



REQUEST FOR PROPOSALS

IT SERVICES

BUTLER COUNTY REGIONAL TRANSIT AUTHORITY
3045 MOSER COURT., HAMILTON, OH 45011

Request for Proposals (RFP) Cover Page

RFP Issue Date:
January 25, 2021
RFP Title:
IT Services
RFP Number:
2021-001

Issuing & Using Agency:

Butler County Regional Transit Authority
Attn: Procurement
3045 Moser Court
Hamilton, OH 45011

Proposals for Furnishing the Product(s)/Service(s) Described Herein Will Be Received Until:
March 3, 2021 until 3:00 PM (EST)

All Inquiries For Information Should Be Directed To: ISSUING AGENCY, address listed above or purchasing@butlercountyrta.com.

IF PROPOSALS ARE MAILED OR HAND DELIVERED, SEND DIRECTLY TO:

BCRTA Procurement, 3045 Moser Court., Hamilton, OH 45011

The Reference Number, Date and Time of proposal submission deadline, as reflected above, must clearly appear on the face of the returned proposal package.

In Compliance With This Request for Proposals And To All Terms, Conditions, Clauses, and Requirements Imposed Therein and Hereby Incorporated By Reference, The Undersigned Offers And Agrees To Furnish The Goods/Services Described Herein In Accordance With The Attached Signed Proposal Or As Mutually Agreed Upon By Subsequent Negotiation.

Name and Address of Firm:

Zip Code: _____
Telephone: (____) _____
Fax Number: (____) _____
Date: _____

By: _____
(Signature in Ink)
Name: _____
Title: _____
(Please Print)
FEI/FIN Number: _____
E-Mail Address: _____

DISADVANTAGED BUSINESS ENTERPRISE (DBE): () YES () NO

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LEGAL NOTICE

January 25, 2021

REQUEST FOR PROPOSALS
IT Services
RFP # 2021-001

Butler County Regional Transit Authority (BCRTA) is seeking proposals for an **IT Services**. The scope of work/specifications is outlined in the Request for Proposals (RFP). The successful Proposer shall meet the terms and conditions set forth in this document and all other attachments.

The RFP, which includes the procurement schedule, may be obtained by downloading the document from BCRTA's website found at <https://www.butlercountyrta.com/doing-business-with-us/solicitations/> under 'Solicitations'. All interested contractors must register as detailed in the solicitation. All questions should be directed to:

Procurement
Butler County RTA
3045 Moser Court, Hamilton, OH 45011
(513) 785-5023
E-mail: purchasing@butlercountyrta.com

All proposals must be received on or before **March 3, 2021 at 3:00PM (EST)** at the address listed above.

The right is reserved to accept any proposal/bid or any part or parts thereof or to reject any and all proposals/bids. Acceptance of any proposal/bid is subject to concurrence by the Ohio Department of Transportation and the United States Department of Transportation.

Any contract resulting from these proposals is subject to financial assistance contract between BCRTA and the United States Department of Transportation and the Ohio Department of Transportation.

BCRTA hereby notifies all proposers that, in regard to any contract entered into pursuant to this RFP, advertisement or solicitation, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response and will not be subjected to discrimination on the basis of race, color, sex or national origin in consideration for an award.

SECTION 1 – INSTRUCTIONS TO PROPOSERS

A. General Information

The Butler County Regional Transit Authority (BCRTA) is a public transit agency that services Butler County, Ohio with fixed, curb-to-curb on-demand, and paratransit operations. Transit service is operated seven days a week and on average for 18 hours a day. BCRTA utilizes gas and diesel vehicles in either transit buses, cutaways, or vans all equipped to handle ADA devices. Over 500,000 annual passenger trips are taken on BCRTA services.

B. Purpose

BCRTA needs an IT contractor to maintain our server and IT equipment, as well as provide user support, strategic planning, needs analysis when needed.

BCRTA follows a procurement process that ensures free and open competition and requires that prices be verified as fair and reasonable.

