



**ALAMEDA-CONTRA COSTA TRANSIT DISTRICT  
REQUEST FOR QUOTES  
BRT SAN LEANDRO TRANSIT CENTER PORTABLE TOILETS  
RFQ NO. 2020-10431**

**GENERAL INFORMATION**

1. **Background Information.** The Alameda-Contra Costa Transit District ('AC Transit' or the 'District') is the third largest public bus system in California, covering a 364-square mile service area. The District operates 156 bus lines with an average annual ridership of 51,760,000 million trips. Bus Rapid Transit (BRT) is a new and innovative service that is a sub-brand of AC Transit and will be launching in the East Bay in late 2019. This type of service is often called "light rail on wheels" because it brings the frequency, safety and reliability of light rail to the bus rider without having to lay down the infrastructure required for rail transit. AC Transit's BRT service will run the 9.5-mile corridor from Downtown Oakland to San Leandro BART, connecting people and places more efficiently. Adherence to the clauses on the attached (Exhibit A-Federal Clauses) is required. These terms will be incorporated into the resulting contract.
2. **Timeline:** Quotes for this project are due by *19 May 2020*. To receive consideration, quotes must be delivered prior to the deadline date. Quotes shall be submitted via email to [denglish@actransit.org](mailto:denglish@actransit.org). In order to submit quotes to AC Transit, the electronic submission must be formatted using Adobe Acrobat (.pdf) with the file size not exceeding 10.0 megabytes. Files shall conform to the naming convention of: "Quote Number Company Name" {Ex: "RFQ2020-1234\_AC Transit"}.
3. **Quotes:** Quotes are to be submitted along with references by *19 May 2020*. Quotes are to be submitted as a lump sum amount. Contractors can submit a more detailed quote based on the items below, editing timeline and any other components (*travel, rentals, taxes, fees, etc.*) for incremental progress payments however these costs cannot be variable and must total an all-inclusive lump sum quote for the entire project.
4. **Standard Scope of Services:**

The Alameda-Contra Costa Transit District (*hereinafter "AC Transit" or the "District"*) is committed to provide a clean and safe environment to AC Transit employees. The District will provide a portable restrooms unit at San Leandro Transit Center. The Bidder shall provide the following scope of services as listed below:

  - a. Provide all equipment, tools, supplies, materials, transportation, and perform all operations necessary to supply, service, and relocate portable toilets under this contract.
  - b. Provide regular service to include delivery of rental toilets to San Leandro Transit Center, set-up for operation, daily service cleaning and subsequent removal from location. The bidder shall review the respective sites to ensure that units are stabilized and readily accessible. Cleaning shall also include any minor repairs and parts discovered at time of servicing the unit. All portable toilets are to be graffiti-free and constructed of poly-plastic or heavy-duty type fiberglass and to be of sufficient height to prevent it from being blown over.
  - c. Any portable toilet delivered in an unserviceable condition, or any unit rendered unserviceable by defect, vandalism, acts of mischief, or acts of nature shall be the responsibility of the Bidder, and shall be corrected within 24 hours of report, at no additional cost to the District.
5. **Product Specification:**

All portable toilets (and servicing of portable toilets) must be compliant with all applicable codes, regulations, and industry standards. The District will require (2) single occupant units on a trailer.

Standard Unit with Hand Wash

Each portable toilet unit should include the following items:

  - A door that can be locked from the inside
  - Toilet Paper, Seat Covers, and Paper Towels
  - Fresh Water Tank
  - Wastewater Tank
  - Soap and/or Hand Sanitizer
  - Lighting (either through solar and battery or by a generator)
6. **Service Requirement:**

Portable toilets are to be serviced seven (7) times per week. Service shall include, but not be limited to the following.

  - Empty waste tank contents.
  - Thoroughly clean waste tank and refill with fresh water.
  - Thoroughly clean and disinfect seats, doors, walls, floors and any other exposed surface.
  - Refill freshwater tank.
  - Any deodorant blocks installed are to be replenished.
  - Toilet tissue, toilet seat cover and paper towel dispensers are to be supplied and fully stocked.



