



1600 Franklin Street
Oakland, CA 94612

**Request for Proposals (RFP)
No. 2020-10432**

**East Bay Paratransit Consortium (EBPC)
Paratransit Coordinator Office (PCO)**

01 April 2020

Alameda-Contra Costa Transit District

The Alameda-Contra Costa Transit District promotes equal opportunity for all individuals without regard to age, color, disability, marital status, national origin, race, religion or creed, sex or gender, sexual orientation, or veteran status.

**ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
REQUEST FOR PROPOSALS
East Bay Paratransit Coordinator
RFP No. 2020-10432**

I. SUMMARY OF PROPOSAL REQUEST/SCHEDULE OF EVENTS

1. Proposal Request.

The Alameda-Contra Costa Transit District (hereafter referred to as “AC Transit” or “District”) is requesting proposals from qualified firms (hereafter referred to as "Proposer") for a paratransit coordinator, as set out in *Part III, Scope of Work*. The District invites sealed proposals in accordance with the provisions, specifications, and instructions set forth in this RFP. Proposals will be received until the date and time specified below. Late proposals will not be considered. All Proposers are cautioned to read the *entire* RFP, noting insurance and submittal requirements, and to complete all required forms. Failure to provide all requested information may cause the proposal to be deemed non-responsive.

2. Schedule of Events.

Listed below is the *Schedule of Events* that outlines the pertinent dates of which Proposers should make themselves aware.

Solicitation Event	Date	Time*
Distribution of RFP	06 April 2020	
Deadline to submit questions, requests for modifications and/or clarifications	09 April 2020	4:00p
District’s response to questions, requests for modifications and/or clarifications	10 April 2020	
Proposals Due	16 April 2020	1:00p

* *All reference in this RFP to “time” will mean Pacific Standard Time (PST).*

** *A Pre-Proposal Conference may be scheduled to answer questions and requests for clarification. The District may, at its discretion, choose to schedule an [optional] virtual pre-proposal conference. Instructions will be provided on the District’s website (<http://www.actransit.org/acpronet>) listed on this RFP’s project page under Current Procurement Opportunities.*

3. Description of the District.

The Alameda-Contra Costa Transit District is a California Special District created by the voters in 1956 and is subject to regulation under Transit District Law, as amended (*see California Public Utilities Code Section 24501 et seq.*). The District provides public transit services to riders throughout western Contra Costa County to southern Alameda County. The District has four (4) operating divisions in addition to the Central Maintenance Facility, Training Center, and the General Office. The District is financed through the receipt of transit fares, property taxes, and state and federal funding.

II. INSTRUCTIONS TO PROPOSERS

1. Proposal Submittal.

A. Questions, Requests for Modifications and/or Clarifications.

Any questions or requests for modifications and/or clarifications of the Proposal specifications shall be submitted in writing by electronic transmission to Dora English at denglish@actransit.org or delivered to her attention at 1600 Franklin Street, 6th Floor, Oakland, CA 94612. Questions and requests for modifications and/or clarification must be received no later than the due date and time indicated in *Part I, Schedule of Events*.

Any interpretation, change, or correction of said specifications will be issued by Addenda only, duly issued by the District. All oral modifications of these conditions or specifications are void and ineffective. The District reserves the right to reject any Proposal that contains unauthorized conditions or exceptions.

B. Proposal Due Date.

Final proposals shall be mailed in sealed envelopes to the attention of *Dora English, RFP 2020-10432*, 1600 Franklin Street, 6th Floor, Oakland, CA 94612 by the due date and time indicated in *Part I, Schedule of Events*, with postmark if applicable. Final proposals received after the time and date specified will not be considered. All packages shall be clearly marked with the RFP Number, Project Title, and the Due Date and Time.

Submission of a Proposal shall constitute a firm offer to the District for one hundred fifty (150) calendar days from the submission deadline for Proposals. A Proposer may withdraw its proposal any time before the date and time when proposals are due, without prejudice, by submitting a written request for its withdrawal to the email address specified in this *Section II.I.A*. A telephone request is not acceptable. The withdrawal of a proposal does not prejudice the right of a Proposer to submit another proposal within the time set for receipt of proposals. After the proposal due date, a proposal may be withdrawn only if the District fails to award the contract within the proposal validity period set forth here, or any agreed-upon extension thereof.

District staff will review all responsive Proposals received and one (1) or more finalists may be selected in the identification of the competitive range. These finalists may be invited to an oral interview if one is held.

2. Proposal Content.

Proposals shall be prepared simply and economically, providing a straightforward and concise description of the Proposer's capabilities and approach for meeting the requirements of this RFP. The Proposal documents shall be divided into sections and cover pages identifying the contents of the sections, and properly formatted for printing. Failure to provide ALL of the required submittals may render the proposal non-responsive. Although the District is not specifying a page limit, clarity and conciseness are essential and will be considered during Proposal evaluation.

A. Cover Letter

The signed cover letter should be on company letterhead clearly stating the name of the Proposer, their firm, business address, telephone, and e-mail address. The following information must be provided:

- i. Introduce the firm and summarize its qualifications.
- ii. Name(s) of authorized principals with authority to negotiate and contractually bind the firm.
- iii. A statement that binds the Proposer to the proposed Scope of Work and Cost Proposal for 150 calendar days.
- iv. Indicate whether there are any conflicts of interest that would limit the Proposer's ability to provide the requested services. See *Part IV, Section 7*.
- v. Acknowledge receipt of all addenda by including the addendum number for each addendum received.

B. Technical Proposal.

Each proposal shall include a detailed description of the technical components to specific sections and methodologies, capacity, strategy, to perform the scope of work.

- i. Experience: Based on the references provided in the enclosed *Attachment A*, Proposals must provide details on the referenced projects relating to the quality of work, the relevance of the projects, and insight into the work process of the Proposer's team. The relevance of the project includes the make-up of the team as well as the type of project, experience with similar power washing or graffiti abatement of public spaces. Please include references from other public transit agencies in *Attachment A - Proposer Qualifications and Reference Questionnaire*, if available. Proposers shall include all experience with projects that are similar in scope and nature to this project.

- ii. Project Approach:
 - a. Proposals must include an understanding of the project, and identify the Proposer’s understanding of the project and competency, as detailed in this *Scope of Work (SOW), Section III.*
 - b. The Alameda-Contra Costa Transit District (hereafter referred to as “District”) is requesting proposals from qualified individuals/US-based firms (hereafter referred to as "Proposer") to provide services to the East Bay Paratransit Consortium (hereafter referred to as “EBPC”) as the Paratransit Coordinator Office, as set out in *Part III, Scope of Services.* The District invites proposals in accordance with the provisions, specifications, and instructions set forth in this RFP.

C. Price Proposal.

A price proposal must be submitted on the *Attachment B-Price Proposal Form.*

If requested, Proposers agree within seventy-two (72) hours to permit access to financial records to verify labor rates, overhead rates, and other information should the District determine that such information is required prior to negotiations or award of a contract to determine the proposed price as fair and reasonable.

D. Required Forms.

Proposers must submit all required forms, specifically:

- i. Attachment A – Proposer’s Statement of Qualifications and Business References
- ii. Attachment B – Price Proposal Form
- iii. Attachment C – Prime Contractor and Subcontractor/Supplier Report
- iv. Attachment D – Certification Regarding Lobbying

E. Exceptions to Sample Contract.

A sample contract (Exhibit 2) is attached to this solicitation that will be finalized and issued to the Awardee determined at the conclusion of proposal evaluations and negotiations. If a Proposer desires any modification of these terms, this should be submitted with the proposal. Otherwise, the Proposer will be deemed to have accepted the form of Contract without modification. Attention is directed in particular, to the Indemnification and Insurance requirements.

3. Evaluation Process.

A. Evaluation Process.

The District intends to award a contract with fixed fees/rates to the most qualified, responsible firm submitting a responsive Proposal. The District may not consider any Proposal in which the technical approach, qualifications, or costs are not deemed to be within a competitive range. The District may seek clarifications or additional information from any or all Proposers regarding their Proposals and may request modified Proposals or best and final offers. In evaluating the Proposal, the District will consider the Proposal material submitted, oral interviews (if applicable), client references, and any other relevant information about a given Proposer.