C. Solicitation Registration

All interested proposers are **required** to register for this solicitation by completing the *solicitation specific* vendor registration at <https://www.butlercountyrta.com/doing-business-with-us/> listed under the heading for *this solicitation*. Vendors that are already registered to receive general information will NOT be added to the bidders list for this solicitation if this step is not completed.

Only Proposers who register for the solicitation will receive copies of questions and answers and/or any addenda.

D. Proposal Submission

The proposer will submit:

- One (1) original proposal
- Two (2) hard copy proposals
- One (1) electronic PDF of proposal and price sheet on USB storage device
- One (1) sealed pricing sheet

Proposer will submit the Original and hard copies in a sealed envelope or box with the originals of all required certifications and affidavits. Originals shall be clearly marked. Oversize pages used for drawings or similar purposes are allowed. Proposals must set forth full, accurate, and complete information as required by the RFP. Each Proposal, complete with affidavits and certifications, will be bound together with the required RFP Cover Page and all required attachments, excluding pricing. The package containing the Proposal must be clearly marked with the words "**BCRTA IT Services #2021-001**" and the time and date Proposals are due.

BCRTA shall not be responsible for unintentional premature opening of a proposal that has not been properly addressed and identified per the instructions included with this RFP. All proposals are due **NO LATER THAN March 3, 2021 at 3:00PM (EST)**. Proposals received by BCRTA after that date and time will not be opened or considered.

E. Proposal Requirements

Proposals shall be prepared in a clear, concise, and economical manner. Proposals should be bound simply, and sections shall be tabbed to coincide with the sections of the RFP and pages

should be numbered in each section. Price page(s) should be submitted separately in a sealed envelope. Proposals pages shall be numbered sequentially and include a table of contents with headings that references relevant page numbers. There is no page limitation or minimum document size, but any information the Proposer submits is expected to be concise and relevant to the RFP.

Proposals that do not adhere to the required format, are difficult to read or are deemed illegible by BCRTA and may be rejected.

Proposals shall contain the following items and follow the exact sequence outlined below:

1. RFP Cover Page, providing the following information:
 - i. Identification of the Bidder(s), including name, address and phone number of the appropriate contact person at each firm.
 - ii. Signature of a person authorized to bind the proposing firm to the terms of the Proposal.
2. Executive Summary
3. Background and Experience
4. Personnel Resumes
5. References
6. Attachments (Attachments A-H)
7. Additional requirements listed on Attachment A
8. Pricing shall be submitted separately from the technical proposal in a sealed envelope with the original, two (2) copies, and a USB device with the price page in .xlsx format. *Inclusion of pricing information in any other portion of the proposal shall be deemed non-compliant and may be disqualified.*

F. Procurement Schedule

Request for Proposals available:	January 25, 2021
Pre-Proposal virtual meeting:	February 12, 2021, 2:00 PM (EST)
Deadline for questions, clarifications and approved equal requests:	February 22, 2021
Deadline for responses to questions/clarifications and approved equals:	February 26, 2021
Proposals due:	March 3, 2021 3:00 PM (EST)
Evaluation of Proposals:	March 3-10, 2021
Interviews, if needed:	March 4-5, 2020
Recommend Award at Board Meeting:	March 17, 2021

G. Postponement or Cancellation of Request for Proposals

BCRTA reserves the right to cancel, amend, or re-issue this RFP at any time, or change the date and time for submitting proposals, by announcing same prior to the date and time established for Proposal submittal.

H. Addenda

Receipt and review of Addenda by each Bidder must be acknowledged on the Addendum Page (**Attachment D**). All addenda must be signed and returned with each Proposal.

I. Inquiries

The proposer is required to show on all correspondence with BCRTA the following: "BCRTA IT Services #2021-001". Any communication with BCRTA should be written and directed to: Procurement, BCRTA, 3045 Moser Ct, Hamilton, OH 45011. Written communication may also be forwarded via email to purchasing@butlercountyrta.com. Correspondence will not be accepted by any other party.