- Hand sanitizer/Soap dispenser to be supplied and filled.
- Remove and dispose of any debris.
- Perform repairs as needed to make the toilet usable and maintain user privacy (replacement if damaged unit is beyond repair).
- Provide and maintain a written service log affixed to the inside of the portable toilet that lists the date of each service visit.
- Responsible for proper and lawful disposal of all waste removed from the portable toilets.
- Diesel fuel to generator if generator is required.

7. **Location and Frequency:**

Location: San Leandro Transit Center, 1401 San Leandro Blvd, San Leandro, CA 94577

Frequency: Service seven (7) days/Week

8. **Duration of Contract:**

Up to a maximum of four (4) months. The District reserves the right to award a contract (or purchase order) to the Bidder for four (4) months.



**EXHIBIT 3**  
**FEDERAL TERMS**

**INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The provisions of this Contract include, in part, certain Standard Terms and Conditions required by the US Department of Transportation (DOT), whether or not expressly set forth in the RFQ (2018-1435). All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, revised 2012 and any future revisions, 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. The Offeror shall not perform any act, fail to perform any act, or refuse to comply with any District requests which would cause the District to be in violation of the FTA terms and conditions.

1. **NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES.** The District and Offeror acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying resulting contract, absent the express written consent by the Federal Government, the Federal Government is not a party to any contract and shall not be subject to any obligations or liabilities to the District, Offeror, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Offeror 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 subconsultant who will be subject to its provisions.

2. **FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD.** The Offeror 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 Offeror certifies or affirms the truthfulness and accuracy of any statement it has made, it makes or 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 Offeror 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 Offeror to the extent the Federal Government deems appropriate.

The Offeror 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 the 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. § 5323(l) on the Offeror, to the extent the Federal Government deems appropriate.

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

3. **ACCESS TO THIRD-PARTY CONTRACT RECORDS.** Offeror 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 Offeror which are directly pertinent to this Contract for the purposes of making audits, copies, examinations, excerpts and transcriptions. Offeror also agrees to maintain, and require its subcontractors 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 Offeror 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 Offeror agrees to permit the FTA and its Offerors to access the sites of performance under this contract as reasonably may be required.
4. **CHANGES TO FEDERAL REQUIREMENTS.** Offeror 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. Offeror's failure to so comply shall constitute a material breach of this contract.

5. **CIVIL RIGHTS REQUIREMENTS.**

*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 Offeror 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 Offeror agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

*Equal Employment Opportunity.* The following equal employment opportunity requirements apply to the underlying contract:

- a. *Race, Color, Creed, National Origin, Sex.* In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Offeror agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment



Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Offeror agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Offeror agrees to comply with any implementing requirements FTA may issue.

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

*Disabilities.* In accordance with *Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112*, the Offeror 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 Offeror agrees to comply with any implementing requirements FTA may issue.

The Offeror 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.

## **6. TERMINATION / RESOLUTION OF DISPUTES.**

**Termination for Convenience (General Provision).** The District may terminate the contract, in whole or in part, at any time by written notice to the Offeror when it is in the District's best interest. The Offeror may be entitled to costs associated with the work performed, including contract close-out costs, and profit on work performed up to the time of termination. The Offeror shall promptly submit its termination claim to the District to be paid the Offeror. If the Offeror has any property in its possession belonging to the District, the Offeror will account for the same, and dispose of it in the manner the District directs.

**Termination for Default (General Provision).** If the Offeror does not deliver supplies in accordance with the contract delivery schedule, or, if the Offeror fails to perform in the manner called for in the contract, or if the Offeror fails to comply with any other provisions of the contract, the District may terminate the contract for default. Termination shall be affected by serving a notice of termination to the Offeror setting forth the manner in which the Offeror is in default. The Offeror will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the District that the Offeror had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Offeror, the District, after setting up a new delivery of performance schedule, may allow the Offeror to continue work, or treat the termination as a termination for convenience.

