Request for Proposals
Cover Page

Name of Business:
___________________________________________________________________________________

Type of Business: □ Sole Proprietor □ Partnership □ Joint Venture □ Corporation (Incorporated
under the State of ______)

Business Address:
___________________________________________________________________________________

Contact Name: ________________________________________________________________

Title: __________________________

Email: ____________________________________________________________

Phone #: _______________________

SBE/DBE #: __________

☐ Receipt of _________ (insert #) Addenda
  The Proposer warrants and represents that it has received all Addenda issued by
  the District in connection with this solicitation.

☐ Insurance
  The Proposer agrees to comply with the insurance requirements provided in
  Section 16 of this RFP and Section 10 of the Sample Contract, (Attachment 5,
  at Page 41).

☐ Non-Collusion
The Proposer offers this proposal independently, without consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to the Request for Proposal with any other firm or with any other competitor.

☐ Non-Conflict:
The Proposer certifies that it presently has no interest, direct or indirect, which would conflict in any manner or degree with the performance of the services called for under this agreement. The Proposer further certifies that in the performance of this agreement, no person having any such interest shall be employed by the Proposer, and that the Proposer receives no commissions or other payments from parties other than the District as a result of work performed.

☐ Equal Employment Opportunity:
The Proposer agrees to comply with Title VI of the Civil Rights Act, as amended, the Proposer agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Proposer agrees to comply with applicable federal law implementing regulations and other implementing requirements that the Federal Transit Authority (FTA) may issue.

The undersigned agrees to comply with the above referenced provisions and certifies that all information included in your proposal is, to the best of your knowledge, true, accurate and complete. Furthermore, upon execution of a Contract, to furnish the District with services and/or goods, in accordance with the terms outlined in this solicitation (including all addenda) and in the manner and at the prices proposed.

Typed name: ______________________________________

Title: ___________________________________________

Signature: _______________________________________

Date: ___________________
1. GENERAL INFORMATION

The Alameda-Contra Costa Transit District (AC Transit) is a special district, organized under the laws of the State of California, which provides public transit service to approximately 181,000 riders daily with a fleet of 618 buses. AC Transit is the third-largest public bus system in California, serving 13 cities and adjacent unincorporated areas in Alameda and western Contra Costa counties. For the period of July 2015 through June 2016, the AC Transit provided approximately 53.5 million annual passenger trips. AC Transit has been serving the East Bay since 1960.

The District is situated in the eastern region of the San Francisco Bay area, commonly known as the East Bay. AC Transit has four operating Divisions in addition to its Central Maintenance Facility, Training Center, and the General Office. The District has approximately 2,243 employees and is financed through receipt of transit fares, property taxes, and state and federal funding.

Approximately 2.5 million people live in AC Transit’s 364 square-mile service area. AC Transit’s District encompasses one of the most diverse areas in the entire country, consisting of approximately 70% minority population with significant populations of Spanish- and Chinese-speaking residents.

2. PURPOSE OF THIS SOLICITATION

The purpose of this Request for Proposal (RFP) is to award a services contract, running from June 1, 2017 through December 31, 2017. This RFP outlines the scope of requested services and describes what must be included in responsive proposals.

The contract award will be based on the best overall proposal, taking into consideration the proposing firm’s track record in light of the evaluation criteria set forth in Section 12 below.

The RFP does not commit the District to award a contract, to pay costs incurred in the preparation of proposals, or to procure or contract for services. The District reserves the right to reject any and all proposals, cancel all or part of this RFP and/or waive any minor irregularities or informalities.

All proposals must be clearly marked RFP No. 2017-10358 Zero Emissions Bus Study. Proposals may be mailed or hand-delivered. If mailed or delivered, proposals must be mailed in sufficient time to reach the above address by the “Proposal Due” date set forth below.
3. **PROPOSED TIMELINE**

<table>
<thead>
<tr>
<th>PROPOSAL STAGE</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>RFP Issued</td>
<td>4/13/2017</td>
</tr>
<tr>
<td>Pre-Proposal Conference</td>
<td>4/26/2017</td>
</tr>
<tr>
<td>Deadline for written questions and requests for clarification</td>
<td>4/27/2017</td>
</tr>
<tr>
<td>First Addendum</td>
<td>4/28/2017</td>
</tr>
<tr>
<td>Proposal Due</td>
<td>5/2/2017</td>
</tr>
<tr>
<td>Contract Award</td>
<td>May, 2017</td>
</tr>
<tr>
<td>Period of Performance</td>
<td>6/1/2017 through 12/31/2017</td>
</tr>
</tbody>
</table>

4. **PRE-PROPOSAL CONFERENCE**

There will be one (1) pre-proposal conference which will be held at AC Transit, 1600 Franklin Street, *Seventh Floor Conference Room*, Oakland, CA 94612 at 1:00 Pacific Daylight Time on April 26, 2017. Attendance at the pre-proposal conference is not mandatory, but strongly recommended.

5. **QUESTIONS AND/OR CLARIFICATIONS**

Proposer inquiries must be submitted in writing via electronic transmission or delivered to the following individual listed below. If emailed, include in the subject line the reference to **2017-10358 for “ZERO EMISSIONS BUS STUDY”**.

AC Transit  
Purchasing Department  
Attn: Michael Daly  
1600 Franklin Street 6th Floor  
Oakland, CA 94612  
Email: wdaly@actransit.org

6. **ADDENDA**

All questions must be received **no later than April 27, 2017, by 5:00 p.m.**
All questions will be answered by written addendum to the RFP. Upon issuance of such, Addendum will become a part of the proposal documents and binding on all eligible proposers.

For further information, prospective proposers may contact Michael Daly, either by telephone (510) 891-5469 or email (wdaly@actransit.org), between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, holidays excepted.

7. SUBMITTAL DATE, TIME AND LOCATION

To be considered, your Proposal must be submitted no later than 5:00 p.m., Pacific Time on May 2, 2017 to the following address:

AC Transit Purchasing Department
1600 Franklin Street, 6th Floor
Oakland, California 94612
Attn: Michael Daly, Contract Specialist

8. PROPOSAL REQUIREMENTS AND INSTRUCTIONS

Proposals must include the following information, presented in a clear, comprehensive, and concise manner:

A. FORMAT OF PROPOSALS
   • All pages must be 8-1/2” x11”, minimum size 11 font.
   • Three ring binder or bound.
   • Print double-sided to the maximum extent practicable
   • Use Tabs or other separators within the document. Distinct documents enclosed in the appendix must be separated by tabbed dividers as well.
   • Submit a CD or flash drive of all documentation as an Adobe Acrobat PDF format.

B. Proposers are required to follow the RFP format, cross-referencing responses to the corresponding RFP sections and subsections in the order provided.

C. Interested firms should submit written proposals responding to the requirements of this Request for Proposal (RFP). There shall be one (1) original set and three (3) copies of the proposal. Each proposal must be
submitted in two (2) separate sealed envelopes within the proposal package. Envelope I will contain all responsive materials except those relating to the Price Proposal. Envelope II will contain only information relating to the Price Proposal outlined in Attachment 1. Submit a CD or flash drive for the Technical Criteria and a separate CD or flash drive for the Price Proposal in Adobe Acrobat PDF format.

D. Proposals may be mailed or hand delivered. RFP responses received after this date, time or at any other location will not be accepted. The CD or Flash Drive must be mailed or hand delivered with the proposals. No other methods of delivery shall be accepted. Submittals received after this time and date shall be returned unopened and shall not be considered. All RFPs should be clearly marked RFP 2017-10358 ZERO EMISSION BUS STUDY.