Each Proposer in the competitive range may be invited for an interview with the District to discuss answers to written or oral questions, clarifications, and/or any other aspect of its proposal.

No information will be provided to any Proposer about any of the other Proposals submitted.

The District, in its sole discretion, may afford Proposers in the competitive range the opportunity to amend the proposal and make their best and final offer (BAFO). The District’s Evaluation Panel will evaluate the BAFO using the same criteria used to evaluate

the original Proposals. If a Proposer does not submit a BAFO upon request, the District will deem its immediate previous offer to be its BAFO.

The District does not conduct a formal public opening for RFP responses. The District requests that companies refrain from requesting proposal information concerning other respondents until an intention to award is announced, as a measure to best protect the solicitation process, particularly in the event of a cancellation or re-solicitation. With this preference stated, the District shall continue to comply with legal requirements for public disclosure requests.

B. Evaluation Criteria.

Proposals will be evaluated based on each reviewer’s determination of the match between the needs of the District outlined in the Scope of Work, and the contents of the Proposal. The evaluation criteria set forth below will be applied in the determination of competitive range, final evaluation.

The following criteria will be considered, although not exclusively, in evaluating proposals:

WEIGHT ASSIGNMENT FOR PROPOSAL EVALUATION CRITERIA	
Evaluation Criteria	Weight
1. Technical Expertise	35%
2. Past Performance/Professional Experience	35%
3. Price/Cost Fee	30%
TOTAL POSSIBLE WEIGHT	100%

A selection panel of staff will be convened for selection purposes. The panel will evaluate each proposal against the requirements stated herein. Additional evaluation factors which may be considered, in whole or in part include: Past Performance & References, Qualifications & Experience, Project Knowledge, Pricing, Technical Capabilities, and responses to Industry-Specific Questions. The evaluation panel’s recommendation will be made for the respondent(s) whose proposal(s) represents the best overall fit and value to the District.

4. Recommendation of Award.

The District’s Evaluation Panel will recommend the proposal which best measures up to the weighted criteria set forth above. The results of the evaluations and the selection of a proposal for an award will be documented. The Evaluation Panel’s selection will be recommended to the District’s Board of Directors for approval if required. The District’s Board of Directors has the option of accepting the recommendation or re-soliciting the requirement/project if it determines that it is in the best interest of the District.

A. Form of Contract.

The firm selected by the District to perform the services based on the Cost/Fee (if negotiated) outlined in this RFP will be required to execute a contract, a sample of which is attached as Exhibit 2.

B. Signature Requirements.

Proposals must be signed by a duly authorized officer(s) eligible to sign contract documents for the Proposer (the "Authorized Signer"). If the Proposer is an individual, the Contract shall be executed by the individual personally. If the Proposer is a co-partnership, it is desirable that the Contract is executed by all of the partners, but it may be executed by one (1) of them. If the Proposer is a corporation, this Contract must be executed by two (2) corporate officers, consisting of (1) the president, vice president or chair of the board; and (2) the secretary, assistant secretary, chief financial officer or assistant treasurer. In the alternative, this Contract may be executed by a single officer or a person other than an officer provided that evidence satisfactory to the District is provided demonstrating that such individual is authorized to bind the corporation (*e.g. a copy of a certified resolution*

from the corporation's board or a copy of the corporation's bylaws). If the Proposer is a joint venture, the Contract must be executed on behalf of each participating firm by officers or other authorized individuals. If the Proposer is an LLC, the Contract must be executed by an officer or member who is authorized to bind the LLC.

Consortiums, joint ventures, or teams submitting proposals, although permitted and encouraged, will not be considered responsive unless it is established that all contractual responsibility rests solely with one Proposer or one legal entity. The submittal should indicate the responsible entity. Proposers should be aware that joint 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.

III. SCOPE OF WORK

1. Project Description/Background

AC Transit is seeking proposals from qualified individuals/firms to provide the East Bay Paratransit Consortium with a Paratransit Coordinator, as set forth more fully below.

The East Bay Paratransit Consortium was established in 1994 by the Alameda-Contra Costa Transit District and the San Francisco Bay Area Rapid Transit District (hereafter referred to as "BART") under a joint exercise of powers agreement (the "JPA") to provide paratransit services mandated by the Americans with Disabilities Act (the "ADA") throughout the overlapping service areas of the two transit agencies. EBPC has been fully operational in all parts of the service area since October 1996.

EBPC Paratransit services are provided through a contracted Broker, currently Transdev, and three (3) service providers: A-Paratransit, First Transit, and MV Transportation.

EBPC's goals are ADA compliance and the provision of cost-effective, safe, convenient, reliable and user-friendly paratransit service. The EBPC service is comparable and complementary to the fixed route systems of AC Transit and BART, which operate accessible fixed-route and rail services. Service is a "shared ride" service and provided by advance reservation only.

EBPC serves the East Bay communities of Western Contra Costa County through Southern Alameda County, and into and out of San Francisco within the AC Transit/BART overlapping service areas. Through an arrangement with the San Francisco Municipal Railway (hereafter referred to as "MUNI"), service is also provided to and from points outside the AC Transit/BART service areas in San Francisco. EBPC also provides reservations and service for trips involving a transfer to another connecting operator's paratransit service.

On behalf of the EBPC, AC Transit has been designated as the lead agency for the procurement of a Program Coordinator. The Program Coordinator will provide a variety of monitoring, administrative, budgeting, planning, and other services to AC Transit and BART, acting as the East Bay Paratransit Consortium.

2. Required Activities and Functions

A. Oversight and Monitoring

The Program Coordinator will participate in oversight of the Broker and Service Providers (the "Operators") through monitoring and audit activities to assure the Broker and Service Providers are in compliance with their contracts, the requirements of the EBPC Paratransit plans, and the ADA. This will include periodic audits of: invoices (fuel, broker, provider, taxi, subcontractors); no-show files; suspension and appeals files; certification determinations.

Within three (3) months following receipt of the Notice to Proceed, the Program Coordinator will develop a written plan for acceptance by Program Management (AC Transit and BART). The plan will outline the steps the Contractor will perform to achieve adequate monitoring, what information will be reviewed, how frequently reviews will take place and at what intervals results will be submitted to Program Management. Monitoring will include site visits/inspections of the broker and provider facilities, and ride along on vehicle trips to evaluate activities, record keeping, and operating procedures.

Monitoring reports will include recommendations on ways to improve customer satisfaction and performance.

The Program Coordinator will maintain a complete set of project related Agency, Broker and Provider contract documents with all amendments and letters; quarterly reports and back-up. Maintain updated binders and electronic versions of these documents for Program Management staff.

The Program Coordinator will review and provide analysis of operational data and provide monthly reports to Agency's/Project Management staff about data elements outside established standards of previous history. Ensure back-up documentation exists, is available to Program Management and is consistent with the following reports:

- Monthly Operations Report sections created by the Contractor, including the budget-to-actual cost spreadsheets; the passengers, hours, and productivity spreadsheet; the Denials spreadsheet; the Service Provider and Taxi Comparison spreadsheet; plus the Operations Report Cover.
- Final review of the Monthly Operations Report sections created by the Broker, including the Monthly Performance Indicator Report (MPI), and the Taxi Report. The Contractor will identify any trends or indicators of change on the monthly Operations Report that affects performance.
- Final review of the quarterly Agency Report by Service Provider created by the Broker and creation of the cover page plus the five-quarter comparison of performance data.
- Creation of the quarterly fuel report and final review of the quarterly Liquidated Damages report created by the Broker.
- Final review of the Broker Quarterly Report with identification of any trends or indicators of changes that affect performance.
- Provide historical data and comparisons from all reports or pertinent other sources to identify trends or indicators of changes that affects performance.
- Track data to determine incentives and disincentives related to Broker performance and provide a quarterly report outlining the categories each month where incentives were earned or disincentives applied.