J. Request for Clarification

All requests for clarifications or changes must be submitted in writing as detailed in section F. Proposers should address such requests to BCRTA, Attention: Procurement Dept., at purchasing@butlercountyrta.com.

Any information given to a proposer concerning the RFP will be furnished to all prospective proposers as an addendum of the RFP if such information is necessary to proposers in submitting proposals on the RFP or if the lack of such information would be prejudicial to uninformed proposers.

K. Interpretation of RFP and Contract Documents

No oral interpretations as to the meaning of the RFP will be made to any Bidder. Any explanation desired by a Bidder regarding the meaning or interpretation of the RFP, scope of work, etc., must be requested in writing on or before the deadline for clarifications (see section F) for a reply to reach Bidders before the submission of their Proposals. Any interpretation or change made will be in the form of an addendum to the RFP, scope of work, etc., as appropriate, and will be furnished as promptly as is practicable to all parties to whom the RFP has been issued by the deadline to address clarifications (see section F). All addenda will become part of the RFP and any subsequently awarded Contract. Oral explanations, statements, or instructions given by BCRTA before the award of the Contract will not be binding upon BCRTA.

L. Approved Equal

In all cases, services and materials must be furnished as specified. Where brand names or specific items are used in the specifications, consider the term "or approved equal" to follow. Any unapproved deviations, exceptions, substitutions, alternates or conditional qualifications contained in a Proposal may be cause for its rejection.

If potential Bidders believe that their product is equal to the product specified, they must submit a written request to BCRTA on the provided form (**Attachment C**) on or before the deadline to submit clarifications, and this request will be approved or rejected by BCRTA on or before the deadline to address clarifications (see section F).

Any request for an approved equal must be fully supported with catalog information, specifications and illustrations, or other pertinent information, as evidence that the substitute offered is equal to or better than the specification. Where an approved equal is requested, the Bidder must demonstrate the equality of this product to BCRTA to determine whether the Bidder's product is or is not equal to that specified.

M. Examination of RFP and Contract Documents

Bidders are expected to examine the scope of services required, specifications, schedules, and all instructions. Failure to do so will be at the Bidder's risk. It is the intent of these specifications to provide services of first quality, and the workmanship must be the best obtainable in the various trades. The services, which the vendor proposes to furnish, must be high quality in all respects. No advantage will be taken by Contractor or vendor in the omission of any part or detail, which goes to make the services complete. All manner of workmanship and material used in the production of the services and not herein contained or specified shall be of the industry standard and shall conform to the best practices known in the industry. Contractor will assume responsibility for all equipment used in the proposed item, whether the same is manufactured by Contractor or purchased ready made from a source outside Contractor's company. It is the sole responsibility of Contractor to read the specifications and understand them.

The submission of a Proposal shall constitute an acknowledgment upon which BCRTA may rely that the Bidder has thoroughly examined and is familiar with the solicitation, including any work site identified in the RFP, and has reviewed and inspected all applicable statutes, regulations, ordinances and resolutions addressing or relating to the goods and services to be provided hereunder. The failure or neglect of a Bidder to receive or examine such documents, work sites, statutes, regulations, ordinances, or resolutions shall in no way relieve the Bidder from any obligations with respect to its Proposal or to any Contract awarded pursuant to this RFP. No claim for additional compensation will be allowed which is based on lack of knowledge or misunderstanding of this RFP, work sites, statutes, regulations, ordinances, or resolutions.

N. Cost of Proposals

BCRTA is not liable for any costs incurred by Bidders in the preparation, presentation, testing, or negotiation of Proposals submitted in response to this solicitation.

SECTION 2 – SCOPE OF WORK

Section 1: Current State Assessment

- 1.0 Evaluate the existing IT environment, including current capabilities and capacity.
- 1.1 Prepare Information Technology research as required.
- 1.2 Review existing hardware, software, and services provided by various firms.
- 1.3 Be familiar with state and federal laws governing public transit agencies.
- 1.4 Counsel and participate in any other Information Technology affairs of interest to the operation of the Authority.
- 1.5 Server Virtualization Assessment will evaluate the applicability of Server Virtualization technologies.
- 1.6 Other services as required.