E. Acknowledgements and Certifications

1. Addenda – In your proposal, please include a statement acknowledging all RFP addenda, if applicable.

2. RFP Signature Page – You must submit the RFP Cover Page (Page 1), signed by an approved representative of your firm.

3. Forms – You must also submit any other forms identified below in the Attachments to this RFP. NOTE: If there are no subcontracting opportunities associated with your proposal, indicate “N/A”, together with an explanation.

F. PROPRIETARY INFORMATION

Any information submitted in the proposal that you have determined to be PROPRIETARY in nature, must be so designated.

In the absence of such a designation, the District will consider such non-designated portions of the proposal as non-proprietary, such that they may be made available to the general public upon request.
In the event a proprietary information designation is challenged by a third party, the proposer agrees to provide legal counsel or other necessary assistance to indemnify the District, defend the designation and agrees to hold the District harmless for any costs or damages arising from such challenge.

G. EXCEPTIONS

If a proposer takes exception to the terms set forth in the Proposed Contract (see Attachment 5 at Page 36) or any other part of this RFP, the proposer must provide the following information as a section of the proposal identified as “Exceptions to the RFP and/or proposed Contract”.

1. Proposer must clearly identify each proposed change to the proposed contract (or other RFP requirements).
2. Proposer must furnish the reasons for any proposed changes, as well as specific recommendations for alternative language.

Substantial exceptions to the proposed contract terms and conditions, or any other RFP requirements may be determined by the District to be unacceptable, such that the District may then proceed to award a contract to another candidate.

9. MINIMUM REQUIREMENTS; RESPONSIVENESS AND RESPONSIBILITY

A. Responsiveness Determination. Contract awards may be made only to candidates submitting “responsive” proposals. The “responsiveness” of a proposal is determined by its conformity to the technical, commercial and legal requirements set forth in this RFP. As such, proposals must:

1. be completed, executed and timely submitted;
2. comply in all material respects with the terms of this RFP;
3. not take significant and/or unexplained exceptions to the requirements of this RFP or the proposed contract terms set forth in the attached General Contract Conditions (Page 35) and Sample Contract (Page 36).
4. acknowledge receipt of any addenda, as applicable.
B. **Responsibility Determination.** Contract awards may be made only to firms determined to be suitably “responsible”. The term “responsible” refers to a candidate’s likely ability to perform successfully in light of the requirements set forth below. Evidence of this responsibility includes financial stability, technical resourcefulness, judgment, skill, integrity, experience and past performance.

C. **Suitable Experience.** At a minimum, the proposer and its management team must demonstrate at least two (2) years of experience advising transit agencies on the relative costs and benefits of Battery Electric Buses, Hydrogen Fuel Cell Buses and possible hybrid solutions combining these alternatives.

10. **TECHNICAL REQUIREMENTS**

Your Technical Proposal must contain the following elements:

A. **Proposal Transmittal Letter,** including your e-mail address.

B. **RFP Signature Page** (Cover Page) signed by an approved representative of your firm. As a condition of participating in this solicitation, you acknowledge your willingness to be bound by the terms and conditions stated in this RFP (subject to any exceptions taken in connection with Section 8G above).

C. **Introduction and Executive Summary.** Please provide a letter of introduction and executive summary of your proposal.

D. **Experience.** Please also provide a concise description of your current and relevant prior experience with ZEB studies and analysis identifying the economic costs, performance issues, risks and the recommended timeline associated with transition to a zero emission transit bus fleet.

E. **Staff and Organization.** A detailed description of staff to be assigned to the project. If you propose to use subcontractors, please describe any such subcontracted services, as well.
F. **Prior Litigation.** Identify whether your firm (or any predecessor in interest) has been involved in any litigation involving any contract. Description the nature of the litigation, the parties, and the status or outcome (i.e. judgment or settlement).

G. **Prior Termination.** Identify whether a transit agency or municipality has ever terminated any contract with your firm (or any predecessor in interest). If applicable, please identify the terminating agency, the inception and termination dates of the contract, and describe the nature of such termination (i.e. whether for cause or for convenience).

H. **Professional References.** In providing the information called for in Attachment 3, please provide a list of at least four (4) professional references, including names and phone numbers, from transit agencies with whom your firm is currently under contract to provide ZEB studies and analysis.

I. **Trade Secrets.** It is each proposer’s responsibility to identify any information submitted with the proposal which is deemed to be a business/trade secret under applicable federal and/or state law and mark that information as confidential. In the event of any challenge from third parties as to any such materials so marked, it shall be the responsibility of the proposer to indemnify AC Transit and undertake the defense of any challenge to said designation at the proposer’s sole cost and expense.

11. **PRICING PROPOSAL (TO BE SUBMITTED IN A SEPARATE, SEALED ENVELOPE).**

This portion of the proposal will be evaluated according to a formula whereby the lowest priced proposal is awarded the entire forty percent (40%) of points available in connection with Proposed Price, and each successively higher priced proposal is awarded a pro-rata share of the 40% of points available for that criterion.

12. **PROPOSAL EVALUATION AND SELECTION CRITERIA**

Evaluations will be made in strict accordance with the following:
A. Evaluation Procedure

An Evaluation Team will review and score the proposals received against the weighted criteria set forth in Section 12B immediately below.

Each member of the team will first read, evaluate, and score all responsive proposals according to the qualitative factors set forth in Section 12B.

For each of these qualitative factors, scores will be tabulated for each reviewer according to the following 5 point scale:

5 = Exceptional  
4 = Above Average  
3 = Good  
2 = Minimal  
1 = Deficient  
0 = Unacceptable / Unresponsive

(As noted above, the pricing proposed will be evaluated separately and points will be allocated on a pro-rata basis relative to lowest proposed cost, with the lowest priced responsive proposal receiving all of the 40% of points allocated for cost, and proportionately higher cost proposals receiving proportionately less points in this category.)

The team will then discuss these evaluations, ultimately combining the individual cost and technical scores to arrive at a composite score for each responsive firm. Firms that receive the highest composite scores will be found to be in the “competitive range” and may be invited to meet with the District for further discussions and/or negotiations. However, the District reserves the right to award a contract solely on the competitive merits of a responsive firm’s proposal.

B. Evaluation Criteria; Weighted Factors

The table below shows the criteria for selection and the maximum potential score for each area. The compiled rankings will be used to identify the preferred firm.
<table>
<thead>
<tr>
<th></th>
<th>WEIGHTED CRITERIA</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>Proposed Cost;</strong> Reasonableness of the total cost proposed and competitiveness of this amount with other offers received.</td>
<td>40%</td>
</tr>
<tr>
<td>2</td>
<td><strong>Qualifications of the Proposing Firm (40%);</strong> Qualifications to be considered include, but are not limited to: recent experience of the Proposer in conducting a formal written analysis of a transit agency’s alternatives for conversion of its bus fleet to zero emission bus technologies.</td>
<td>40%</td>
</tr>
<tr>
<td>3</td>
<td><strong>Staffing and Project Organization (10%);</strong> Qualifications of project staff will be considered, particularly any key personnel and the project manager. The Proposer must list the key individuals who will be assigned to the project, their qualifications and disciplines and the total person hours of each person’s degree of commitment. Other factors to be considered include, but are not limited to key personnel's level of involvement in performing related work, logic of project organization; adequacy of labor commitment, and concurrence in the restrictions on changes in key personnel.</td>
<td>10%</td>
</tr>
<tr>
<td>4</td>
<td><strong>Work Plan/Project Understanding (5%);</strong> Proposer’s demonstrated understanding of the project requirements; specifically the assessment of the District’s baseline diesel bus fleet with a view toward upgrading to electric battery powered buses and/or hydrogen fuel cell buses as early as 2040, with life cycle costing projected through 2060.</td>
<td>5%</td>
</tr>
<tr>
<td>5</td>
<td><strong>Small Local Business Preference (5%);</strong> Responsive firms that are geographically headquartered in one of the five Wards comprising the District's geographical boundaries will receive 5% of all available points.</td>
<td>5%</td>
</tr>
<tr>
<td></td>
<td><strong>TOTAL WEIGHT</strong></td>
<td>100%</td>
</tr>
</tbody>
</table>
13. **BEST AND FINAL OFFERS (“BAFO”)**

Any proposer determined to be in the competitive range may be requested to modify its initial proposal and submit a Best and Final Offer (“BAFO”). In such event, the request will include:

A. A uniform date and time for submission of all requested BAFOs, allowing a reasonable opportunity for finalists to prepare them.

