



1600 Franklin Street  
Oakland, CA 94612

**Request for Proposals (RFP)**

**NO. 2021-1514**

**OUTSIDE LEGAL SERVICES**

Date of Issue: **11 August 2020**

Closing Date and Time: **31 August 2020 *no later than* 2:00pm**

Single Point of Contact (SPC): Jamell Woodard, Contracts Specialist, [jwoodard@actransit.org](mailto:jwoodard@actransit.org)

**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  
OUTSIDE LEGAL SERVICES  
RFP NO. 2021-1514**

**SECTION A: GENERAL INFORMATION**

- Proposal Request.** The Alameda-Contra Costa Transit District ("AC Transit" or the "District") is issuing this Request for Proposal to receive proposals on or before 31 August 2020 no later than 2:00pm Pacific Standard Time, at the District's General Office, 1600 Franklin Street, Oakland, California 94612, for qualified firms (hereafter referred to as "Offeror") to provide Outside Legal Services, as set out in Part III, Scope of Services. The District invites sealed proposals in accordance with the provisions, specifications, and instructions set forth in this RFP.

This Request for Proposal (RFP) outlines the scope of services requested for the District, as well as information that should be included in the proposal. It includes the District's objectives, describes the general characteristics of the services to be provided, and (without being exhaustive) outlines the principal obligations of the District and the selected Offeror. Additional details on the scope of the services are included in the Scope of Services section. **Late proposals will not be considered.** Offerors 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 considered nonresponsive.

It is the District's intent to establish a panel of qualified attorneys and/or law firms in different specialty areas from which the District can draw as needed and then award fixed price contracts to the selected panel of responsible and qualified attorneys/firms considering overall price, experience and responsiveness to this RFP. The panel will remain in effect for a base period of two (2) years, with three (3) one (1) year options, that may or may not be exercised. Attorneys/law firms interested in contracting with the District may submit proposals directed to one or more of the subject matter areas described in the Scope of Services. Award of a contract for Outside Legal Services does not guarantee that any legal work will be referred to the panel member. Attorneys/firms who are awarded a contract with the District must register on the District's website as a vendor.

- Schedule.** Following is the projected Schedule of Events that outlines the pertinent dates of which Offerors should be aware; N/A denotes the event is not applicable to this RFP:

Event	Date*	Time
RFP Distribution Date	<b>11 August 2020</b>	
Offeror's Deadline to Submit Questions & Requests for Clarifications to Designated POC	<b>17 August 2020</b>	2:00pm
District to Issue Response to Questions & Requests for Clarifications (approx.)*	<b>20 August 2020</b>	
Deadline to Submit Proposals	<b>See RFP cover page</b>	

\*All dates & times are tentative. The District reserves the right to alter this schedule as it deems necessary or appropriate. Any changes will be issued via an addendum to this RFP. All reference in this RFP to "time" will mean Pacific Time (PT).

\*\*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.

- 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, sales taxes, property taxes, and state and federal funding.
- Single Point of Contact (SPC).** The SPC for this RFP is identified on the cover page, along with the SPC's contact information. Offeror shall direct all communications related to any provision of the RFP in writing only to the SPC, whether about the technical requirements of the RFP, contractual requirements, the RFP process, or any other provision. Offerors may not contact any other District personnel regarding this RFP.

**SECTION B: METHOD / DEFINITIONS**

- Method.** The District is using the Competitive Sealed Proposal method. The District may use a combination of the methods for Competitive Sealed Proposals, including optional procedures: a) Competitive Range; b) Discussions and Revised Proposals; c) Revised Rounds of Negotiations; d) Negotiations; e) Best and Final Offers; and f) Multistep Sealed Proposals.
- Definition of Terms.** For the purposes of this RFP, capitalized words are defined as defined below or as defined in 49 U.S.C. § 5302 as well as those definitions listed in Circular 4220.1F Chapter I - Items 5 a - ff.
- Inquiry Period.** The Inquiry Period begins on the date of first advertisement of the RFP and continues until the Deadline for Submission. RFP packages will be distributed to potential Offerors during the Inquiry Period.
- Publishing.** This RFP and attachments are published on the District's Procurement website at <http://www.actransit.org/acpronet>. RFP documents will not be mailed to prospective Offerors. Modifications to this RFP, if any, will be made by written Addenda published on the website. Prospective Offeror is solely responsible for checking the website to determine whether or not any Addenda have been issued. Addenda are incorporated into the RFP by this reference.
- Pre-Proposal Conference.** The District may schedule an in-person or virtual pre-proposal conference, at its discretion. Attendance at such conferences is optional. Instructions for attendance will be posted on the District's website (<http://www.actransit.org/acpronet>), listed under Current Procurement Opportunities and detailed on this RFP's project page.

The purpose of this conference is to allow potential Offerors to ask questions regarding this RFP, the District's competitive contracting process and to discuss/clarify any issues. This is an opportunity for Offerors to raise concerns regarding specifications, terms, conditions, and any requirements



of this solicitation. Failure to raise concerns over any issues at this opportunity will be a consideration in any protest filed regarding such items that were known as of the pre-proposal conference. Only answers issued in writing by the District to questions asked before or during the pre-proposal conference are binding on the parties to an awarded contract.

## SECTION C: INSTRUCTIONS TO OFFERORS

### 1. Proposal Submittal

- A. **Registration into AC Transit’s Online Supplier System.** If you have not previously completed a one-time registration into the AC Transit Online Supplier system, we request you register at this time at: <http://www.actransit.org/purchasing/acpronet/?page=register>. The Registration System is used by District staff to locate your contract(s) and identify companies for bid lists on future purchases. Proposals are not rejected for failure to register, however, if you win a contract and have not registered, you will be required to register in the system. Women, minority-owned, and Veteran-owned firms are asked to self-identify. If you have questions or require assistance, please contact [sotenbreit@actransit.org](mailto:sotenbreit@actransit.org).
- B. **Registration into System for Award Management (SAM).** As a public entity that receives federal funding, AC Transit is required by the Federal Transit Administration (FTA) and the Federal Acquisition Regulation (FAR) to compile and maintain a list of parties debarred, suspended, or disqualified by federal agencies. The System for Award Management (SAM) (<https://www.sam.gov>) is a government run site required by the federal government that collects information on organizations applying for grants and contracts and serves as a central registration point for government contractors. A SAM registration is required for any entity to bid on and get paid for federal contracts or to receive federal funds. FAR also requires all prospective vendors to be registered in SAM prior to the award of a contract, basic agreement, basic ordering agreement, or blanket purchase agreement. If your business is not currently registered in SAM, you will need to complete registration.

This registration is sometimes referred to as "self-certifying" your small business. Using SAM, you will be able to register your business size and socio-economic status while completing the required solicitation clauses and certification. By completing your required solicitation clauses and certifications you certify that the information provided about your company and its business activities are correct.

To register with SAM, go to the [SAM website](#), create a user account, and click “Register/Updated Entity”. If you have the information below readily available, you may expect to spend approximately one to three (1-3) hours entering the required data:

- Dun & Bradstreet DUNS number. A DUNS number is a nine-digit identification number for each physical location of your business. As with SAM registration, obtaining a DUNS number is free; it is provided by Dun & Bradstreet and can be requested at <https://fedgov.dnb.com/webform>.
- [Taxpayer Identification Number \(TIN\) or Employment Identification Number \(EIN\)](#).
- Original signed notarized letter stating the registrant is the authorized Entity Administrator.
- Your bank's routing number, your bank account number, and your bank account type, i.e. checking or savings, to set up Electronic Funds Transfer (EFT).
- North American Industry Classification System (NAICS) Code(s). NAICS codes are used to classify products and services offered by companies. You can search for the appropriate NAICS code by keyword on the Census website here: <https://www.census.gov/eos/www/naics/>.
- Commercial and Government Entity (CAGE) Code. If you do not already have a CAGE Code one will be assigned to you by the Defense Logistics Agency (DLA) after you complete your SAM registration.

Once submitted, a SAM registration is typically approved or “activated” in three (3) weeks or less. Once approved, the SAM registration is valid for one (1) year from the date the registration is complete and must be renewed before sixty (60) days of expiration to avoid potential penalties. It will take three to five (3-5) business days for your renewal to become active and replace your current registration. Updates made in SAM are reflected the next business day. Additional time may be needed if the structure of your organization has changed since your last renewal. There is NO FEE to register or maintain your registration in SAM.gov. If you have questions or require assistance, please contact [sotenbreit@actransit.org](mailto:sotenbreit@actransit.org).

- C. **Communications with the District.** All Offeror communications concerning this acquisition shall be directed to the SPC. Unless authorized by the District, no other District official or employee is empowered to speak for the District with respect to this acquisition. Any Offeror seeking to obtain information, clarification, or interpretations from any other District official or District employee (*other than the SPC*) is advised that such material is used at the Offeror’s own risk. The District will not be bound by any such information, clarification, or interpretation.

Following the Proposal submittal deadline, Offerors shall continue to direct communications to only the SPC. The SPC will send out information to responding companies as decisions are reached.

*Contact by an offeror regarding this acquisition with a District employee other than the SPC or an individual specifically approved by the District in writing, may be grounds for rejection of the offeror's proposal.*



- D. **Questions and/or Requests for Clarifications About This RFP.** Unless otherwise instructed herein, all inquiries, whether relating to the RFP process, administration, deadline or method of award, or to the intent or technical aspects of the RFP must (a) be delivered to the SPC via email submission; (b) reference the RFP title and number, time and submission due date of the RFP; (c) identify Offeror's name and contact information; (d) refer to the specific area of the RFP being questioned (i.e. page, section and paragraph number); and (e) be received *no later than* the due date and time for Questions/Requests for Clarifications indicated in Part I, Schedule of Events. Unauthorized contact with other District staff regarding the RFP may result in the disqualification of the Offeror.

Upon examination of this RFP document, Offeror should promptly notify the District of any ambiguity, inconsistency, or error they may discover. Any questions or requests for clarifications of the proposal specifications shall be submitted in writing by electronic transmission to the SPC. Questions and requests for clarifications must be received no later than the due date and time indicated in Part I, Schedule of Events.

If the District deems its answer to a question merely clarifies the existing terms and conditions and does not have a material impact on other potential Offerors or the RFP itself, no further documentation of that question is required. If the District deems that its answer to a question has a material impact on the RFP itself, the District will create an addendum to this RFP. All addenda issued by the District become a part of the RFP. Addenda will be delivered to all Potential Offerors using the same method of delivery of the original RFP material. The District accepts no liability in connection with the delivery of any addenda. Copies of addenda will also be made available on the District website at <http://www.actransit.org/acpronet> (under "Current" and "Pending" Solicitations). All Offerors must provide written acknowledgement of their receipt of all addenda in their proposal response.

Interpretations, corrections, or changes that are made in any other manner, including oral modifications, are not binding on the District, and Offerors must not rely on them. Any interpretation, change, or correction of said specifications will be issued by Addenda only, duly issued by the District, which shall become a part of the proposal documents. Any amendment to a submitted proposal must be in writing and must be delivered to the District by the RFP submission deadline. 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.

