Request for Qualifications (RFQ)

2020-1480

Rapid Corridor Construction Management (San Pablo Avenue)

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT (DISTRICT)

1600 Franklin Street
Oakland, CA 94612

September 6, 2019
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Summary of Project / Schedule of Events

1. Introduction

A. The District is issuing a Request for Qualifications (RFQ) from qualified Offerors (hereafter referred to as "Offerors") to provide Rapid Corridor Construction Management services as described in this RFQ. The services are fully described in Exhibit A, Scope of Work, Page 24 included in this RFQ. The anticipated procurement will be funded by the Metropolitan Transportation Commission (MTC) and the Alameda County Transportation Commission (CTC) Vehicle Registration Fee (VRF), Measure B and/or Measure BB funds, or such funds in combination with other local funds.

B. The District invites sealed Statements of Qualifications (SOQ) from firms capable of performing construction management services in accordance with the provisions, specifications, and instructions set forth in this RFQ. Offers will be received until the date and time specified below. Late SOQs will not be considered.

C. All Offerors are cautioned to read the entire RFQ, noting insurance and submittal requirements, and to complete all required forms enclosed. Failure to provide all requested information may cause the SOQ to be rejected. The District reserves the right to waive minor irregularities in offers and to reject any and all offers and re-solicit or cancel this RFQ.

D. There are two (2) RFQs running concurrently relating to Rapid Corridor Construction Management, for San Pablo Avenue (this solicitation) and for Telegraph Avenue. An Offeror may submit a SOQ for the San Pablo Avenue Corridor project and/or the Telegraph Avenue Corridor project. Being awarded either contract does not disqualify the Offeror from being awarded the other contract. However, it is the District’s intent to award two (2) separate contracts.

2. Schedule of Events

A. Offerors shall be governed by the following schedule:

<table>
<thead>
<tr>
<th>Solicitation Event</th>
<th>Date</th>
<th>Time</th>
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</thead>
<tbody>
<tr>
<td>Distribution of RFQ</td>
<td>September 6, 2019</td>
<td>N/A</td>
</tr>
<tr>
<td>Pre-Offer Conference</td>
<td>September 20, 2019</td>
<td>2:00 p.m.</td>
</tr>
<tr>
<td>Last day for written questions</td>
<td>September 23, 2019</td>
<td>5:00 p.m.</td>
</tr>
<tr>
<td>District’s deadline to respond to questions via addendum</td>
<td>September 27, 2019</td>
<td>5:00 pm</td>
</tr>
<tr>
<td>Deadline for Statements of Qualification</td>
<td>October 4, 2019</td>
<td>2:00 pm</td>
</tr>
<tr>
<td>Evaluation</td>
<td>October, 2019</td>
<td>TBD</td>
</tr>
<tr>
<td>Recommendation for Award</td>
<td>November 13, 2019</td>
<td>N/A</td>
</tr>
<tr>
<td>Notice to Proceed</td>
<td>December, 2019</td>
<td>N/A</td>
</tr>
</tbody>
</table>

B. Should an Offeror find discrepancies or omissions in the RFQ, or should the Offeror be in doubt as to meanings, the Offeror shall notify the Contacts Specialist, Michael Daly at wdaly@actransit.org prior to the date specified above for written questions. A written solicitation addendum will be sent to all persons or potential Offerors receiving the RFQ, outlining the questions posed from all participants, and their respective answers.

C. An Offeror shall raise any exceptions to the RFQ prior to the date specified above for written questions and shall submit the exceptions with alternative language, as applicable, to the RFQ Contacts Specialist, Michael Daly at wdaly@actransit.org. All exceptions shall be submitted as an email attachment.
Special Instructions to Offerors

1. Pre-Offer Conference
   A. An optional, but highly recommended pre-offer conference will be held on September 20, 2019 at 2:00 p.m. at the following location:
      
      AC Transit
      1600 Franklin Street
      7th Floor Conference Room
      Oakland, CA 94612

2. Small Business Enterprise (SBE) Goal Attainment
   A. There is no percentage goal for SBE participation on this project.

3. Offers and Statement of Qualification Submission
   A. All SOQs shall be received no later than the date and time specified above at the District office at the following address:
      
      AC Transit
      Purchasing Contract Administration Department
      1600 Franklin Street, 6th Floor
      Oakland, CA 94612
      Attn: Michael Daly
   B. All packages shall be sealed and clearly marked as:
      
      RFQ No: 2019-1480 / Rapid Corridor Construction Management – San Pablo
      Due Date/Time: October 4, 2019 by 2:00 p.m., P.S.T.
   C. Any offers or modifications received after the exact time specified for receipt shall not be considered and will be returned to the Offeror unopened.
   D. Offers will not be publicly opened. All offers and evaluations will be kept strictly confidential throughout the evaluation, and negotiation process. Only the members of the Evaluation Team will be provided access to the offers and evaluation results during this period.

4. Technical Offer Contents
   Offers shall be prepared simply and economically, providing a straightforward and concise description of the Offeror’s capabilities and approach for meeting the requirements of this RFQ. The Technical Offer shall be sectionalized with index tabs and cover pages identifying the contents of the sections. The Offeror shall submit one (1) original and three (3) copies of the Technical Offer, along with one (1) set of CDs/Flash Drives with a PDF version, containing the following information, at a minimum. The original shall be loose-bound and suitable for photocopy reproduction.

   Offers shall be organized as follows. Each section shall be clearly labeled with pages numbered and separated by tabs.

   A. Tab 1, Offeror Forms (Page 12)
      i. Offeror Cover Letter (limit of 2 pages)
      ii. RFQ Cover Page
      iii. Offeror Statement of Qualifications and Business References
      iv. Prime and Subcontractor/Supplier Report

   B. Tab 2, Technical
Offeror shall provide a description of its qualifications, experience and knowledge of completing the Plans, Specifications and Estimates (PS&E) for the design of this procurement. This shall also include the firm’s name, address, telephone number, e-mail, web address, brief description of the respondent’s/firm’s history, and background of the firm and state how many years the firm has been in business.

i. Technical Specialized Experience
   - Firms must demonstrate experience in projects which include the type of specialties outlined in this RFQ. Past successes of the firm as demonstrated by its performance evaluations on institutional/government work shall be provided. Identify specific personnel involved with these projects.
   - Demonstrate experience with multi-agency MOUs & agreements and with relevant public works type contracts, preparing bid documents, specifications, designs, and cost estimates.
   - Demonstrate familiarity and relevant experience with the local agencies involved directly in this project. Please review the Scope of Work detailed in Exhibit A of the Sample Contract.
   - Demonstrate experience with local projects of a type and nature which shows expertise as required by this RFQ.
   - Demonstrate familiarity with the project. For more information on the project please review the Scope of Work detailed in Exhibit A of the Sample Contract.
   - Demonstrate knowledge and experience with federal, state and local regulations and regulatory agencies that have jurisdiction over designs and construction in the District’s area of operations.

ii. Professional Qualifications and Technical Competence of Team Members, and Depth of Firm
   - Offeror must submit a summary of key project personnel and principals assigned and/or overseeing the tasks described in the Scope of Work using Attachment B, and include:
     - Resumes
     - Briefly describe their responsibilities and prior relevant experience
     - Include all certifications, training, accreditations, and licenses of those responsible for completing required tasks and how they will be designated.
     - Describe how change orders and review comments are managed within key personnel.
   - Active professional registration of team members.
   - Individual team members’ role in this contract.
   - Capability to provide qualified back-up staffing for key personnel to ensure continuity of services and ability to surge to meet unexpected project demands.
   - Professional affiliations and licensing including team members.

iii. Capacity of Firm to Accomplish the Work in the Required Time
   - Offeror must propose a plan for completing the required tasks.
   - Demonstrate the ability to perform work to schedules and the capacity to accomplish multiple taskings simultaneously (show current and projected work load). Firms will be evaluated in terms of impact of this work load on its staff’s projected work load during the contract period.
   - Show in-house capacity to perform required services.
   - List other public contracts within the past 18 months, if any. Provide the value, critical staff, start and finish dates.
   - Detail the firm’s organization and management plan for the anticipated contract.

C. Tab 3, Past Performance

i. Demonstrate relevant past performance on contracts with government agencies and private
industry.
ii. Demonstrate how design costs, change order costs, schedules, and construction budgets have been managed. Use examples of actual projects of similar size and type as required by this RFQ.

i. Provide information comparing original construction budgets to proposal costs to final construction costs.

5. Cost Proposal Contents

A. The Cost Proposal shall be submitted in a separately sealed envelope, and must only contain information related to price, labor rates, labor category/job title, office location(s) of each key personnel, and cost breakdown similar to Attachment E, Sample Cost Proposal, including a schedule showing task durations.

B. The total proposed cost shall include all applicable costs for services provided. The total cost breakdown shall include all labor, materials, taxes, profit, overhead, insurance, subcontractor/subconsultant costs, and all other costs and expenses incurred, and shall provide the total cost to complete all the required tasks, along with a schedule showing task durations, including hourly rates by personnel assigned to this project and for additional support, proposed costs of deliverables and hourly rates/schedule in response to each task outlined in the Scope of Work.

C. The Offeror shall submit one (1) original and one (1) copies of the Cost Proposal, along with one (1) set of CDs/Flash Drives with versions in Microsoft Excel and pdf. The original shall be loose-bound and suitable for photocopy reproduction.