B. Notice that, in the event of a failure to timely submit a BAFO, the finalist’s previous proposal will be considered to be its best and final offer.

Any modifications to an initial proposal made by a Proposer in its BAFO must be identified in the BAFO. The Evaluation Panel will evaluate the BAFO using the same criteria used to evaluate the original proposals as to those items addressed in the request for a BAFO. Final weighted scores will then be determined.

The proposal which offers the best value to the District will then be recommended to the AC Transit Board of Directors. The results of the evaluations and the selection of a proposal for a recommended contract award will be documented. Nevertheless, it bears repeating that the District reserves the right to reject any and all proposals.

The AC Board of Directors retains the option of accepting such a recommendation or of making an award to another firm if it determines that such a selection is in the best interest of the District and public transit in the geographic region the District serves.

14. **AWARD**

The District reserves the right to:

A. Reject any and all proposals.

B. Withdraw, cancel, all, or part, of the RFP, at any time, without prior notice.

C. Reissue a subsequent RFP, as considered necessary by the District.

D. Waive any minor irregularities, technical errors, or information, in the procurement process.
E. Verify all information submitted in a proposal submission.

F. Approve or disapprove the use of any proposed subcontractor.

H. Award without negotiation to a responsive and responsible proposer, based on the evaluation criteria stated in Section 12 and a cost proposal in the form set forth in Attachment No. 1 on Page 26.

If a contract award is approved, unsuccessful proposers will be notified of the award in a timely manner.

15. PROTEST PROCEDURES

Copies of the District’s Procurement Protest Procedures can be obtained online at:


FAILURE TO COMPLY WITH ANY OF THE REQUIREMENTS SET FORTH IN THE DISTRICT’S PROTEST PROCEDURES MAY RESULT IN REJECTION OF THE PROTEST.

CONTRACT ADMINISTRATION

Michael Daly, Contract Specialist will administer the operational aspects of this contract. Changes to the Scope of Services, contract revenue compensations, quantity, and quality of delivery schedules shall be coordinated with the Contract Specialist and will be made official by a properly executed amendment. Any proposed change of amendment and all correspondence that in any way concerns the terms and conditions of this contract shall be submitted directly to:

Michael Daly
Contract Specialist
Purchasing Department
AC Transit District
1600 Franklin Street, Oakland CA 94612
(510) 891-5469
wdaly@actransit.org
16. **INSURANCE REQUIREMENTS**

It is strongly recommended that respondents to this solicitation confer with their insurance carriers and/or brokers to determine in advance of submitting a proposal whether the insurance requirements set forth below can be met. Any potential contractor must procure and maintain, for the duration of the proposed contract, insurance against claims for injuries to persons or damages for property which may arise from or in connection with the performance of the work by such contractor, its agents, representatives, employees and/or subcontractors. The District reserves the right to alter, amend, increase or otherwise modify the insurance requirements stated below.

A. **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. **General Liability** – Equal to Insurance Office Commercial General Liability Occurrence Form CG0001.
2. **Automotive Liability**: Coverage is to be equal to Insurance Services Office Business Auto Form CA0001 (01/87) covering Automobile Liability, code 1 (any auto).
3. **Workers’ Compensation** - As required by the State of California and Employer’s Liability.

B. **Minimum Limits of Insurance**

A contractor to the District must maintain limits no less than:

1. **General Liability**: $2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If an aggregate limit is used, either separate aggregate limit shall apply to this project/location or the aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability**: $2,000,000 combined single limit per accident for bodily injury and property damage.
3. **Workers’ Compensation**: Workers’ Compensation limits as required by State of California and Employer’s Liability limits of $1,000,000 per accident for bodily injury or disease.
4. Professional Errors and/or Omissions Liability: $2,000,000.00.

C. Deductible and/or Self-Insured Retentions

Any deductibles and/or self-insured retentions must be declared to and approved by the District. The District reserves the option to:

1. Require insurer to reduce or eliminate such deductible or self-insured retention as to District, and/or:

2. Require a contractor to procure a bond guaranteeing payment of any deductible or self-insured retention of losses, related investigations, claims administration and defense expenses.

D. Other Insurance Provisions

The policies are to contain, or are to be endorsed to contain, the following provisions:

1. General Liability and Automotive Liability
   a. The District, its directors, officers, officials, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of activities performed on behalf of the contractor; products and completed operation of the contractor; premises owned, occupied or hired by the contractor; automobiles owned, leased; hired, or borrowed by the contractor. The coverage shall contain no special limitation on the scope of protection afforded to the District, its directors, officers, officials, employees, or volunteers.
   b. For any claims related to any contract awarded in connection with this solicitation, the contractor’s insurance coverage shall be primary insurance with respect to the District, its directors, officers, employees, and volunteers. Any insurance or self-insurance maintained by the District, its directors, officers, employees, or volunteers shall be in excess of the contractor’s insurance and shall not contribute with it.
c. Any failure with reporting provisions of the policies including breaches of warranties must not affect coverage provided to the District, its directors, officers, or employees.

d. The contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of insurer’s liability.

2. Workers’ Compensation and Employers Liability

The insurer shall agree to waive all subrogation rights against the District, its directors, officers, officials and employees for losses arising from work performed by the contractor for the District.

3. All Coverages

a. Each policy required shall be endorsed to state that coverage shall not be suspended, voided or canceled by either party or reduced in coverages or limits except after 30 days prior written notice by certified mail, return receipt requested, has been given to the District.

b. Each policy is to be on an “Occurrence” form. A “Claims Made” form requires prior approval by the District, and a contractor will be required to provide acceptable evidence of the policy’s retroactive date, and will also be required to maintain the coverage with same retroactive date for a period of not less than five (5) years following termination of services.

c. If Contractor maintains broader coverage and or higher limits than the minimums shown above, The District requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.
4. Acceptability of Insurers – Insurance is to be placed with insurers having a current A.M. Best & Co. Rating of no less than “A-:VII”.

5. Verification of Coverages – A contractor to the District must furnish the District with appropriate Certificates of Insurance and with original Endorsements effecting coverages required. The Certificates and Endorsements are to be signed by a person authorized by the insurer to bind coverage. The Certificates and Endorsements are to be on forms approved by the District. All required Certificates and Endorsements are to be received and approved by the District prior to the commencement of any work under the Contract. The District reserves the right to require complete, certified copies of all required Insurance policies at any time.

6. Other Requirements

a. Should any work under this contract be subcontracted, the contractor must require each sub-contractor of any tier to comply with each of these insurance provisions and provide the proof of such compliance to the District.

b. These insurance requirements are not intended to and shall not in any manner be construed to limit or otherwise qualify the liabilities and obligations otherwise assumed by the contractor under any contract awarded in connection with this RFP, including but not limited to the provisions concerning indemnification.

c. Compliance with these insurance requirements shall be considered a material part of any contract awarded, and breach of any such provision will be considered a material breach of any such contract. This may result in action by the District to withhold payment and/or terminate such contract for cause.
17. **CONFLICT OF INTEREST**

By submitting a proposal and entering into any contract awarded hereunder, the contractor represents that it presently has no interest, direct or indirect, which would conflict in any manner or degree with the performance of the services called for under the proposed agreement. The contractor shall further covenants that in the performance of such agreement, no person having any such interest shall be employed by the contractor, and that the contractor receives no commissions or other payments from parties other than the District as a result of any work thus performed.