2. **Submission of Proposals.** To receive consideration, proposals must be received by the Procurement Department *no later than* 2:00pm local time on the date indicated in Part I, Schedule of Events. Clocks are located throughout the Procurement Department, at the District's front lobby desk, and can also be verified by visiting <http://www.time.gov>. Requests for extensions of this time and date will not be granted, unless deemed to be in the District's best interest. Final Technical and Price Proposals shall be submitted electronically via email, organized as outlined herein. The electronic copy must contain all required completed and signed forms. *Price information must be submitted as a separate electronic file from the Technical Proposal file.* In order to submit proposals to AC Transit, Offeror must comply with the following:

Offeror's electronic submission must be formatted using Adobe Acrobat (.pdf) or Microsoft Excel (.xls) with the total combined size of the proposal and price information compressed so it does not exceed 10.0 megabytes. File proposals shall conform to the naming convention of: "RFP Number\_Company Name" (Ex: "RFP 2021-1514\_AC Transit").

The Technical Proposal must be included as a (.pdf) file; and the Price Proposal must be submitted as a separate Microsoft Excel (.xls) file with all related Attachments. The District will not be responsible for corruption of any file submitted. *If the submitted file cannot be viewed and printed as submitted, it will not be considered.*

Offerors are responsible for verifying successful delivery of electronic transmission to the SPC on/before the time and date specified in Part I, Schedule of Events as *late submissions will not be considered*. When sending proposals by email, Offeror is responsible for marking the email "return receipt" and "notify when read" to ensure the District has received the submission and to be alerted when the email was opened at the predetermined submission opening time. Once Offeror's email is received by the District, Offeror will receive an email acknowledgement notification confirming receipt of the submission. In order to ensure the full response is evaluated, **Offeror must also provide a flash drive and two (2) hard copy versions of the Technical and Price Proposals.**

Alternative to email submission, Offerors may opt to submit final proposals by U.S. mail, private carrier (UPS/FedEx), or hand delivery in sealed envelopes to the SPC's attention on/or before the due date and time indicated in Part I, Schedule of Events. Offerors mailing their proposals shall allow for sufficient mail time to ensure receipt of their proposals by the Procurement Department by the time and date fixed for acceptance of the proposals. *(Please note: Offerors choosing to submit proposals via U.S. Mail should allow at least an additional twenty-four (24) hours in the delivery process for internal District mailroom distribution.)* The Offeror should ensure the Cost Proposal is in a separate sealed envelope from the Technical Proposal. All packages shall be clearly marked with the Offeror's Name, the RFP Number, Project Title, and the Due Date and Time. **Final Proposals (or unsolicited amendments to proposals) received after the time and date specified will not be considered and will be deemed as disqualified.** Proposals will be accepted and logged in at the time and date specified above.

Regardless of method of delivery, each offeror **must** also submit a flash drive and one (1) original and one (1) copy of their proposal to the District's Procurement Department.

The District will reject any Proposals or unsolicited Proposal addenda that are received after the deadline. The District recommends that Offerors submit Proposals as early as possible. The District will reject late Proposals regardless of the cause for the delay. 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.

An Offeror 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 SPC. A telephone request is not acceptable. The withdrawal of a proposal does not prejudice the right of an Offeror 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 one hundred fifty (150) calendar day period set forth herein, or any agreed-upon extension thereof.

District staff will review all responsive Proposals received and may select one (1) or more finalists in each area of legal expertise identified in the competitive range. These finalists may be invited to an oral interview *if* one is held.



3. **Proposal Content.** Proposals shall be prepared simply and economically, providing a straightforward and concise description of the Offeror's capabilities and approach for meeting the requirements of this RFP. Each Offeror must carefully review the requirements of the RFP and the contents of its Proposal. Before submitting a proposal, read the *entire* solicitation including the contract terms and conditions. Failure to read any part of this solicitation will not relieve an offeror of the contractual obligations. All proposals must be submitted in a sealed envelope. The face of the sealed envelope shall indicate the RFP number, time and date of opening and the title of the RFP. Once opened, Proposals cannot be altered, except as allowed by the RFP. The Proposal documents shall be divided into sections with cover pages identifying the contents of the sections, and properly formatted for printing. The Proposal must address all requirements set forth in this RFP and documents shall be divided into sections and cover pages identifying the contents of the sections, and properly formatted for printing.

Offeror shall describe the goods to be provided or the services to be performed or both. A Proposal that merely offers to provide the goods or services as stated in this RFP *may be* considered non-responsive and *may not* be considered further.

Proposal submissions should be submitted using the electronic forms provided and must be signed by the individual or authorized principals of the firm. Offerors that use alternative documents are responsible for ensuring the content is substantially similar to the District form and the document is readable by the District. The District is not responsible for the accuracy of any information regarding the RFP that was gathered through a source different from the inquiry process described in the RFP. Offerors are responsible for checking directly with the District website for any addendums to this RFP. Addendums to this RFP can change the terms and conditions of the RFP, including the proposal submission deadline. Although the District is not specifying a page limit for the overall Proposal submission, clarity and conciseness are essential and will be considered during Proposal evaluation. All Proposal forms must be submitted in English and must be legible.

The proposal must include copies of all appropriate forms executed and dated by an authorized signatory of the Offeror authorized to legally bind the Offeror. Proposals should not include extensive artwork, unusual printing or other materials not essential to the utility and clarity of the Proposal. Do not include marketing or advertising material in the Proposal, unless requested. Proposals containing unsolicited marketing or advertising materials may receive a lower evaluation score if specific information is difficult to locate.

As a public agency, the District's proposals, responses, and awarded contracts are a matter of public record, except for such data that is classified as nonpublic. Accordingly, public data is available for review through a properly submitted public records request. To redact nonpublic information from your proposal (*under the California Public Records Act (Cal. Govt. Code Sections 6250 et seq.)*), you must make your request within thirty (30) days of the contract award or non-award date.

It is the Offeror's responsibility to carefully examine the terms, specifications and conditions of the Proposal Documents thoroughly, and comply fully with specifications and all attached terms and conditions and shall judge for itself all of the circumstances and conditions affecting its Proposal. The District will endeavor to present accurate information, but Offerors are advised to independently verify the accuracy of any information received. Offeror is responsible for providing a full and complete written response, which does not require interpretation or clarification by the District. Offerors must comply with all Federal, State, and City laws, ordinances and rules, and meet any and all registration requirements. Offeror is to provide all requested materials, forms and information at the time of proposal submission. Offeror is responsible to ensure submitted materials properly and accurately reflects Offeror's specifications and offering. Offerors are advised that the District's ability to evaluate proposals is dependent in part on the Offeror's ability and willingness to submit proposals which are well ordered, detailed, comprehensive, and readable. Clarity of language and adequate, accessible documentation is essential. During scoring and evaluation (prior to interviews if any), the District will rely upon the submitted materials and shall not accept materials from the Offeror after the RFP deadline; however, this does not limit the right of the District to consider additional information (such as references that are not provided by the Offeror but are known to the District, or past experience by the District in assessing responsibility), or to seek clarifications as needed by the District.

- A. **Proposal Format and Quantity.** The District wants clear and concise proposals. Proposal shall be organized as described below. Each section must be clearly labeled with pages numbered and separated by tabs. Offerors should, however, take care to completely answer questions and meet the RFP's requirements thoroughly. Failure to provide *all* of the required submittals may render the proposal non-responsive.

All Offerors, including current contract holders, if applicable, must provide detailed and complete responses as proposal evaluations, and subsequent scores, are based solely on the content of this proposal. No assumptions will be made, or values assigned for the competency of the Offeror whether or not the Offeror is a current or previous contract holder. The District will not be liable for any costs incurred by an Offeror in responding to the RFP, regardless of whether the District awards the Contract through this process, decides not to go forward with the Project, cancels the RFP for any reason, or contracts for the Project through some other process or by issuing another RFP.

1. **Tab 1 - Cover Sheet.** A signed cover letter should be on company letterhead clearly stating the name of the proposal subject, the name of the Offeror's firm, business address, telephone, e-mail address, name of contact person, and date of submittal. The following information must be provided:
  - a. Briefly, introduce the firm, indicating whether the firm is local, regional, national or international, its legal entity type and including, but not limited to, the approximate number of professional staff employed. Please summarize the firm's qualifications including a brief description of the history, background of the firm and length of time in business under the same name.
  - b. Offerors must be licensed to do business in California. Provide a copy of the firm's business license. The Offeror(s) shall possess and maintain all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for the performance of the services prior to the initiation of the Work. Contractor must maintain current licenses, permits, etc., to perform the Work described herein and shall comply with all applicable local, county, state and federal laws and ordinances pertaining to, or regulating the Services to be performed under the contract awarded related to this RFP.
  - c. The name, title, address, telephone number, and e-mail address of the Offeror's contact person during the solicitation process.



- d. Name(s) of authorized person(s) who will be authorized to represent Offeror and with the authority to contractually bind the firm.
- e. A statement that binds the Offeror to the proposed Scope of Work and Cost Proposal for at least one hundred fifty (150) calendar days from the date of submission of the proposal.
- f. Indicate whether there are any conflicts of interest that would limit the Offeror's ability to provide the requested services. Also please provide a System of Award Management (S.A.M.) number.
- g. Acknowledge receipt of all addenda by including a copy of the signed addendum.

2. **Tab 2 - Technical Proposal.** Each proposal must include a detailed description of the technical components to specific sections and methodologies, capacity, and strategy to perform the scope of work. Disclose any subcontractors who will be used on the project, including identifying the portions and percentages of the work to be performed per subcontractor.

- a. Past Performance, Experience and References: Offeror must provide a description of sound methodologies and list examples of steps, time, and cost savings achieved under similar contracts (*ideally with similar customers*). Provide relevant and/or current information of past performance (*within the past three (3) years*) by identifying the agency, contact person, and contact person's telephone number for whom the service was provided by completing Attachment A – Offeror's Qualifications and Reference Questionnaire.

Proposals must provide details on the qualifications of the Offeror including an organizational chart that identifies the proposed management team as well as provide the size, number of employees, primary nature of the business, and other affiliate businesses or services. Proposals must also 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 Offeror's team. The relevance of the project includes the make-up of the team as well as the type of project, experience with public transit agencies, or similar public entities. Please include references from other public transit agencies in Attachment A, if available. Offerors shall include all experience with projects that are similar in scope and nature to this project as well as include the level of achieved client satisfaction for past performances.

- b. Technical Ability to Perform Required Services: Offeror must provide a detailed description of its ability to provide the required services including a demonstrated understanding of the RFP requirements, its capacity and its planned strategy to perform the proposed *Scope of Work*. Evaluations will be based on the Offeror's ability to meet the necessary requirements.

