTIFYING DATA Each Proposer shall complete (a), (b) if applicable, and (c) below, representing that:

(a) It ☐ is, ☐ is not, owned or controlled by a parent company. For this purpose, a parent company is defined as one which either owns or controls the activities and basic business policies of the Proposer. To own another company means the parent company must own at least a majority, i.e., more than 50 percent, of the voting rights in that company. To control another company, such ownership is not required; if another company is able to formulate, determine or veto basic business policy decisions of the Proposer, such other company is considered the parent of the Proposer. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements or otherwise.

(b) If the Proposer is owned or controlled by a parent company, it shall insert in the space below the name and main office address of the parent company:

Company Name of Parent

(including ZIP Code) Main Office Address

(c) If the Proposer has no parent company, it shall provide in the applicable space below its own Employer's Identification Number (E.I.N.), (i.e., number used on Federal Tax Returns or, if it has a parent company, the E.I.N. of its parent company). Proposer E.I.N.: _____ or, Parent Company's E.I.N.: _____

(d) If a Data Universal Numbering Systems (DUNS), number has not been established for the address entered on the Solicitation

3. COVENANT AGAINST GRATUITIES By submission of this offer, the Proposer certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:

Neither it nor any of its employees, representatives or agents have offered or given gratuities (in the form of entertainment, gifts or otherwise) to any director, officer or

employee of the Authority with the view toward securing favorable treatment in the awarding, amending, or the making of any determination with respect to the performing of the contract.

4. CONTINGENT FEE By submission of this offer, the Proposer certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement: (a) It [] has, [] has not, employed or retained any company or persons (other than a full-time, bona fide employee working solely for the Proposer) to solicit or secure this contract, and (b) It [] has, [] has not, paid or agreed to pay any company or person (other than a full-time, bona fide employee working solely for the Proposer) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract.

5. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

(a) By submission of this offer, the Proposer certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Proposer or with any other competitor, as to any matter relating to such prices;

(2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the Proposer and will not be knowingly disclosed by the Proposer prior to award (in the case of a negotiated procurement), directly or indirectly, to any other Proposer or to any competitor; and

(3) No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

(b) Each person signing this offer certifies that:

(1) He or she is the person in the **Proposer's** organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or (2) He or she is not the person in the **Proposer's** organization responsible within that organization for the decision as to the prices being offered herein, but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated; and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify.

6. NONDISCRIMINATION ASSURANCE

By submission of this offer, the **Proposer** certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, in connection with this procurement that it will not discriminate on the basis of race, color, creed, national origin, sex, age in the performance of this contract. The **Proposer** is required to insert the substance of this clause in all subcontracts and purchase orders. Failure by the Proposer to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Authority deems appropriate. The **Proposer** further agrees by submitting this offer that it will include this certification, without modification, in all subcontracts and purchase orders.

7. DISCLOSURES OF INTERESTS OF BJCTA BOARD MEMBERS

For purposes of this disclosure, terms in bold are defined by the Code of Ethics for Members of the BJCTA Board of Directors a copy of which is available at www.BJCTA.com. Financial interest includes ownership interests and prospective and actual income. Firm includes parents, subsidiaries and affiliates.

By submission of this offer, the Proposer certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that to the best of your knowledge, information and belief in connection with this procurement:

(a) ☐ No BJCTA Board Member, Household Member or Business Associate has a financial interest in this firm, in a Financial Transaction with the Authority to which this firm is a party or prospective party, or in an Actual or Prospective Business Relationship with the Authority to which this firm is a party.

(b) ☐ The following BJCTA Board Member(s), Household Member(s) or Business Associate(s) has a financial interest in this firm, in a Financial Transaction with the Authority to which this firm is a party or prospective party, or in an Actual or Prospective Business Relationship with the Authority to which this firm is a party,

Include in Nature of Interest below a description of the financial interest and

(1) for ownership interests, the value of the interest, the name and address of the firm in which the interest is held, and the total equity or equivalent interest of the firm; and

(2) for income, the amount of all income received by the Board Member, Household Member or Business Associate in the current and preceding fiscal year for services provided, and the name and address of the firm from which the income was received.