B. Coordination & Liaison Between Agency Staff and Broker

The Program Coordinator will:

- provide coordination between AC Transit, BART, & Broker staff on a variety of activities;
- prepare and maintain a centralized calendar of meetings, activities, & reporting deadlines;
- provide centralized data gathering, recordkeeping, and reporting that is approved per District standards;
- schedule, coordinate and facilitate regular staff meetings biweekly (once every two (2) weeks) and as needed for special items;
- provide staff meeting agenda, minutes, background materials and schedule; and
- ensure follow up on action items and to-do lists.

Program Management will provide a centralized location for recordkeeping and storage for EBPC program records, contracts, and program policy and procedures documents.

C. Financial Administration – Forecasting and Budgeting

The Program Coordinator will:

- Based on operating statistics, financial records, and research, prepare annual EBPC level of service demand and budget estimates for submittal to Program Management staff for budgeting purposes. This should include future projections, forecasts, and year-to-date comparisons;
- provide explanations for any increases/decreases & variance explanations for under/over runs;
- respond to requests for numbers, data & performance analyses to support Program Management staff with mid-year revisions & adjustments and as needed for agency budgeting process;
- track budget to actual expenses (4) individual reports, which are included in the monthly Operations Report) and report to agency staff monthly.
- provide ten (10) year financial planning estimates with revenue and expenditures;

- review and provide oversight of all National Transit Database (NTD) data and work with Broker and Program Management Staff to provide uniform reporting between the two (2) agencies which tie to the individual agency budget processes and reporting;
- develop a written plan for acceptance by Program Management within three (3) months after the Notice to Proceed, which outlines steps the Contractor will perform to achieve adequate monitoring, what information will be reviewed, how frequently reviews will take place and at what intervals results will be submitted to Program Management; and
- provide analysis of Service Providers' rate/range evaluation and distribution of work among providers bi-annually.

D. Planning, Grants, and Research

The Program Coordinator will:

- assist in the development and approval process for annual paratransit plans, reports, and claims required by Alameda County's Measure B and BB, and Contra Costa County's Measure J;
- conduct research as needed and prepare ad hoc reports, including requests from outside agencies, at the request of the Program Management staff. Draft staff reports for committees;
- review new grant opportunities and applications for suitability for EBP. They will prepare grant applications and data support as needed. Assist in grant application project planning, writing grant proposals, budget, schedule and milestone development;
- prepare Year-end Report on Measure B and BB; and
- assist in the required Grant reporting and tracking as identified by the Funding Agency.

E. Compliance Activities

The Program Coordinator will:

- assist Program Management staff with compliance activities such as the Federal Transit Administration (FTA) and the Metropolitan Transportation Commission (MTC) triennial audits, FTA compliance assessments, Alameda County Transportation Commission (ACTC) Measure B and BB, NTD reporting and Contra Costa County's Measure J, etc., reporting and audit requirements;
- collect data, prepare draft reports, & coordinate common information for use by both agencies;
- support internal agency audits with information and data; and
- respond to questions resulting from audits and assist with recommendations to address any findings or issues.

F. Complaints, Public Outreach and Customer Satisfaction Survey

The Program Coordinator will:

- be required to monitor and audit complaints submitted to the Broker;
- maintain a separate phone number and mailing address for customers to submit complaints and commendations outside of the Broker and Agency's complaint process;
- provide a phone system that has automatic recording of all calls, as well as a translation service;
- review / research / track any escalated complaints and develop responses as directed by Program Management staff;
- track complaints that originate outside of the Brokers office and provide follow up, as needed, which may include contacting the Broker, Service Providers, Rider, and Program Management staff;
- provide oversight of response and/or resolution to insure follow through; and
- maintain records of all complaints that originate outside of Broker's office including complaints submitted directly to the Agencies. Complaint records shall be logged so that they can be searched by complaint name, date, type of complaint. Quarterly review/audit all complaints to look for patterns or practices that need to be addressed.

The PCO will be responsible for the functioning of EBPC's rider advisory committee, called the Service Review Action Committee ("SRAC"). This committee meets every other month, starting in February, and the PCO must attend the meetings. PCO responsibilities include, but are not limited to the following:

The Program Coordinator will:

- assemble and mail a meeting package approved by the District, distributed a week before the scheduled meeting, creating documents for each bi-monthly meeting consisting of: the agenda developed by the The Program Coordinator and reviewed by the SRAC Chair and Vice Chair and Program Management; minutes from the prior meeting, staff reports on agenda items as needed, and miscellaneous other information;
- maintain the SRAC database of SRAC members and others from the public who want the meeting package or to whom EBPC might mail to for miscellaneous reasons. This database must identify accessible format needs and the PCO must ensure individual requests for accessible formats are met;
- provide talking reports or summarizations to Program Management on SRAC agenda items as needed;
- manage at least one (1) Nominating Committee event per year, usually in the spring. This activity is to allow for new candidates to apply for membership on the committee and to permit current members to re-apply;
- provide a member orientation to newly appointed members;
- maintain SRAC documents and ensure they are current. *Examples are: SRAC application forms: SRAC roster: Information on what the Committee does, etc.;* and
- manage and distribute the travel reimbursements for Committee members.

The Program Coordinator assist Program Management and Broker staff with the scheduling, development and review of the Annual Customer Satisfaction Survey, which will be contracted for by the Broker, and conducted by an independent company. Contractor shall work with Broker to schedule survey for the spring of each year, review the survey questions for any changes or new information, review the draft and final report for accuracy and clarity.

G. Meetings, Availability, Record Maintenance, and Office Space

The Program Coordinator will:

- be available to attend regular staff meetings which may be located at the Brokers office and/or Agency offices. In order to facilitate coordination between the agencies and the Broker, the Program Coordinator will provide ready access to records and other materials upon request. There will be no requirement for the Program Coordinator to maintain a commercial lease space as an office. The Project Management staff will make arrangements for a flexible working space within the Brokers offices or at the Agency's office facilities.
- make themselves available at locations which are accessible and open to people with disabilities and arrange for a space for small meetings of up to five (5) people. These meetings may or may not be held at the Brokers and/or Agency office buildings;
- maintain a fixed mailing address to receive correspondence including customer complaints;
- maintain a local phone number to receive non-urgent calls and messages and be able to respond to inquiries or requests for information. The Program Coordinator shall provide a phone system capable of conferencing up to four (4) individuals or propose an alternative method for calls, subject to Project Management staff approval. Response to calls must be within two (2) business day;
- maintain historical, strategic EBPC information. A plan for electronic and paper record storage, including an outline of what records to keep, how long and in what form shall be developed in the first three to five (3-5) months from the award of contract, subject to Project Management approval

H. Special Projects

Special Projects consist of analysis, reports, and creation of documents for projects or deliverables that arise over the fiscal year, in addition to the assignments described above. The Contractor will be required to assist either one or both of the Project Management staff with Special Projects as they develop. Some examples of Special Projects that the Contractor might be involved may include:

- Questions, advice, small projects, minor reports, historical information searches

- Annual revenue and cost forecasting reports; Multiyear cost performance reports for STA and TDA
- Surveys from other transit agencies or organizations.
- Tracking, summarizing and presenting any costs associated with re-locating the Broker office. This includes notifying the Project Management staff as soon as possible of any costs the Contractor is informed by the current landlord, Rubicon Partners, they do not intend to absorb.

Assistance to the Agency's/Project Management staff in the development of the Broker/Service Provider's RFP, such as:

- Creating some of the language/text in the RFP
- Developing responses to all questions submitted, ensuring the Agency's/Project Management staff approve the responses and ensuring responses are distributed appropriately
- Developing and organizing all RFP attachments
- Developing all pricing sheets used in the RFP

Performing the Financial analysis on Proposals submitted for the Broker/Service Provider's RFP and ensuring financial documentation and analysis is compliant with the needs for Board presentations at either agency.

Changes in structure or procedures that bring modifications to Accounting and Reporting, such as, the following. This is not intended to be a complete list.