Proposals must also provide, at a minimum, the answers to the following questions (*Please limit response to ten (10) pages*):

- Describe the experience of the firm in the past thirty-six (36) months in performing similar services. Particular emphasis should be placed on representing government/public entity clients, in particular transit agencies.
  - Identify examples of firms and organizations where you have successfully represented government/public entity clients, in particular transit agencies. Specifically identify quasi-public, governmental, and non-profit entities your organization has worked with in the past.
  - Provide the names and telephone numbers of at least five (5) clients for whom your firm has worked. The District reserves the right to contact any additional individuals or firms to obtain information about the respondent.
  - Indicate any additional information for the consideration of your firm's qualifications.
- c. Project Approach: Proposals must include an understanding of the project and the proposed work; outline the qualifications of the firm including expertise with public agencies giving special attention to expertise in public transportation; the Offeror's project plan and relevant capabilities with respect to the *Scope of Services*.
    - Identify the proposed authorized representative for the firm during the solicitation period. Provide name, title, address, contact number, email address.
    - Indicate acceptance of the standard contract terms.
    - Indicate the names and titles, and include resumes, of the person(s) who will be working on District legal matters. A response to this requirement should include all contact information such as telephone number, e-mail address and web address.
    - Identify the key personnel who would be assigned to this engagement. Attach résumés reflecting relevant qualifications and work experience (*résumés not included in the ten (10) page maximum*).
  - d. Minimum Qualifications: Proposals must demonstrate Proposers meet the following minimum qualifications:
    - Biography and experience of each partner or associate proposed as contact/lead person(s) and other attorneys to whom work will be assigned; affirmation of licenses to practice before the state and federal courts of California; affirmation of good standing with the California State Bar Association; statement of how the attorney(s) who will be responsible for the District's work will be designated.
    - The nature and scope of the attorney/firm's experience in representing government/public entity clients, in particular transit agencies.
    - Knowledge and experience in the area(s) of legal specialty(s) to which the proposal is directed.
    - Proposals shall be limited to a maximum of twenty (20) pages including five (5) resumes and rates of key players of proposed representation team that the firm is offering. (*Elaborate "glossy" marketing responses with high production value and little substance are discouraged*.)
    - A minimum of three (3) relevant references from public entity clients, preferably transit agencies, for whom similar legal services have been provided. Attorneys/firms who are currently on the District's outside services legal panel do not need to re-submit references, but may do so at their discretion. Provide a list of references specifying:



- Company name
  - Contact person and contact person's title
  - Contact person's address, phone number, and e-mail address
  - Length of your relationship
  - Description of type of work performed for client
- Offeror(s) shall be actively engaged in this line of work for a period of no less than *five (5) years* and have a good record of performance, sufficient financial support, equipment, personnel, and the appropriate facilities to satisfactorily execute the Services under the terms and conditions stated herein, if awarded a Contract.
  - Include a statement that the required insurance coverage will be acquired and maintained without reservation or exclusion for the duration of the contract (*should Offeror secure the contract award*).

**Tab 3 - Cost Proposal.** Offeror must provide a complete description of the fee structure of the firm and a non-binding general indication (or range) of the costs for providing the required services, including a fee schedule by classification for all services, how such fees are calculated, and payment terms. The proposed hourly billing rates should include information for all categories of attorneys and staff (*senior partners, partners, associates, paralegals, etc.*) who are expected to provide work for the District and any direct costs chargeable to the District. For example, Offerors may consider providing respective hourly rates for partners, associates, paralegals and other legal staff.

Offeror shall provide a statement concerning fees, expenses and cancellation policy. Please specify pricing proposal response in the format and on the form(s) provided, indicating flat rate fees if appropriate, and attaching additional pages, if needed. The hourly rates shall be inclusive of all fees for the specified services, travel, and materials. The pricing must include a detailed cost breakdown of all non-labor costs, profit, overhead, taxes, and any out-of-pocket expenses that would be billed separately. The District expects all costs are included in the overall fee for the contracted services, and there will be no additional expenses billed to the District for any reason.

Fees must be quoted as an all-inclusive flat rate, lump sum fee per position/service item as listed in Attachment A for the timeframe listed in this RFP. Pricing shall be shown by item and individually extended, unless otherwise indicated. In case of a conflict between the position/service item price and the extended price, the District shall use the position/service item pricing. All prices shall be in U.S. Dollars..

Please provide detailed explanations of any assumptions made in calculating costs in order to provide sufficient information for the District to be able to prepare a detailed cost analysis and comparison. The *Cost Proposal* must be included in a separate sealed envelope and be valid for a minimum period of one hundred fifty (150) calendar days from proposal receipt date. Please also provide a statement concerning fees, expenses, and cancellation policy. In addition to conducting technical evaluations of proposals, cost proposals will also be evaluated.

No Guaranteed Quantities. The District does not guarantee to Offeror, either expressed or implied, any minimum or maximum purchase quantities of services under this contract to be awarded related to this RFP. The District does reserve the right to purchase any greater or lesser quantities than indicated in the solicitation estimate. Offeror shall be bound to the prices on the submitted Pricing Form for the duration of the contract term.

Service Delivery. Award of a Contract related to this RFP is contingent upon Offeror's ability to timely deliver the Services as outlined in the Scope of Services. Any additional fees for Services shall be delineated in writing and agreed upon, in writing, by both parties.

Selected contents of the proposal submitted by the successful Offeror and this RFP will become part of any contract awarded as a result of the Scope of Services contained herein. The selected Offeror will be required to enter into a contract with District, a form of which is provided as Exhibit 1.

Within seventy-two (72) hours of a District request, Offeror agrees to provide financial records to verify labor rates, overhead rates, and other information should the District determine that such information is required to validate pricing information or award of a contract to determine the proposed price is fair and reasonable.

Thereafter, for each subsequent option year, the hourly rates shall only increase in an amount equal to the Consumer Price Index (CPI) for the San Francisco Bay Area, but in no case shall any yearly increase exceed the rate of four percent (4%) above the original quoted rate of the prices quoted herein. Hourly rate increases based upon the CPI for the San Francisco East Bay Area shall not be automatic and must be requested by each contractor for each awarded contract. Requests for hourly rate increases shall not be retroactive and shall become effective once calculated by the District and approved in writing. The District expressly reserves the right to negotiate any and all proposed hourly rates for each staff member or subcontractor the Offeror is requesting to utilize during the term of any awarded contract.

3. **Tab 4 - Required Forms.** Offeror must submit all required forms, specifically:
  - a. Attachment A - Offeror's Statement of Qualifications and Business References
  - b. Attachment B - Cost Proposal
  - c. Attachment C - Prime Contractor and Subcontractor/Supplier Report
  - d. Attachment D - Certification Regarding Lobbying



B. **Evaluation of Proposals.** The District intends to award a contract with fixed fees/rates to the most qualified, responsible firm submitting a responsive Proposal. Proposals that pass the preliminary screening and mandatory requirements review will be evaluated based on information provided in the proposal. Proposals will be evaluated for completeness and responsiveness to this RFP's stated requirements as detailed in the Scope of Services, minimum qualification requirements, and the weights assigned to each evaluation factor according to the evaluation criteria herein. The proposal will be evaluated in light of the material and the substantiating evidence presented to the District, not on the basis of what may be inferred. The District normally rejects any incomplete or incorrectly formatted Proposal, though it may waive any defects or allow an Offeror to submit a correction. The District also may reject any Proposal in which the technical approach, qualifications, or costs are deemed nonresponsive.

The District will establish a Proposal Analysis Group (*PAG*) comprised of persons designated by the District with subject matter expertise regarding the Services to be provided with respect to this RFP. The PAG will evaluate and score the Proposals using the criteria and scoring set forth in Section C: Evaluation Criteria. The PAG shall determine the individuals or firms that meet the minimum requirements pursuant to selection criteria of the RFP. All proposals shall be evaluated using the same criteria and scoring process. The PAG may consult other subject matter experts to serve in an advisory capacity. Such advisory input may include, but not be limited to, analysis of Offeror's financial statements, review of technical requirements, or preparation of cost score data. In evaluating Proposals, the District will consider the Proposal material submitted, oral interviews (if applicable), client references, and any other relevant information about a given Offeror.

Offeror must receive a minimum score of *65.0 points (80.0%)* of the total available points in the technical categories of Experience, Qualifications, Project Approach and Methodology, Past Performance, Project Knowledge and Technical Capabilities to be considered responsive to the RFP. Proposals not meeting the minimum score shall be rejected and not proceed to further Cost or Competitive Range evaluation. The scores for the Technical Proposals and the Price Proposals will be combined to determine the overall score. The Offeror whose Proposal receives the highest overall score will be recommended for award.

The PAG will collectively develop a composite rating which indicates the group's collective ranking of the highest rated proposals in a descending order. The PAG may then conduct interviews with only the top ranked offerors in each area of legal expertise, usually the top two or three (2-3) depending upon the number of proposals received. The PAG may request a Best and Final Offer and/or make a recommendation for the contract award.

**Best and Final Offers (BAFO).** 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 reserves the right to seek clarifications, additional information or request modified Proposals and/or best and final offers (BAFO) from one or more Offerors identified by the PAG to be reasonably likely to be selected for an award. If requested, the Offeror selected will receive written notification of their selection, a list of specific items to address in the BAFO, and instructions for submittal. The BAFO negotiation may be used to assist the District in clarifying the Scope of Work or to obtain the most cost-effective pricing available. The PAG will evaluate the BAFO using the same criteria used to evaluate the original Proposals. If an Offeror does not submit a BAFO upon request, the District will deem its immediate previous offer to be its BAFO. The written invitation to participate in BAFO will not obligate the District to commit to enter into a contract.

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 properly fulfill all public disclosure requests for such information, as required by State Law.

Unless stated to the contrary in the Scope of Work, the District reserves the right to make a partial and/or multiple award(s), in the best interest of the District. Offerors are to prepare proposals given the District's right to a partial or multiple award(s). Further, the District may eliminate an individual line item when calculating award, in order to best meet the needs of the District, if a particular line item is not routinely available or is a cost that exceeds available District funds. District may negotiate with the successful Offeror(s) to finalize the work and specifications consistent with the objectives of this RFP.

The District's Board will consider making awards to the selected Offeror(s) based on the recommendations of the PAG. To qualify for the final evaluation, an Offeror must have been deemed responsive as a result of the criteria set forth below under "*Offeror Responsiveness*".

**Responsiveness and Responsibility Determination.** District personnel will review all submittals for initial decisions on responsiveness and responsibility, including responsiveness to minimum qualifications. Those found responsive and responsible based on this initial review will then be reviewed for responsiveness in meeting the minimum qualifications.

a. **Responsiveness Determination.** A Proposal received prior to Proposal Deadline will be reviewed to determine if it is Responsive to all RFP requirements including compliance with the Minimum Qualifications section and the Minimum Submission Requirements section. If the Proposal is unclear, the SPC may request clarification from Offeror. However, clarifications may not be used to rehabilitate a non-Responsive proposal. If the SPC finds the Proposal non-responsive, the Proposal may be rejected, however, the District may, in its sole discretion, waive immaterial mistakes. All responses are evaluated for Level-One and Level-Two Responsiveness. If a response does not substantially conform to all of the terms and conditions in the solicitation, or if it requires unreasonable exceptions, it may be considered non-responsive. All proposals must contain suitable responses to the questions in the proposal forms. The following requirements must be satisfied in order to meet *Level One Responsiveness* requirements, which is typically ascertained following opening of the proposals. If these standards are not met, Offeror's response may be disqualified as nonresponsive.