6. Evaluation Process

The evaluation process will be based on the Brooks Act (Public Law 92-582) which requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications for the type of design services being procured, and at a fair and reasonable price. The process is further defined as follows:

A. Responsiveness (pass or fail)

After the SOQ submittal date and time, each SOQ will be checked for the responsiveness of required information in conformance with the submission requirements of this RFQ. If any required information is absent, the SOQ may be rejected.

Exceptions, conditions, reservations or understandings that are explicitly, fully and separately stated will be evaluated for their acceptability. An Offer having a preponderance of unacceptable exceptions and conditions may be cause for the Offer to be rejected. An unacceptable exception, condition, reservation or understanding, if not withdrawn by the Offeror upon the request by the Contracts Specialist, or designee, would be cause for the Offer to be rejected.

In addition, if an Offeror receives a score of “0” in any one of the sections of the Technical Specifications, the Offeror will be given an opportunity to bring that section into compliance with the specifications. If the Offeror declines to do so, that Offer may be rejected as non-responsive.

B. Qualifications are being sought from the most qualified firm in response to this RFQ.

C. Using the evaluation elements, and interviews (if deemed necessary), qualifications are ranked to identify the most qualified firm.
D. Once the most qualified firm has been identified, The District will open that qualified firm’s cost proposal and begin negotiations.

E. Based on the detailed technical and cost proposal from the respondent, a fair and reasonable price will be negotiated.

F. If the negotiating parties cannot agree as to contract terms and/or fair and reasonable price within a reasonable time frame, the District may terminate discussions and select the second-ranked firm for negotiations.

G. If the second-ranked firm cannot agree as to contract terms and/or services price, the next most qualified firm will be selected for negotiations and so on, until an agreement can be reached with a qualified firm. The District will not reopen negotiations with a firm after negotiations have been closed.

H. The selected firm will be required to enter into the District’s standard form contract.

I. Application of Evaluation Criteria

Technical Offers will be evaluated based on the reviewer’s determination of the degree of compliance with RFQ requirements. The evaluation criteria will be applied in the determination of the most highly qualified offeror. The District’s staff will record and tabulate the raw evaluation scores of the Evaluation Committee and apply the established weights. The “Weighted Method” of scoring will be utilized as described below.


The evaluation criteria outlined below will be used to evaluate each technical written offer:

<table>
<thead>
<tr>
<th>WEIGHT ASSIGNMENT FOR OFFER EVALUATION CRITERIA</th>
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<tbody>
<tr>
<td>Evaluation Criteria</td>
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<tr>
<td>---------------------</td>
</tr>
<tr>
<td>1. Responsiveness to Request for Qualification</td>
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<tr>
<td>2. Technical</td>
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<tr>
<td>a. Technical Specialized Expertise</td>
</tr>
<tr>
<td>b. Professional Qualifications and Technical Competence of Team Members, and Depth of the Firm</td>
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<tr>
<td>c. Capacity of Firm to Accomplish the Work in the Required Time</td>
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<tr>
<td>3. Past Performance</td>
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<tr>
<td>4. Capacity to Travel Promptly to Relevant Job Site</td>
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<td><strong>TOTAL POSSIBLE WEIGHT</strong></td>
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K. Evaluation Scoring

This evaluation process will be used to determine the relative qualifications of Offerors. The determination will be based on an overall score, arrived at separately by the members of the District’s Evaluation Team and tabulated by the District’s Procurement staff for each Offeror.

i. The written SOQs will be evaluated based on each Reviewer’s determination of each criteria and sub-criteria compared to the degree of compliance with Contract requirements. Scores will be assigned according to the following:
5 Exceptional
Fully compliant with RFQ requirements and with desirable strengths or betterments; no errors, or risks, or weaknesses or omissions. There is a high probability of success.

4 Compliant
Fully compliant with RFQ requirements - Meets in all aspects and may in some cases exceed the critical requirements

3 Good
Generally compliant with RFQ requirements; some minor errors, or risks, or weaknesses or omissions. Minor weaknesses can be readily corrected

2 Minimal
Minimally compliant with RFQ requirements; errors, or risks, or weaknesses or omissions; possible to correct and make acceptable.

1 Deficient
Non-compliant with RFQ requirements; errors, or risks, or weaknesses or omissions; difficult to correct and make acceptable.

0 Unacceptable
Totally deficient and not in compliance with RFQ requirements; demonstrates a lack of understanding of RFQ requirements.

ii. Evaluators may utilize non-whole numbers, i.e. decimals, in providing their raw scores. The District's Evaluation Team members will carry out and document its evaluations. Any noted deficiencies which may render an Offer unacceptable will be documented. The District's Evaluation Team members will make specific note of questions, issues, concerns and areas requiring clarification by Offeror and to be discussed in any meetings with Offeror.

7. Recommendation to Award

After the District’s Evaluation Team has chosen the Offer and Statement of Qualification which it finds to be the highest ranked to the District based on the tabulated results, and negotiations are completed, the District’s Evaluation Team’s selection will be recommended to the District’s Board of Directors for approval. The results of the evaluations and the selection of an Offer for any award will be documented.

The District’s Board of Directors has the option of accepting the recommendation or of resoliciting the requirement/project if it feels that such a selection is in the best interests of the District and public transit in the Bay Area.
Standard Instructions to Offerors

1. Revisions/Addenda to RFQ/Solicitation

   If it becomes necessary to revise any part of this Request for Qualification (RFQ), or if additional information is necessary to enable the Offerors to make an adequate interpretation of the provisions of this RFQ for an Offer, an Addendum to the RFQ will be provided to each prospective Offeror. Offerors must acknowledge receipt of all Solicitation Addenda in Offers submitted to the District via the RFQ Cover Page form located in the Attachments section.

2. Explanation to Offerors

   Any explanation desired by an Offeror regarding the meaning or interpretation of this solicitation must be requested in writing and received prior to date specified in the "Schedule of Events" in the Special Instructions to Offerors Section. All information provided to any prospective Offerors concerning this solicitation will be furnished to all prospective Offerors in writing.

3. Verbal Agreements

   No prior, current, or post-award verbal conversations or agreement(s) with any officer, agent, or employee of the District shall affect or modify any terms or obligations of this RFQ or any Contract that may result from this procurement. Oral explanations or instructions will not be binding.

4. Signature Requirements

   A. Offers must be signed by a duly authorized officer(s) eligible to sign contract documents for the Offeror (the "Authorized Signer").

   B. Consortia, joint ventures, or teams submitting Offers, although permitted and encouraged, will not be considered responsive unless it is established that all contractual responsibility rests solely with one Offeror or one legal entity. The submittal should indicate the responsible entity. Offerors should be aware that joint and several responsibility and liability will attach to any resulting Contract and failure of one party in a joint venture to perform will not relieve the other party or parties of total responsibility for performance.

5. Vendor Registration

   Online Vendor Registration is required prior to contract award. Offerors should access www.actransit.org, select: Doing Business with AC Transit, Vendor Login and Registration, and Vendor Registration, to register as an Online Purchasing User. To complete the process, include a W-9, Request for Taxpayer Identification Number and Certification (containing original signature) in proposals. If online access is not available, contact the Contracts Specialist for instructions.

6. News Releases

   Written approval by the District shall be required prior to any public disclosure regarding this RFQ or any subsequent selection or contract award.

7. Reserved Rights

   A. All Offerors are notified that the Contract for these services is contingent upon funds appropriated by the District and local, regional, state and federal governments. In the event that funding is eliminated or decreased, the District reserves the right to terminate any Contract or modify it accordingly. The
District makes no representations that any Contract will be awarded to any Offeror responding to the RFQ.

B. The District reserves the right to waive any immaterial irregularities in any and all offers.

C. The District reserves the right to reject all offers and re-solicit or cancel this procurement if deemed by the District to be in its best interest, without indicating any reasons for such rejection(s).

D. The District reserves the right to enter into a Contract with any Offeror based upon the initial offer or on the basis of a best and final offer without conducting interviews.

E. The District reserves the right to select the offer that, in its judgment, is the highest ranked, and offers a reasonable and acceptable price.

F. The District reserves the right to negotiate a contract that covers selected parts of an offer, or a contract that will be interrupted for a period or terminated for lack of funds.

G. The District reserves the right to award in whole or in part, by line item or group, or to make multiple awards or no award, whatever is in the best interests of the District.

8. Cost of Offer and Pre-Contractual Expenses

The District shall not be liable for any pre-contractual expenses incurred by any Offeror. Offeror shall not include any such expenses as part of the Offer in response to the RFQ. The District shall be held harmless and free from any and all liability, claims, or expenses whosoever incurred by, or on behalf of, any person or organization responding to this RFQ.

Pre-contractual expenses are defined as expenses incurred by Offeror in:

A. Offers in response to this RFQ.

B. Costs associated with interviews and meetings (including travel expenses) incurred in responding to this RFQ.

C. Other expenses incurred by an Offeror prior to the date of award and formal Notice to Proceed for any contract.

9. Pricing and Financial Information

A. Each Offeror shall submit a Cost Proposal in accordance with the Special Instructions to Offerors. The price must be valid for a minimum of one hundred eighty (180) days from date of submittal.

10. Debriefing

Subsequent to the award, unsuccessful Offerors will be notified and may request a formal debriefing if a written request is received by the District no later than three (3) business days following the receipt of notification of non-award.