A failure to comply with this provision will serve as a basis for termination for default and the collection of any resulting damages.

18. **TERMINATION / RESOLUTION OF DISPUTES**

A. **Termination for Convenience of the District.**

The performance of work or delivery of work product under any contract awarded in connection with this RFP may be terminated in whole or in part by the District upon written notice to the contractor in accordance with this clause whenever the District determines that such termination is in its best interest. After receipt of said notice, contractor shall stop work on such contract on the date and to the extent specified in said notice, terminate all applicable orders and subcontracts, and complete performance of all work as shall not have been terminated by said notice. After receipt of such notice, the contractor shall submit to the District a statement setting forth the contractor’s actual, direct unavoidable and non-cancelable costs incurred as a result of such termination, together with such information as may be required by the District to evaluate the claim.

B. **Termination for Default.**

1. Should the contractor be in default and fail to remedy this default within ten (10) calendar days after receipt from the District of a notice of default (or in the case of a default that cannot be remedied within ten (10) calendar days, to commence to cure said default
within said ten (10) calendar days and thereafter diligently pursue said
cure until the default is remedied), the District may in its
discretion terminate this contract or such portion thereof as the
District determines is most directly affected by the default.

2. The term “default” for purposes of this provision includes, but is not
limited to, the performance of work in violation of the terms of any
contract awarded in connection with this RFP, abandonment,
assignment, delegation, or subcontracting of this contract without
approval of the District, bankruptcy or appointment of a receiver for
Contractor’s property, failure of contractor to perform the services or
other required acts within the time specified in any contract awarded
in connection with this RFP or any extension thereof, refusal or failure
to provide proper workmanship, failure to take effective steps to end a
prolonged labor dispute, or the performance of services under any
contract in bad faith.

C. Disputes.

Performance During Dispute – Unless otherwise directed by the District,
contractor shall continue performance under any contract awarded in
connection with this RFP while matters in dispute are being resolved.

D. Mandatory Arbitration.

1. Mandatory and Binding Arbitration.

a. In the event that any controversy, claim or dispute between the
District and the contractor arising out of or related to any contract
awarded in connection with this RFP cannot be settled or
resolved amicably by the parties during a thirty (30) day period
of good faith negotiations, then either party thereto may submit
said controversy, claim or dispute to binding arbitration before
a single neutral arbitrator in accordance with the provisions
contained herein and in accordance with the Commercial
Arbitration Rules of the American Arbitration Association
(“Rules”); provided, however, that notwithstanding any provisions
of such Rules, the parties to the arbitration shall have the right to
take depositions and obtain discovery regarding the subject matter of the arbitration, as provided in Title III of Part 4 (commencing with Section 1985) of the California Code of Civil Procedure, to the extent that the arbitrator deems fair and reasonable. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator shall determine all questions of fact and law relating to any controversy, claim or dispute under such contract, including, but not limited to, whether or not any such controversy, claim or dispute is subject to the arbitration provisions contained herein.

b. Any party desiring arbitration shall serve on the other party or parties and the San Francisco Office of the American Arbitration Association, in accordance with the aforesaid Rules, its Notice of Intent to Arbitrate (“Notice”). The parties shall select a single, neutral arbitrator who is generally familiar with the factual and legal issues that relate to this contract and the dispute to be resolved by arbitration. In the event that the parties are unable to agree on a neutral arbitrator, then one shall be selected in accordance with the rules. The arbitration proceedings provided hereunder are hereby declared to be self-executing and it shall not be necessary to petition a court to compel arbitration.

c. The parties to the arbitration shall share equally all costs of the arbitration, including the fee of the neutral arbitrator, and each party shall bear its own costs. The arbitrator shall have the authority, in accordance with the provisions of any contract awarded in connection with this RFP, to award to the prevailing party its costs, including its share of the arbitration costs, and reasonable attorneys’ and expert witness fees and expenses.

d. If a controversy, claim or dispute arises between the parties which is subject to the arbitration provisions hereunder, and there exists or later arises a controversy, claim or dispute between the parties, or either of them, and any third party, which controversy, claim or dispute arises out of or relates to the same transaction or series of transactions, said third party controversy, claim or dispute shall be
consolidated with the arbitration proceedings hereunder; provided, however, that any such third party must be a party in a contract with either of the parties which provides for the arbitration of disputes thereunder in accordance with rules and procedures substantially the same in all material respects as provided for herein or, if not, must consent to arbitration as provided for hereunder.

e. All Arbitration proceedings shall be held in Oakland, California.

f. The notice of a Demand for Arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

19. RECORDS AND AUDITS

A contractor to the District will be required to maintain full, true and active accounts of all business conducted under the terms of the proposed contract; and said accounts shall be available to the District for audit and inspection at any reasonable time during the term of the contract and for four (4) years after termination thereof.

20. RELEASE OF INFORMATION

A contractor must receive prior permission from the District before releasing any reports, information or promotional materials prepared in connection with this RFP or any resulting contract. Similarly, such a contractor must obtain prior written consent from the District before using the District’s logo or any other proprietary marks or materials. The contractor shall provide a copy or copies to the District Program Manager of any such proposed promotional materials for first review and comment.
21. **EQUAL OPPORTUNITY/NON DISCRIMINATION**

   It is the policy of the District to ensure non-discrimination in the award and administration of all contracts and to create a level playing field on which minority and small/local business can compete for all District Contracts. In connection with the performance of this Contract, the Contractor must cooperate with the District in furthering the District’s policy.

22. **SMALL LOCAL BUSINESS PROGRAM**

   AC Transit has established a Small Local Business Procurement Program (pursuant to its Board Policy 466) to ensure that small local business enterprises have a meaningful opportunity to participate in AC Transit’s procurements. AC Transit believes that a Small Local Business Procurement Policy can provide support to small local businesses and enable them to more effectively compete for AC Transit procurements, especially those businesses that have been at a disadvantage in the past. Under the current Policy, a Small Local Business is a business which meets the U.S. Government’s Small Business Administration (SBA) size standard and is located within AC Transit’s geographical service area.

23. **TYPE OF CONTRACT**

   As a result of this solicitation, the District intends to award a professional services contract, under which compensation will be based on the achievement of the deliverables set forth in Attachment 1.

24. **NOTICES**

   Any notice which may be required under any contract awarded in connection with this RFP shall be in writing, shall be effective when received, and shall be given by personal service or by certified or registered mail, return receipt requested, to the addresses set forth below or to such other addresses which may be specified in writing by the parties to such contract.

   **DISTRICT:**
   
   Director of Purchasing and Materials

   **CONTRACTOR**
AC Transit
1600 Franklin Street, 6th Floor
Oakland, California 94612

25. **PENALTY FOR COLLUSION**

If at any time it shall be found that the person, firm or corporation to whom a Contract has been awarded has, in presenting any Proposal or Proposals colluded with any other party or parties; then the contract so awarded shall be null and void and the contractor shall be liable to the District for all loss or damage which the District may suffer thereby, and the Board of Directors may advertise for a new contract for said labor, supplies, materials or equipment.