1. Level-One Responsiveness means the response:
  - is received on/before the deadline for submission; and
  - is properly addressed and identified as a sealed proposal with a specific RFP number, submission date/time; and
  - lists the name, title, address, telephone number, and e-mail address of the Offeror's principal contact person during the solicitation process; and
  - contains a separate pricing document (*with apparent discounts*) and all other forms fully completed, even if "*not applicable*"





- is the answer; and
- includes signed copies of all required forms - completed, dated, and signed and, if applicable, any signed addenda that have been issued in relation to this RFP; and
  - includes a statement accepting the standard contract terms; and
  - includes a flash drive with an electronic copy of the entire RFP submittal (*in the formats detailed herein*); and
  - includes two (2) hard copies of the entire RFP submittal (*in the formats detailed herein*).
2. **Level-Two Responsiveness** (*including whether the response is within the RFP's scope*) is determined while evaluating the remaining items listed under Proposal Evaluation Criteria below. For example, the answers to industry-specific questions may help determine scoring relative to an Offeror's industry positioning and financial strength. Any questions not answered without an explanation will likely result in a loss of points and may lead to a non-award if the PAG cannot effectively review its response.
- b. **Responsibility Determination.** District engages in business with only responsible Offerors with sound management, quality control, capacity, experience, financial resources, and ethics to perform its contract. District reserves the right to employ a variety of means to determine the responsibility of potential Offerors, including evaluating its past experience with the Offeror. The contract may not be awarded to an Offeror that is determined not to be responsible.

The District shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed contract. As a prerequisite to an award of Contract, the District will determine whether the Offeror meets the definition of a "responsible Bidder" as set forth in *Public Contract Code Section 1103: "a Bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract."* In making this determination, the District may consider any information about the Offeror, including information submitted in response to this RFP and the Attachment A-Offeree's Statement of Qualifications (*included with the solicitation forms*). Responsibility can be determined at any time during the solicitation process.

To be considered responsible, consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The Contracts Specialist will check to determine whether the Offeror is an excluded Party on Sam.gov, (*The District may not award a contract to a Contractor that appears on this list.*), as well as the following: Does the vendor have appropriate financial resources, equipment, facility, and personnel? Has the vendor adequately completed the Proposer's Statement of Qualifications & Business Reference Questionnaire? Has the vendor demonstrated its ability to meet the delivery schedule? Has the vendor provided all additional information requested by the District?

The District may reject the proposal of any offeror deemed not to possess the minimum qualifications to provide or perform the work hereunder. The District's determination of an Offeror's responsibility may also include the following factors: the experience of the Offeror and its key team members; past conduct and past performance on previous contracts; ability to execute this contract; and management skill. The District will make such determination of responsibility based on the Offeror's Proposal, reference evaluations, and any other information the District requests or determines to be relevant. If minimum requirements are not met, the proposal may be disqualified as nonresponsive and nonresponsible.

The District will contact the selected Offerors' references to verify and validate past performance. Reference checks indicating poor or failed performance by the Offeror or proposed candidate may be cause for rejection of the proposal. In addition, failure to provide requested reference contact information may result in the District not including the referenced experience in the evaluation process. The reference evaluation will measure the criteria contained in this part of the RFP as it relates to the Offeror's previous contract performance including, but not limited to, its performance with other local, state and federal entities. The District reserves the right to check references other than those provided in the Offeror's Proposal. The District may obtain information relevant to criteria in this part of the RFP, which is deemed critical to not only the successful operation and management of the services, but also the working relationship between the District and the Offeror. Although the District anticipates completing reference checks at this point in the process, the PAG may contact the client references of the companies or other sources in addition to those specifically provided by the Company, at any time to assist the District in understanding the services offered. The District reserves the right to request samples from offerors for a specified job.

Part of the Proposal evaluation criteria is the qualifications of the Offeror which include, as a component, the Offeror's financial ability to perform the Contract. The RFP may expressly require the submission of financial statements from all Offerors in the Proposal contents. If the Proposal contents do not make this an expressed requirement, the District may still insist that an Offeror submit audited financial statements for up to the past three (3) years if the District is concerned that an Offeror may not have the financial ability to carry out the Contract. In evaluating an Offeror's financial ability, if requested, the District will review the documentation provided by the Offeror to determine if the Offeror's financial position is adequate or inadequate. If the District believes the Offeror's financial ability is not adequate, the District may reject the Proposal despite its other merits. To maintain fairness in the evaluation process, all information sought by the District will be obtained in a manner such that no Offeror is provided an unfair competitive advantage.

The District will determine if an apparent successful Offeror is responsible prior to award and execution of a contract. At any time prior to award, the District may reject an Offeror found to be not responsible.

- C. **Evaluation Criteria.** Each Proposal meeting all Responsiveness and Responsibility requirements will be independently evaluated by a PAG. Evaluators will assign a score for each evaluation criterion listed below in this Section C up to the maximum points available in the Point and Score Calculation section. Final selection will be evaluated based on the best value to the District after consideration of both the *Technical Proposal* and the *Price Proposal*. The maximum possible points awarded a Proposal will be 100.

Proposals will be evaluated based on each reviewer's determination of the match between the needs of the District, scope of work outlined in this solicitation, and the proposal. The evaluation criteria set forth below will be applied in the determination of competitive range, and final evaluation.



The following factors will be considered, although not exclusively, utilizing the weighted method of rating in evaluating proposals:

WEIGHT ASSIGNMENT FOR PROPOSAL EVALUATION CRITERIA	
Evaluation Criteria	Weight
Qualifications and Experience of Personnel Providing Services under the Contract	30%
Expertise and Experience in the Specific Areas of Law to which the Proposal is Directed	25%
Experience in Representing Public Entities, particularly Transit Clients	25%
Fees	20%
<b>TOTAL POSSIBLE WEIGHT</b>	<b>100%</b>

The PAG 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 (Company Information & Financial Strength), Qualifications & Experience (qualifications and experience of personnel providing services under the contract, expertise and experience in the specific areas of law to which the proposal is directed, experience in representing public entities, particularly transit clients), and responses to Industry-Specific Questions.*

- D. **Ranking of Proposals.** Proposals that are technically acceptable are re-evaluated with cost as a consideration. The District’s Contracts Specialist will average the technical evaluation scores assigned during the evaluation of each Proposal (*calculated by totaling the points awarded by each PAG member and dividing by the number of members*). After any applicable preference has been applied, the Contracts Specialist will use both technical and cost evaluation information to rank all Offerors (*by subject matter expertise*), with the highest scoring Offeror receiving the highest rank, and successive rank order determined by the next highest score. The Contracts Specialist may, in the District’s sole discretion, then determine an apparent successful Offeror. (*If additional rounds are conducted, the District will rank advancing Offerors at the conclusion of each subsequent round and may determine an apparent successful Offeror at any time during the solicitation process.*)
- E. **Competitive Range Determination.** Once proposals are scored and tabulated, a “competitive range” for each subject matter area of expertise will be determined, on the basis of overall rankings according to the weighted criteria set forth herein. Offerors determined to be within the competitive range may be notified in writing to provide additional information. Offerors in the competitive range may be invited for an interview with the District to provide further clarification. In such event, the District will not provide any information to any Offeror regarding its relative standing among the others. District may negotiate with all responsible, responsive proposers in the competitive range. The District, at its sole discretion, will determine whether to hold discussions with Offerors who are in the “competitive range” or to award the contract without discussion based on the initial submission.
- F. **Next Steps Determination.** At the conclusion of a round of competition, the District may choose to conduct additional round(s) of competition if in the best interest of the District. Additional rounds of competition may consist of, but will not be limited to:
- **Interviews/Presentations/Demonstrations/Additional Submittals.** Based on the overall scores and proposal rankings, the PAG may identify a select number of Offerors to participate in oral interviews and/or in-person presentations/demonstrations. Interviews and/or presentations may be held in person at a location determined by the District or, at the District’s elections, may be conducted via videoconference or teleconference. Offerors may only ask questions that are intended to clarify the questions they are being asked. Each Offeror’s time slot for oral interviews will be randomly determined. Offerors who are selected shall make every effort to attend.
  - **Discussions and Submittal of Revised Proposals.** The Contracts Specialist may request clarification to assist the PAG in gaining additional understanding of a proposal. A response to a clarification request must be to clarify or explain portions of the already submitted Proposal and may not contain new information not included in the original Proposal.
  - **Serial or Simultaneous Negotiations.** The District may exercise its discretion to conduct serial or competitive simultaneous discussions or negotiations with one (1) or more offerors in any sequence or order and at any stage of the selection process until the District has determined: (a) an eligible offeror with whom it is currently discussing or negotiating to award the Contract; (b) a need to conduct revised rounds of negotiations; or (c) a need to cancel the procurement.
  - **Best and Final Offers.** Offerors in the Competitive Range may be asked to submit its BAFO. Best and Final Offers must be submitted in the form of a written amendment to the Offeror’s initial proposal and must comply with the requirements and specifications outlined in the *Notice of Competitive Range*. All BAFOs *must* be submitted to the SPC on or before the due date and time as set forth in the *Notice of Competitive Range*. **Late Revised Proposals Will Not Be Accepted**. If an Offeror elects not to submit a revised proposal, the Offeror’s initial proposal will be accepted as the Best and Final Offer and evaluated accordingly.

During the evaluation process and final negotiations, no information will be provided to any Offeror about any other Proposals. Proposals will be evaluated and scored based on a committee evaluation of the weighted portions listed in the Evaluation Criteria.

- G. **Award Consideration.** The District may reject any and all proposals, may waive any minor irregularities or informalities in any proposals or in the solicitation procedure, and must reject a proposal of any party who has been delinquent or unfaithful in any former contract with the District. 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 PAG’s selection(s) will be recommended to the District’s General Manager and/or Board of Directors for approval. The District’s General Manager and/or Board of Directors have the option of accepting the recommendation or cancelling the solicitation if the General Manager and/or Board of Directors determines it is in the best interest of the District. If the District chooses to award a Contract, it shall award a Contract to the highest-ranking Responsible Offeror(s) based upon the scoring methodology and process described herein. The District, in its discretion, may award less than the full Scope of Work defined in this RFP.



- H. **Award Notification Process - Intent to Award Notice.** After the District’s approval of the award(s), the District will timely notify the successful Offeror(s), in writing, that District intends to award a contract to the selected Offeror(s) subject to successful completion of a contract between the parties. The letter will include instructions for final submittals that are due prior to execution of the contract. Notice(s) of award shall be made available to the public through electronic means. The District will also timely notify the unsuccessful offerors of such award. The Contracts Specialist will maintain a complete file record showing the basis for determining the successful Offeror(s). Should administrative difficulties after proposal opening threaten to delay award beyond the one hundred fifty (150) calendar day proposal validity period, the District may ask the Offerors’ to extend the proposal validity period, with consent of sureties, if any, to avoid the need for re-advertising.
- I. **Award and Contract.** The District reserves the right to enter into a Contract based on the initial offers received without further discussion of the proposals submitted. The District reserves the right to contract for all or a partial list of services offered in the proposals. Therefore, Offerors are encouraged to submit their best offer initially. The District will award to the Offeror(s) whose Proposal(s) is most advantageous to the District, with cost and other factors considered. This RFP, including any addenda added, and the selected proposal shall become part of the Contract initiated by the District. By submitting a Proposal, Offeror agrees to comply with the requirements of the RFP, including the terms and conditions of the Sample Contract (*Exhibit 1*). Offerors are responsible to review all specifications, requirements, Terms and Conditions, insurance requirements, and other requirements herein and should price proposals with the understanding that all specifications, requirements, terms and conditions are *mandatory* for the Offeror to comply. Submittal of a proposal is agreement to comply without exception, unless modified by the District.