- Becoming the Centralized, Regional Operator
- Changes to the current EBP structure and organization
- Centralized fueling
- Fare payment through individual accounts
- Contracting with providers who cannot or will not be involved in fare collections
- Programs for either agency that require special billing.
- Use of the Clipper Card system or credit/debit cards to pay for rides

The Project Coordinator will review all Broker Departments' written Standard Operating Procedures for clarity, accuracy and reasonableness. They will propose and coordinate changes as needed.

The Project Coordinator will perform an analysis of any proposed increase to fares and impacts.

I. Pricing Rates

Proposers shall provide an hourly rate for a period of up to twelve (12) weeks, for transition, beginning 01 May 2020 through 30 June 2020. The range of hours will be from a minimum of ten (10) hours per week to a maximum of thirty (30) hours per week during this period.

Proposers shall also provide a Proposed Annual Fee.

IV. STANDARD CONDITIONS

1. Reserved Rights.

All Proposers 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 Proposer responding to the RFP.

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

The District reserves the right, in its sole discretion, to reject all proposals and re-solicit or cancel this procurement if deemed by the District to be in its best interest.

The District reserves the right to select the proposal that, in its judgment, will best measure up to the weighted evaluation criteria set forth in Part II above.

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

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.

2. Protest Procedures.

A link to the District's protest procedures is listed below. You may also find it on the District's website (actransit.org) by clicking on "Board Policies / Notices" on the right-hand side of the home page, and then scrolling down to Board Policy 468.

http://www.actransit.org/wp-content/uploads/board_policies/BP%20468%20-%20Procurement%20Protest-1.pdf

3. DBE Program/SBE Goal. There is no DBE or SBE goal for this contracting opportunity.

a. Vendor Registration.

Online Vendor Registration is required prior to the contract award. Proposers can register here: <http://www.actransit.org/purchasing/vendor-registration-and-log-in/>. Additionally, should register as a vendor with BART. BART online registration can be accessed by visiting BART.Gov.

Have ready your business tax identification information.

Please also ensure you are registered with SAM.GOV:

<https://www.sam.gov/SAM/pages/public/generalInfo/aboutSAM.jsf>

4. Cost of Proposal and Pre-Contractual Expenses.

The District shall not be liable for any pre-contractual expenses incurred by any Proposer. Proposers shall not include any such expenses as part of the Proposal. The District shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP. Pre-contractual expenses are defined as expenses incurred by Proposer in:

- i. Proposals in response to this RFP (including copies or other expenses of any submitted documentation).
- ii. Costs associated with interviews and meetings (including travel expenses) incurred in responding to this RFP.
- iii. Other expenses incurred by a Proposer prior to the date of award and formal Notice to Proceed for any contract.

5. Waiver.

By submitting a Proposal, the corresponding Proposer represents and warrants that it has sufficiently informed itself in all matters affecting the performance of the work or the furnishing of the labor, supplies, material, or equipment called for by the envisioned Contract; that Proposer has checked its Proposal for errors and omissions; that the prices stated in its Proposal are correct and as intended by it and are a complete and correct statement of its prices for performing the work or furnishing the labor, supplies, materials, or equipment required by the Contract.

6. Public Records Act/Confidentiality.

The California Public Records Act (*Cal. Govt. Code Sections 6250 et seq.*) mandates public access to government records. Therefore, unless the information is exempt from disclosure by law, the content of any request for explanation, exception or substitution, response to these specifications, protest or any other written communication between the District and the Proposer shall be available to the public.

If the Proposer believes any communication contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer shall request that the District withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. The

Proposer may not designate its entire Proposal as confidential. Additionally, Proposer may not designate Proposal Forms as confidential.

If the Proposer requests that the District withhold from disclosure information identified as confidential, and the District complies with the Proposer's request, the Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify, defend, and hold harmless the District from and against all damages (*including but not limited to attorneys' fees that may be awarded to the party requesting the Proposer information*), and pay any and all cost and expenses related to the withholding of the Proposer information. The Proposer shall not make a claim, sue or maintain any legal action against the District or its directors, officers, employees or agents in connection with the withholding from the disclosure of Proposer information or in connection with the disclosure of Proposer Information in the event the District determines such information is subject to disclosure.

If the Proposer does not request that the District withhold from disclosure information identified as confidential, the District shall have no obligation to withhold the information from disclosure and may release the information sought without liability to the District.

7. Conflict of Interest.

By submitting a Proposal, the Proposer represents and warrants that no director, officer or employee of the District is in any manner interested directly or indirectly in the Proposal or in the Contract which may be made under it or in any expected profits to arise there from, as set forth in *Article 4, Division 4, Title I (commencing with Sec. 1090)* of the Government Code of the State of California.

The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under *California Government Code Sections 1090 et seq.* or *Sections 87100 et seq.* during the performance of services under this Contract. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of this Contract. Violation of this provision may result in this Contract being deemed void and unenforceable.

Depending on the nature of the work performed, the Proposer may be required to publicly disclose financial interests under the District's Conflict of Interest Code. The Proposer agrees to promptly submit a Statement of Economic Interest on the form provided by the District upon receipt. No person previously in the position of director, officer, employee or agent of the District may act as an agent or attorney for, or otherwise represent, the Proposer by making any formal or informal appearance, or any oral or written communication, before the District, or any officer or employee of the District, for a period of twelve (12) months after leaving office or employment with the District if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, awards or revocation of a permit, license, grant or Contract.

The Proposer warrants that it has no organizational conflicts of interest at this time. Alternatively, the Proposer must disclose all known organizational conflicts of interest. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to the District; a firm or person's objectivity in performing the contract work is or might be impaired, or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other agreement.

8. Insurance

See Exhibit 1

9. Ex-Parte Communications.

Proposers and Proposers' representatives may not communicate orally with an officer, director, employee, or agent of the District, with the exception of the Procurement Staff or DBE Program Administrator regarding this RFP until after a Notice to Proceed has been issued by the District. Proposers and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of the District during a public meeting.

In the context of this RFP, an "ex parte communication" is any communication between a Proposer (or the Proposer's representative) and the District's General Manager, Board Member, officer, employee or consultant, regardless of who initiates the communication, other than as part of the procurement process specified herein, before the District issues a Notice to Proceed, unless it is in writing and available for disclosure to the general public.

V. ATTACHMENTS AND EXHIBITS :

ATTACHMENTS *(to be completed and returned with the proposal):*

- Attachment A - Proposer's Statement of Qualifications and Business References
- Attachment B - Price Proposal Form
- Attachment C - Prime Contractor and Subcontractor/Supplier Report
- Attachment D - Certification Regarding Lobbying

EXHIBITS *(to be reviewed prior to proposal submission):*

- Scope of Work on page
- Exhibit 1 - Insurance Requirements
- Exhibit 2 - Sample Contract

Exhibit 3 - Federal Clauses

**ATTACHMENT A
PROPOSER'S STATEMENT OF QUALIFICATIONS & BUSINESS REFERENCES**

A. Proposer Name: _____

B. How many years has your organization been in business under your present business name? _____

C. 3-Year Annual Gross Sales

Year:	Year:	Year:
\$	\$	\$

D. Give information below about all your current and ongoing projects. *Attach additional sheets if necessary.*

Client	Location (city/state)	Type of Work	Value of Work	Percent Completed of Overall Project	Scheduled Completion Date

E. List all key projects your organization has completed, which are similar in nature to the Scope of Work outlined in this solicitation during the last three (3) years, at a minimum. *(Attach additional sheets if necessary.)*

Client	Location (city/state)	Type of Work	Value of Work	Year Started	Year Completed

F. Give information below about the relevant experience of the principal individuals of your present organization including those individuals to be in responsible charge of this project. *Attach additional sheets if necessary.*

Individual's Name	Title	Years of Professional Experience	Type of Work

G. References: List a minimum of two (2) professional references for whom your organization has performed work similar in nature to the *Scope of Work* outlined in this solicitation. *Do not list AC Transit as a reference. Attach additional sheets if necessary.*

Business Name	Contact Person	Phone	Email

H. Have you or your organization, or any officer or partner thereof, defaulted on a contract?
 No Yes If yes, please explain below. *Attach additional sheets if necessary.*

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

No **Yes** If yes, please explain below. Attach additional sheets if necessary.