26. **INDEPENDENT CONTRACTOR**

Whether a contractor is a corporation, partnership, or other legal entity, the contractor shall be considered an independent contractor whose duties will be performed with the understanding that the contractor has special expertise as to the services which contractor is to perform; and, is customarily engaged in the performance of the same or similar services for others. The contractor shall control the manner in which the services are performed; however, the District shall specify the nature of the services and the results to be achieved. The contractor is not to be deemed an employee or agent of the District and has no authority to make any binding commitments or obligations on behalf of the District, except to the extent expressly provided in any contract awarded in connection with this RFP.

27. **SUBCONTRACTING**

A contractor shall not subcontract services, in whole or in part, without the District's prior written approval. The contractor shall require any approved subcontractor to agree, as to the portion subcontracted, to comply with all obligations of contractor specified in any contract awarded in connection with this RFP. Notwithstanding the District's approval of a subcontractor, the contractor shall remain obligated for full performance of the contract and the District shall incur no obligation to any subcontractor. The contractor shall indemnify, defend, and hold the District harmless from all claims of subcontractors.
28. **VENDOR REGISTRATION**

If not already an AC Transit registered vendor, an online Vendor Registration is required prior to contract award. Please register as a vendor, please follow the link below.

http://www.actransit.org/purchasing/vendor-registration-and-log-in/

To complete the process, include a W-9, Request for Taxpayer Identification Number and Certification (containing original signature) in proposal/proposals. If online access is not available, contact the Purchasing Department for instructions.

29. **FURTHER INFORMATION**

Prospective proposers may contact Michael Daly, by calling (510) 891-5469 or by email wdaly@actransit.org between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, holidays excepted, for further information.
### ATTACHMENTS

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
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<tbody>
<tr>
<td>Attachment 1</td>
<td>Cost Proposal Form</td>
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<td>Scope of Services</td>
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<td>Proposer Qualifications and Business Reference Questionnaire</td>
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<td>Attachment 4</td>
<td>General Contract Conditions</td>
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<td>Attachment 5</td>
<td>Proposed Contract</td>
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ATTACHMENT 1

COST PROPOSAL FORM

<table>
<thead>
<tr>
<th>Project Intervals</th>
<th>Description</th>
<th>Proposed Cost</th>
</tr>
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<tbody>
<tr>
<td>Assessment</td>
<td>Complete a project plan and schedule for completion of the stated tasks and development of the Study.</td>
<td>$________</td>
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<tr>
<td>Task 1</td>
<td>Lifecycle Economic Analysis for Transit Bus Technology Scenarios.</td>
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<td>Task 2</td>
<td>Facility Infrastructure Modifications and Operating Costs for Technology Scenarios</td>
<td>$________</td>
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<td>Task 3</td>
<td>Communication of Results to AC Transit Staff and Board of Directors</td>
<td>$________</td>
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<td>Task 4</td>
<td>Communication of Report Recommendations to Outside Agencies</td>
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Overview

The Alameda Contra Costa Transit District (AC Transit) seeks to engage a firm with relevant expertise to perform a written analysis concerning the District’s alternatives for conversion of its bus fleet to zero emission bus technologies.

This analysis will identify, on a lifecycle basis, the economic costs, performance issues, risks, and recommended timeline associated with transition to a zero emission transit bus fleet. The results of this analysis will inform AC Transit decision making in the areas of policy, procurement and technology.

The analysis shall consider financial and operational impacts of various zero emission transit bus technologies that are considered commercially available during the time period of this study. The results of this analysis will be presented to the AC Transit Board of Directors to better inform their decision making on the transition to a zero emission bus fleet.

The firm selected must demonstrate sufficient knowledge, understanding, and experience with zero emission tailpipe technologies and anticipated requirements of the California Air Resources Board.

Statement of Work

The analysis objective is an evaluation of the economic costs, performance issues, risks, and recommended timeline for implementing the following zero emission bus technology scenarios in the AC Transit bus fleet. Analyses will be transparent and flexible.

- Diesel Bus Baseline - No change in technology from current bus procurements;
- Battery Electric Bus (BEB) – Transit buses with sufficient battery capacity to provide energy to propel the vehicle utilizing an electric drive system and operate electrically driven accessories. The BEB will be "fueled" by plugging into the electrical grid.
- Hydrogen Fuel Cell Bus (FCB) – Transit buses with Proton Exchange Membrane (PEMS) fuel cells that provide energy to propel the vehicle utilizing an electric drive system and operate electrically driven accessories. The FCB will be “fueled” with hydrogen stored in high pressure vessels on the bus.
The analysis must consider both the transit bus technologies and the facilities infrastructure modifications to support the fleet of buses. The evaluation shall consider implementation as early as 2020, and shall include evaluation of alternatives for full 100 percent conversion to zero emission buses as early as economically and technically feasible. The modeling for the life cycle costing shall be projected through 2060.

The analysis must consider the three specific alternatives noted above, along with potential hybrid analysis that includes combinations of the alternatives based upon the benefits and limitations of each technology.

Specific Deliverables

Task 1: Lifecycle Economic Analysis for Transit Bus Technology Scenarios

(To be completed no later than October 31, 2017.)

- Develop projections of AC Transit bus fleet turnover through 2040.
- Identify the number of standard diesel transit buses that can be replaced by ZEBs of each type based on vehicle capability (i.e. based on range restrictions battery buses may not be able to operate on all lines).
- Evaluation of AC Transit service area electric rate structure to identify the cost of electricity ($/kWh, $ KW demand) for night-time and day-time charging of battery electric buses.
- Develop charging model to identify total load by time of day for overnight and day-time charging of battery electric buses.
- Evaluation of the availability of delivered liquid hydrogen, along with cost projections ($/kg) assuming steam reformation of natural gas.
- Evaluation of renewable hydrogen assuming generation of hydrogen from water through an electrolysis process using renewable energy, along with cost projections ($/kg) for production and distribution.
- Develop life-cycle cost analysis for all ZEB options: baseline, battery electric bus, and fuel cell bus.
- Develop reliability and performance analysis for all ZEB options: baseline, battery electric bus, and fuel cell bus.
- Evaluate the benefits and limitations of current battery electric bus configurations, including mid-day and evening depot charging bus designs and continuous on-route charging bus designs.
- Identify any risks or limitations related to each technology option.
- Identify training and technical support requirements related to each technology option.
• Identify any current development activities, such as development of standards for plug-in or inductive charging systems or fuel storage systems on ZEB bus fleets.
• Provide projections of anticipated technology advancements for each ZEB option along with recommendations for early adoption or phased implementation.

Task 2: Facility Infrastructure Modifications and Operating Costs for Technology Scenarios

(To be completed no later than October 31, 2017.)

• Identify infrastructure requirements for each of the technology scenarios, including fuel storage, fuel pumping requirements, electric charging equipment, maintenance facility modifications, and back-up power generating requirements.
• Develop capital costs related to the installation of required infrastructure and facilities modifications for each technology option.
• Develop life-cycle operating costs for maintaining the infrastructure and facilities for each technology option.
• Identify any risks or limitations related to the infrastructure and facilities for each technology option.
• Identify any current development activities, such as development of industry standards for charging or fuel delivery systems.
• Identify fueling infrastructure redundancy requirements to ensure reliability of service during major transportation or utility interruptions (i.e. power outage due to earthquake).
• Identify training and technical support requirements related to the infrastructure and facilities for each technology option.

Task 3: Communication of Results to AC Transit Staff and Board of Directors

(Report to be completed no later than October 31, 2017; Support activities continuing through December 31, 2017.)

• Develop a report that compiles, evaluates, and summarizes the results from Task 1 equipment and Task 2 infrastructure analysis.
• Develop detailed presentation materials defining the analysis methodology, assumptions, core data and results.
• Present report and analysis outcome to AC Transit staff.
• Develop executive briefing materials for presentation by AC Transit staff to the AC Transit Board of Directors.
• Support outcomes of the report at the AC Transit Board of Directors meeting.
Task 4: Communication of Report Recommendations to Outside Agencies

(Activities continuous throughout contract term.)