Name of Board Member
Household Member or
Business Associate

Nature of Interest

_____	_____
_____	_____
_____	_____

(c) The certification required by subparagraphs (a) and (b) above shall be included in all subcontracts. The prime contractor shall furnish copies of certifications to the contracting officer and retain a copy for inspection upon the contracting officer's request. The undersigned certifies to the accuracy of all information. +

SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS				
Agency Name: _____ ☐ Individual ☐ Partnership ☐ Corporation Address City, State Zip Code: _____ Print Name of Authorized Representative: _____ Sign Name <table style="width: 100%;"><tr><td style="width: 50%; text-align: center;">_____</td><td style="width: 50%; text-align: center;">_____</td></tr><tr><td style="text-align: center;">Title</td><td style="text-align: center;">Date</td></tr></table>	_____	_____	Title	Date
_____	_____			
Title	Date			

PRE-AWARD EVALUATION DATA

- 2.1 Names of Officers or Partners:
- 2.2 How long has your firm been in business under its present name?
- 2.3 Attach as SCHEDULE ONE a list of similar current contracts which demonstrates your technical proficiency, each with contract amount, name of contracting party, character or type of work and percentage of completion.
- 2.4 Attach as SCHEDULE TWO a list of similar contracts, each with contract amount, name of contracting party, and character or type of work for similar contracts completed in the last two years.
- 2.5 In the past three years, has the agency ever failed to complete any contracts Proposed by your agency? If the answer is YES, attach as SCHEDULE THREE that details each occurrence.
- 2.6 Attach as SCHEDULE FIVE financial statements and letters from banks regarding credit as required by the Pre-Award Information article.
- 2.7 What percentage of work (contract amount) would you perform with your own personnel? %.
- 2.8 Attach as SCHEDULE SIX a list of all principal subcontractors and the percentage and character of work (contract amount) which each will perform. Principal items of work shall include, but not be limited to, those items listed in the Pre-Award Information article of the Request for Proposal.
- 2.9 If the Contractor or subcontractor is a joint venture, submit PRE-AWARD EVALUATION DATA forms for each member of the joint venture.

The above information is confidential and will not be divulged to any unauthorized personnel.

COMPANY:

SIGNATURE:

NAME:

TITLE:

DATE:

PHONE:

EMAIL:

DUNS#:

ATTACHMENT A

Acknowledgement of Addenda

The undersigned acknowledges receipt of the following addenda to the Request for Proposal Number RFP #19-01

Addendum No. _____ Dated _____

Addendum No. _____ Dated _____

Addendum No. _____ Dated _____

Addendum No. _____ Dated _____

Company

Authorized Signature

Printed Name of Signer

Title of Signer

Date

ATTACHMENT B

DBE Letter of Intent

The BJCTA has an overall DBE goal of 10.5 percent. Our solicitations do not have DBE goals and we do not give bonuses or points; however, we will continue to use and support race-neutral means of facilitating DBE participation to meet our overall goal.

The Proposer _____
Name of Prime Contractor

certifies that, on _____, _____, 20____, an authorized representative contacted the following Birmingham and surrounding municipalities Department of Transportation (ALDOT) certified Disadvantaged Business Enterprise ("DBE") to obtain a Proposal for the following work items. The disadvantaged business status of the undersigned is confirmed.

The undersigned is prepared to perform the following work in connection with the above project (*specify in detail the particular work items or parts thereof to be performed*):

At the following price: \$_____ or percentage _____

The certified DBE intends to perform work in connection with the above project as an ALDOT-certified DBE in the following capacity (check one):

- | | |
|--------------------------------------|--|
| ☐ Individual | ☐ Corporation |
| ☐ Partnership | ☐ Joint Venture |

The certified DBE will enter into a formal agreement for the above work, conditioned upon execution of an agreement with the Birmingham-Jefferson County Transit Authority (BJCTA).

ALDOT certified DBE Agency

Authorized Signature

Printed Name of Signer

Title of Signer

Date

OR

- [] The foregoing work will not be sublet to a non-certified Disadvantaged Business Enterprise at any level.

ATTACHMENT C

Conflict of Interest Statement

Proposer certifies that no BJCTA employee, or family members will receive a benefit from these payments, except as disclosed below BJCTA. Failure to disclose this information may result in the elimination of your Proposal from consideration.

Proposers shall provide a list of all entities/individual(s) with which it has relationships that create, or would appear to create, a conflict of interest with the work expressed in this RFP. The list should indicate the name of the entity/individual, the relationship to the Proposer, and a discussion of the conflict.

Prior to awarding an agreement, this RFP will be decided upon by the BJCTA Board of Directors. Also provide a description of relationships with any board member that would create, or would appear to create, a conflict of interest.