11. Waiver

By submission of its Offer, the Offeror represents and warrants that it has sufficiently informed itself in all matters affecting the performance of the work or the furnishing of the labor, services, supplies, materials, or equipment called for in the solicitation; that it has checked its offer for errors and omissions; that the prices stated in its cost proposal are correct and as intended by it; and are a complete and correct statement of its prices for providing all the labor, services, supplies, materials, equipment and other resources required.
12. Public Records/Confidentiality

A. The Offers received in response to this RFQ become the exclusive property of the District.

B. When a Contract award is approved by the District, all Offers submitted in response to this RFQ shall become a matter of public record and shall be regarded as public records. Those elements of each proposal which are marked as "CONFIDENTIAL", or "PROPRIETARY" and are determined by the District to be confidential shall be exempt from being deemed as a public record.

C. If required by law or by an order of a court, the District may be required to disclose such records or portions thereof, including without limitation those so marked.

D. Offers that indiscriminately identify all or most of the Offer as exempt from disclosure without justification may be technically unacceptable as privileged information and be subject to public disclosure.

E. In the event a proprietary information designation is challenged by a third party, the Offeror 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.

13. Completeness of Offers

Only those Offers which provide for all of the required services will be considered responsive.

14. Knowledge of Offer/Price Conditions

Before submitting an Offer, the Offeror shall carefully read all sections of this RFQ and shall fully inform itself as to all existing conditions and limitations.

15. Audit and Inspection of Records

Offerors shall permit authorized representatives of the District or its designee to inspect and audit Offeror’s data, facilities and records relating to this RFQ. Unsubstantiated statements or refusal to permit audit or inspection may cause the Offer to be declared non-responsive.

16. Black Out Provision

No Offeror, including anyone directly or indirectly on behalf of such Offeror, shall attempt to influence any part of the process. From the time the RFQ is issued until District’s Board of Directors or designee makes the Contract Award (the “Black-Out Period”), Offerors directly or indirectly through others, are restricted from attempting to influence in any manner the decision making process through, including, but not limited to, the use of paid media; contacting or lobbying the District’s Board of Directors or General Manager (GM) or any District employee; contacting reporters; contacting RFQ evaluators; submitting letters, e-mail messages or other similar forms of communications to the editor of newspapers and other media for publication or ghostwriting or otherwise requesting others to submit such letters, e-mail messages or other similar forms of communication; answering questions regarding the RFQ or their Offers during the “Black-Out Period” or in any other way which could be construed to influence any part of the decision making process about this RFQ.

Violation of this provision will cause the Offer to be rejected.

17. Debarred Offerors
At the time of Offer submittal, the Offeror, including any of its officers or holders of a controlling interest, is obligated to inform the District whether or not it is or has been on any debarred Offeror list maintained by the U.S. Government and the State of California.

18. Protest Procedures

A link to Board Policy 468, the District’s bid protest procedures is listed below: You may also contact the District’s assigned Contracts Specialist for a copy thereof.


19. Department of Industrial Relations (DIR) Registration

In order to submit a responsive offer and perform public works as defined in the Scope of Work, all tiers of subcontractors, including trucking/hauling firms that are subcontracted to perform services, must be registered with the California Department of Industrial Relations (DIR) pursuant to Senate Bill 854, at the time offers are due and throughout the duration of contract performance, if awarded the contract. Evidence of DIR registration, including that of its subcontractors, must be submitted by the Offeror. No prime or subcontractor may be listed on an offer for a public works project (submitted on or after March 1, 2015) unless registered with the DIR pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for offer purposes only under Labor Code section 1771.1(a)].

Offerors and their proposed subcontractors shall hold such licenses as may be required by the laws of the State of California for the performance of the work specified in the Scope of Work. The Contractor will also be required to ensure that all subcontractors working on this project are holding valid licenses suitable for their trade.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county, or counties, in which the work is to be done have been determined by the Director of the California DIR. The prevailing wage rates may be reviewed/validated by the District.
Statement of Qualification Forms –
To be Completed and Returned by Offerors

Checklist

☐ Attachment A  RFQ Cover Page
☐ Attachment B  Offeror Statement of Qualifications and Business References
☐ Attachment C  Prime and Subcontractor/Supplier Report
☐ Attachment D  Certification Regarding Lobbying

☐ Attachment E  Cost Proposal (to be submitted in separate sealed envelope)
Attachment A
RFQ Cover Page

Name of Business: ______

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

Primary Business Address: ______

Contact Name: ______
Title: ______

Email: ______
Phone #: ______

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

☐ Offer Validity
  Offer shall remain valid for a period of not less than 180 days from the date of submittal.

☐ Insurance
  The Offeror agrees to comply with the insurance requirements provided in Sample Contract, Exhibit B: Special Terms and Conditions.

☐ Non-Collusion
  The Offeror has made this Offer independently, without consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to Request for Qualifications with any other firm or with any other competitor.

☐ Non-Conflict:
  The Offeror 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. The Offeror further covenants that in the performance of this agreement, no person having any such interest shall be employed by the Offeror, and that the Offeror receives no commissions or other payments from parties other than the District as a result of work performed.

☐ Equal Employment Opportunity:
  The Offeror agrees to comply with the Civil Rights Act and agrees to have a complaint procedure where violations of the Act can be reported and appropriately adjudicated. The Offeror agrees to comply with applicable Federal laws, implementing regulations, and other implementing requirements the FTA may issue. In addition, the Offeror agrees to provide workforce data reports as may be periodically requested by the District.
Drug Free Workplace:
The Offeror certifies, pursuant to the definitions regarding a Drug Free Workplace provided in the Federal Acquisition Regulation System ("FAR"), Procedures for Transportation Workplace Drug & Alcohol Testing Programs, 49 CFR 40, and Prevention of Alcohol Misuse & Prohibited Drug Use in Transit Operation, 49 CFR 655, as amended, to the best of its knowledge and belief that it and its principles maintain a workplace(s) safe and free from "controlled substances" as described in the Controlled Substances Act (21 U.S.C. 812) and as further described in regulations 21 CFR 1308.11 – 1308.15.

The undersigned agrees to comply with the above referenced provisions and certifies that all information included in your Offer 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: _____
Typed name: _____
Title: _____
Signature: __________________________
Date: _____
Attachment B
OFFEROR’S STATEMENT OF QUALIFICATIONS & BUSINESS REFERENCES

A. Offeror Name: 

B. How many years has your organization been in business as a Contractor under your present business name?  

1. As a prime contractor?  

2. As a subcontractor?  

C. Give information below about all your current and ongoing projects. (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 Completed of Overall Project</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 Work outlined in this solicitation during at least the last three (3) years in the following tabulation.

<table>
<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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(Attach additional sheets if necessary.)

E. Give information below about the relevant experience of the principal individuals of your present organization including those identified as proposed key personnel and 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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CONFIDENTIAL INFORMATION
F. **References:** List a minimum of three (3) primary and up to two (2) alternate professional references for which your organization has performed work relevant to the Scope of Work outlined in this solicitation within the past three (3) years.

<table>
<thead>
<tr>
<th>Business Name</th>
<th>Contact Person</th>
<th>Phone</th>
<th>Email</th>
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G. Have you or your organization, or any officer or partner thereof, failed to complete a contract?

☐ **No**  ☐ **Yes**  If yes, please explain below.

______________________________________________________________________________

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

☐ **No**  ☐ **Yes**  If yes, please explain below.

______________________________________________________________________________
PRIME CONTRACTOR & SUBCONTRACTOR/SUPPLIER REPORT

To be Completed and Returned by Proposers

The Proposer is required to furnish the following information in accordance with the provisions of Public Contract Code Sections 4100 to 4113, inclusive. This list and information shall include all subcontractors that will perform work, provide labor or render services to the Proposer in connection with the project in an amount in excess of one-half of one percent (0.5%) of the total amount of Proposer’s Grand Total Proposal Price.

<table>
<thead>
<tr>
<th>Prime/Subcontractor/Supplier Name/Address/Contact Information</th>
<th>Type of Work</th>
<th>Percentage of Work</th>
<th>Check if Applicable</th>
<th>DBE/DBE Certifying Agency (i.e. State of CA)</th>
<th>Annual Gross Receipts for the Last 3 Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
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<td></td>
<td>DBE</td>
<td>SBE</td>
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<td>Address:</td>
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<td>How Many Years In Business:</td>
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<td>License No (if applicable):</td>
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(Do not list alternative subcontractors for the same work. Attach additional sheets as necessary)
Attachment D

CERTIFICATION REGARDING LOBBYING

Offerors shall certify 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. Offerors 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 shall be forwarded to the District. Offerors shall ensure that all of its Subcontractors included in their Offer shall certify the same.

