



1600 Franklin Street
Oakland, CA 94612

Request for Proposals (RFP)
NO. 2020-1495
HASTUS Audit

23 January 2020

Alameda-Contra Costa Transit District

Table of Contents
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Section Title	Page
I. Summary of Proposal Request/Schedule of Events	3
II. Instructions to Proposers	4
III. Scope of Work	8
IV. Standard Conditions	12
V. Summary of Attachments	14
Attachment A - Proposer Qualifications and Reference Questionnaire	15
Attachment B – Cost Proposal Form	17
Attachment C – Prime Contractor & Subcontractor/Supplier Report	18
Attachment D – Certification Regarding Lobbying	19
Exhibit 1 – Insurance Requirements	21
Exhibit 2 – Sample Contract	23

**ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
REQUEST FOR PROPOSALS
HASTUS Audit
RFP No. 2020-1495**

I. SUMMARY OF PROPOSAL REQUEST/SCHEDULE OF EVENTS

1. Proposal Request.

The Alameda-Contra Costa Transit District (the “District”) is requesting proposals from qualified firms (hereafter referred to as "Proposer") to review, evaluate and recommend improvements regarding AC Transit’s use of the *Horaires et Assignments pour Systems de Transport Urban et Semi-Urban (HASTUS)* software application and system, 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	23 Jan 2020	
Proposer's deadline to submit questions, requests for modifications and/or clarifications	31 Jan 2020	4:00p
District’s response to questions, requests for modifications and/or clarifications	6 Feb 2020	
Proposals Due	12 Feb 2020	4:00p
Proposer Interviews, if held	Week of 17 Feb 2020	Tentative
Notice of Award Issued	27 Feb 2020	Tentative
Contract Executed	01 Mar 2020	Tentative

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

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 Michael Silk at MSilk@actransit.org or delivered to his 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 *Michael Silk, RFP 2020-1495* 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 120 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.1.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 120 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:
 - a. 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 North American/U.S. public transit agencies, industry experience / HASTUS Experience within the industry. 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, understanding of the software, the proposed work plan and identify the Proposer's understanding of the project and competency in conducting an assessment of the District's current utilization of HASTUS along with the associated business process improvements involving the use of HASTUS, as detailed in this Scope of Work (SOW), Section III.
 - b. Proposals must include details of their approach, review and evaluation criteria for reviewing the HASTUS system.
 - c. Proposals must include a detailed approach to quantifying the software/process efficiencies, preparing, presenting and implementing feedback regarding the District's HASTUS system and business processes.

C. Cost Proposal.

The *Cost Proposal Form (Attachment B)* shall be inclusive of all fees for service, profit, overhead, travel, materials, and taxes. The fee shall be presented as a lump sum for each deliverable and service listed in Attachment A for the timeframe listed in this RFP.

The Proposer selected for this project will be required to enter into an agreement with the District, a form of which is provided as Exhibit 2, for a twelve (12) month term.

If requested, Proposers agree within 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 – Cost 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.

B. Evaluation Criteria.

Proposals will be evaluated based on each reviewer’s determination of the match between the needs of the District, scope of work outline in this solicitation and the proposal. The evaluation criteria set forth below will be applied in the determination of competitive range, final evaluation. Based upon individual evaluations of the non-price criteria below, the District’s Procurement staff will record and calculate the raw evaluation scores of the Evaluation Panel for each proposal, calculate composite raw scores and apply the established weights shown below. The following weighted method of scoring will be used in evaluating proposals:

WEIGHT ASSIGNMENT FOR PROPOSAL EVALUATION CRITERIA	
Evaluation Criteria	Weight
1. Experience	35%
2. Project Approach	40%
3. Cost/Fee	25%
TOTAL POSSIBLE WEIGHT	100%

For the evaluation of cost/fee, raw points will be assigned by the Contracts Specialist to the Proposal with the lowest overall cost/fee. The Proposal offering the lowest contract cost/fee for the services required will receive the maximum points (in this case 25% of all available points) allocated for cost/fee. Other cost/fee proposals will be allocated points on a pro-rata basis, such that a proposal that is twice as costly as the lowest cost/fee proposal would receive half the points (in this case 12.5%) allocated to cost/fee.

$(\text{Low Price/Proposer's Cost/Fee}) \times 5 = \text{Total Raw Cost/Fee Points}$

The Total Raw Cost/Fee Points are then multiplied by the Cost/Fee Weight to yield the

Total Weighted Cost/Fee Points.

The Total Weighted Cost/Fee Points are added to the Total Weighted Technical Points to yield the grand total score of each Proposer.