The undersigned Proposer discloses the following actual or potential, direct or indirect conflicts of interest:

Company

Authorized Signature

Printed Name of Signer

Title of Signer

Date

PROPOSER REGISTRATION FORM

RFP Number: _____

RFP Description: _____

Company Name/Vendor: _____

Address: _____

City / State / ZIP: _____

Contact Person: _____

Title: _____

Office Number: _____

Fax Number: _____

Cell Number: _____

Email Address: _____

Website: _____

DUNS: _____

Proposals WILL NOT be honored without a valid DUNS number registered with www.SAM.gov

Send to:

Darryl Grayson, Manager Contracts & Procurement
Birmingham-Jefferson County Transit Authority
1801 Morris Avenue 2nd floor
Birmingham, AL 35203
Direct: (205) 521-0144
Email: dgrayson@bjcta.org





**FEDERAL CLAUSES
&
CERTIFICATIONS**

**Professional Service
Purchases**

**Birmingham-Jefferson County Transit Authority
1801 Morris Avenue 2nd FL
Birmingham, Alabama 35203
(205)521-0101**

Fly America Requirements

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

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

Energy Conservation

All Contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water

All Contracts and Subcontracts over \$100,000

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

Lobbying

Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$100,000

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Access to Records and Reports

Applicability – As shown below. These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO

contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

2 Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3 Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

6 Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes

All Contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

Clean Air

1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

2) Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

No Government Obligation to Third Parties

Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination

Applicability – All Contracts over \$100,000 except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$100,000

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a

strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from

contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Government Wide Debarment and Suspension (Non Procurement)

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180 subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200 which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180 including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689 "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200 and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

Contracts Involving Federal Privacy Act Requirements

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Civil Rights Requirements

Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the underlying contract

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute):

(1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, or (g) Age, and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332 as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3 and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246 "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".

(3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60 and (b) Executive Order No. 11246 "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26 and (c)

Federal transit law, specifically 49U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49C.F.R. part 26 under MAP-21 and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49U.S.C. § 5332, as stated in section a,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities:

Passenger Vessels," 49C.F.R. part 39 (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36C.F.R. part 1192 and 49C.F.R. part 38 (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28C.F.R. part 35 (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28C.F.R. part 36 (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29C.F.R. part 1630 (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49C.F.R. part 609 and (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972 as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd - 290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166 "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

Breaches and Dispute Resolution

All contracts over \$100,000

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient 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.

Patent and Rights in Data

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK (\$3,000 or less, except for construction contracts over \$2,000).

Patent Rights

A. General. The Recipient agrees that

(1) Depending on the nature of the Project, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable: (a) Invention, (b) Improvement, or (c) Discovery, (2) The Federal Government's rights arise when the patent or patentable information is: (a) Conceived under the Project, or (b) Reduced to practice under the Project, and (3) When a patent is issued or patented information becomes available as described in Patent Rights section A(2), the Recipient agrees to: (a) Notify FTA immediately, and (b) Provide a detailed report satisfactory to FTA,

B. Federal Rights. The Recipient agrees that

(1) Its rights and responsibilities, and the rights and responsibilities of each Third Party Participant, in that federally funded invention, improvement, or discovery will be determined as provided by applicable Federal laws, regulations, and guidance, including any waiver thereof, and (2) Unless the Federal Government determines otherwise in writing, irrespective of the Recipient's status or the status of any Third Party Participant as a large business, a small business, a State government, a State instrumentality, a local government, an Indian tribe, a nonprofit organization, an institution of higher education, or an individual, the Recipient agrees to transmit the Federal Government's patent rights to FTA as specified in: (a) 35 U.S.C. § 200 et seq., and (b) U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. part 401, and

C. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19

(1) License fees and royalties for patents, patent applications, and inventions derived from the Project are program income, and (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing.

Rights in Data and Copyrights

A. Definition of "Subject Data." means recorded information: (1) Copyright. Whether or not copyrighted, and (2) Delivery. That is delivered or specified to be delivered under the Underlying Agreement,

B. Examples of "Subject Data." Examples of "subject data": (1) Include, but are not limited to:

(a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but (2) Do not include: (a) Financial reports, (b) Cost analyses, or (c) Other similar information used for Project administration,

C. General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Recipient's Project supported by the Underlying Agreement (1) Prohibitions. The Recipient may not: (a) Publish or reproduce any subject data in whole or in part, or in any manner or form, or (b) Permit others to do so, but (2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to: (a) Publications or reproductions for the Recipient's own internal use, (b) An institution of higher learning, (c) The portion of subject data that the Federal Government has previously released or approved for release to the public, or (d) The portion of data that has the Federal Government's prior written consent for release,

D. Federal Rights in Data and Copyrights. The Recipient agrees that (1) License Rights. The Recipient must provide a license to its "subject data" to the Federal Government, which license is: (a) Royalty-free, (b) Non-exclusive, and (c) Irrevocable, (2) Uses. The Federal Government's license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data, and

E. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development, demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its Third Party Participants, therefore, the Recipient agrees that (1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet, (2) Other Reports. It must provide other reports pertaining to the Project that FTA may request, (3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its Third Party Participants at any tier of the Project, either FTA's copyright license to the subject data or a copy of the subject data, except as the Federal Government determines otherwise in writing, (4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA, (5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes "subject data" and must be delivered as the Federal Government may direct, but (6) Exception. Rights in Data and Copyrights Section E does not apply to an adaptation of automatic data processing equipment or program that is both: (a) For the Recipient's use, and (b) Acquired with FTA capital program funding,

F. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19 (1) License fees and royalties for copyrighted material or trademarks derived from Project are program income, and (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing,

G. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that (1) Violation by Recipient. (a) If it willfully or intentionally violates any: 1 Proprietary rights, 2 Copyrights, or 3 Right of privacy, and (b) Its violation occurs from any of the following uses of Project data: 1 Publication, 2 Translation, 3 Reproduction, 4 Delivery, 5 Use, or 6 Disposition, then (c) It will indemnify, save, and hold harmless against any liability, including costs and expenses of: 1 The Federal Government's officers acting within the scope of their official duties,

2 The Federal Government's employees acting within the scope of their official duties, and 3 Federal Government's agents acting within the scope of their official duties, but (2) Exceptions. The Recipient will not be required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights section G(1) if: (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents, or (b) State law. If indemnification is prohibited or limited by applicable State law,

H. Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights in data either: (1) Implies a license to the Federal Government under any patent, or (2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent,

I. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that in certain circumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless: (1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project, and (2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential," and

J. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by: (1) The Freedom of Information Act, 5 U.S.C. § 552, (2) Another applicable Federal law requiring access to Project records, (3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," specifically 49 C.F.R. § 19.36(d), or (4) Other applicable Federal regulations and guidance pertaining to access to Project records.

Disadvantaged Business Enterprise

Contracts over \$3,000 awarded on the basis of a bid or proposal offering to use DBEs

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

b. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53

d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.

f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of

the recipient.

Prompt payment

Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

Incorporation of Federal Transit Administration (FTA) Terms

All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 422Q.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

Other Federal Requirements

The following requirements are not federal clauses.

Full and Open Competition

In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

Conformance with ITS National Architecture

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

Notification of Federal Participation

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

Interest of Members or Delegates to Congress

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

Ineligible Contractors and Subcontractors

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

Other Contract Requirements

To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those provisions attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

Compliance with Federal Regulations

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Real Property

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49CFR 18.31-18.34, 49CFR 19.30-19.37, 49CFR Part 24, 49CFR 53.26 as amended by MAP-21, 49CFR part 18 or 19, 49USC 5334, applicable FTA Circular 501Q and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Access to Services for Persons with Limited English Proficiency

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

Environmental Justice

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1)

Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

Environmental Protections

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969, the Clean Air Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, as well as environmental provisions with Title 23 U.S.C., and 49 U.S.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

Geographic Information and Related Spatial Data

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only

Non Federal entities that expend \$500,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, Audits of States, Local Governments, and Non Profit Organizations. Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than \$500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in '3052.215(a), but records must be available for review or audit by appropriate officials of the Federal and State agencies.

Catalog of Federal Domestic Assistance (CFDA) Identification Number

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

CFDA number for the Federal Transportation Administration

A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

Federal Certifications

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, _____, hereby certify
(Name and title of official)

On behalf of _____ that:
(Name of Bidder/Company Name)

- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name _____

Type or print name _____

Signature of authorized representative _____ Date ____/____/____

Signature of notary and SEAL _____

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

- (1) It will comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR part 180,
- (2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
 - a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
 - (1) Debarred,
 - (2) Suspended,
 - (3) Proposed for debarment,
 - (4) Declared ineligible,
 - (5) Voluntarily excluded, or
 - (6) Disqualified,
 - b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
 - (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
 - (2) Violation of any Federal or State antitrust statute, or
 - (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,
 - c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
 - d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
 - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a - 2.d above, it will promptly provide that information to FTA,

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

- f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
- (1) Equals or exceeds \$25,000,
 - (2) Is for audit services, or
 - (3) Requires the consent of a Federal official, and
- g. It will require that each covered lower tier contractor and subcontractor:
- (1) Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
 - (2) Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
 - a. Debarred from participation in its federally funded Project,
 - b. Suspended from participation in its federally funded Project,
 - c. Proposed for debarment from participation in its federally funded Project,
 - d. Declared ineligible to participate in its federally funded Project,
 - e. Voluntarily excluded from participation in its federally funded Project, or
 - f. Disqualified from participation in its federally funded Project, and

3. It will provide a written explanation as indicated on a page attached in FTA's TEAM-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor _____

Signature of Authorized Official _____ Date ____/____/____

Name and Title of Contractor's Authorized Official _____