Please choose one:

☐ No, Offeror has not participated in lobbying activities as outlined above

☐ Yes, Offeror has participated in lobbying activities as outlined above
   If yes –and complete the Disclosure of Lobbying Activities form on the following page

Name of Offeror: _______

Person Completing Form: _______

Signature: __________________________________________ Date: _______
## Attachment D (Continued):
### Certification Regarding Lobbying

**DISCLOSURE OF LOBBYING ACTIVITIES** (Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352)

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<tr>
<td><strong>1. Type of Federal Action:</strong></td>
<td><strong>2. Status of Federal Action:</strong></td>
<td><strong>3. Report Type:</strong></td>
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<tr>
<td>contract</td>
<td>bid/offer/application</td>
<td>initial filing</td>
</tr>
<tr>
<td>grant</td>
<td>initial award</td>
<td>material change</td>
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<tr>
<td>cooperative agreement</td>
<td>post-award</td>
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<tr>
<td>loan</td>
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<tr>
<td>loan guarantee</td>
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<td>loan insurance</td>
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**For Material Change Only:**
Year ______ Quarter ______
Date of last report: ______

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<tr>
<td><strong>4. Name and Address of Reporting Entity:</strong></td>
<td><strong>5. If Reporting Entity in No. 4 is Sub-awardee, Enter Name and Address of Prime:</strong></td>
<td></td>
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<tr>
<td>□ Prime</td>
<td>□ Sub-awardee</td>
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<tr>
<td>Tier, if known:</td>
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<tr>
<td>Congressional District, if known:</td>
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<td><strong>6. Federal Department/Agency:</strong></td>
<td><strong>7. Federal Program Name/Description:</strong></td>
<td><strong>8. CFDA Number, if applicable:</strong></td>
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<tr>
<td><strong>9. Award Amount, if known:</strong></td>
<td><strong>10. Name and Address of Lobbying Entity:</strong></td>
<td><strong>10b. Individuals Performing Services</strong></td>
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<td>□ planned</td>
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(Attach Continuation Sheet(s), if necessary)

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<tr>
<td><strong>11. Amount of Payment (check all that apply):</strong></td>
<td><strong>12. Form of Payment (check all that apply):</strong></td>
<td><strong>13. Type of Payment (check all that apply):</strong></td>
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<td>$ ______</td>
<td>cash</td>
<td>□ retainer</td>
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<td>□ actual</td>
<td>in-kind; specify:</td>
<td>□ one-time fee</td>
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<td>□ planned</td>
<td>nature ______</td>
<td>□ commission</td>
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<td>value ______</td>
<td>□ contingent fee</td>
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<td><strong>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:</strong></td>
<td><strong>15. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reference was placed by the user above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.</strong></td>
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**Signature: ___________________________**

Print Name: ______
Title: ______
Telephone #: ______
Date: ______

CONFIDENTIAL INFORMATION
Attachment E

SAMPLE COST PROPOSAL

A. The Cost Proposal shall be submitted in a separately sealed envelope, and must only contain information related to price, labor rates, labor category/job title, office location(s) of each key personnel, and cost breakdown similar to Attachment E, Sample Cost Proposal, including a schedule showing task durations.

B. The total proposed cost shall include all applicable costs for services provided. The total cost breakdown shall include all labor, materials, taxes, profit, overhead, insurance, subcontractor/subconsultant costs, and all other costs and expenses incurred, and shall provide the total cost to complete all the required tasks, along with a schedule showing task durations, including hourly rates by personnel assigned to this project and for additional support, proposed costs of deliverables and hourly rates/schedule in response to each task outlined in the Scope of Work.

<table>
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<tr>
<th>Direct Costs</th>
<th>Proposed Hours</th>
<th>Proposed Price</th>
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<tr>
<td>Task 1 - Administration</td>
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<td>Task 2 – Preliminary Engineering</td>
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<td>Task 3 – Public Outreach</td>
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<td>Task 4 – Design</td>
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<td>Task 5 – Base TSP Signal Timing + Signal Coordination</td>
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<td>Task 6 – Construction Management Support</td>
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Direct Cost Subtotal:
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<th>Indirect Costs</th>
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<td>Taxes:</td>
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<td>Profit:</td>
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<td>Insurance:</td>
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<td><strong>PROJECT TOTAL:</strong></td>
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Sample Contract

THIS CONTRACT is made and entered into this ___ day of __________ 2019, by and between ALAMEDA-CONTRA COSTA TRANSIT DISTRICT (hereinafter “District”), a special transit district established pursuant to California Public Utilities Code, Section 24501 et seq., and ________________ (hereinafter “Contractor”).

THE PARTIES AGREE AS FOLLOWS:

1. **SCOPE OF WORK**
   Contractor shall provide construction management services in support of the Rapid Corridors Construction Management – Telegraph Project, in full accordance with Exhibit A – Scope of Work.

2. **COMPONENT PARTS**
   This Contract shall consist of the following documents:
   - Contract
   - Exhibit A – Scope of Work
   - Exhibit B – Special Terms and Conditions
   - Exhibit C – Standard Terms and Conditions
   - Exhibit D – Contractor’s Final Offer, inclusive of a Statement of Qualifications, and Completed Forms, as accepted by the District

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

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT:           CONTRACTOR NAME:  
________________________________           ________________________________
Michael Hursh                                Date  Signature                 Date
General Manager

_____________________ _________
Printed Name

Approved as to Form and Content:

________________________________  ________________________________
Denise C. Standridge              Date  Title
General Counsel

CONFIDENTIAL INFORMATION

Page 23 of 49
Exhibit A

Scope of Work

A. General Statement

The District has received funding under the Alameda County Transportation Commission’s Capital Improvement Plan, and Federal Surface Transportation Program/Congestion Mitigation and Air Quality (STP/CMAQ) funds under the Metropolitan Transportation Commission’s (MTC) Transit Performance Initiative (TPI) program. MTC intends these funds to be used quickly to address known congestion/delay issues and improve route performance. Both funding sources will be used for Rapid Corridors projects aimed at improving transit speeds and reliability while reducing traffic congestion.

The Rapid Corridors Project is intended to improve transit operations along San Pablo Avenue, Telegraph Avenue and Grand/W. Grand Avenue, as well as providing a mechanism to deliver the Southside Pilot Transit Project in Berkeley, CA. The Rapid Corridors Project will implement short-term projects recommended in the Major Corridors Study (2016).

The project will improve the performance of the current transportation systems by promoting the effective use of existing roadway and transit systems along San Pablo Avenue, Telegraph Avenue and Grand/W. Grand Avenue corridors. To organize delivery of the project better it has been divided into two efforts (sub-projects): 1) Rapid Corridors San Pablo and Grand/W. Grand Avenues, 2) Rapid Corridors Telegraph and Grand/W. Grand Avenues. This solicitation covers the former. Both design and construction phases of these sub-projects have been/will be solicited separately.

This project will enhance corridor traffic and transit operations along San Pablo Avenue (AC Transit Lines 18, 52, 72, 72M, 72R, 667, 668, 800, 802, G, H, L, LA), Grand/W. Grand Avenues (Lines 12 and NL) and I-80 ICM crossing arterials (Lines 70, 71, 74, 76, 80, FS, G, H, J, L, LA, and Z) passing through nine jurisdictions. The corridor is approximately 13.5 miles long and is the major travel corridor between Oakland and San Pablo. The Project will install transportation infrastructure improvements to decrease traffic delay and increase operational reliability for buses along the length of the corridor. Generally, improvements include evaluation of existing conditions of TSP and Signal controller/equipment along all project corridors, installation of a corridor-wide transit signal priority system through various jurisdictions along San Pablo Avenue and at some intersections along the Grand/W. Grand corridor, and programming/testing/activation of TSP equipped intersections along San Pablo, Grand/W. Grand and other Interstate 80 Integrated Corridor Mobility (I-80 ICM) connecting arterials. All improvements and designs shall comply with current/required jurisdictional code.

District staff needs additional support within the construction phase of the project to help manage the construction effort, inspect and supervise the construction process, and ensure the project is successfully constructed. This Scope of Work seeks to secure the services of a qualified Construction Management (CM) team who will take responsibility to ensure delivery of the project construction to fulfill the project’s intended purpose on schedule and within budget. A Construction Management Services contract is necessary to prepare for project construction. A Design Services contract was awarded. Upon completion of the design package, the District will solicit an IFB for Construction (currently expected to take place in September 2019).

B. Pre-Construction Services

The District’s Procurement Department is in the process of preparing bid and contract documents in preparation to advertise for construction of the project. Support from a CM team experienced in Construction Management, and Construction Contract Administration on traffic signal Intelligent Transportation System (ITS) projects will be required to quickly evaluate the final bid and contract.
documents and confirm the comprehensive (prioritized) list of all tasks and processes necessary to successfully complete construction (with sign-off) from vested stakeholders.

In advance of construction bid review and construction contract award, the CM will be required to review the full Invitation for Bids (IFB) and provide an expedited Quality Assurance/Quality Control (QA/QC) bid analysis and constructability review. The CM must identify any issues which may cause delays to resolve them as soon as possible. Any and all issues/liabilities must be accounted for and mitigated. All responsibilities and obligations with regard to The District and the project must be accounted for, clearly assigned, and communicated ahead of time.

The CM shall set up the needed framework to provide effective and efficient construction oversight on this project. The CM shall review documents to ensure local jurisdictional agency construction provisions, standards, and conditions are met to ensure that contractual terms and conditions for the construction procurement are as consistent as possible across all jurisdictions and in compliance to the fullest extent possible with any/all regulations. (Please note: This is a federally funded project for which the District needs to successfully pass an audit.)

The following are examples of required services needed during pre-construction. Please note this is not an exhaustive list of the services that may be required to complete the Project.