Offeror shall review the attached Sample Contract (*Exhibit 1*) and submit exceptions to the District during the Questions/Requests for Clarifications period set forth herein. *No exceptions will be accepted after the submission deadline.* An Offeror shall not submit its own standard contract terms and conditions as a response to this RFP. Unless the District agrees to modify any of the terms and conditions, District intends to enter into a Contract with the successful Offeror substantially in the form set forth in the *Sample Contract*. The District has the right to negotiate changes to submitted proposals and to change the District’s otherwise mandatory terms and conditions during negotiations or by providing notice to the Offeror during the contract. It may be possible to negotiate some provisions of the final Contract; however, District is not required to make any changes and many provisions will not be changed. Offeror is cautioned the District believes modifications to the standard provisions constitute increased risk and increased cost to the District. Therefore, District will consider the scope of requested exceptions in the evaluation of the proposal.

Nothing herein prohibits the District from opening discussions with the highest ranked apparent successful Offeror, to negotiate modifications to either the proposal or the contract terms and conditions, in order to align the proposal or the contract to best meet District needs within the scope sought by the RFP. If the contract negotiation period exceeds sixty (60) business days, or if the selected Offeror fails to sign the final Contract within twenty-one (21) business days of delivery, the District may elect to cancel the award and award the Contract to the next-highest-ranked Offeror.

#### SECTION D: SERVICES

1. **Project Description.** AC Transit is seeking proposals from attorneys/firms to establish a panel of qualified attorneys and/or law firms in different specialty areas from which the District can draw as needed.
2. **Detailed Statement of Services.** The successful Offeror(s) will work from time to time, as detailed on the attached *Scope of Services*, when the District refers legal matters to outside attorneys/law firms for handling, where either special legal expertise is required, a second opinion is desired, or there is a need for separate counsel.

#### SECTION E: STANDARD CONDITIONS

1. **Reserved Rights.** Without limiting the generality of any other provision of this RFP, the District reserves the right, at any time prior to execution of an agreement with the successful Offeror, to exercise all or any of the following rights and options, which rights and options the District may exercise to the extent that the District, in its sole discretion, deems to be in the District’s best interests:
  - This RFP and the process it describes are proprietary to the District and for the sole and exclusive benefit of the District. No other party, including any respondent to this RFP or future Offeror to any RFP which may be issued by the District, is intended to be granted any rights hereunder.
  - All Offerors are notified the Contract for these services is contingent upon funds appropriated by the District and local, regional, state and federal governments. In the event that funding is eliminated or decreased, the District reserves the right to terminate any Contract or modify it accordingly. The District makes no representations that any Contract will be awarded to any Offeror responding to the RFP.
  - The District reserves the right, in its sole discretion:
    - To cancel the RFP at any time and for any reason, with or without issuing another RFP, with no cost or penalty to the District; or to reject all proposals and re-solicit or cancel this RFP if deemed by the District to be in its best interest.
    - To re-issue this RFP without change or modification; or to issue a subsequent RFP for this project with terms and conditions that are substantially different from the terms and conditions set forth in this RFP.
    - To correct inaccurate awards resulting from its clerical errors. This may include, in extreme circumstances, revoking the awarding of a contract already made to an Offeror and subsequently awarding the contract to another Offeror. Such action on the part of the District shall not constitute a breach of contract on the part of the District since the contract with the initial Offeror is deemed to be void *ab initio* and of no effect as if no contract ever existed between the District and the Offeror.
    - To permit or reject amendments (including information inadvertently omitted), modifications, alterations and/or corrections of Proposals by some or all of the Offerors following Proposal submission.
    - To waive any informality, defect, non-responsiveness, or derivation from this RFP that is not, in the District’s sole judgment, material to the Proposal.
    - To not proceed with the process described in this RFP, or to change any time schedules set forth herein, including to extend proposal due dates.
    - To reject any Proposal that is untimely, incomplete, unclear, conditional, contains irregularities of any kind, is not in conformity with applicable law, not responsive to this RFP, contains ambiguities or services not called for by this RFP, or whose conduct



violates ethical regulations.

- To reject the Proposal of an Offeror that has been delinquent or unfaithful in the performance of any contract with the District, or is financially or technically incapable of performing the services required in this RFP, or is otherwise not a responsible Offeror.
  - To rescind its rejection of any Proposal(s) with a previously rejected Offeror.
  - To request clarifications of any unclear Proposal; and to request that some or all of the Offerors modify Proposals or provide additional information following evaluation by the District.
  - To consider, and accept for evaluation, a late modification of a proposal if the proposal itself was submitted on time; the modifications were requested by the District; and the modifications make the terms of the proposal more favorable to the District.
  - To request additional or supplemental information (including but not limited to information inadvertently omitted by any Offeror in response to this RFP) from any or all Offerors.
  - To conduct such investigations as the District considers appropriate with respect to the qualifications of any Offeror and/or any information contained in any Proposal.
  - To duplicate, without limitation, all materials submitted for purposes of this RFP evaluation, and duplicate for public information in response to data requests regarding the proposal.
2. **Protest Procedures.** District's protest policies, as detailed in *Board Policy 468*, may be accessed via the following link: [http://www.actransit.org/wp-content/uploads/board\\_policies/BP%20468%20-%20Procurement%20Protest-1.pdf](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.
4. **Vendor Registration.** Online Vendor Registration is required prior to the contract award on the District's online system: <http://www.actransit.org/purchasing/vendor-registration-and-log-in/>. All prospective vendors must also be registered in the federal government's System for Award Management (SAM) database (<https://www.sam.gov>) prior to the award of a contract.
5. **W-9 Form Required.** Each offeror shall submit a completed W-9 form with its proposal. In the event of contract award, this information is required in order to issue purchase orders and payments. A copy of this form can be downloaded from <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.
6. **Cost of Proposal Submission and Pre-Contractual Expenses.** Offeror shall pay all the costs in submitting its Proposal, including, but not limited to, the costs to prepare, present and/or submit the Proposal in response to this RFP, costs of samples and other supporting materials, costs to participate in demonstrations, pre-proposal conferences, or costs associated with protests. The District shall not be liable for any pre-contractual expenses incurred by any Offeror and Offerors 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 Offeror in:
- Proposals in response to this RFP (including copies or other expenses of any submitted documentation).
  - Costs associated with interviews and meetings (including travel expenses) incurred in responding to this RFP.
  - Other expenses incurred by an Offeror prior to the date of award and formal Notice to Proceed for any contract.
7. **Waiver.** By submitting a Proposal, the corresponding Offeror represents and warrants that it has sufficiently informed itself in all matters affecting the performance of the work or the furnishing of the labor, supplies, material, or equipment called for by the envisioned Contract; that Offeror 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.
8. **Ownership/Permission to Use Materials.** Responses to this RFP become the exclusive property of the District. At such time as the Procurement Department makes an award recommendation to the General Manager or the Board of Directors, as applicable and following the District's issuance of the *Notice of the Intent to Award*, all Proposals become public record and subject to public inspection. Application of the *California Public Records Act* (*Cal. Govt. Code Sections 6250 et seq.*) will determine whether any information is actually exempt from disclosure.

The District shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as "Confidential," "Trade Secret," or "Proprietary" or if disclosure is required under the Public Records Act. Any proposal which contains language purporting to render all or significant portions of the proposal "Confidential," "Trade Secret," or "Proprietary" shall be regarded as non-responsive. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the District may not accept or approve that the information that an Offeror submits is a trade secret. If a request is made for information marked "Confidential," "Trade Secret," or "Proprietary," the District shall provide the Offeror who submitted the information with reasonable notice to allow the Offeror to seek protection from disclosure by a court of competent jurisdiction

By submitting a Proposal in response to this RFP, Offeror grants the District a non-exclusive, perpetual, irrevocable, royalty-free license for the rights to copy, distribute, display, prepare derivative works of and transmit the Proposal solely for the purpose of evaluating the Proposal, negotiating a Contract, if awarded to Offeror, or as otherwise needed to administer the RFP process, and to fulfill obligations under *California Public Records Act* (*Cal. Govt. Code Sections 6250 et seq.*). Proposals, including supporting materials, will not be returned to Offeror unless the Proposal is submitted late.

9. **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 Offeror shall be available to the public.

If the Offeror believes any communication contains trade secrets or other proprietary information the Offeror believes would cause substantial injury to the Offeror's competitive position if disclosed, the Offeror shall request the District withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. The Offeror may not designate its entire Proposal as confidential. Additionally, Offeror may not designate Proposal Forms as confidential.

If the Offeror requests that the District withhold from disclosure information identified as confidential, and the District complies with the Offeror's request, the Offeror 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 Offeror information), and pay any and all cost and expenses related to the withholding of the Offeror information. The Offeror 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 Offeror information or in connection with the disclosure of Offeror Information in the event the District determines such information is subject to disclosure.

If the Offeror 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.

- 10. Conflict of Interest.** By submitting a Proposal, the Offeror 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 Offeror 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 Offeror 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 Offeror may be required to publicly disclose financial interests under the District's Conflict of Interest Code. The Offeror 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 Offeror 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 Offeror warrants that it has no organizational conflicts of interest at this time. Alternatively, the Offeror 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.

- 11. No Collusion.** By submitting a proposal, each Offeror represents and warrants that its proposal is genuine and not a sham or collusive or made in the interest of or on behalf of any person not named therein; that the Offeror has not directly induced or solicited any other person to submit a sham proposal or any other person to refrain from submitting a proposal; and that the Offeror has not in any manner sought collusion to secure any improper advantage over any other person submitting a proposal.

Penalty for Collusion. If, at any time, it shall be found that the person, firm or corporation to whom a contract has been awarded has, in presenting any proposal or proposals, colluded with any other party or parties, then the contract so awarded shall be null and void and the Contractor and its bondsmen shall be liable to the District for all loss or damage which the District may suffer thereby and the District may advertise for a new contract for said services, supplies, materials, or equipment.

- 12. Non-Conforming Proposal.** A proposal shall be prepared and submitted in accordance with the provisions of these RFP instructions and specifications. Any alteration, omission, addition, variance, or limitation of, from or to a proposal may be sufficient grounds for nonacceptance of the proposal, at the sole discretion of the District.
- 13. Gratuities.** No person shall offer, give or agree to give any District employee any gratuity, discount or offer of employment in connection with the award of contract by the District. No District employee shall solicit, demand, accept or agree to accept from any other person a gratuity, discount or offer of employment in connection with a District contract.
- 14. Ex-Parté Communications/Cone of Silence Policy.** In accordance with California Public Contract Code section 20216(d), the District Board of Directors, or any person responsible for awarding a contract shall not have any ex-parté communication with a bidder or any representative of the bidder except in writing and if the communication is made public.