J. Has your firm ever been debarred by a Federal, State or Local Government agency?

No **Yes** If yes, please explain below. Attach additional sheets if necessary.

The undersigned proposer represents and warrants that the foregoing information is true and accurate to the best of its knowledge and the undersigned intends that the District rely thereof in awarding the attached contract.

Signature of Proposer

Name/Title

Dated: _____

**ATTACHMENT B
PRICE PROPOSAL FORM**

Proposers shall provide an hourly rate for a period of up to 12 weeks, for transition, beginning 01 May 2020 through 30 June 2020. The range of hours will be from a minimum of ten (10) hours per week and a maximum of thirty (30) hours per week for the period.

Proposers shall also provide a Proposed Annual Fee.

	Transition Period Hour Rate <i>(5/1/2020-6/30/2020)</i>	Contract Year 1 Annual Rate <i>(7/1/2020 – 6/30/2021)</i>	Contract Year 2 Annual Rate <i>(7/1/2021 – 6/30/2022)</i>
Proposed Hourly Rate			
Proposed Annual Fee			

ATTACHMENT C

PRIME PROPOSER & SUB-PROPOSER/SUPPLIER REPORT

Complete All Sections of Form and Return with Proposals/Proposals

The Proposer/Proposer is **required** to complete the following information in accordance with the provisions of Public Contract Code Sections 4100 to 4113, inclusive. This form shall include prime contractor, all suppliers, and all subcontractors that will perform work, provide labor, or render services 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/Proposal Price. AC Transit reserves the right to request additional documentation to validate any and all information provided on this form. **COMPLETE ALL FIELDS OR INDICATE N/A. DO NOT LEAVE BLANKS.**

Prime/SubProposer/Supplier Name/Address/Contact Information	Type of Work or Materials	Value of Work & Materials <i>(complete both below items)</i>	DBE/SBE UTILIZATION <i>AC Transit reserves the right to request further documentation to validate provided information on meeting the DBE/SBE requirements for this procurement.</i>	Annual Gross Receipts <i>List annual gross receipts for last three years (i.e. 2018, 2017, 2016)</i>
Prime Contractor: Address: Contact Person: Phone: Email: How Many Years In Business: DIR Registration #: License No (if applicable):		Percentage (%) Dollar Value (\$)	Is Prime Contractor: DBE <input type="checkbox"/> SBE <input type="checkbox"/> Not Applicable <input type="checkbox"/> If DBE or SBE, include the following: Certifying Agency: _____ _____ Certification No.: _____ Certification Date: _____ Expiration Date: _____	
Subcontractor/Supplier: Address: Contact Person: Phone: Email: How Many Years In Business: DIR Registration #: License No (if applicable):		Percentage (%) Dollar Value (\$)	Is Subcontractor or Supplier: DBE <input type="checkbox"/> SBE <input type="checkbox"/> Not Applicable <input type="checkbox"/> If DBE or SBE, include the following: Certifying Agency: _____ _____ Certification No.: _____ Certification Date: _____ Expiration Date: _____	
Subcontractor/Supplier: Address: Contact Person: Phone: Email: How Many Years In Business: DIR Registration #: License No (if applicable):		Percentage (%) Dollar Value (\$)	Is Subcontractor or Supplier: DBE <input type="checkbox"/> SBE <input type="checkbox"/> Not Applicable <input type="checkbox"/> If DBE or SBE, include the following: Certifying Agency: _____ _____ Certification No.: _____ Certification Date: _____ Expiration Date: _____	

(DO NOT LIST ALTERNATIVE SUBPROPOSERS FOR THE SAME WORK. ATTACH ADDITIONAL SHEETS AS NECESSARY.)

ATTACHMENT D:

CERTIFICATION REGARDING LOBBYING

Proposers 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. Proposers 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. Proposers shall ensure that all of its Subcontractors included in their Proposal shall certify the same.

Please choose one:

- No, Proposer has not participated in lobbying activities as outlined above**
- Yes, Proposer has participated in lobbying activities as outlined above**
If yes –and complete the Disclosure of Lobbying Activities form on the following page

Name of Proposer: _____

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)		
1. Type of Federal Action: <input type="checkbox"/> contract <input type="checkbox"/> grant <input type="checkbox"/> cooperative agreement <input type="checkbox"/> loan <input type="checkbox"/> loan guarantee <input type="checkbox"/> loan insurance	2. Status of Federal Action: <input type="checkbox"/> Proposal/offer/application <input type="checkbox"/> initial award <input type="checkbox"/> post-award	3. Report Type: <input type="checkbox"/> initial filing <input type="checkbox"/> material change For Material Change Only: Year _____ Quarter _____ Date of last report: _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Sub-awardee Tier, if known: _____ Congressional District, if known: _____	5. If Reporting Entity in No. 4 is Sub-awardee, Enter Name and Address of Prime: _____ _____ _____ Congressional District, if known: _____	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable:	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10a. Name and Address of Lobbying Entity: (if individual, last name, first name, MI):	10b. Individuals Performing Services (including address if different from No. 10a):	
(Attach Continuation Sheet(s), if necessary)		
11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply): <input type="checkbox"/> retainer <input type="checkbox"/> one-time fee <input type="checkbox"/> commission <input type="checkbox"/> contingent fee <input type="checkbox"/> deferred <input type="checkbox"/> other (specify: _____)	
12. Form of Payment (check all that apply): <input type="checkbox"/> cash <input type="checkbox"/> in-kind; specify: nature _____ value _____		
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:		
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.	Signature: _____ Print Name: _____ Title: _____ Telephone #: _____ Date: _____	

EXHIBIT 1 INSURANCE REQUIREMENTS

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office *Form CG 00 01* covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (*ISO CG 25 03 or 25 04*) or the general aggregate limit shall be twice the required occurrence limit.
 - a. *Sexual Abuse or Molestation (SAM) Liability:* If the CGL policy referenced above is not endorsed to include affirmative coverage for sexual abuse or molestation, Contractor shall obtain and maintain a policy covering Sexual Abuse and Molestation with a limit no less than \$2,000,000.00 per occurrence or claim.
 2. **Automobile Liability:** Insurance Services Office *Form Number CA 0001* covering, *Code 1* (any auto), or if Contractor has no owned autos, *Code 8* (hired) and *9* (non-owned), with limit no less than \$2,000,000.00 per accident for bodily injury and property damage.
 3. **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease. (*Not required if Contractor provides written verification it has no employees*)
 4. **Professional Liability Errors and Omissions Insurance** appropriate to the Contractor’s profession and work hereunder, with limits not less than \$2,000,000.00 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Contractor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, the release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
 - a. The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of the Agency in the care, custody, or control of the Contractor. If not covered under the Contractor’s liability policy, such “property” coverage of the Agency may be endorsed onto the Contractor’s Cyber Liability Policy as covered property as follows:
 - i. Cyber Liability coverage in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of the Agency that will be in the care, custody, or control of Contractor.
 - ii. The Insurance obligations under this agreement shall be the greater of 1—all the Insurance coverage and limits carried by or available to the Contractor; or 2— the minimum Insurance requirements shown in this agreement. Any insurance proceeds in excess of the specified limits and coverage required, which are applicable to a given loss, shall be available to Agency. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the indemnity or other obligations of the Contractor under this agreement.
- If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.
5. **Other Insurance Provisions:** The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - a. **Additional Insured Status:** The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment

furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as *ISO Form CG 20 10 11 85* or both *CG 20 10*, *CG 20 26*, *CG 20 33*, or *CG 20 38*; and *CG 20 37* forms if later revisions used).