- Assistance with construction pre-bid meeting
- Responsibility for managing pre-construction kick-off meeting
- Management and execution of all necessary pre-construction activities
- Verify contractor has prepared all traffic control plans needed for all participating jurisdictions and that plans are in order as required by each jurisdictional agency before submission to ensure expedited review and approval of Traffic Control Plan (TCP) by each agency.
- Ensure contractor has all necessary permits applications submitted to all participating jurisdictions and that permits are in order
- Assure advanced written notice is given to the residents of nearby properties (as directed by jurisdictional agencies) or the general public, informing them of the work to take place that may impact them
- Identify all long lead time purchases immediately (i.e. Traffic Signal Equipment) and ensure early approval and order of these items
- Pre-construction photo records
- Contract Compliance Support in regard to payment of Prevailing Wage rates (review of contractors certified payroll)

The CM shall also identify all necessary District responsibilities to ensure conformance to and compliance with any/all regulations governing administration/primary oversight responsibility for full project delivery. The CM will be required to work closely and coordinate with District staff to prepare/review and/or provide guidance on the following type of documentation and identify issues that could lead to delays, disputes, and change orders or any other problems that may arise during construction. This is not an exhaustive list of the type of documentation the CM may be required to complete/maintain throughout the Project.

- Invitation for Bids (IFB – Full package incl. plans/specifications, division 00 & 01, SWPPP, etc.)
- Bid Inquiries and Responses (incl. technical responses)
- All contract documents
- Addendums
- Bid submissions and award recommendations
- General Contractor Submittals
- Relevant Insurance Policies
- General Contractor Schedule of Values
- Review of all contractor labor to ensure compliance with all requirements
• Review of all project quality control procedures, reporting of nonconforming work, testing requirements, dealing with discovery of changed conditions, time extensions, deductive changes, retentions, and final payment

C. Construction Services

After award and full execution of the construction contract, the CM will be responsible to provide all services needed to fully administer construction. Please note, all work shall be performed per City, County, and/or Caltrans standards. CM shall show that they can perform the duties of a Construction Manager, Resident Engineer, Civil Inspector, Traffic Signal ITS Inspector, Materials and Soils testing technicians, and any other duties needed to ensure the project is constructed successfully on schedule and on budget. CM shall be fully responsible to ensure construction follows/adheres to appropriate standard plans, specifications, practices, processes, and guidelines of each associated jurisdictional agency involved.

CM shall develop and adhere to the project schedule and project schedule process and enforce it during construction. Schedules are an essential tool to keep a project on track and to monitor and control changes. Generally, the project design professionals come up with the initial project schedule during the design phase. The schedule is stated in terms of tasks, their interrelationships, durations, and “critical paths” of the project, i.e., the series of sequential tasks that determine the shortest time in which the project can be completed. Task durations are determined based on their nature and the amount of work they involve using project scheduling tools. Project start, and completion dates are then established by taking the actual project start date (typically established by a Notice to Proceed), adding the number of days from the initial project schedule, and arriving at the initial (scheduled) project completion date. The project completion date is then adjusted by means of the change order process. The District can foreclose many potential legal issues by diligently adhering to project scheduling and control processes such as (1) developing an accurate and complete initial project schedule, (2) conducting weekly and daily (on-site) project meetings, (3) obtaining 30-day schedule updates from the contractor, (4) adhering to the change order process, and (5) maintaining project schedule oversight and control responsibility. The CM will be required to carry the responsibility stated above.

CM must show strong experience with successful past CM services involving both Civil and Traffic Signal/ITS systems construction projects including, but not limited to:

- Interconnect (fiber, wireless, and copper)
- Traffic Signal coordination (including responsive and adaptive systems)
- Traffic Management System Integration
- Transit Signal Priority (TSP)
- Storm Water Drainage
- Bus Stop Relocations (bus pads, sidewalks, curb and gutter, and ADA ramps, etc.)
- Bike Paths
- Landscaping/Irrigation
- Caltrans Right-of-way
- Roadway design/construction for stakeholder agencies involved
- Traffic Control and Traffic Management Plans

Significant coordination efforts will be expected and required of the selected CM for the full duration of the project. They will develop, establish, foster, and participate in a partnering relationship and activities with the District, all affected local agencies/stakeholders, other partnering consultants, the public, and the contractor. Any construction project can benefit from a partnering approach to promote cooperation, minimize confrontation, and resolve disputes amicably and expeditiously. By establishing these relationships and building trust, the team shares risk, allowing for a more efficient operation. There are many aspects of a project that can be enhanced through a cooperative and collaborative environment with the Construction Contractor by developing a commitment to teamwork, identifying mutual goals and the obstacles to achieving these goals, and finding solutions to these obstacles.
Weekly contractor coordination meetings will be managed and conducted by the selected CM to discuss conformance to plans/specs, inspection, new issues, outstanding issues, Requests for Information (RFI), RFI logs, submittal reviews, requests for survey staking, Field Change orders, contract change orders, and the contractor's three-week look-ahead schedule. CM is expected to anticipate and facilitate/participate in any construction coordination meetings with any adjacent or otherwise impacting concurrent construction projects to discuss, assess, and resolve any conflicts with our project construction process. They will be required to provide reports as needed to advise the District of potential impacts or conflicts. The CM will be expected to take detailed notes and provide meeting minutes to weekly construction meetings highlighting resolutions, action items, critical path issues, assignments, and expected due dates.

The following are examples of required services needed during construction. Please note this is not an exhaustive list of the services that may be required to complete the Project.

- Review & Ensure timely submission of Construction Staging Schedule and Plan, Traffic Management Plan (TMP) – TCP (as required for approval by stakeholder agencies), SWPPP, and any other necessary items required from the contractor by local agencies before commencement of construction
- Contract Administration Support
- Management of issues as they arise through resolution
- Analyze issues and make sound engineering recommendations for solutions in a timely manner
- Bus stop relocation coordination involving potential impacts to bus pads, sidewalks, curb and gutter, and curb ramps compliant with the Americans with Disabilities Act, etc. and resolving these issues in a timely manner, including field adjustments as necessary. It is expected that inspectors have a thorough knowledge of existing bus stop geometric requirements.
- Construction inspection (Roadway/highway inspector, Quality control Inspector, Traffic Signal ITS/Interconnect, etc.) to assure all improvements are constructed as designed and within allowable tolerances
- Oversight for compliance with any environmental requirements
- Construction survey staking and management of all staking requests
- Materials and Soils testing
- Systems performance testing
- Off-site materials source inspection
- Construction photo records
- Management and handling of all contractor Requests for Information (RFI)
- Determination of Construction staging and staging areas. Check overall logic for any conflicts in required construction sequencing and verify all contract work items are included
- Review contractor equipment and labor resources allocated to the project and determine any potential resource leveling problems or conflicts
- Early review of Traffic Management and Traffic Control Plans to ensure compliance with local agency requirements
- Preparation of Meeting Minutes for all meetings attended clearing showing decisions and outcomes and action plan identifying who is responsible for specific action items
- Perform all Resident Engineer functions as required (Review Schedule of Values and Inspectors' daily reports, manage submittals and change order requests from the General Contractor, etc.)
- Provide full Construction Coordination
- Have a working knowledge of the various reporting requirements as required by Caltrans Local Assistance Procedure Manual (LAPM), as it relates to this project
- Ensure all necessary Caltrans LAPM documents and services are properly prepared and submitted and ensure submittals to Caltrans are approved in a timely manner.
- Full Assistance in any/all Dispute Resolutions
- Identify potential claims throughout the duration of the construction process and provide recommendations to resolve potential claims
• Coordination of construction activities with all Utility companies to ensure contractor has 
  coordinated any impacts or potential impacts properly and successfully. Verification of location of 
  all underground utilities, coordination of potholing activities, and relocation of any utilities.
• Assist in processing all Progress Payments and Payment Application Audits
• Review and manage all Payment Applications and assist The District in Processing invoices
• Review and Manage Stop Notices and assist The District in handling Stop Notices as they relate 
  to paying invoices
• Assure advanced written notice is given to the residents of nearby properties (as directed by 
  jurisdictional agencies) or the general public, informing them of the work to take place that may 
  impact them
• Perform and conduct all construction management services needed to ensure the contractor's 
  operations are conducted in such a manner as to avoid endangering the safety, or unlawfully or 
  unnecessarily interfering with the convenience of the public
• Hold all required safety certifications/training required to perform needed work, and comply with all 
  safety rules, regulations, and instructions issued by the construction contractor or jurisdictional 
  agencies, and California Occupational Safety and Health Administration (CAL OSHA). Review 
  project safety plans and procedures to clarify each party’s responsibility
• Confirm the location and availability of temporary water, electric, storm water, sewage and other 
  similar services, and confirm whose responsibility it is to provide, maintain and pay for these 
  services.
• Review of all contractor labor to ensure compliance with all requirements 
• Review of all project quality control procedures, reporting of nonconforming work, testing 
  requirements, dealing with discovery of changed conditions, time extensions, deductive changes, 
  retentions, and final payment 
• Provide bi-weekly and monthly reviews including impact analysis and other needed activities to 
  assist in accepting or rejecting (along with any conditions) the contractors bi-weekly and monthly 
  updates of the Critical Path Method (CPM) Schedule
• Provide Weekly updates on project schedule status including potential impacts to the overall project 
  completion/acceptance date and advise as to how to avoid and mitigate delays (including 
  statements of contract working days)
• Review of all contractor Change Orders (CCO) to the construction contract
• Negotiate all proposed CCOs with the contractor and evaluate all aspects associated with the 
  proposed CCOs to provide recommendations
• Coordinate/consult with the District on all potential CCOs, prepare all CCO documents, obtain 
  contractor concurrence on all CCO documents, endorse said documents (along with any 
  amendments) and submit for final approval/execution
• Work with the contractor to discuss/assess contract item quantities, supplemental work items, and 
  extra work to prepare monthly contractor progress payments and provide recommendations for 
  approval and payment of progress payments to the contractor
• Prepare all reports, calculations, measurements, test data and other documentation on forms 
  specified or otherwise acceptable to the District. All schedules using Primavera P6 Enterprise (or 
  latest release) and all documents uploaded daily into the District local SharePoint network 
• Maintain all project documentation using uniform pre-approved filing system within current District’s 
  software/network system (SharePoint)
• Consultation as needed with the District and local jurisdictions for design/construction clarifications 
• Community outreach efforts such as notification mailers/flyers informing residents and or business 
  within 300 feet of the construction zone or impacted by the traffic control or construction, attendance 
  to community meetings, and weekly coordination of construction activities with a public outreach 
  manager.
• Provide Public Information (PI) services and coordination for project construction. The District 
  reserves the right, at its sole discretion, to consider such services for the project as optional. PI 
  services may include, but are not limited to, attendance at weekly traffic management meetings 
  with the contractor, preparation of a summary of the planned lane and sidewalk closures, and/or
detours for each following week, participate at public meetings and special events, prepare display materials, preparation of all needed notices (flyers), newsletters, traffic advisories, the District approved media advisories, and email traffic alerts, distribution of all said materials, maintain a project traffic advisory website (daily/weekly/as needed) with frequent updates with project related information, with District guidance/supervision, respond to public inquiries and maintain a written log of inquiries and responses,