Any verbal or written communication between any potential or actual offeror, or its representatives and any District Board Member, staff member, committee member, or contractor regarding this procurement are strictly prohibited from the date of the solicitation advertisement through the date of execution of the contract. The only exceptions to this are: (1) written requests regarding information or clarification made to District's designated Contracts Specialist (*or other procurement designee*) during the allowable time period under the solicitation; (2) written communications available for disclosure to the public; and (3) any communications at a publicly noticed meeting of the District Board of Directors. Any violation of the requirements set forth in this section shall constitute grounds for immediate and permanent disqualification of the Offeror from participation in this procurement.

In the context of this RFP, an "ex-parté communication" is any communication between an Offeror (or the Offeror'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.

- 15. Disqualification.** Factors such as, but not limited to, any of the following may be considered just cause to disqualify a proposal without further consideration:
- Any attempt to improperly influence any member of the evaluation team;
  - Evidence of collusion, directly or indirectly, among Offerors in regard to the amount, terms or conditions of this proposal;
  - Evidence of incorrect information submitted as part of the proposal;
  - Evidence of Offeror's inability to successfully complete the responsibilities and obligation of the proposal;



- Existence of any lawsuit, unresolved contractual claim or dispute between Offeror and the District;
  - Offeror is in arrears on an existing contract or has failed to perform on a previous contract with the District; or
  - Offeror's default under any previous agreement with the District, which results in termination of the Contract.
- 16. Firms or Persons Not Eligible to Submit a Proposal.** In order to avoid any conflict of interest or perception of a conflict of interest, Offeror(s) selected to provide professional services under this RFP will be subject to the following requirements:
- The Offeror(s) who works on the procurement will be precluded from submitting proposals as a prime contractor or subcontractor in the ultimate procurement.
  - The Offeror(s) may not have interest in any potential Offeror for the ultimate procurement.
- 17. Authorized Representative.** Proposals must be signed by a duly authorized officer(s) eligible to sign contract documents for the Offeror (*the "Authorized Signer"*). Failure of the Authorized Signer to sign the Proposal may subject the Proposal to rejection by the District. Consortiums, joint ventures, or teams submitting a Proposal, although permitted and encouraged, will not be considered responsive unless it is established that all contractual responsibility rests solely with one (1) offeror or one (1) legal entity. The submittal should indicate the responsible entity. Offerors should be aware that joint and several responsibility and liability will attach to any resulting Contract and failure of one (1) party in a joint venture to perform will not relieve the other party or parties of total liability.
- 18. Insurance.** Offerors shall include with their proposal a copy of their current Certificates of Insurance that illustrate the current level of coverage the Offeror carries. The Certificate can be a current file copy and does not need to include any "additional insured" language for the District. Upon Contract award, the selected Offeror(s), at Offeror's sole cost and expense and for the full term of the Contract or any extension thereof, shall obtain and maintain, at a minimum, all of the insurance requirements outlined in Exhibit 2. All policies, endorsements, certificates and/or binders shall be subject to the approval of the District's Claims and Liability Manager as to form and content. These requirements are subject to amendment or waiver if approved in writing by the Claims and Liability Manager. The selected Offeror agrees to provide the District with a copy of said policies, certificates and/or endorsement upon award of contract.
- 19. Additional Proposal Information.**
- **Cancellation of RFP; Rejection of Proposal; No Damages.** The District may reject any or all Proposals in-whole or in-part or may cancel this RFP at any time when the rejection or cancellation is in the best interest of the District, as determined by the District. The District shall not be liable to any Offeror for any loss or expense caused by or resulting from the delay, suspension, or cancellation of the RFP, award, or rejection of any Proposal.
  - **Changes or Corrections in Proposal Submittal.** Prior to the proposal submittal closing date and time, an Offeror may make changes to its proposal, if the change is initialed and dated by the Offeror. No change shall be allowed after the closing date and time. Offeror cannot change, mark-up or cross-out any condition, format, provision or term that appears on the District's published Cost Proposal Form. If Offeror needs to change any prices or answers on the Cost Proposal Form must be made in pen, initialed, and be clear in intent. Do not use white-out.
  - **Errors in Proposals.** The Offeror is responsible for errors and omissions in its proposals. No such error or omission shall diminish the Offeror's obligations to the District.
  - **Withdrawal of Proposal.** A proposal may be withdrawn by written request of the Offeror, prior to the proposal closing date and time. The request for withdrawal shall be signed by an authorized agent of Offeror. Modifications offered in any manner, oral or written, will not be considered after the deadline. After the closing date and time, the submittal may be withdrawn only with permission by the District.
  - **Prohibition as Subcontractor.** No Offeror who is permitted to withdraw a proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn proposal was submitted.
  - **Duration of Proposal.** Each Offeror agrees that its Proposal prices and costs shall be a firm offer to the District and shall remain valid for the one hundred fifty (150) calendar day period as stated herein.
  - **Rejection of Proposals and Rights of Award.** The District reserves the right to reject any or all proposals at any time with no penalty. The District also has the right to waive immaterial defects, technicalities, and minor irregularities in any submitted proposal and to accept any proposal it deems to be in the best interest of the District.
  - **Incorporation of RFP and Proposal in Contract.** This RFP and the Offeror's response, including all promises, warranties, commitments, and representations made in the successful proposal as accepted by the District, shall be binding and incorporated by reference in the District's contract with the Offeror.

## SECTION F: EXHIBITS AND ATTACHMENTS

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

- Attachment A - Offeror'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 - Sample Contract
- Exhibit 2 - Insurance Requirements



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

A. Offeror's 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 <i>(city/state)</i>	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 Services outlined in this solicitation during the last three (3) years, at a minimum. *Attach additional sheets if necessary.*

Client	Location <i>(city/state)</i>	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 Services* 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.*

\_\_\_\_\_



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The undersigned Offeror 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 Offeror

\_\_\_\_\_  
Name/Title

Dated: \_\_\_\_\_







**ATTACHMENT C**  
**PRIME CONTRACTOR & SUBCONTRACTOR / SUPPLIER REPORT**

*Complete All Sections of Form and Return with Proposals*

The Offeror 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 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/Sub-Contractor/Supplier Name/Address/Contact Information	Type of Work or Materials	Value of Work & Materials <i>(complete both items)</i>	DBE/SBE UTILIZATION AC Transit reserves the right to request further documentation to validate provided information on meeting the DBE/SBE requirements for this procurement.	Annual Gross Receipts List annual gross receipts for last three years (i.e. 2019, 2018, 2017)
<b>Prime Contractor:</b>  Address:  Contact Person: Phone: Email: How Many Years in Business? DIR Registration #: License No (if applicable):		Percentage (%)    Dollar Value (\$)	Is Prime Contractor: <input type="checkbox"/> DBE <input type="checkbox"/> SBE <input type="checkbox"/> Not Applicable If DBE or SBE, include the following: Certifying Agency: _____ _____ Certification No.: _____ Certification Date: _____ Expiration Date: _____	
<b>Subcontractor/Supplier:</b>  Address:  Contact Person: Phone: Email: How Many Years in Business? DIR Registration #: License No (if applicable):		Percentage (%)    Dollar Value (\$)	Is Subcontractor or Supplier: <input type="checkbox"/> DBE <input type="checkbox"/> SBE <input type="checkbox"/> Not Applicable If DBE or SBE, include the following: Certifying Agency: _____ _____ Certification No.: _____ Certification Date: _____ Expiration Date: _____	
<b>Subcontractor/Supplier:</b>  Address:  Contact Person: Phone: Email: How Many Years in Business? DIR Registration #: License No (if applicable):		Percentage (%)    Dollar Value (\$)	Is Subcontractor or Supplier: <input type="checkbox"/> DBE <input type="checkbox"/> SBE <input type="checkbox"/> Not Applicable If DBE or SBE, include the following: Certifying Agency: _____ _____ Certification No.: _____ Certification Date: _____ Expiration Date: _____	

Revised August 2019

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



**ATTACHMENT D**  
**CERTIFICATION REGARDING LOBBYING**

Offeror 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. Offeror shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded to the District. Offerors shall ensure that all of its Subcontractors included in their Proposal shall certify the same.

**Please choose one:**

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

Yes, Offeror has participated in lobbying activities as outlined above

*If yes –and complete the Disclosure of Lobbying Activities form on the following page*

Name of Offeror: \_\_\_\_\_

Person Completing Form: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

<b>DISCLOSURE OF LOBBYING ACTIVITIES</b> <i>(Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352)</i>	
<b>1. Type of Federal Action:</b> <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	<b>2. Status of Federal Action:</b> <input type="checkbox"/> bid/offer/application <input type="checkbox"/> initial award <input type="checkbox"/> post-award
<b>3. Report Type:</b> <input type="checkbox"/> initial filing <input type="checkbox"/> material change  For Material Change Only: Year _____ Quarter _____ Date of last report: _____	
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Sub-awardee  Tier, if known: _____  Congressional District, if known: _____	<b>5. If Reporting Entity in No. 4 is Sub-awardee, Enter Name and Address of Prime:</b>  _____ _____ _____  Congressional District, if known: _____
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known: \$ _____</b>
<b>10a. Name and Address of Lobbying Entity:</b> (if individual, last name, first name, MI):	<b>10b. Individuals Performing Services</b> (including address if different from No. 10a):
(Attach Continuation Sheet(s), if necessary)	
<b>11. Amount of Payment</b> (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>13. Type of Payment (check all that apply):</b> <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: _____)
<b>12. Form of Payment</b> (check all that apply): <input type="checkbox"/> cash <input type="checkbox"/> in-kind; specify: nature _____ value _____	
<b>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:</b>	
<b>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 \$10,000.00 and not more than \$100,000.00 for each failure.</b>	
Signature: _____  Print Name: _____  Title: _____  Telephone #: _____  Date: _____	

**EXHIBIT 1**



**SAMPLE CONTRACT**

**THIS CONTRACT** (the “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 \_\_\_\_\_ corporation, having its principal place of business at \_\_\_\_\_ (hereinafter the “Contractor”).

**THE PARTIES AGREE AS FOLLOWS:**

1. **Scope of Services.** Contractor shall provide services (the “Services”) in full accordance with *Request for Proposals No. 2021-1514* prepared and issued by the District, entitled Outside Legal Services, (dated \_\_\_\_\_), a copy of which is attached hereto and incorporated by this reference. Contractor agrees to undertake, carry out and complete all work established herein in a professional and efficient manner satisfactory to District standards.

Contractor hereby agrees to furnish the materials, supplies and services in compliance with all terms, conditions, specifications, and addenda in the above referenced solicitation. Contractor is hereby cautioned not to perform any work or provide any service under this Contract until valid certificates of insurance, all current and valid copies of any required licenses/certifications and/or performance bond are received and accepted by the District, if applicable, a purchase order is issued for the services described herein and the *AC Transit Project Manager (Jill A. Sprague)* has approved the start date for the project. Any work initiated prior to the official contract award and the submission of the documents referenced above shall be performed solely at Contractor's risk.