- Participate in meetings between AC Transit and outside regulatory or funding agencies.
- Develop briefing materials for presentation of analysis results.
- Presentation of analysis results to regulatory or funding agencies.
- Respond to regulatory or funding agency requests for information per guidance from AC Transit.
ATTACHMENT 3

PROPOSER’S STATEMENT OF QUALIFICATIONS & BUSINESS REFERENCES

A. Proposer Name: _______________________________________________________

B. How many years has your organization been in business? ________________

C. Give information below about all your current and ongoing transit advertising accounts. (Attach additional sheets if necessary.)

<table>
<thead>
<tr>
<th>Client</th>
<th>Location (city/state)</th>
<th>Type of Work</th>
<th>Value of Work</th>
<th>Percent Complete</th>
<th>Scheduled Completion Date</th>
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D. List all key projects your organization has completed similar in nature to the scope of services outlined in this solicitation during at least the last three (3) years in the following tabulation.

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<thead>
<tr>
<th>Client</th>
<th>Location (city/state)</th>
<th>Type of Work</th>
<th>Value of Work</th>
<th>Year Started</th>
<th>Year Completed</th>
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E. Give information below about the relevant experience of the principal individuals of your present organization including those individuals to be in responsible charge of this project. Attach additional sheets if necessary.

<table>
<thead>
<tr>
<th>Individual's Name</th>
<th>Title</th>
<th>Years of Professional Experience</th>
<th>Type of Work</th>
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</table>
F. **References:** List Professional references for who your organization has performed work similar in nature to the scope of services outlined in this solicitation.

<table>
<thead>
<tr>
<th>Business Name</th>
<th>Contact Person</th>
<th>Phone</th>
<th>Email</th>
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<tbody>
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(Attach additional sheets if necessary)

G. Have you or your organization, or any officer or partner thereof, failed to complete a contract?

- [ ] No  - [ ] Yes  If yes, please explain below. Attach additional sheets if necessary.

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

H. Is any pending litigation or adverse findings against your organization?

- [ ] No  - [ ] Yes  If yes, please explain below. Attach additional sheets if necessary.

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
ATTACHMENT 4

GENERAL CONTRACT CONDITIONS

1. RENDITION OF SERVICES
The Contractor hereby agrees to undertake, carry out and complete all work established herein in a professional and efficient manner satisfactory to District standards.

The professional service or the performance of work or services required by the District cannot satisfactorily be performed by the regular employees of the District.

2. CONTRACTOR'S STATUS
Neither the Contractor nor any party contracting with the Contractor shall be deemed to be an agent or employee of the District. The Contractor is and shall be an independent contractor, and the legal relationship of any person performing services for the Contractor shall be one solely between said parties.

Contractor shall not subcontract any services to be performed by it under this Agreement without the prior written approval of the District, except for service firms engaged in drawing, production, typing and printing. Contractor shall be solely responsible for reimbursing any subcontractors and the District shall have no obligation to them.

3. OWNERSHIP OF WORK
All reports, designs, drawings, plans, specifications, schedules, and other materials prepared, or in the process of being prepared, for the services to be performed by Contractor shall be and are the property of the District and the District shall be entitled to access thereto, and copies thereof, during the progress of the work.

In the event that the work, which is the subject of this Agreement, is not completed, for any reason whatsoever, all materials generated under this Agreement shall be delivered as the District may direct.

4. RECORDS
The Contractor shall permit the authorized representatives of the District to inspect and audit all data and records relating to performance under this Agreement. Contractor shall maintain all such records for a period of three (3) years after the District makes final payment under this Agreement.

5. TERMINATION FOR DEFAULT
In the event the Contractor breaches the terms or violates the conditions of this Agreement, and does not within ten (10) days of written notice from the District cure such breach or violation, the District may immediately terminate this agreement, and shall pay the Contractor only its allowable costs to the date of termination.

6. TERMINATION FOR CONVENIENCE
The District may terminate this Agreement, in whole or in part, at any time for the District's convenience and without cause at any time by giving the Contractor written notice of termination. The Contractor will be paid for those services performed pursuant to this Agreement to the satisfaction of the District up to the date of notice of termination. The Contractor shall promptly submit its termination claim. If the Contractor has any property in its possession belonging to the District, the Contractor will account for the same and dispose of it in the manner the District directs.

7. NON-DISCRIMINATION
In connection with the execution of any Contract hereunder, the Contractor shall not discriminate against any applicant or employee on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, gender, gender identity, gender expression, sexual orientation, sex or age as defined in Section 12926 Government Code.

8. INDEMNIFICATION
The Contractor shall indemnify, keep and save harmless the District, its Board of Directors, officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, expense, costs (including, without limitation, costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the District.

9. CHANGES
If any changes to the scope of services are sought by either party that would require a modification of the amount of compensation, the changes must be reviewed and approved in advance of any action to implement the change by the Program Manager and the Purchasing Department.
The District may at any time by written order make changes within the Scope of Services described in this Agreement. If such changes cause an increase in the budgeted cost of or the time required for performance of the agreed upon work, the Contractor shall notify the District in writing of the amount of time and compensation adjustments that are required.

In the event the Contractor encounters any unanticipated conditions or contingencies that may affect the scope of services and would result in an adjustment to the amount of compensation specified herein, Contractor shall so advise the District immediately upon notice of such condition or contingency. The written notice shall explain the circumstances giving rise to the unforeseen condition or contingency and shall set forth the proposed adjustment in compensation resulting therefrom.

Any notices shall be given to the District under the Notices clause of the Special Conditions. Any and all agreed upon pertinent changes shall be expressed as a written modification to this Agreement prior to implementation of such changes.

10. DISPUTE RESOLUTION
   In case any disagreement, difference or controversy shall arise between the parties, with respect to any matter in relation to or arising out of or under this Agreement or the respective rights and liabilities of the parties, and the parties to the controversy cannot mutually agree thereon, then such disagreement, difference, or controversy shall be determined by binding arbitration, according to the rules of the American Arbitration Association.

   Any award made by the Arbitrator(s) shall be final, binding and conclusive upon all parties and those claiming under them. The costs and expenses of any Arbitration shall be borne and paid as the Arbitrator(s) shall, by their award, direct.

   The submission to Arbitration is hereby made a condition precedent to the institution of any action at law or in equity with respect to the controversy involved; and such action at law or in equity shall be restricted solely to the subject matter of the challenge of such award on the grounds and only in the manner permitted by law.

11. NO ASSIGNMENT
   This Agreement is personal to each of the parties hereto, and neither party may assign or delegate any of its rights or obligations hereunder without first obtaining the written consent of the other.

12. PROHIBITED INTERESTS
   No member, Director, officer, or employee of the District during his/her tenure or for one year thereafter, shall have any interest direct or indirect, in this Agreement or the proceeds thereof.

   Contractor covenants that it presently has no interest, direct or indirect, which would conflict in any manner or degree with the performance of the services called for under this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

   The District may require Contractor to file an annual Statement of Economic Interest form pursuant to the Political Reform Act of 1974 (Government Code Section 81000 et seq.)

13. WAIVER
   Failure of any party to exercise any right or option arising out of a breach of this Agreement shall not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach.

14. GOVERNING LAW
   This Agreement, its interpretation and all work performed thereunder, shall be governed by the laws of the State of California.