- Responsibility for full system integration of traffic signal systems (incl. TSP) into existing local agency management control centers as required, for full operation & functionality for the intended project purpose
- Prepare all final red-lined as-built record drawings needed. Records and provide adequate documentation during the course of work to verify accuracy of final as-builts.
- Preliminary and final punch-lists
- Final project review (Includes but not limited to, final punch-list, passing inspections and complete project close-out)
- Any and all necessary activities to assist The District with the formal acceptance of the project construction/elements by respective jurisdictional agencies.

D. Post-Construction Services

The following are examples of required services needed during post-construction. Please note this is not an exhaustive list of the services that may be required to complete the Project.

- Management and execution of all necessary post-construction activities
- Obtaining jurisdictional agency sign-off/approval
- Provide and prepare all necessary Caltrans LAPM documents and services and ensure submittals to Caltrans are approved in a timely manner. Such documents/services shall include, but not limited to: QA/QC, project award package, progress billings, project closeout, project final report, and final billing
- Post-construction photo records
- Transfer of all project records and files to The District and Jurisdictional Agencies including Final As-Built drawings
- Provide summary list of all change orders with final values
- Review warranty documents and training requirements
- Assist District staff with the resolution of any outstanding issues

E. Proposal

Please refer to RFQ directions regarding format and details needed for proposal. Listed below please refer to the current expected project schedule for construction

| Construction Management Board Award | 9/11/19 |
| Construction Management NTP         | 9/28/19 |
| Construction Procurement            | 12/01/19 – January 2020 |
| Construction Board Award            | January 2020 |
| Construction Notice to Proceed (NTP) | February 2020 |
| Construction Completion              | 7/31/2020 |
Exhibit B
Special Terms and Conditions

1. **Term of Contract**
   
The term of this contract shall begin in September, 2019 and expire on September 30, 2020.

2. **Method of Compensation**
   
The Contractor agrees to perform all of the services included in Exhibit A, Scope of Work for a total contract ceiling that shall not exceed $ _____________, in accordance with the Contractor’s Offer/Best and Final Offer, if any, as accepted by the District. The total not-to-exceed price shall include all labor, materials, taxes, profit, overhead, insurance, subcontractor/subconsultant costs, and all other costs and expenses incurred by the Contractor.

   The Contractor shall submit invoices, based on the milestone payment schedule amounts upon the delivery and District acceptance of deliverables, or at the end of each month if a subcontractor/subconsultant submits an undisputed invoice for payment, and shall state the number of hours and the applicable hourly rate of each person. Hourly rates shall be in accordance with the Contractor’s Offer and BAFO if any, as accepted by the District. The District will endeavor to pay properly submitted, undisputed invoices within thirty (30) calendar days of initial receipt.

3. **Contract Order of Precedence**
   
Upon award, the following shall comprise the contract document. In the event of a conflict in the provisions of the Contract, as accepted by the District and as they may be amended, the following shall prevail in the order set forth below:

   A. Exhibit B, Special Terms and Conditions
   B. Exhibit C, Standard Terms and Conditions
   C. Exhibit A, Scope of Work
   D. Exhibit D, Federal Clauses
   E. Exhibit E, inclusive of Final Offer, SOQ and Completed Forms, as accepted by the District

4. **Notices**
   
A. Any notice, consent or other communication (“Notice”) required or permitted under this Contract shall be in writing and either delivered in person, mailed or electronically delivered as follows:
B.

THE DISTRICT

Contact Name ___________________

Title _____________________________

AC Transit

Address___________________________

Oakland, CA 94612    Address___________________________

Phone (510) 891-5469  Phone #:___________________________

Email:  wdaly@actransit.org

C. A Notice shall be deemed received at the time it is personally served, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, ten (10) days after the Notice is deposited in the United States mail as above provided. Any time period stated in a Notice shall be computed from the time the Notice is deemed received. Either party may change its mailing address or the person to receive Notice by notifying the other party as provided in this section. This requirement for duplicate notice is not intended to change the effective date of the Notice sent by facsimile transmission.

5. Insurance Requirements

A. The Contractor is primarily responsible for the risk management of its work under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. The District reserves the right to amend the requirements herein at any time during the term of this contract, subject to at least sixty (60) days written notice and an appropriate adjustment of the compensation terms of the Contractor to offset any attributable increase in the Contractor’s costs. Any and all of the Contractor’s sub-contractors must meet the requirements of this Section and Contractor shall include the terms of this Section in each contract with sub-contractors.

B. Prior to beginning the work under this Contract and without limiting any liabilities or other obligations of Contractor, Contractor shall obtain and maintain, and/or cause to be obtained and maintained, the required forms and minimum amounts of insurance coverages as outlined below. Contractor’s responsibility and liability for the services provided by its subcontractors is not limited in any fashion by the types and limits of subcontractors’ insurance. Coverages shall be in full force and effective during the terms of this Contract.

C. All Insurance Coverages

Upon execution of the Contract, all required insurance coverages must be evidenced to the District through receipt of acceptable certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing full compliance with the insurance requirements set forth in this Section.

i. Failure of the District to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of the District to identify a deficiency from the evidence that is provided shall not be construed as a waiver of Contractor’s obligation to maintain such insurance.

ii. Certificate(s) of insurance is to be mailed to the following address or such other addresses as designated by the District:
iii. Michael Daly  
Contracts Specialist  
AC Transit  
1600 Franklin Street, 6th Floor  
Oakland, CA 94612  
Email: wdaly@actransit.org

iv. If the 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 Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.

v. Failure to maintain the required insurance may result in the termination of this Contract at the District’s option.

vi. If the Contractor fails to maintain the insurance as set forth in this Section, the District shall have the right, but not the obligation, to purchase said insurance at Contractor’s expense.

vii. Contractor shall provide certified copies of all insurance policies required in this Section within ten (10) days of the District’s written request of said copies.

viii. The Contractor’s insurance company(ies) and third-party administrators are subject to approval by the District as well as any use of partial or full self-insurance programs. This includes the use and amounts of deductibles and/or self-insured retentions.

ix. Each insurance policy shall not be subject to lapse, cancellation or material change in coverage unless at least sixty (60) days prior to written notice is provided to the District.

x. Each insurance policy shall be written on a primary coverage basis, including any self-insured retentions, unless expressly approved by the District, in writing.

xi. Each insurance policy, with the exception of the workers’ compensation policies, shall include by specific endorsement the following as additional insureds:
   a. “The District, its Directors, agents, officers, and employees.”

xii. In addition, any person or entity shall be added as an additional insured upon the request of the District to the Contractor.

xiii. Any failure by the Contractor to comply with the reporting requirements of the required insurance coverage shall not affect the coverage provided to the District, its Directors, agents, officers, and employees.

xiv. If Contractor’s liability policies do not contain a separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

xv. To the extent permitted by insurance, Contractor waives all rights of subrogation or similar rights against the District and its members and each of their respective agents, officers, employees and directors.

xvi. By requiring the insurance in this Section, the District does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor liability under the indemnities granted by the District in this Contract.
xvii. **Claims-Made Insurance**

   If any insurance specified below shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

   a. Policy retroactive date coincides with or precedes the Contractor’s start of work (including subsequent policies purchased as renewals or replacements).

   b. Contractor shall make every effort to maintain similar insurance for at least five (5) years following project completion, including the requirement of adding all named insureds.

   c. If insurance is terminated for any reason, Contractor agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from work performed in connection with this Agreement or Permit.

   d. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

D. **Commercial General Liability Insurance**

   i. Contractor shall maintain general liability and, if necessary, excess/umbrella insurance with a limit of liability not less than $1,000,000.00 each occurrence. If such insurance contains an aggregate limit, it shall apply separately to this Contract. The insurance shall, at a minimum, cover liability arising from premises, operations, independent contractors, products and completed operations, personal injury, advertising injury and liability assumed under insured contract, including the tort liability of another assumed in a business contract. There shall be no endorsement or modification limiting the scope of coverage for liability arising from pollution or employment-related practices.

   ii. Coverage for claims or incidents occurring, but not known, during the policy period will extend for a period of at least three (3) years past acceptance, cancellation or termination of the Work.