- b. **Primary Coverage:** For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance primary coverage at least as broad as *ISO CG 20 01 04 13* as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- c. **Notice of Cancellation:** Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the Entity.
- d. **Waiver of Subrogation:** Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.
- e. **Self-Insured Retentions:** Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.
- f. **Acceptability of Insurers:** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.
- g. **Claims Made Policies:** If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- h. **Verification of Coverage:** Contractor shall furnish the Entity with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language affecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Entity before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- i. **Subcontractors:** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors.
- j. **Special Risks or Circumstances:** The District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**EXHIBIT 2
SAMPLE CONTRACT**

THIS CONTRACT is made and entered into this ____ day of ___, 2020 (the “Effective Date”), by and between **ALAMEDA-CONTRA COSTA TRANSIT DISTRICT**, a special transit district established pursuant to California Public Utilities Code, Section 24501 *et seq.*, having its principal place of business at 1600 Franklin Street, Oakland, California 94612 (hereinafter “AC Transit” or the “District”) and _____, a [description of type of entity] having its principal place of business at _____ (hereinafter “Contractor”).

THE PARTIES AGREE AS FOLLOWS:

1. **Scope of Work.** Contractor shall provide services in full accordance with **Request for Proposals No. 2020-10432** prepared and issued by the District, a copy of which is attached hereto and incorporated by this reference. The Contractor agrees to undertake, carry out and complete all work established herein in a professional and efficient manner satisfactory to District standards.

2. **Time for Performance and Term.** The Contractor shall commence work upon the execution of this Contract by both parties and, unless this Contract is terminated sooner pursuant to *Section 23- Termination*, shall complete the services within or before twelve (12) months, ending no later than _____, 2021. Services shall be performed at the District’s direction and within the term/deadline set forth above hereto unless otherwise mutually agreed upon by the District and the Contractor.

OPTION TO EXTEND THE CONTRACT (PRICED). At the sole discretion of the District, this Contract may be extended unilaterally by the exercise of ____ () one (1) year priced options. If exercised, the District shall notify Contractor, in writing, of its intent to exercise each priced option at least *thirty (30)* days prior to the exercise of said option(s). The option(s) shall be exercised in accordance with the prices proposed in the original submitted bid.

3. **Compensation.** The Contractor agrees to perform all of the services included in *Section III of the RFP (Scope of Service)* in accordance with the fees as accepted by the District set forth in *Attachment B-Cost Proposal* hereto, not to exceed \$ ___, in accordance with Contractor’s Proposal, and Best and Final Offer if any, as accepted the District. The total not to exceed cost/fee 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, with a payment term of net thirty (30) days, at the end of each month services have been provided. Invoices shall clearly describe in detail the services rendered by Contractor during the previous month 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 Proposal, and Best and Final Offer if any, as accepted the District. The District will endeavor to pay properly submitted, undisputed invoices within thirty (30) calendar days of initial receipt.

Disputed Charges. If the District, in good faith, believes there is a dispute concerning the accuracy or applicability of any charge or other invoiced amount, it will notify Contractor of the nature of such dispute not later than ten (10) calendar days after receipt of invoice and will provide reasonable support for such dispute together with such notice of disputed charges. In such an event, the District may withhold such disputed charges or other invoiced amounts from payment of that or subsequent invoices. Failure by the District to identify a disputed charge or other invoiced amount prior to payment of such charge or amount will not limit or waive any of its rights or remedies with respect thereto, including its right to withhold such disputed charges or amounts from payments on subsequent invoices. Contractor shall use diligent efforts to provide any supporting documentation required by the District to resolve any such disputes.

4. **Component Parts.** This Contract shall consist of the following documents, each of which is on file with the District, and is incorporated into and made a part of this Contract by reference. In the event of a conflict these documents shall control in order of precedence as set forth below:

- Contract and Contract Amendments (if any)
- RFP Addenda
- RFP No. 2020-10432 and any Addenda thereto, as incorporated by reference
- Contractor’s Proposal dated _____, as accepted by the District

5. **Notices.** All communications relating to the day-to-day activities of the provided services shall be exchanged between Mallory Brush, District’s Accessible Services Manager, and Contractor. All other notices, 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:

<p><u>THE DISTRICT</u> Dora English Assistant Contracts Specialist AC Transit 1600 Franklin Street, 6th Floor Oakland, CA 94612 (510) 891-4789 denglish@actransit.org</p>	<p><u>CONTRACTOR</u> Proposer Name Contact Name/Title Proposer Address Proposer Address Proposer Phone #: Proposer Email:</p>
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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.

6. **Subcontracting.** The Contractor shall not subcontract any services to be performed by it under this Contract without the prior written approval of the District, except for service firms engaged in drawing, reproduction, typing, and printing. Any subcontractors must be engaged under written contract with the Contractor with provisions allowing the Contractor to comply with all requirements of this Contract. The Contractor shall be solely responsible for reimbursing any subcontractors, and the District shall have no obligation to them. The Contractor shall be solely responsible for subcontractor insurance requirements, prompt payment affidavits, certifications regarding lobbying, and DBE designations.

For contract monitoring and tracking purposes, the District utilizes B2GNow. This is an interactive system that 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.

7. **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.

8. **Changes.** If the Contractor seeks any changes to the *Scope of Work* that would require a modification of the amount of compensation or the time required for performance, the changes must be reviewed and approved in advance of any action to implement the change by the Project Manager. In the event that the Contractor encounters any unanticipated conditions or contingencies that may affect the scope of work or services, schedule, or the amount of compensation specified herein, the 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 schedule or compensation. This notice shall be given to the District prior to the time that the Contractor performs work or services related to any proposed adjustment.

The District may at any time by written order, make changes to the *Scope of Work* described in this Contract. 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.

Any and all pertinent changes shall be expressed in a written supplement to this Contract prior to implementation of such change.

9. **Indemnification.**

- A. Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless the District, and its agents, representatives, officers, directors and employees (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 of the following:

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; or

Any allegation that materials or services provided by the Contractor infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

- 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. This indemnification shall survive the termination of this Contract.

- 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.

10. **Insurance Requirements.** (See *RFP Exhibit 1*)

11. **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 persons performing services for the Contractor shall be one solely between said parties.

12. **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 Work* 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.

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.

Any and all rights, title, and interest (including, without limitation, patent rights, copyright and any other intellectual-property or proprietary right) to materials prepared under this Agreement are hereby assigned to the Contractor. The Contractor agrees to execute any additional documents which may be necessary to evidence such assignment.

The Contractor represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual property or proprietary right of any third party.

13. **Release of Information.** Before releasing any reports, promotional materials or information prepared in connection with this Contract, the Contractor shall provide a copy or copies for first review and approval by the District. Contractor shall not use the District's logo without specific written permission from the District Designated Representative.
14. **Evaluation of Contract Performance.** The District reserves the right to evaluate the Contractor's performance under this Contract, including but not limited to, compliance with all Contract flow down requirements for subcontractors, and to provide feedback and require corrective action, as appropriate. The Contractor agrees to comply, including attending and participating in periodic Contract review meetings, with any District directed Contract evaluation, project improvement plan, or corrective action for fulfillment of Contract requirements. The Contractor agrees to promptly provide the District with any supporting documentation or evidence it may request, including but not limited to, subcontracts. The failure of the Contractor to provide such documentation or adequately perform under this Contract may result in suspension, termination, debarment, or any other remedy the District deems appropriate.
15. **Transition/Migration Cooperation.** The Contractor agrees that upon termination of this Contract for any reason, sufficient efforts and cooperation will be provided to ensure an orderly and efficient transition of services to the customer or to a different Contractor. The Contractor shall provide full disclosure to the subsequent Contractor and to the District on the equipment, software and required processes and procedures to perform the District's services. The Contractor agrees to transfer licenses or assign agreements for any software or services used to provide the services to the District or to a subsequent Contractor. The Contractor agrees to support the transition of code, data, and environments, including virtual server images if any.
16. **Notice of Labor Disputes**
 - A. If the Contractor or a subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor or subcontractor shall immediately 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.
17. **Removal of Contract Personnel**
 - A. The Contractor acknowledges that any person assigned to work under this Contract must perform their duties so as to not unduly impair contract performance. By assigning a person to work under this Contract, the Contractor agrees to be responsible for the behavior of that person during contract performance.
 - B. The Contractor acknowledges that the District has the right to require the removal of any Contractor and any subcontractor employee that the District determines, at its sole discretion, to be negatively effecting performance of work under the contract. Examples of such behavior include, but are not limited to: (1) conduct which poses a threat to the safety of anyone working under the contract and any District employees; (2) conduct which is disruptive to contract performance; (3) careless work; (4) conduct which is not appropriate when working with District employees under this Contract; and (5) conduct in violation of District policy or local, state or federal laws.
 - C. The District will provide written notice to the Contractor that a person's behavior is unacceptable or unduly impairing contract performance. Upon receipt of written notice from the District, the Contractor agrees 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 agrees that it is not entitled to any additional costs it may incur as a result of the removal of the person from the District. The Contractor agrees to find a timely replacement and in no event shall this period exceed seventy-two (72) hours from that person being removed.