2. **Contract Term.** Services under this Contract shall commence on 01 October 2020 and continue through 30 September 2022, or unless this Contract is terminated sooner pursuant to *Section 29-Termination* or extended by the parties, as allowed for herein. Services shall be performed at the District's direction and within the term set forth herein 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 *three (3) one (1) year* 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. **Contract Price.** Contractor agrees to perform all of the services, as accepted by the District, included in *Attachment 1-A of the RFP (Scope of Services)* and in accordance with the fees as accepted by the District.

The total price shall include all services, labor, materials, taxes, profit, overhead, insurance, subcontractor costs, and all other costs and miscellaneous expenses incurred by the Contractor as reflected in the proposal. The District agrees to pay the Contractor in accordance with their submitted schedule for fees and costs, which shall be held firm for the first two (2) years of the Contract. Requested increases for the three (3) option years of the contract shall not exceed the Consumer Price Index (CPI) for the local San Francisco East Bay Area and are subject to approval by the District. In no case shall any yearly increase exceed the rate of four percent (4%) above the original quoted rate of the prices quoted herein. The District and Contractor must mutually agree upon any adjustments in payment, in writing.

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 performed and the applicable hourly rate of each person being billed. Rates shall be in accordance with the Contractor's Bid, and Best and Final Offer, if any, as accepted by the District. Invoices shall be submitted electronically to [accountspayable@actransit.org](mailto:accountspayable@actransit.org). The District will endeavor to pay properly submitted, undisputed invoices within thirty (30) calendar days of initial receipt. *Please reference the Contract Number and Purchase Order Number on all submitted invoices. Failure to do so could delay payment.*

**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 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:

- This Contract and any Amendments
- RFP No. 2021-1514 and any Addenda thereto, as incorporated by reference
- Contractor's Proposal dated \_\_\_, and all attachments, as accepted by the District

5. **Notices.** All communications relating to the day-to-day activities of the provided services shall be exchanged between the District's General Counsel's Office, and the Contractor's representative, \_\_\_\_\_. 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:



DISTRICT

\_\_\_\_\_, Contracts Specialist  
AC Transit  
1600 Franklin Street, 6<sup>th</sup> Floor  
Oakland, CA 94612  
Phone (510) 891-\_\_\_\_\_  
Email: \_\_\_\_\_@actransit.org

CONTRACTOR

Contact Name/Title  
Contractor's Name  
Contractor's Address  
Contractor's Address  
Contractor's Phone #:  
Contractor's 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. **Vendor Registration.** If Contractor is not already an AC Transit registered vendor, Online Vendor Registration is required prior to contract award on the District's online system: <http://www.actransit.org/purchasing/vendor-registration-and-log-in/>. To complete the process, include a W-9, Request for Taxpayer Identification Number and Certification-containing original signature. All prospective vendors must also be registered in the federal government's System for Award Management (SAM) database (<https://www.sam.gov>) prior to the award of a contract.

7. **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, court reporting, 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.

8. **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 Contract shall be delivered as the District may direct.

9. **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 writing in advance of any action to implement the change by the Project Manager. In the event 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 written 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 Services* described in this Contract, and Contractor shall provide such additional services, supplies or materials at the Contractor's fair market prices, less discounts ordinarily allowed to users of such materials or equipment or at regular labor charges less customary discount, or both. 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.

If the District deems it necessary that any work, materials or equipment which are mentioned, specified or indicated, or otherwise provided for in the Contract or in the specifications forming a part of the Contract shall be required to be omitted from, in or about the work, the Contractor shall be notified, in writing, to omit the performance of such work and the furnishing of such materials or equipment. A deduction shall be made from the amount to be paid to the Contractor in an amount which the District and Contractor shall determine and mutually agree to be the reasonable value of such work, materials or equipment, and such determination and agreement shall be final and conclusive upon the Contractor.

It is understood, however, that the amount of work, materials, or equipment required by the Contract shall not, in accordance with the above provisions referring to additions and omissions, be increased or diminished so as to substantially alter the general character or extent of the Contract. Any and all pertinent changes shall be expressed in a written supplement to this Contract prior to implementation of such changes.

10. **Service Delivery.** Award of this Contract is contingent upon Contractor's ability to timely deliver the Services as outlined in the *Scope of Services*. In the event of breach of this clause, the District reserves the right to terminate this Contract without liability by giving an immediate notice and to charge the Contractor with any loss incurred as a result of the Contractor's failure to make the delivery within the time specified.

11. **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.

**12. Insurance Requirements.** See *Exhibit 2*.

**13. Small/Micro Business Enterprise (SBE/MBE) Goal**

- A. The District seeks to utilize Small Business Enterprises (SBE), including Disadvantaged Business Enterprises (DBE) and Micro Business Enterprises (MBE) to the extent permissible by law, when such businesses are available and the price of their goods, material or services sought is reasonable and competitive in the marketplace.
- B. This project has no specific goal for SBE participation.
- C. The Contractor must promptly notify the District prior to terminating, replacing, or reducing scope of a DBE subcontractor performing work related to this contract; obtain written authorization from the District's Contracts Compliance Department to terminate, replace, or reduce scope of a DBE firm, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work if granted authorization. The contractor may not terminate, replace, or reduce scope of a DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written authorization from the District.

**14. 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.

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

**15. 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 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 work product, pleadings, 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 Contract 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 Contract are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Contract do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

**16. Intellectual Property Rights.**

- 16.1 In case of an alleged or actual claim, demand, action, suit, litigation proceeding or the like of a third party against the District, its Board of Directors, officers, business partners or staff (together "District Indemnitees") alleging that an ordered Product or its use infringes or misappropriates any third party's patent, trademark, trade secret, copyright or other intellectual property right, Contractor shall (i) indemnify, defend and hold harmless the District Indemnitees from and against any and all liabilities, losses, judgements, settlements, damages, costs and expenses (including attorney's fees) and the like arising out of or being related to any such intellectual property claim, and (ii) at its costs acquire for the District a right to use the Product or, in case this is not possible at reasonable conditions, modify the Product to become non-infringing or to deliver an equivalent non-infringing Product. If both remedies set forth in (ii) of the previous sentence are impossible, the District Indemnitees shall be entitled to return the affected Products against payment of the price for which



Contractor has sold these Products without any reduction even if the respective District Indemnitee has not purchased the affected Product directly from Contractor.

16.2 Contractor's obligations pursuant to this Section 16 shall not apply to the extent that: (i) customized software product is produced to the District's detailed design and the District's design is the cause of the claim; or (ii) product(s) are used in combination with equipment, software or other products not supplied, required or recommended by Contractor and such infringement would not have occurred but for such combination.

16.3 The District shall inform Contractor without unreasonable delay in writing of any claims related to protective rights as mentioned in Section 9, and Contractor shall be given the opportunity to take over the defense against such intellectual property claims.

17. **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 name or logo or any variation thereof for advertising or publicity purposes without specific prior written permission from the District's Designated Representative.
18. **Evaluation of Contractor's 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.
19. **Most Favored Customer.** Contractor represents the prices charged the District do not exceed existing prices to other customers for the same or substantially similar items or services for comparable quantities under similar terms and conditions.
20. **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.
21. **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.
22. **Licensing and Certifications.** Contractor is required to obtain all applicable business and professional licenses required to perform work within the City of Oakland, Alameda County and the State of California.
23. **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 employee; (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.
24. **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.
25. **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 attachment or amendment to the contract.

26. **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.
27. **No Assignment.** This Contract is personal to each of the parties hereto. The Contractor shall not assign any of its rights nor transfer, convey, sublet or otherwise dispose of any of its obligations under this Contract without the prior written consent of the District. The written consent must appear on the contract or be attached to it.
28. **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, 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 services to the District or to provide the District with replacement services. In either case, the District shall reimburse Contractor for reasonable costs incurred by Contractor in order to provide the replacement services. If the Force Majeure Event continues exceeds thirty (30) days, the District may pause or terminate the Contract for Convenience in accordance with Section 29 of this Contract.

## 29. 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. No new work shall be undertaken by Contractor and no new deliveries will be made after the date of receipt of such termination 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.

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 funds or if funds are not otherwise made available for continued performance for any fiscal year of this Contract after the first fiscal year, 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 funds for the continuation of this Contract, the Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the District's or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the District from future performance of the Contract, but not from their rights and obligations existing at the time of termination. Upon termination of this Contract, the District shall pay the Contractor only its allowable costs to the date of termination. Contractor shall be entitled to payment for work performed satisfactorily and reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. 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. The District shall notify the Contractor, in writing, as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

In the event of termination under the above Termination conditions, Contractor will be paid for those services performed or deliveries made pursuant to this Contract to the satisfaction of the District up to the effective date of termination. In no event will the District be liable for costs incurred by Contractor after receipt of notice 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. Contractor shall have the right to remove any of its equipment within sixty





(60) days of the termination date.

30. **Suspension of Work.** The District unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Director may determine to be appropriate for the convenience of the District. Upon suspension of Work, the District shall pay the Contractor its allowable costs to the date of suspension. Contractor shall be entitled to payment for work performed satisfactorily and reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract.
31. **Dispute Resolution.** The District and Contractor agree to attempt in good faith to resolve all disputes arising out of or under this Contract or the respective rights and liabilities of the Parties 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. In case any disagreement, difference or controversy still cannot reach mutual agreement thereon, then the Parties agree to use an alternative dispute resolution process such as mediation and/or arbitration to resolve their dispute prior to initiating any formal action in court. Such disagreement, difference, or controversy shall be determined by binding arbitration, according to the rules of the American Arbitration Association with said arbitration being held in Oakland, California. The costs and expenses of any Arbitration shall be borne and paid as the Arbitrator(s) shall, by their award, direct. The submission to Arbitration is hereby made a condition precedent to the institution of any action at law or in equity with respect to the controversy involved; and such action at law or in equity shall be restricted solely to the subject matter of the challenge of such award on the grounds and only in the manner permitted by law. Unless otherwise directed by the District, the Contractor shall continue performance under this Contract 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 is 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.
32. **Continuity of Services.** Contractor acknowledges that the timely and complete performance of its obligations pursuant to this Contract is critical to the business and operations of the District. Accordingly, in the event Contractor or its affiliate is unwilling or unable to perform the Services hereunder as contracted, the District shall have the right to engage a Third Party to perform such duties until such time as Contractor is able to fulfill the duties as contracted.
33. **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. 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.

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

**35. Claims Process (Public Contract Code § 9204).** A claim is a separate demand by the Contractor for one or more of the following: (i) a time extension for relief from damages or penalties for delay, (ii) payment of money or damages arising from work done pursuant to the contract for a public work, or (iii) payment of an amount disputed by the District. A claim must be sent by registered or certified mail, and upon receipt of a claim sent by registered or certified mail, the District will review it and, within forty-five (45) days, provide a written statement identifying the disputed and undisputed portions of the claim. The forty-five (45) day period may be extended by mutual agreement or, until after the next Board of Directors meeting, if the Board must approve the disputed and undisputed portions of the claim. Any payment due on the undisputed portion of the claim must be processed within sixty (60) days.