**Opportunity to Cure (General Provision).** The District in its sole discretion may, in the case of a termination for breach or default, allow the Offeror forty-five (45) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Offeror fails to remedy to the District's satisfaction the breach or default of any of the terms, covenants, or conditions of the contract within forty-five (45) days after receipt by Offeror of written notice from the District setting forth the nature of said breach or default, the District shall have the right to terminate the contract without any further obligation to Offeror. Any such termination for default shall not in any way operate to preclude the District from also pursuing all available remedies against Offeror and its sureties for said breach or default.

**Waiver of Remedies for any Breach.** In the event that the District elects to waive its remedies for any breach by Offeror of any covenant, term or condition of the contract, such waiver by the District shall not limit the District's remedies for any succeeding breach of that or of any other term, covenant, or condition of contract.

**Disputes.** Disputes arising in the performance of the contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the District's General Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Offeror mails or otherwise furnishes a written appeal to the General Manager. In connection with any such appeal, the Offeror shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Offeror and the Offeror shall abide by the decision.

**Performance During Dispute.** Unless otherwise directed by District, Offeror shall continue performance under the contract while matters in dispute are being resolved.

**Alternative Dispute Resolution/Mandatory Arbitration.** In the event that any controversy, claim or dispute between the District and the Offeror 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.

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



**Rights and Remedies.** The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the District or Offeror shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

7. **DISADVANTAGED BUSINESS ENTERPRISE (DBE).** The contract is subject to the requirements of *Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. There is no DBE or SBE goal for this contract opportunity.

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

Offerors are required to document sufficient DBE participation to meet this goal or, alternatively, document adequate good faith efforts to do so, as provided for in *49 CFR 26.53*. Award of this contract is conditioned on submission of the following [concurrent with and accompanying an initial Proposal, and prior to award]:

- a) The names and addresses of DBE firms that will participate in this contract;
- b) A description of the work each DBE will perform;
- c) The dollar amount of the participation of each DBE firm participating;
- d) Written documentation of the Offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
- e) Written confirmation from the DBE that it is participating in the contract as provided in the prime Offeror's commitment; and
- f) If the contract goal is not met, evidence of good faith efforts to do so.

Offerors must present the information required above as a matter of responsiveness [*with initial Proposals, prior to contract award*] (see *49 CFR 26.53(3)*).

The Offeror is required to pay its subcontractors performing work related to the contract for satisfactory performance of that work no later than thirty (30) days after the Offeror's receipt of payment for that work from the District. In addition, the Offeror may not hold retainage from its subcontractors.

The Offeror must promptly notify the District, whenever a DBE subcontractor performing work related to the contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Offeror 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.

Pursuant to *49 CFR §26.27*, the District strongly encourages Contractors and Subcontractors to utilize the services offered by DBE financial institutions. A list of DBE financial institutions can be found online at [http://www.fms.treas.gov/mbdp/current\\_list.html](http://www.fms.treas.gov/mbdp/current_list.html) or provided by the District's Contracts Compliance Administrator, Phillip Halley, via email request to [phalley@actransit.org](mailto:phalley@actransit.org).

8. **SUSPENSION AND DEBARMENT.** This contract is a covered transaction for purposes of 2 CFR 180. As such, the Offeror is required to verify that none of the Contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2CFR 180.940 and 180.935.

The Offeror is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters.

By signing and submitting its Proposal, the Offeror certifies as follows:

The certification in this clause is a material representation of fact relied upon by the District. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to remedies available to the District, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Offeror agrees to comply with the requirements of 2 CFR 180, Subpart C while this offer is valid and throughout the period of the contract. The Offeror further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9. **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.

**10. 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 CFR Part 247*, and Executive Order 12873, as they apply to the procurement of the items designated in *Subpart B of 40 CFR Part 247*. The Contractor agrees to comply with the U.S. Environmental Protection Agency (US EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," *40 CFR part 247*.