18. **Communication with Contractor's Staff.** In order 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 the purpose of 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
19. **Application of Federal, State and Local Laws and Regulations.** During the Contract period of performance, the Contractor shall be subject to and comply with all current and new FTA, federal, state and/or local laws, regulations, policies, procedures, and directives, and shall adhere to all financial privacy laws and regulations, if Federal funds are used to supplement District funding. Contractor agrees that the most recent of such federal requirements will govern the administration of a contract at any particular time, except if there is sufficient evidence in the Contract of a contrary intent. To achieve compliance with changing requirements, the Contractor agrees to include in all agreements with subcontractors a statement that Federal requirements may change and that any changed requirement will apply. Federal terms and conditions will be incorporated through an amendment to the contract.
20. **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.
21. **No Assignment.** The Contractor shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the District.
22. **Force Majeure.** Each party shall be excused from performance of any of its obligations under this Contract if such inability was caused by an event beyond that party's reasonable control ("Force Majeure Event"). A Force Majeure Event shall include (i) natural disasters (e.g., earthquake, hurricanes, floods, fire); (ii) major upheavals (e.g., war, riots, act of terrorism, sabotage, labor strikes, embargoes); (iii) epidemics or pandemics; or (iv) government intervention (e.g., government orders, court orders, confiscation, condemnation, future laws, government shutdown).
- If a Force Majeure Event occurs, then Contractor shall make all commercially reasonable efforts to deliver product or services to the District or to provide the District with replacement product or service. In either case, the District shall reimburse Contractor for reasonable costs incurred by Contractor in order to provide the product, replacement product or service. If the Force Majeure Event continues exceeds thirty (30) days, the District may pause or terminate the Contract for Convenience in accordance with *Section 23* of this Contract.
23. **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 as a result of said termination 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 *Force Majeure Events* which render impossible the Contractor's performance under the contract.
- D. **Termination for Non-Appropriation of Funds.** The continuation of this Contract is contingent upon the appropriation of funds by local, state and federal bodies. If local, state or federal contracts, grants, or other authorizations of funding fail to appropriate sufficient monies to provide for the continuation of the Contract, or if such appropriation is reduced by the veto of the Governor, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the Contract, the Contract shall terminate upon written notice of the District. Contractor shall be entitled to payment for work performed satisfactorily.

Upon termination of this Contract, the District shall pay the Contractor only its allowable costs to the date of termination. 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.

24. **Dispute Resolution.** The District and Contractor agree to attempt in good faith to resolve all disputes informally. The Parties agree that any dispute arising from this Contract, that is not resolved within thirty (30) days by the Parties' representatives responsible for the administration of this Contract will be set forth in writing to the attention of the District's General Manager for resolution. If mutually agreed, the Parties may use an alternative dispute resolution process such as mediation and/or arbitration to resolve their dispute prior to initiating any formal action in court. Unless otherwise directed by the District, the Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

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, 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.

- A. 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 or not any such controversy, claim or dispute is subject to the arbitration provisions contained herein.

- B. Any party desiring arbitration shall serve on the other party or parties and the San Francisco Office of the American Arbitration Association, in accordance with the aforesaid Rules, its Notice of Intent to Arbitrate ("Notice"). The parties shall select a single, neutral arbitrator who is generally familiar with the factual and legal issues that relate to this Contract and the dispute to be resolved by arbitration. In the event that the parties are unable to agree on a neutral arbitrator, then one shall be selected in accordance with the Rules. The arbitration / provided hereunder are hereby declared to be self-executing and it shall not be necessary to petition a court to compel arbitration.
 - C. The parties to the arbitration shall share equally all costs of the arbitration, including the fee of the neutral arbitrator, and each party shall bear its own costs. The arbitrator shall have the authority, in accordance with the provisions of 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.
 - D. If a controversy, claim or dispute arises between the parties which is subject to the arbitration provisions hereunder, and there exists or later arises a controversy, claim or dispute between the parties, or either of them, and any third party, which controversy, claim or dispute arises out of or relates to the same transaction or series of transactions, said third party controversy, claim or dispute shall be consolidated with the arbitration proceedings hereunder; provided, however, that any such third party shall be a party to an agreement with either of the parties which provides for the arbitration of disputes thereunder in accordance with rules and procedures substantially the same in all material respects as provided for herein or, if not, shall consent to arbitration as provided for hereunder.
 - E. All arbitration proceedings shall be held in Oakland, County of Alameda, California.
 - F. 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.
 - G. Unless otherwise directed by the District, the Contractor shall continue performance under this Agreement while matters in dispute are being resolved.
25. **Records.** All Contractor and any subcontractor costs incurred in the performance of this Contract will be subject to audit. The Contractor shall provide the District with copies of fully executed subcontracts. The Contractor and any subcontractors shall permit the District or its authorized representatives to, within forty-eight (48) hours of notice, inspect, examine, make excerpts from, transcribe, and copy the Contractor's books, work, documents, papers, materials, payrolls records, accounts, and any and all data relevant to the Contract at any reasonable time, and to audit and verify statements, invoices or bills submitted by the Contractor pursuant to this Contract. The Contractor shall also provide such assistance as may be required in the course of such audit. The Contractor shall retain these records and make them available for inspection hereunder for a period of four (4) years after expiration or termination of the Contract.
26. **Conflict of Interest.** The Contractor warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under *California Government Code §§ 1090 et seq.* or *§§ 87100 et seq.* during the performance of services under this Contract. The Contractor further covenants that it will not knowingly employ any person having such an interest in the performance of this Contract. Violation of this provision may result in this Contract being deemed void and unenforceable.

Depending on the nature of the work performed, a Contractor of the District is subject to the same conflict of interest prohibitions that govern District employees and officials (*Cal. Govt. Code Section 1090 et seq. and Cal. Govt. Code Section 87100 et seq.* as well as all applicable federal regulations and laws). During the proposal process or the term of the Contract, Contractor and its employees may be required to disclose financial interests.

Depending on the nature of the work performed, the Contractor may be required to publicly disclose financial interests under the District's Conflict of Interest Code. Upon receipt, the Contractor agrees to promptly submit a Statement of Economic Interest on the form provided by the District.

No person previously in the position of director, officer, employee or agent of the District may act as an agent or attorney for, or otherwise represent, the Contractor by making any formal or informal appearance, or any oral or written communication, before the District, or any officer or employee of the District, for a period of twelve (12) months after leaving office or

employment with the District if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant or contract.

The Contractor shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Contract and other solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to the District; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other contract.

The Contractor shall not engage the services of any subcontractor or independent Contractor on any work related to this Contract if the subcontractor or independent contractor, or any employee of the subcontractor or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Contract.

If at any time during the term of this Contract, the Contractor becomes aware of an organizational conflict of interest in connection with the work performed hereunder, the Contractor immediately shall provide the District with written notice of the facts and circumstances giving rise to this organizational conflict of interest. The Contractor's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the term of this Contract, the District becomes aware of an organizational conflict of interest in connection with the Contractor's performance of the work hereunder, the District shall similarly notify the Contractor. In the event a conflict is presented, whether disclosed by the Contractor or discovered by the District, the District will consider the conflict presented and any alternatives proposed and meet with the Contractor to determine an appropriate course of action. The District's determination as to the manner in which to address the conflict shall be final.