E. **Automobile Liability Insurance**

   i. Contractor shall maintain automobile liability and, if necessary, excess/umbrella insurance with a limit of liability of not less than $2,000,000.00 each accident. Contractor shall also maintain uninsured and underinsured motorist coverage with limits of liability of not less than $2,000,000.00 each accident. Such insurance shall cover liability arising out of any vehicle, including owned, hired, leased, borrowed and non-owned vehicles. If necessary, the policy shall be endorsed to provide contractual liability coverage.

   ii. With respect the District’s vehicles loaned or leased to Contractor for the completion of the Work, the District shall be named as loss payee. In the event of a loss, Contractor will be responsible for the cost of repairing or replacing the vehicle with vehicles of like kind and quality.

F. **Professional Errors and/or Omissions**

   Contractor shall maintain professional insurance appropriate to Contractor’s profession with a limit of not less than $1,000,000.00 per occurrence

G. **Workers’ Compensation Insurance**
Contractor shall maintain workers’ compensation and employer’s liability insurance in accordance with the Federal and State statutes having jurisdiction over the employees where the work is performed. The limits of liability for employers’ liability coverage shall not be less than $1,000,000.00 each accident for bodily injury by accident and $1,000,000.00 each employee for bodily injury by disease.

Additionally, the coverage shall include:

i. The District, its officers, officials, Board of Directors 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 officers, Board of Directors, officials or employees.

ii. A waiver of subrogation for the District,

iii. An endorsement indicating the coverage is primary and non-contributing and any coverage maintained the District is excess over the Contractor’s insurance coverage, and

iv. An endorsement scheduling this Contract with the District as an Insured Contract on the policy, including removal of insured vs. insured exclusionary language that may be applicable to this Contract.

The coverage should not contain an exclusion for claims arising out of the ownership, entrustment, maintenance, operation or use of any motor vehicles that are owned, operated or rented by or loaned to the Named Insured.

6. Prompt Payment

The District shall pay properly submitted, undisputed invoices within thirty (30) calendar days of initial receipt. Within seven (7) calendar days of receipt of payment from the District, the prime Contractor shall pay any subcontractors that have submitted undisputed invoices and report such activity in the District’s contract monitoring tool cited below.

7. Electronic Contract Monitoring

For contract monitoring and tracking purposes, the District utilizes B2GNow. This is an interactive system which requires all tiers of contractors to login and submit payment data for prompt payment compliance and subcontractor utilization purposes. If no subcontractors are being proposed, the District may waive the requirement of utilizing this system.

8. Rights in Data

The term “subject data” as used herein means recorded information, whether or not copyrighted, that is delivered under this Contract. The term includes graphic or pictorial delineation in media, text in specifications or related performance or design-type documents and machine forms. Except for its own internal use, Contractor may not publish or reproduce such data in whole or in part, nor may Contractor authorize others to do so, without the written consent of the District, until such time as the District may have either released or approved release of such data.

In the event that the scope of services in this Contract is not completed, all data generated under this Contract shall become subject data and shall be delivered as the District may direct.
9. Release of Information

Before releasing any reports, promotional materials or information prepared in connection with this RFQ and subsequent Contract, the Contractor shall provide a copy or copies for first review by the District. Contractor shall not use the District’s logo without specific written permission from the District Staff.

10. Indemnification

A. Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless the District, and the agents, representatives, officers, directors and employees of the District (Indemnified Group) from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work or services in the performance of this contract, including but not limited to, work or services by any subcontractor or anyone directly or indirectly employed by or contracting with a Contractor or a subcontractor or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor’s and subcontractor’s employees or subcontractors.

B. If any claim, action or proceeding is brought against the Indemnified Group, by reason of any event that is the subject of this contract and or described herein, Contractor, at its sole cost and expense, shall pay, resist or defend such claim or action on behalf of the Indemnified Group by attorney of Contractor, or if covered by insurance, Contractor’s insurer, all of which must be approved by the District which approval shall not be unreasonably withheld or delayed. The District shall cooperate with all reasonable efforts in the handling and defense of such claim. Included in the foregoing, the District may engage its own attorney to defend or assist in its defense, and the Contractor shall pay the reasonable costs and expenses thereof. Any settlement of claims must fully release and discharge the Indemnified Group from any further liability for those claims. The release and discharge shall be in writing and shall be subject to approval by the District, which approval shall not be unreasonably withheld or delayed. If Contractor, its agents or employees, neglects or refuses to defend the Indemnified Group as provided by this contract, any recovery or judgment against the Indemnified Group for a claim covered under this contract shall conclusively establish Contractor’s liability to the Indemnified Group in connection with such recovery or judgment, and if the District desires to settle such dispute, the District shall be entitled to settle such dispute in good faith and Contractor shall be liable for the amount of such settlement, and all expenses connected to the defense, including reasonable attorney fees, and other investigative and claims adjusting expenses.

C. Insurance provisions set forth in this contract are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

11. Notice of Labor Disputes

A. If the Contractor or a Service Delivery Provider has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the
Contractor immediately should give notice, including all relevant information, to the District’s Project Manager and the District’s Contracts Specialist.

B. The Contractor agrees to insert the substance of this clause, including this paragraph in any subcontract under which a labor dispute may delay the timely performance of this Contract; except that each subcontract should provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor should immediately notify the next higher tier subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

12. Removal of Contractor’s Personnel

A. The Contractor and any Service Delivery Provider acknowledge that any person assigned to work under this Contract must perform their duties to not unduly impair contract performance. By assigning a person to work under this Contract, the Contractor and any Service Delivery Provider agree to be responsible for the behavior of that person during contract performance.

B. The Contractor and any Service Delivery Provider acknowledge that the District has the right to require the removal of any Contractor and any Service Delivery Provider employee that the District determines at its sole discretion to be negatively effecting performance of work under the contract. Examples of such behavior include: (1) conduct which poses a threat to the safety of anyone working under the contract; (2) conduct which is disruptive to contract performance; (3) careless work; (4) conduct which is not appropriate when transporting participants under this Contract; (5) Conduct in violation of District policy or local, state or federal laws.

C. Upon receipt of written notice from the District that a person's behavior is unacceptable or unduly impairing contract performance, the Contractor and any Service Delivery Provider agree to remove that person from doing any further work on the Contract, and to cause that person to be removed from providing service under this Contract. The Contractor and any Service Delivery Provider agree that it is not entitled to any additional costs it may incur because of the removal of the person from the District.

13. Communications with Contractor’s Staff

To ensure efficient communication of operational needs, the District staff shall be permitted to communicate directly with Contractor’s staff regarding day to day issues for inquiry as to factual performance issues. The District will not give Contractor’s staff directions concerning performance under this Contract. Issues which affect the Contract will be communicated through the General Manager.

14. Anti-Kickback and Gratuities

The Contractor is prohibited from receiving any kickbacks, gratuities, payments, merchandise, equipment, supplies, services or favors in exchange for directing additional billable services to any sub-contractor.

15. Reporting

Contractor shall provide weekly Project Status Reports to the District’s Project Manager or his/her designee, as requested.

A claim is a separate demand by the Contractor for one or more of the following: (i) a time extension for relief from damages or penalties for delay, (ii) payment of money or damages arising from work done pursuant to the contract for a public work, or (iii) payment of an amount disputed by the District. A claim must be sent by registered or certified mail, and upon receipt of a claim sent by registered or certified mail, the District will review it and, within forty-five (45) days, provide a written statement identifying the disputed and undisputed portions of the claim. The forty-five (45)-day period may be extended by mutual agreement or, until after the next Board of Directors meeting, if the Board must approve the disputed and undisputed portions of the claim. Any payment due on the undisputed portion of the claim must be processed within sixty (60) days.

If the claimant disputes the District’s written response or if the District fails to respond to a claim within the time prescribed, the claimant must demand a meet and confer for settlement of the issues in dispute. The District must then schedule a meet and confer conference within thirty (30) days for settlement of the dispute. Any disputed portion of the claim that remains in dispute after the meet and confer conference will be subject to nonbinding mediation, as specified. The District can also require arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if the mediation does not resolve the dispute.

If the District fails to respond to a claim from a contractor within the above referenced time periods, the claim is deemed rejected in its entirety. Unpaid claim amounts which are not paid in a timely manner shall accrue interest at seven percent (7%) per annum.

To read the full AB 626 language, please refer to: [http://www.leginfo.ca.gov/pub/15-16/bill asm/ab_0601-0650/ab_626_cfa_20160627_172317_sen_comm.html](http://www.leginfo.ca.gov/pub/15-16/bill asm/ab_0601-0650/ab_626_cfa_20160627_172317_sen_comm.html)

17. **Governing Law**

All matters arising under the contract shall be governed by California law.