15. INSURANCE
   Depending on the nature of the services being solicited, the District may have certain minimum insurance requirements.
ATTACHMENT 5

SAMPLE CONTRACT

THIS CONTRACT is made and entered into this 1st day of June, 2017 by, and between ALAMEDA CONTRA COSTA TRANSIT DISTRICT (hereinafter referred to as "District"), a special transit district established pursuant to California Public Utilities Code, Section 24501 et seq., and _____________________________ (hereinafter referred to as "Contractor").

THE PARTIES AGREE AS FOLLOWS:

1. **SCOPE OF SERVICES**

   Contractor shall furnish to the District those professional services specified in with RFP 2017-10358 issued by the District entitled ZERO EMISSION BUS STUDY dated April 13, 2017.

2. **COMPONENT PARTS**

   This Contract shall consist of the following documents, each of which is on file with the District, and is incorporated into and made a part of the Contract by reference:

   A. This Contract
   B. RFP No. 2017-10358 and any addenda
   C. Contractor’s Proposal dated May 2, 2017

3. **PERIOD OF PERFORMANCE**

   Services under this Contract shall commence June 1, 2017 and continue to December 31, 2017. Tasks 1 and 2 shall be completed no later than October 31, 2017. Likewise, the Report noted in Task 3 shall be completed by October 31, 2017. Task 3 and Task 4 support activities shall be provided throughout the contract term.

4. **CONTRACT PRICE**

   The District agrees to pay the Contractor in accordance with its submitted proposal with a not-to-exceed (NTE) total contract price of $_______ for
software licensing, implementation, hosting, maintenance and support over the Period of Performance set forth immediately above. The District and the Contractor must mutually agree upon any adjustments in payment. Invoices for services performed shall be submitted to AC Transit Accounts Payable, P.O. Box 28507, Oakland, California 94604. Payment to the Contractor will be made Net 30 days after receipt of approved invoices. Please reference the Contract Number and Purchase Order Number on all submitted invoices. Failure to do so could result in delay of payment.

5. **NOTICES**

Any notice which may be required under this Contract shall be in writing, shall be effective when received, and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addresses set forth below or to such other addresses which may be specified in writing by the parties to this Contract.

**DISTRICT:**
Purchasing Department
Attn: Director of Procurement and Materials
1600 Franklin Street (6th Floor)
Oakland, CA 94612

**CONTRACTOR:**

6. **TERMINATION**

A. **Termination for Convenience of the District.**

The performance of work or delivery of products under any contract resulting from this RFP may be terminated in whole or in part by the District upon written notice to the contracting party (hereinafter “Contractor”) whenever the District determines that such termination is in its best interests. After receipt of said notice, Contractor must (i) stop work on such awarded contract on the date and to the extent specified in said notice, (ii) terminate all applicable orders and subcontracts, and (iii) complete performance of all work not terminated by such notice. After receipt of said notice, Contractor shall submit to the District its termination claim setting forth Contractor’s actual, direct and non-cancellable costs, together with such information as may be required by the District to evaluate the claim. The determination of the District on the claim shall be
final, subject only to the dispute resolution procedures set forth in Section 7 hereof.

B. Termination for Default

1. Should the Contractor be in default and fail to remedy this default within ten (10) calendar days after receipt from the District of a notice of default (or in the case of a default that cannot be remedied within ten (10) calendar days, to commence to cure said default within said ten (10) calendar days and thereafter diligently pursue said cure until the default is remedied), the District may in its discretion terminate the contract or such portion thereof as the

2. The term “default” for purposes of this provision includes, but is not limited to, the performance of work in violation of the terms of the contract; abandonment, assignment, delegation, or subcontracting of the contract without approval of the District; bankruptcy or appointment of a receiver for Contractor’s property; failure of Contractor to perform the services contracted for or other required acts within the time specified for the contract or any extension thereof; refusal or failure to provide proper workmanship; failure to take effective steps to end a prolonged labor dispute; and the performance of this contract in bad faith.

C. Termination for Force Majeure.

The performance of work under the awarded contract may be terminated by the District, at its discretion, upon application therefor by the Contractor for unforeseen causes beyond the control and without the fault or negligence of the Contractor, including acts of God, acts of the public enemy, governmental acts, fires and epidemics if such causes irrecoverably disrupt or render impossible the Contractor’s performance. An “act of God” shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of the Contractor to foresee or make preparation in defense against

7. DISPUTE RESOLUTION

A. Notice of Dispute / Neogiated Resolution

In the event that there is any controversy, claim or dispute between the District and the Contractor arising out of or related to the awarded
contract or the breach thereof, that has not been resolved by informal discussions and negotiations, either party may, by written notice to the other, invoke the formal dispute resolution procedures set forth below. The written notice invoking these procedures shall set forth in reasonable detail the nature, background and circumstances of the controversy claim or dispute. During the thirty (30) days following said written notice, the parties shall meet, confer and negotiate in good faith to resolve the dispute. Either party may, during said thirty (30) day period, request the utilization of the services of a professional mediator, and the other party or parties to this dispute shall cooperate with such request and share the reasonable costs of such mediator.

B. Mandatory and Binding Arbitration.

In the event that any controversy, claim or dispute between the District and the contractor arising out of or related to the awarded contract, or the breach thereof, cannot be settled or resolved amicably by the parties during the thirty (30) day period of good faith negotiations provided for above, then the parties shall submit said controversy, claim or dispute for binding arbitration before a single neutral arbitrator in accordance with the provisions contained herein and in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“Rules”); provided, however, that notwithstanding any provisions of such Rules, the parties to the arbitration shall have the right to take depositions and obtain discovery regarding the subject matter of the arbitration, as provided in Title III of Part 4 (commencing with Section 1985) of the California Code of Civil Procedure, as and to the extent that the arbitrator deems fair and reasonable. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator shall determine all questions of fact and law relating to any controversy, claim or dispute hereunder, including, but not limited to, whether or not any such controversy, claim or dispute is subject to the arbitration provisions contained herein.

Any party desiring arbitration shall serve on the other party or parties and the San Francisco Office of the American Arbitration Association, in accordance with the aforesaid Rules, its Notice of Intent to Arbitrate (“Notice”). The parties shall select a single, neutral arbitrator who is generally familiar with the factual and legal issues that relate to this contract and the dispute to be resolved by arbitration. In the event that the parties are unable to agree on a neutral arbitrator, then one shall be selected in accordance with the rules. The arbitration proceedings provided hereunder are hereby declared to be self-executing and it shall not be necessary to petition a court to compel arbitration.
The parties to the arbitration shall share equally all costs of the arbitration, including the fee of the neutral arbitrator, and each party shall bear its own costs. The arbitrator shall have the authority, in accordance with the provisions of this contract, to award to the prevailing party its costs, including its share of the arbitration costs, and reasonable attorneys’ and expert witness fees and expenses.

If a controversy, claim or dispute arises between the parties which is subject to the arbitration provisions hereunder, and there exists or later arises a controversy, claim or dispute between the parties, or either of them, and any third party, which controversy, claim or dispute arises out of or relates to the same transaction or series of transactions, said third party controversy, claim or dispute shall be consolidated with the arbitration proceedings hereunder; provided, however, that any such third party must be a party in a contract with either of the parties which provides for the arbitration of disputes thereunder in accordance with rules and procedures substantially the same in all material respects as provided for herein or, if not, must consent to arbitration as provided for hereunder.

All Arbitration proceedings shall be held in Oakland, California. The Notice of the demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

8. **ATTORNEY’S FEES**

In the event that it becomes necessary for either party to bring a lawsuit to enforce any of the provisions of the Contract, the parties agree that the court having jurisdiction over such dispute shall have the authority to determine and fix reasonable attorney’s fees to be paid to the prevailing party.