**11. DAVIS-BACON ACT REQUIREMENTS (NEW).**

Minimum Wages

- A. All laborers and mechanics employed or working upon the site of any qualifying construction work under the Contract (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)], the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.
- B. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section I (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Subsection (A)(4) of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which such work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- C. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- D. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- E. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination.

The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- a. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- b. The classification is utilized in the area by the construction industry;
- c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the thirty (30) day period that additional time is necessary.

In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the thirty (30) day period that additional time is necessary.

The wage rate (including fringe benefits where appropriate) determined pursuant to Subsections (A)(4)(b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.



**12. COPELAND ANTI-KICKBACK ACT.** For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Copeland "Anti-Kickback" Act. The Contractor shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

**13. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT NOT INVOLVING CONSTRUCTION.** The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts A-41 Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

**14. ANTI-LOBBYING REQUIREMENTS & CERTIFICATION.** Offerors who apply for an award of \$100,000.00 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the District.

**15. CLEAN AIR.** The Offeror agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Offeror 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 FTA and the appropriate EPA Regional Office.

The Offeror also agrees to include these requirements in each subcontract exceeding \$150,000.00 financed in whole or in part with Federal assistance provided by FTA.

**16. CLEAN WATER REQUIREMENTS.** The Offeror 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.* The Offeror 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 FTA and the appropriate EPA Regional Office.

The Offeror also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

**17. ENERGY CONSERVATION REQUIREMENTS.** The Offeror agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act of 1975.

**18. AMERICANS WITH DISABILITIES ACT (ADA).** The Offeror 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 contract.

**19. PROMPT PAYMENT OF SUBCONTRACTORS.** In accordance with the California revised statutes, section 34-221(g), the agency's solicitation and/or contract documents, Contractor is required to promptly pay any subcontractors, sub-consultants, or suppliers 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 each progress payment from the District. No contract terms and conditions between the Contractor and its subcontractors, sub-Contractors, or suppliers may alter the rights of any subcontractor, sub-consultant, or supplier to receive prompt and timely payment as provided herein. Any reduction of retention by the District to the Contractor shall result in a corresponding reduction to subcontractors, sub-consultants, or suppliers who have performed satisfactory work.

The prompt payment provisions of 49 CFR Part 26 also require the Contractor to ensure the prompt and full payment of retainage monies to subcontractors or sub-consultants at such time as the work of the subcontractor or sub-consultant is complete and the District has accepted the work and paid the Contractor for the work performed and accepted. Retention shall be paid no later than



thirty (30) days after such payment is issued by the District. Any diversion by the Contractor of payments received for work performed on the contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for a declaration of breach of the contract with the Contractor.

If the Contractor fails to make payments in accordance with these provisions, the District may take any one or more of the following actions, and the Contractor agrees that the District may take such actions: (a) hold the Contractor in default under this contract; and/or (b) withhold future payments, including retention, until proper payment has been made to subcontractors, sub-Contractors, or suppliers in accordance with these provisions.

Within sixty (60) days of satisfactory completion of all work required of the subcontractor, sub-consultant, or supplier, the Contractor shall release any retained payments withheld to the subcontractor. The Offeror shall complete and sign a Prompt Payment Act Affidavit related to invoices submitted for services performed under this contract.

## **20. PATENT RIGHTS.**

- a. **General** - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the District and Offeror agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
- b. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Offeror's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the District and the Offeror agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in *U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.*
- c. The Offeror also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**21. DRUG AND ALCOHOL TESTING.** The Consultant agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or the District, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The Consultant agrees further to certify annually its compliance with Part 655 before June 30 and to submit the Management Information System (MIS) reports before January 15 to the District. To certify compliance the Consultant shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

## **22. VETERANS EMPLOYMENT**

- a. To the extent practicable, Contractor agrees that it:
  1. Will 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 funds made available or appropriated for 49 U.S.C. chapter 53, and
  2. 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, and
- b. Contractor also assures that its sub-contractor will:
  1. Will 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 funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
  2. 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.