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 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. BACKGROUND

AC Transit has implemented or is still in the process of implementing a number of major service improvement projects over the past four (4) years. However, a number of challenges and areas requiring improvement have been identified for study and analysis in order to support the agency staff and help the District to continue to improve the provision of bus service to East Bay customers. Those projects include:

- Bus Rapid Transit (BRT)
- Service Quality Improvements per the Strategic Plan
- Bid Web – automated sign-up process
- HASTUS Daily – optimized employee and vehicle assignment with payroll interface
- AC Go – route restructuring and service expansion
- Bay Bridge Forward – expansion of peak period Transbay service
- New TSP Corridors – special signal priority equipped buses and corridors
- Clever Devices – new computer-aided dispatching and vehicle location (CAD/AVL) system with additional analysis tools
- Salesforce Transit Center Opening (Bay Area regional transit hub)
- Bus Storage Facility Opening
- Implementation of new fleet types including Double-deckers, BRT and Zero-emission Buses
- New Flex Service
- New Geographic Information Systems (GIS) Interfaces
- Incorporating School Bell Timed Service into the Main HASTUS software schedules for supplementary service and exported deliverables

Many of these new services can be found here: <http://www.actransit.org/planning-focus/projects-in-the-works/>

The challenges and issues that surfaced during the design, development and deployment of the projects listed above impact key departments across the District including the Transportation, Maintenance and Service Development departments. However, the focus of this study is to identify the business, scheduling, and data related pain points of the quarterly Bus Operator sign-up process, as implemented by the Service Development, in order to understand and develop a plan for addressing those pain points.

Service Development is comprised of the Long Range and Short-Range Planning Departments, and a Service Implementation Department. The composition of those departments includes unrepresented employees, employees from the AFSCME Local 3916 union and the ATU Local 192.

The Department of Scheduling & Implementation has experienced the full range of impacts over the past three (3) years including increased staff hours, unanticipated funding needs and inconsistent data accuracy when compared to prior years. Because the needs of each of these projects could be tied to new funding, have great public visibility and reflect desired technology improvements, the Service Development and Scheduling staff are being asked to provide complex and cost-effective solutions. Those solutions are now constrained by a number of factors including a 12-week Bus Operator sign-up, training on new technologies and various levels of experience using software tools such as the HASTUS scheduling system. Staff training has been unable to keep up with these agency-wide demands in an efficient and consistent way.

As of the release of this RFP, AC Transit continues to face a Bus Operator deficit of about sixty (60) operators per day, out of a total of 1350 budgeted Bus Operators. This has resulted in the need to cancel some bus service each transit day. To mitigate this shortage, AC Transit has reduced frequency on high-frequency bus routes and placed a limit or ‘cap’ on the Bus Operator that are available in HASTUS. This has resulted in an increase in Bus Operator overtime. AC Transit is increasing its recruitment for Bus Operators and training current Bus Operators in order to minimize the District’s Bus Operator attrition rate.

AC Transit suffers from poor bus schedule on-time performance. The District has averaged around seventy percent (70%) On-Time Performance (OTP) for the past few years. Per the District's Strategic Plan, there is a concerted goal and effort to improve service quality. In the short-term, the District's strategy is to reduce service (either through frequency reductions or whole-route service cuts) in order to generate more resources to increase running time on productive routes.

2. **PROJECT OBJECTIVE**

The goals of this audit are to examine the current methods, tools, resources, and end-to-end processes used to develop and implement service changes using HASTUS scheduling software (version 2012 release 48). The assessment should note the current utilization of the software and the associated business processes that result in more efficient use of the system in regard to service changes and staffing. The assessment will produce a detailed report of recommendations for business process adjustments or re-designs (based on best practices of Giro) and produce a detailed action plan for the successful implementation of these recommendations.

3. **PROCESS AND DELIVERABLES**

To achieve the Project Objective, the proposer and its subconsultants (if applicable) will:

- A. Interview key District staff including:
 - Transportation Department Management
 - Planning Department Management
 - Scheduling Department Management
 - Dispatchers and Office Managers
 - Drivers' Committee
 - Operations Control Center Staff
 - IT Department staff
- B. Interview GIRO staff assigned to support the District. Review HASTUS configuration for Scheduling, BID, and BIDWeb, and observe meetings held during the scheduling process including:
 - The Service Planning and Operation Committee (SPOC) meeting
 - The Schedules Department staff meeting
 - The Drivers' Committee Review and Rostering
- C. Survey relevant industry literature and highlight best practices from the vendor (Giro) and other authoritative sources
- D. Review the District's quarterly sign-up process and procedure documents and contractual agreements
- E. Analyze Transit data provided by the software vendor, GIRO
- F. Perform analysis of Transit data
- G. Evaluate the usage or lack of usage of all of the installed HASTUS modules (Vehicle, Crew, CrewOpt, Geo, ATP, MinBus, BID and Daily)