18. **Venue**

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

[The remainder of this page is intentionally left blank]
Exhibit C: Standard Terms and 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 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 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 Project 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 Terms & 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 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.
Exhibit D: Federal Clauses

1. **Incorporation of Federal Transit Administration (FTA) Terms**

   This Contract is being financed in part by the Federal Transit Administration (FTA). Accordingly, federal requirements apply to this Contract. In the event that those requirements are revised during the performance of this Contract, the Contractor shall incorporate those revised provisions mandated by the FTA. **The following provisions are Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated March 18, 2013, as revised, and as may be revised, 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 Contract document. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any District requests that would cause the District to be in violation of the FTA terms and conditions. To the extent the Contract provisions required by the FTA, and State law are inconsistent, the Contractor is responsible for complying with the more comprehensive or stricter requirements.**

2. **No Federal Government Obligation to Third Parties**

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

   The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

3. **Fraud and False or Fraudulent Statements or Claims; Civil or Criminal Fraud**

   The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

   The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. §§5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

   The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.
Exhibit D: Federal Clauses

4. **Access to Third Party Contract Records**

Proposer shall provide all authorized representatives of the District, the FTA Administrator, the State Auditor and the Comptroller General of the United States access to any books, documents, papers and records of the Proposer which are directly pertinent to this Contract for the purposes of making audits, copies, examinations, excerpts and transcriptions. Proposer also agrees to maintain, and require its sub-Proposers of all tiers, to maintain, all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Proposer agrees to maintain the same until the District, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. The Proposer agrees to permit the FTA and its Proposer’s to access the sites of performance under this contract as reasonably may be required.

5. **Changes to Federal Requirements**

Proposer shall, at all times, comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (24) dated October 1, 2017) between the District and FTA, as they may be amended or promulgated from time to time during the term of this contract. Proposer’s failure to so comply shall constitute a material breach of this contract. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000.00 financed in whole or in part with Federal assistance provided by FTA.

6. **Civil Rights Requirements**

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

B. **Equal Employment Opportunity:**

The following equal employment opportunity requirements apply to this Contract:


During the performance of this contract, the Contractor agrees as follows:
Exhibit D: Federal Clauses

i. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

ii. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

iii. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers’ representatives of the Contractor’s commitments under this section and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

iv. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

v. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

vi. In the event of the Contractor’s noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

vii. The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of these paragraphs (i) through (vii) in every subcontract or purchase order unless exempt by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event an Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Exhibit D: Federal Clauses

agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(4) Access Requirements for Individuals with Disabilities. The Contractor agrees to comply with the requirements of 49 U.S.C. §5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. Contractor also agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§12101, et seq., and 49 U.S.C. §322; § 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794; §16 of the Federal Transit Act, as amended; 49 U.S.C. App. §612; and the following federal regulations, including any amendments thereto:

i. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;


ix. FTA regulations, "Transportation for Elderly and Handicapped Persons", 49 C.F.R. Part 609; and

x. Any other implementing federal regulations and requirements.
Exhibit D: Federal Clauses

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

7. Termination

A. Termination for Convenience of the District: The District, by written notice, may terminate this contract, in whole or in part, whenever the District determines that such termination is in its best interests. Any termination under this provision shall be affected by delivery to the Contractor of a notice of termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. After receipt of said notice, Contractor shall stop work on this contract on the date and to the extent specified in said notice, terminate all applicable orders and subcontracts, and complete all work not terminated by said notice. After receipt of said notice, Contractor shall submit to the District its termination claim setting forth Contractor's actual, direct, and unavoidable costs incurred which cannot be canceled because of said termination 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 an appeal pursuant to the dispute resolution procedures set forth herein.

B. Termination for Default: In the event that the Contractor breaches the terms or violates the conditions of the contract and does not 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 to diligently pursue said cure until the default is remedied), the District may in its discretion terminate the contract, or such portion thereof, as the District determines to be most directly affected by the default.

The term "default" for purposes of this provision includes, but is not limited to, the performance of work in violation of the terms of this contract; abandonment, assignment, delegation or subletting of this contract without approval of the District; bankruptcy or appointment of a receiver for Contractor's property; failure to perform services 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 the contract in bad faith. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the convenience of the District.

C. Termination for Force Majeure: The performance of work under this contract may be terminated by the District, in its discretion, based upon unforeseen causes beyond the control and without the fault or negligence of the Contractor such as Acts of God which render impossible the Contractor's performance under the contract. 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.

8. Disputes

A. Performance During Dispute: Unless otherwise directed by the District, Contractor shall continue performance under the Contract while matters in dispute are being resolved. Further, the District shall pay Contractor for any undisputed work performed by Contractor prior to or during the resolution of the matters in dispute.
Exhibit D: Federal Clauses

B. Alternative Dispute Resolution/Mandatory Arbitration: If any controversy, claim or dispute between the District and the Contractor arising out of or related to this Contract, or the breach hereof, 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 herein. 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.

C. Mandatory and Binding Arbitration: In the event any controversy, claim or dispute between the District and the Contractor arising out of or related to this contract, or the breach hereof, cannot be settled or resolved amicably by the parties during the thirty (30) day period of good faith negotiations provided for above, the either party or any party hereto may 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 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. If 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 shall be a party to an agreement with either of the parties which provides for the arbitration of disputes hereunder in accordance with rules and procedures substantially the same in all material respects as provided for herein or, if not, shall consent to arbitration as provided for hereunder.
Exhibit D: Federal Clauses

All arbitration proceedings shall be held in Oakland, Alameda County, 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.

D. Waiver of Remedies for any Breach: In the event that the District elects to waive its remedies for any breach by the Contractor of any covenant, term, or condition of this Contract, such waiver by the District shall not limit the district's remedies for any succeeding breach of that or any other term, covenant, or condition of this Contract.

9. Americans with Disabilities Act (ADA)

The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC §12101 et seq.; section 504 of the Rehabilitation Act of 1973, amended, 29 USC §794; 49 USC §5301(d); and any implementing requirements FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.

10. Disadvantaged Business Enterprise (DBE)

This solicitation and resulting contract are 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 ten percent (10%). The District's overall goal for DBE participation is fourteen percent (14%). A separate contract goal has not been established for this procurement.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted 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 District deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than seven (7) days after the contractor's receipt of payment for that work from the District.

The Contractor must promptly notify the District whenever and prior to terminating a DBE subcontractor performing work related to this contract; obtain written authorization from the District's Contracts Compliance Department to terminate a DBE firm, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work if granted authorization to terminate a DBE firm. 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 District.

11. Energy Conservation Requirements
Exhibit D: Federal Clauses

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

12. Privacy Act

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:

A. 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.

B. 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.

13. Contract Work Hours and Safety Standards Act

A. Overtime: Neither the Contractor nor its Subcontractors may permit any laborer or mechanic in any work week in which he or she is employed on such work under this Contract to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

B. Violation/Liability for Unpaid Wages/Liquidated Damages: In the event of any violation of the clause set forth in Paragraph (A) of this Section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this Section, in the sum of twenty dollars ($20.00) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in Paragraph (A) of this Section.

C. Withholding for Unpaid Wages and Liquidated Damages: The District shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor under any such contract or any other Federal contract with Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this Section.

D. Subcontracts: The Contractor shall insert in any subcontract the clauses set forth in this Section and also a clause requiring the subcontractors to include these clauses in any lower
Exhibit D: Federal Clauses

tier subcontracts. The Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in this Section.

E. Payrolls and Basic Records: Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (incl. rates of contributions or costs anticipated for bona fide fringe, benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits, the Contractor employ apprentices or trainees under approved programs, it shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

14. Suspension and Debarment

The prospective lower tier participant certifies, by submission of their bid or submittal, that neither it nor its "principals" [as defined at 2 C.F.R. §180.995] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this submittal.

15. Anti-Lobbying Requirements

Contractors are required to comply and assure the compliance of each third-party Contractor at any tier and each sub-recipient at any tier, with U.S. Department of Transportation regulations, "New Restrictions on Lobbying: 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. §1352. Contractor shall certify 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.

Contractor 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 shall be forwarded to the District. Contractor shall ensure that all of its Subcontractors under this Contract shall certify the same.

Contractor must complete and execute the form entitled "Certification Regarding Lobbying" which is to be completed and submitted with final Offer. The District is responsible for keeping the certification of the Contractor, who is in turn responsible for keeping the certification forms of subcontractors.

16. Clean Water and Air Requirements
Exhibit D: Federal Clauses

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et. seq., and the Clean Air Act, as amended, 42 U.S.C. 7401 et. seq. The Contractor agrees to report each violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office. The Contractor also agrees to include these requirements in each subcontract exceeding $150,000.00 financed in part or in whole with federal assistance provided by the FTA.

17. Prompt Payment of Subcontractors

The Contractor shall pay any subcontractors approved by the District for work that has been satisfactorily performed no later than seven (7) days from the date of the contractor’s receipt of progress payments by the District. Within sixty (60) days of satisfactory completion of all work required of the subcontractor, contractor shall release any retained payments withheld to the subcontractor. The contractor shall complete and sign a Prompt Payment Act Affidavit related to invoices submitted for services performed under this contract.

18. Seismic Safety Requirements

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a Sub-Contractor complies with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

19. Environmental Protection


20. Recycled Products

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. §6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 13423, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

21. Fly America

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

22. Safe Operation of Motor Vehicles

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or the District. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

23. Veteran’s Employment

As provided in 49 U.S.C. §5325(k), to the extent practicable, the Contractor shall do the following:

A. Give a hiring preference to veterans, as defined in 5 U.S.C. §2108, who have the skills and abilities required to perform construction work required under a third-party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53; and

B. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

24. Conformance with ITS National Architecture

To the extent applicable, the Contractor agrees to conform to all applicable requirements of the ITS National Architecture policy.

[END OF FEDERAL CLAUSES]