9. **INDEPENDENT CONTRACTORS**

Neither the Contractor nor any party contracting with the Contractor shall be deemed to be an agent or employee of the District. The Contractor is and shall be an independent contractor, and the legal relationship of any person performing services for the Contractor shall be one solely between said parties.

Contractor shall not subcontract any services to be performed by it under this Agreement without the prior written approval of the District, except for service
firms engaged in drawing, production, typing and printing. Contractor shall be solely responsible for reimbursing any subcontractors and the District shall have no obligation to them.

10 **INSURANCE**

Contractor shall procure and maintain for the duration of the contract and for a period of three years thereafter or the period of any contract warranties, whichever is longer, insurance against claims for injuries to persons or damages for property which may arise from or in connection with the performance of the work thereunder by the Contractor, Contractor’s agents, representatives, employees or subcontractors. The District reserves the right to alter, amend, increase or otherwise modify the insurance requirements stated herein.

A. Coverage shall be at least as broad as:

1. General Liability coverage is to be equal to Insurance Services Office Commercial General Liability Occurrence Form CG0001.

2. Automotive Liability coverage is to be equal to Insurance Services Office Business Auto Form CA0001 covering Automobile Liability.

3. Workers’ Compensation Insurance as required by the State of California and Employer’s Liability Insurance.

4. Professional Liability/Errors & Omissions insurance appropriate to Contractor’s profession.

B. Contractor shall maintain limits no less than:

1. General Liability: $2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If aggregate limit is used, either separate aggregate limit shall apply or aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: $2,000,000 combined single limit per accident for bodily injury and property damage.

3. Workers’ Compensation: Workers’ Compensation limits as required by State of California and Employer’s Liability limits of $1,000,000 per accident for bodily injury or disease.
4. Liability/Errors & Omissions: $2,000,000 per occurrence.

C. Deductible and/or self-insured retentions must be declared to and approved by the District. The District reserves the option to require insurer to reduce or eliminate such deductible and self-insured retention as to District and/or require Contractor to procure a bond guaranteeing payment of any deductible or self-insured retention of losses, related investigations, claims, administration and defense expenses.

D. Policies are to contain the following provisions:

1. General Liability and Automotive Liability

   a. The District, its directors, its officers, officials and employees are to be covered as additional insureds as respects to liability arising out of activities performed on behalf of Contractor, products and completed operations of Contractor, premises owned, occupied or used by Contractor, and automobiles owned, leased, hired or borrowed by Contractor. Coverage shall contain no special limitation on scope of protection afforded to the District, its directors, its officers, officials or employees.

   d. For any claims related to this contract, Contractor insurance coverage shall be primary insurance as respects the District, its directors, its officers, officials and employees. Any insurance or self-insurance maintained by District, its directors, its officers, officials or employees shall be in excess of Contractor insurance and shall not contribute with it.

   e. Any failure with reporting provisions of the policies including breaches of warranties, shall not affect coverage provided to the District, its directors, its officers, officials or employees.

   d. Contractor insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of insurer’s liability.

2. Workers’ Compensation and Employers Liability
Insurer shall agree to waive all subrogation rights against the 
District, its directors, its officers, officials and employees for losses 
arising from work performed by the Contractor.

3. All Coverages

b. Each policy required shall be endorsed to state that 
coverage shall not be suspended, voided or canceled by 
either party or reduced in coverages or limits, except after 
30 days prior written notice by certified mail, return receipt 
requested, has been given to the District.

c. Each policy is to be on an “Occurrence” form. “Claims 
Made” form requires prior approval by the District as well as 
Contractor required to provide acceptable evidence of 
policy retroactive date and to maintain coverage with same 
retroactive date for a period of not less than five (5) years 
following termination of services.

d. If Contractor maintains broader coverage and or higher 
limits than the minimums shown above, The Di 
strict requires and shall be entitled to the broader coverage 
and/or higher limits maintained by the Contractor. Any 
available insurance proceeds in excess of the specified 
minimum limits of insurance and coverage shall be available 
to the District.

4. Acceptability of Insurance

Insurance is to be placed with California admitted insurers having 
a current A.M. Best & Co. rating of no less than “A-:VII”.

5. Verification of Coverage

Contractor shall furnish the District with appropriate Certificates of 
Insurance and Endorsements effecting required coverages signed 
by a person authorized by insurer to bind coverage. Certificates 
and Endorsements are to be received and approved by the District 
 prior to commencement of any work under Contract. The District 
reserves the right to require certified copies of all required 
insurance policies.
6. Other Requirements

   a. Should any work under this Contract be subcontracted, Contractor shall require each subcontractor to comply with each of these requirements and provide proof of such compliance to the District.

   b. These insurance requirements are not intended to and shall not in any manner be construed to limit or otherwise qualify the liabilities and obligations otherwise assumed by the contractor under any contract awarded in connection with this RFP, including but not limited to the provisions concerning indemnification.

   c. Compliance with these insurance requirements shall be considered a material part of any contract awarded, and breach of any such provision will be considered a material breach of any such contract. This may result in action by the District to withhold payment and/or terminate such contract for cause.

11. INDEMNIFICATION

Contractor shall defend, indemnify, keep and save harmless the District, its Board of Directors, officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, expense, costs (including, without limitation, costs and fees of litigation) of every nature arising out of or in connection with Contractor’s performance of work hereunder or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage caused by the sole negligence or willful misconduct of the District.

12. RECORDS

Contractor shall permit the authorized representatives of the District to inspect and audit all data and records relating to performance under this Agreement. Contractor shall maintain all such records for a period of three (3) years after the District makes final payment under this Agreement.

13. NO CONFLICT OF INTEREST

By signing this Contract, The Contractor covenants that it is presently has no interest, direct or indirect, which would conflict in any manner of degree with the
performance of the services called for under this agreement. The Contractor further covenants that in the performance of this agreement, no person having any such interest shall be employed by the Contractor, and the Contractor receives no commissions or other payments from parties other than the District as a result of work performed hereunder.

If any provision of the Contract is declared void or unenforceable, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.

14. SEVERABILITY

If any provision of the Contract is declared void or unenforceable, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.

15. BINDING EFFECT

All of the terms, provisions and conditions of the Contract hereunder shall be binding upon and inure the parties hereto and their respective successors, assigns and legal representatives.

16. GOVERNING LAW

This Contract, its interpretation and all work performed hereunder, shall be governed by the laws of the State of California.

17. VENUE

In the event of a dispute or breach of contract, venue shall be in Alameda County, California.

18. NONDISCRIMINATION

In connection with the execution of any Contract hereunder, the Consultant shall not discriminate against any applicant or employee on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, gender, gender identity, gender expression, sexual orientation, sex or age as defined in Section 12926 Government Code.
19. **PROHIBITED INTERESTS**

Contractor represents and warrants that neither the General Manager nor any Director, officer employee of the District is in any manner interested directly or indirectly in this contract, or in any expected profits to arise therefrom (State of California Government Code section 1090 et Seq.). No director, member, officer or employee of the District, during his/her tenure or for one year thereafter, shall have an interest, direct or indirect, in this Contract or the proceeds thereof.

20. **ENTIRE AGREEMENT**

This Contract represents the entire agreement of the parties with respect to the subject matter hereof, and all such agreements entered into prior hereto are revoked and superseded by this Contract, and no representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.

This Contract may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

**IN WITNESS WHEREOF**, the parties have executed this Contract on the dates set forth below.

**ALAMEDA-CONTRA COSTA TRANSIT DISTRICT:**

Michael A. Hursh  
General Manager  
Name  
Title  
Date

**CONTRACTOR:**

Name  
Title  
Date

Approved as to form and content:

Denise Standridge  
General Counsel  
Date

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