4. **TASKS**

- A. **Task 1** – Review Existing Practices. Conducted as a single site visit – including a kick-off meeting, the successful proposer should review existing AC Transit scheduling and sign-up procedures, HASTUS settings, and organizational processes and structure.
- B. **Task 1.1 – Review Procedures.** The successful proposer will be required to review the following procedures as they relate to AC Transit's Operator sign-up process:
 - Data export processes and data exchange interfaces
 - Development of scheduling effectiveness and cost controls
 - Scheduling Effectiveness
 - Implementation of Timeline with checklist improvements

- Pre-prep for the Bus Operator bid and compare with actuals
- Proofing and QA/QC roles quality control improvements and responsibility
- Sign-up development procedures (review the District's Standard Operating Procedures)
- Dissemination of report products to various users
- The transition from On-time schedule (OTS) to HASTUS Daily including Holiday Rosters

- C. **Task 1.2 Review of HASTUS Settings.** The successful proposer will review the current settings within the District's HASTUS scheduling software application:
- Collective Bargaining Agreement (CBA) Requirements compared with HASTUS parameters
 - Check and update blocking (Minbus) rules and parameters
 - Check and update rostering rules and parameters
 - Check and update run cutting (CrewOpt) rules and parameters
 - Check and update other software settings and parameters

- D. **Task 1.3 Review Current Scheduling Department Organizational Structure.** The successful proposer will have discussions with staff and management about the Department's structure to identify any issues and opportunities to improve the HASTUS system based on:
- Department job descriptions
 - Division of assignments between the union's representing staff (ATU and AFSCME)
 - Staffing and responsibilities for sign-up
 - Staffing levels
 - Staffing responsibilities
 - Technology and tools upgrades
 - Training and education opportunities

- E. **Task 2 – Develop Recommendations** Following the on-site and remote review conducted in Task 1, the successful proposer will develop recommendations for each of these areas:(Review Existing Practices, Review HASTUS Settings, Review Current Scheduling Department Organizational Structure) above based on best practices and lessons learned from other public transit agencies within the context of achievable implementations given the District's resources and time constraints. Beyond those items identified in Task 1, the successful proposer will be asked to review the following opportunities to improve the HASTUS system:
- Reduction in customization to reduce our HASTUS support and upgrade costs
 - More efficient ways to schedule school-bell-timed service
 - Reduction in the need for paper sign-up materials with the start of Bid Web
 - Reduction in the need for paper reports with the start of HASTUS Daily
 - Reduction in the number of manual processes due to past practice
 - Process automation with quantifiable efficiencies
 - Better use of HASTUS modules for increased efficiencies

These recommendations will then be combined with findings from Task 1 into the deliverables for Task 3.

- F. **Task 3 – Deliverables.** The successful proposer shall synthesize the findings and recommendations into a comprehensive white paper with the following sections:
- Findings and recommended changes in HASTUS settings and parameters
 - Findings and recommended changes in reports and printed materials
 - Findings and recommended changes in staffing and training
 - Findings and recommended changes to implementation timeline and checklist
 - Findings and recommended changes in the scheduling process and procedures

5. **ADDITIONAL REQUIREMENTS**

- A. The successful proposer shall present the findings and recommendations to relevant AC Transit staff and the Board of Directors (if requested) following the staff's review and approval of the reports. If recommendations are made in addition to the items specified in this document, the successful proposer shall implement items as agreed by both parties. The implementation of the recommendations may be required of the successful proposer. All documents will be in Microsoft Word format. Tasks 1-2 are expected to be completed within 6 months of the start of the resulting contract. Review and approval of the deliverables in Task 3 will be required by 12 months prior to the execution of this contract.
- B. The successful proposer shall have the key manager, technical HASTUS resource, and any additional HASTUS resources as scoped by the proposer, on-site at the District offices for the initial kick-off meeting for Task 1.

At the mutual agreement of the successful proposer and the District, additional portions of Task 1.1, 1.2 and 1.3 of the Scope of Service shall be conducted on-site at the District offices.

- C. The successful proposer may be asked to provide computer equipment for all of the company's resources, including any applicable software and licenses (except for the HASTUS license).
- D. The successful proposer may be provided applicable telephones, network access, printers, and facilities by the District to conduct business for the project when on the District's property. The District assumes that most of the work required for tasks 2 and 3 will be performed at the Contractor's offices with the Contractor's resources.

Contractor warrants that the services shall be performed in full conformity with this Contract, with the professional skill and care that would be exercised by those who perform similar services in the commercial marketplace, and in accordance with the District security policies and accepted industry best practices.