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

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

To read the full AB 626 language, please refer to: [http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab\\_0601-0650/ab\\_626\\_cfa\\_20160627\\_172317\\_sen\\_comm.html](http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0601-0650/ab_626_cfa_20160627_172317_sen_comm.html).

**36. Confidentiality.** In the course of performing work under this Contract, Contractor may have access to confidential information of the District, which may be exempt from public disclosure by law. Contractor acknowledges such information is secret and confidential and shall not disclose any such confidential information, directly or indirectly, or use it in any way either during the term of this Contract or at any time thereafter, except as required in the course of its performance in accordance with this Contract.

**37. Conflict of Interest.** By signing this Contract, Contractor warrants and represents that it presently has no interest, direct or indirect, and agrees that it will not acquire any interest in any manner or degree with the performance of the services called for under this Contract 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 in the performance of this Contract, it will not knowingly employ any person having such an interest in the performance of this Contract and that the Contractor receives no commissions or other payments from parties other than the District as a result of work performed hereunder. Failure to comply with this provision and/or violation of this provision may be basis for termination of this Contract for default and the collection of any applicable damages.

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 solicitation process or the term of the Contract, Contractor and its employees may be required to disclose financial interests.

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.

38. **Statement of Economic Interest.** The District's Conflict of Interest Code designates some Contractors and Consultants as a category of persons who must complete *Form 700, Statement of Economic Interest*, at the beginning of the contract period and again at the termination of the contract. Depending on the nature of the work performed, selected Contractors may be required to complete the *Form 700* before work may begin.
39. **Prohibited Interests.** By signing this Contract, Contractor represents and warrants that neither the General Manager nor any Director, officer, or employee of the District is in any manner interested, directly or indirectly, in the bid or in the contract which may be awarded under it, or in any expected profits to arise therefrom (*State of California Government Code section 1090 et seq.*). 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 Contract 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 Contract. Contractor further covenants that in the performance of this Contract 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.)*.
40. **No Collusion Declaration.** By signing this Contract, Contractor represents and warrants that its proposal is genuine and not a sham or collusive or made in the interest of or on behalf of any person not named therein; that Contractor has not directly induced or solicited any other person to submit a sham proposal or any other person to refrain from submitting a proposal; and that Contractor has not in any manner sought collusion to secure any improper advantage over any other person submitting a proposal.

**Penalty for Collusion.** If, at any time, it shall be found that the person, firm or corporation to whom a contract has been awarded has, in presenting any proposal(s), colluded with any other party or parties, then the contract so awarded shall be null and void and the Contractor and its bondsmen shall be liable to the District for all loss or damage which the District may suffer thereby and the District may advertise for a new contract for said labor, supplies, materials, or equipment.

41. **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.

42. **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.
43. **Americans With Disabilities Act (ADA).** The Offeror agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap,



be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this contract.

44. **Changes to Federal Requirements.** Offeror shall, at all times, comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (24) dated October 1, 2017) between the District and FTA, as they may be amended or promulgated from time to time during the term of this contract. Offeror's failure to so comply shall constitute a material breach of this contract.
45. **Access to Third-Party Contract Records.** Offeror shall provide all authorized representatives of the District, the FTA Administrator, the State Auditor and the Comptroller General of the United States access to any books, documents, papers and records of the Offeror which are directly pertinent to this Contract for the purposes of making audits, copies, examinations, excerpts and transcriptions. Offeror also agrees to maintain, and require its subcontractors of all tiers, to maintain, all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Offeror agrees to maintain the same until the District, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. The Offeror agrees to permit the FTA and its Offerors to access the sites of performance under this contract as reasonably may be required.
46. **False Statements or Claims Civil and Criminal Fraud.** The Offeror acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S DOT Regulations "Program Fraud Civil Remedies", 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Offeror certifies or affirms the truthfulness and accuracy of any statement it has made, it makes or it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Offeror further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Offeror to the extent the Federal Government deems appropriate.

The Offeror also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by the FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Offeror, to the extent the Federal Government deems appropriate.

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

47. **Assignability.** Any public agency (i.e., city, district, public authority, public agency, municipality, and other political subdivision, or any Federal Transit Administration-funded entity) shall have the option of participating in any award made as a result of this proposal at the same prices, and terms and conditions. District reserves the right to assign all or any portion of the vehicles awarded under this Contract including option quantities. This assignment, should it occur, shall be agreed to by District and the contractor. Once assigned, each agency will enter into its own contract and be solely responsible to contractor for obligations to the buses assigned. District's right of assignment will remain in force over the *five (5)* year period or until completion of the contract to include options, whichever occurs first. District shall incur no financial responsibility in connection with contracts issued by another public agency. The public agency shall accept sole responsibility for placing orders or payments to the Contractor.
48. **Attorney's Fees.** In the event that it becomes necessary for either party to bring a lawsuit to enforce any of the provisions of the Contract, the parties agree that the court having jurisdiction over such dispute shall have the authority to determine and fix reasonable attorney's fees to be paid to the prevailing party.
49. **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.
50. **Governing 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.
51. **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.
52. **Third-Party Beneficiaries.** This Contract is not for the benefit of any person or entity other than the parties.
53. **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.
54. **Entire Contract; Modification.** This Contract, including any attachments, , the solicitation and addenda, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and all such agreements entered into prior hereto are revoked and superseded by this Contract, and no representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements. This Contract may not be changed, modified or rescinded except in writing, signed by authorized representatives of all parties hereto, and any attempt at oral modification of this Contract shall be void and of no effect. 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 A. Hursh  
General Manager

Date

\_\_\_\_\_  
Signature

Date

\_\_\_\_\_  
Printed Name

**Approved as to Form and Content:**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Jill A. Sprague  
General Counsel

Date

\_\_\_\_\_  
Signature

Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

*\*If the Contractor is a corporation, this Contract must be executed by two (2) corporate officers, consisting of: (a) the president, vice president or chair of the board; and (b) 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 2 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 \$1,000,000.00 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.
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 *Code 9* (non-owned), with limit no less than \$1,000,000.00 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 contract 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 contract 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 contract. 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 contract are sufficient to cover the indemnity or other obligations of the Contractor under this contract.

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.



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**ATTACHMENT 1-A**  
**SCOPE OF SERVICES**

1. **INTRODUCTION/BACKGROUND**

The District intends to establish a panel of qualified attorneys and/or law firms, that offers a range of services in a variety of legal specialty areas from which the District can draw as needed. The panel will remain in effect for a base period of two (2) years, with three (3) one (1) year options that may or may not be exercised. Referrals to outside attorneys/law firms will be made through the District's Office of the General Counsel. The District may either refer a matter in its entirety to an attorney/law firm on the panel or elect to associate an outside attorney/law firm from the panel as co-counsel. The District reserves the right to assign a legal matter or case to a specific attorney and/or remove any attorney or law firm from the panel, without recourse, whose services are deemed unsatisfactory.

2. **SCOPE OF SERVICES**

AC Transit is seeking proposals from qualified attorneys and law firms to provide legal services to the District on an as-needed basis.

The majority of legal services required by the District are provided in-house by the staff attorneys of the District's Office of the General Counsel. However, from time to time, the District refers legal matters to outside attorneys/law firms for handling, where either special legal expertise is required, a second opinion is desired, or there is a need for separate counsel.

3. **LEGAL SERVICES REQUIRED**

The District is seeking proposals from attorneys/law firms directed to one or more of the following areas of legal practice:

A. **Public Sector Labor/Employment Law:**

- Collective bargaining, including familiarity with public sector state and federal labor law (e.g. NLRA)
- Labor arbitration proceedings
- 13(c) issues
- Federal, state and local discrimination and leave laws
- Federal, state and local wage and hour laws
- Civil Rights
- Occupational, safety and health regulatory law (OSHA)
- Benefits
- Employment contracts and agreements
- USERRA
- Employment litigation

B. **Public Entity Law:**

- California Public Records Act and Brown Act
- Conflicts of interest laws and regulations
- Redistricting
- Ethics
- Election law
- Fair Political Practices Commission investigations
- Transit District Law
- Public Transit and Transportation, including DOT and FTA regulations
- Title VI and Environmental Justice
- ADA
- Litigation

C. **Public Entity Procurement and Contracting:**

- Federal Transit Administration (FTA) procurement and contracting regulations, guidelines and best practices
- California Public Contract Code requirements
- Negotiated procurement under federal and state law
- Litigation

D. **Public Works Contracting:**

- Federal and state public works contracting requirements and regulations
- Design/build projects
- Project Labor Agreements
- Litigation

E. **Litigation:**

- Automobile and premises liability, including Subrogation
- California Tort Claims Filing Act
- Personal Injury Defense
- Class Actions

F. **Financing:**

- Expertise in public entity financing mechanisms, including Certificates of Participation (COPS), Revenue Anticipation Notes (RANS), cross border leasing, lease to service transactions, etc.
- Parcel taxes
- Bond issuance





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- Lines of Credit
  - Borrowing instruments
  - Banking
  - Litigation
- G. Tax Law:
- Federal and state business tax issues
  - Taxability of settlements
  - Employee compensation tax issues
  - Charitable/non-profit corporation law
  - Litigation
- H. Bankruptcy Law:
- Provision of advice in bankruptcy matters
  - Representation of District in litigation involving bankruptcy
- I. Intellectual Property Law:
- Patent/copyright law
  - Registration of service marks
  - Litigation
- J. Environmental Law and Litigation:
- NEPA; CEQA
  - Federal and state air and water quality laws and regulations
  - Toxic and hazardous waste disposal laws and regulations and permitting
  - Comprehensive Environmental Response, Compensation and Liability Act
    - Resource Conservation and Recovery Act
  - Bus Regulations
  - Litigation
- K. Workers' Compensation Law:
- Representation of the District in Workers' Compensation litigation (*The District contracts out litigation of Workers' Compensation cases and referrals are made by the District's 3rd Party Administrator (TPA) provider*)
  - Provision of legal advice and opinions in Workers' Compensation matters
  - Subrogation
  - Excess litigation/recovery
- L. Real Estate
- Sales, purchases, leases
  - Eminent Domain
  - Real Estate Acquisition Management Plans
  - Purchase Agreements
  - Easement Agreements
  - Third Party Agreements
- M. Construction
- Review of Cooperative Agreements for Engineering Support
  - Review of Cooperative Agreements for Construction Support
  - Review of Operations & Maintenance Agreements
  - Utility Relocation Agreements
  - Construction
  - Review and analysis of construction claims, including Notices of Potential Claims
  - Litigation
- N. Privacy, Data Security, Governance and Information Technology and Litigation
- Data breach response
  - Policy development and compliance
  - Privacy and Security regulations
  - Technology transactions
  - Privacy and Cybersecurity counseling
  - Data Incident Preparedness
  - Internal Investigations and litigation
- O. Pension Law:
- Pension/retirement plan drafting and interpretation (including PEPRA)
  - Tax Qualification
  - Funding pension obligations and mechanisms
  - Litigation



**ATTACHMENT 1-B**  
**CONTRACTOR'S PROPOSAL**