During the term of this Contract, the Contractor must maintain lists of its employees, and the subcontractors and independent Contractor used and their employees. The Contractor must provide this information to the District upon request. However, submittal of such lists does not relieve the Contractor of its obligation to assure that no organizational conflicts of interest exist. The Contractor shall retain this record for four (4) years after the District makes final payment under this Contract. Such lists may be published as part of future District solicitations.

The Contractor shall maintain written policies prohibiting organizational conflicts of interest and shall ensure that its employees are fully familiar with these policies. The Contractor shall monitor and enforce these policies and shall require any subcontractors and affiliates to maintain, monitor and enforce policies prohibiting organizational conflicts of interest.

Failure to comply with this section may subject the Contractor to damages incurred by the District in addressing organizational conflicts that arise out of work performed by the Contractor, or to termination of this Contract for breach.

27. **Prohibited Interests.** No Director, officer, or employee of the District during his/her tenure or for one (1) 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.)*.

28. **Non-Discrimination Assurance – Title VI of the Civil Rights Act**

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 U.S. DOT-assisted contracts. Further, the Contractor agrees to comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. The Contractor shall obtain the same assurances from its joint venture partners, subcontractors, and subconsultants by including this assurance in all subcontracts entered into under this Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the District deems appropriate, which may include, but is not limited to withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the contractor from future Proposaling as non-responsible.

During the performance of this Contract, Contractor and its subconsultants and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental

disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subconsultants or subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) *et seq.*) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Contract.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

29. Equal Employment Opportunity

In connection with the performance of this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The Contractor shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national origin, or any other characteristic protected under state, federal, or local laws. Such actions 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 further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

30. Attorney's Fees If any legal proceeding should be instituted by either of the parties to enforce the terms of this Contract or to determine the rights of the parties under this Contract, the prevailing party in said proceeding shall recover, in addition to all court costs, reasonable legal fees.

31. Waiver. Failure of any party to exercise any right or option arising out of a breach of this Contract 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.

32. Applicable Law and Venue. This Contract, its interpretation and all work performed under it shall be governed by the laws of the State of California. In the event of a dispute or breach of contract, venue shall be in Alameda County, California.

33. Binding on Successors. All of the terms, provisions and conditions of this Contract shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.

34. Third-Party Beneficiaries. This Contract is not for the benefit of any person or entity other than the parties.

35. Severability. If any provision of this Contract shall be deemed invalid or unenforceable, that provision shall be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Contract, and in any event, the remaining provisions of this Contract shall remain in full force and effect.

36. Entire Contract; Modification. This Contract, including any attachments, constitutes the entire Contract between the parties with respect to the subject matter hereof and may not be amended except by a written amendment executed by authorized representatives of both parties. In the event of a conflict between the terms and conditions of this Contract and the attachments, the terms of this Contract will prevail.

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

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT CONTRACTOR:

Michael Hursh General Manager	Date	Signature	Date
		Printed Name	

Approved as to Form and Content:

Jill A. Sprague General Counsel	Date	Signature	Date
		Printed Name	
		Title	

**If the Contractor is a corporation, this Contract must be executed by two corporate officers, consisting of: (1) the president, vice president or chair of the board; and (2) the secretary, assistant secretary, chief financial officer or assistant treasurer. In the alternative, this Contract may be executed by a single officer or a person other than an officer provided that evidence satisfactory to the District is provided demonstrating that such individual is authorized to bind the corporation (e.g. a copy of a certified resolution from the corporation's board or a copy of the corporation's bylaws)*

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 Proposer 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 Proposer 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, Proposer, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Proposer 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 Proposer 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 Proposer 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 Proposer 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 Proposer to the extent the Federal Government deems appropriate.

The Proposer 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(I) on the Proposer, to the extent the Federal Government deems appropriate.

The Proposer 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

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 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 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 Proposers to access the sites of performance under this contract as reasonably may be required.

4. 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.

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 Proposer agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Proposer agrees to comply with applicable Federal 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 Proposer 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 Proposer 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 Proposer 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 Proposer agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Proposer 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 Proposer 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 Proposer agrees to comply with any implementing requirements FTA may issue.

The Proposer 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 Proposer when it is in the District's best interest. The Proposer 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 Proposer shall promptly submit its termination claim to the District to be paid the Proposer. If the Proposer has any property in its possession belonging to the District, the Proposer will account for the same, and dispose of it in the manner the District directs.

Termination for Default (General Provision): If the Proposer does not deliver supplies in accordance with the contract delivery schedule, or, if the Proposer fails to perform in the manner called for in the contract, or if the Proposer 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 Proposer setting forth the manner in which the Proposer is in default. The Proposer 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 Proposer 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 Proposer, the District, after setting up a new delivery of performance schedule, may allow the Proposer 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 Proposer 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 Proposer 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 Proposer 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 Proposer. Any such termination for default shall not in any way operate to preclude the District from also pursuing all available remedies against Proposer 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 Proposer 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 Proposer mails or otherwise furnishes a written appeal to the General Manager. In connection with any such appeal, the Proposer 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 Proposer and the Proposer shall aProposale by the decision.

Performance During Dispute: Unless otherwise directed by District, Proposer 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 Proposer 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 Proposer 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 Proposer 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 Proposer shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Proposer shall carry out applicable requirements of *49 CFR Part 26* in the award and administration of this DOT-assisted contract. Failure by the Proposer to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the District deems appropriate. Each subcontract the Proposer signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

Proposers 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 Proposer'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 Proposer's commitment; and
- f) If the contract goal is not met, evidence of good faith efforts to do so.

Proposers 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 Proposer 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 Proposer's receipt of payment for that work from the District. In addition, the Proposer may not hold retainage from its subcontractors.

The Proposer 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 Proposer 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.

8. **SUSPENSION AND DEBARMENT**

This contract is a covered transaction for purposes of 2 CFR 180. As such, the Proposer 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 Proposer 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 Proposer 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 Proposer 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 Proposer 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 Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9. ANTI-LOBBYING REQUIREMENTS & CERTIFICATION

Proposers 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.

10. CLEAN AIR

The Proposer 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 Proposer 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 Proposer 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.

11. CLEAN WATER REQUIREMENTS

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

12. ENERGY CONSERVATION REQUIREMENTS

The Proposer 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.

13. AMERICANS WITH DISABILITIES ACT (ADA)

The Proposer 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.

14. PROMPT PAYMENT OF SUBCONTRACTORS

The Proposer 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 Proposer's receipt of progress payments by the District. Within sixty (60) days of satisfactory completion of all work required of the subcontractor, Proposer shall release any retained payments withheld to the subcontractor. The Proposer shall complete and sign a Prompt Payment Act Affidavit related to invoices submitted for services performed under this contract.

15. PATENT RIGHTS

(1) 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 Proposer 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.

- (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Proposer'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 Proposer 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.*
- (3) The Proposer 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.

16. BUY AMERICA REQUIREMENTS

The Proposer agrees to comply with *49 U.S.C. 5323(j) and 49 CFR Part 661*, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA- funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in *49 C.F.R. § 661.7*. Under *49 C.F.R. § 661.7(b) and (c)*, a general public interest waiver from the Buy America requirements applies to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data, and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Under limited circumstances, FTA may waive Buy America requirements if the agency finds that:

- application of Buy America is inconsistent with the public interest;
- the steel, iron, and goods produced in the U.S. are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality; or
- including domestic material will increase the cost of the overall project by more than 25 percent for rolling stock.

All Proposers must submit the appropriate Buy America certification to the District (*Attachment D*), except those subject to a general waiver. Proposals that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier Subcontractors.

17. CARGO PREFERENCE REQUIREMENTS

The Proposer agrees: (a) to use privately owned United States Flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract by ocean vessels to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to AC Transit (through the Proposer in the case of a subcontractor's bill-of-lading); and (c) to include these requirements in all subcontracts issued pursuant to this Proposer when the subcontract may involve the transport of equipment, Material, or commodities by ocean vessel.

18. FLY AMERICA REQUIREMENTS

Proposer 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 contractors 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 successful Proposer 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. Proposer agrees to include the requirements of this Section in all subcontracts that may involve international air transportation as a result of this solicitation.