(End of Scope of Work)

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/>

Have ready your business tax identification information.

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. EXHIBITS AND ATTACHMENTS:

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

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

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

- Exhibit 1 - Insurance Requirements
- Exhibit 2 - Sample Contract

**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
COST PROPOSAL FORM**

Instructions: Included in the costs below shall be all labor, materials, taxes, insurance, any subcontractor costs, travel expenses, telephone costs, copying costs, profit, administrative and overhead fees, and all other costs as required to perform the services listed in the Scope of Work for the term detailed.

COMPANY NAME	SERVICE COST
Tasks	Costs
1. Review Existing Practices	
1.1 Review Procedures	
1.2 Review HASTUS Settings	
1.3 Review Current Scheduling Department Organizational Structure	
2. Develop Recommendation	
3. Deliverables	
• Findings and recommended changes in Hastus settings and parameters	
• Findings and recommended changes in reports and printed materials	
• Findings and recommended changes in staffing and training	
• Findings and recommended changes to implementation timeline and checklist	
• Findings and recommended changes in the scheduling process and procedures	
Others (<i>specify, if any</i>)	
Total Service Cost Proposal	

**ATTACHMENT C:
PRIME CONTRACTOR & SUBCONTRACTOR/SUPPLIER REPORT**
(To be Completed and Returned by Proposers)

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

Prime/Subcontractor/Supplier Name/Address/Contact Information	Type of Work	Percentage of Work	Check if Applicable		DBE/SBE Certifying Agency (i.e. State of CA)	Annual Gross Receipts for the Last 3 Years
			DBE	SBE		
Name:						
Address:						
Contact Person:						
Phone:						
Email:						
How Many Years In Business:						
DIR Registration #:						
License No (if applicable):						
Name:						
Address:						
Contact Person:						
Phone:						
Email:						
How Many Years In Business:						
DIR Registration #:						
License No (if applicable):						
Name:						
Address:						
Contact Person:						
Phone:						
Email:						
How Many Years In Business:						
DIR Registration #:						
License No (if applicable):						

**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"/> bid/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 \$1,000,000 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.
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 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 per accident for bodily injury or disease. *(Not required if Contractor provides written verification it has no employees)*
4. **Technology Professional Liability Errors and Omissions Insurance** appropriate to the Contractor’s profession and work hereunder, with limits not less than \$2,000,000 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. 2020-1495** 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 21- 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.

3. Compensation

The Contractor agrees to perform all of the services included in section III of the RFP (*Scope of Work*) 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 Amendments (if any)
- Contract
- RFP Addenda
- RFP No. 2020-1495 and RFP Attachments A through E

- Contractor’s Proposal, as accepted by the District

5. Notices

All communications relating to the day-to-day activities of the provided services shall be exchanged between Christina Ebojo, Operations Data Administrator and the Contractor’s account manager. 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:

THE DISTRICT

Michael Silk, Contracts Specialist
 AC Transit
 1600 Franklin Street, 6th Floor
 Oakland, CA 94612
 (510) 891-5469
msilk@actransit.org

CONTRACTOR

Proposer Name
 Contact Name/Title
 Proposer Address
 Proposer Address
 Proposer Phone #:
 Proposer Email:

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

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. Changes

If any changes to the *Scope of Work* that would require a modification of the amount of compensation or the time required for performance, are sought by the Contractor, 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 within the *Scope of Work* described in this Contract. If such changed 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 changes.

8. Indemnification

A. Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless the District, and the agents, representatives, officers, directors and employees of the District (Indemnified Group) from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of any of the following:

1. **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**
2. 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.

9. Insurance Requirements

(See RFP Exhibit 1)

10. Contractor's Status

Neither the Contractor, nor any party contracting with the Contractor shall be deemed to be and 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.
- C. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. Termination

In the event the Contractor breaches the terms or violates the conditions of this Contract, and does not within ten (10) days of written notice from the District cure such breach or violation, the District may immediately terminate

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

22. 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.

If, as a result of the audit, it is determined by the District's Contractor or staff that reimbursement of any costs including profit or fee under this Contract was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, the Contractor agrees to reimburse the District for those costs within sixty (60) days of written notification by the District.

23. 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.

24. 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 bidding 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. Third-Party Beneficiaries

This Contract is not for the benefit of any person or entity other than the parties.

31. 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.

32. 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	Date	Signature	Date
General Manager			

Printed Name

Title

Approved as to Form and Content:

Denise C. Standridge	Date	Signature	Date
General Counsel			

Printed Name

Title

**If the Contractor is a corporation, this Agreement 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 Agreement 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)*