Section 2: Needs Analysis

- 2.0 Perform risk and intrusion assessment using industry standards, annually.
- 2.1 Network Assessment services should include directory services, critical server performance, SQL, Exchange, security, desktops, network and databases.
- 2.2 Identify problem areas of network that effect operations.
- 2.3 Specific deliverables include: performance baselines, a complete network assessment report, and design recommendations.
- 2.4 Highlight the opportunities and constraints imposed on the IT planning process by the culture and environment.

Section 3: Desktop Support

- 3.0 Provide oversight and engineering of IT environment through hands-on inspection of network resources and complete documentation of recommendations.
- 3.1 Wireless architecture, product selection, deployment, and management.
- 3.2 Desktop virtualization.
- 3.3 Technical support available via telephone, email, and remote desktop 24/7/365.
 - 3.3.1 <20-minute response time for critical items (to be mutually documented).
 - 3.3.2 <24 hours response time for high importance items (to be mutually documented).
 - 3.3.3 <36 hours for low importance items (to be mutually documented).
 - 3.3.4 Contractor will provide clearly documented and up-to-date contact info and procedures to RTA staff within 24 hours of execution of any ensuing agreement and any change in information.
- 3.4 Other services as required.

Section 4: Strategic Plan

- 4.0 Provide a comprehensive IT strategy for infrastructure, architecture, product selection, deployment, and management of ...
 - 4.0.1 Wireless
 - 4.0.2 Firewall
 - 4.0.3 Remote Access VPN
 - 4.0.4 Facility Security
 - 4.0.5 Intrusion Detection System

- 4.0.6 Back Up storage
 - 4.0.7 Computer Emergency Response Team
 - 4.0.8 Integrated Communications
 - 4.0.9 Mobile Onboard Wi-Fi
 - 4.0.10 Ability to subcontract services for a security risk assessment.
 - 4.0.11 Other areas as needed.
- 4.1 Ongoing General Security Consulting as new industry trends evolve.
 - 4.2 Disaster Recovery/Backup solutions/Server Co-location.
 - 4.2.1 vSphere environment shall be replicated to an offsite location capable of performing a failover operation in the event of primary system failure. The system shall provide 32 vCPU and 96GB of RAM with reserved usage 24/7.
 - 4.3 Professional Services for network monitoring, management, and administration.
 - 4.4 Storage Area Network Security.
 - 4.5 Analyze current network for usage trends. ISP- bandwidth, current versus planned need in the future.
 - 4.6 Other services as required.

Section 5: Product Delivery

- 5.0 A shared understanding of the “current state”. This will be developed through presentations and review of the findings.
- 5.1 An assessment of our most critical needs: Prioritized list with descriptions.
- 5.2 A Strategic Plan that identifies and recommends how to implement and direct IT development and improvement that addresses the most critical needs.
- 5.3 Recommend technological solutions to achieve specific strategic objectives and optimal communications.
- 5.4 Documentation
 - 5.4.1 Contractor shall clearly document, in manner consistent with industry standards, and provide to RTA, in a well-organized system, all actions and system changes. Documentation shall include but not be limited to:
 - 5.4.1.1 Hardware configurations
 - 5.4.1.2 VM configurations
 - 5.4.1.3 Server configurations
 - 5.4.1.4 Domain configurations and settings
 - 5.4.1.5 Usernames and passwords
 - 5.4.1.6 Printer and Copier Network configuration
 - 5.4.1.7 Wireless configurations
 - 5.4.1.8 Workstation configurations and settings
 - 5.4.1.9 Other areas requested by RTA

SECTION 3 – PROPOSAL SUBMISSION PROVISIONS

A. Modification or Withdrawal of Proposals Prior to Submittal Date and Late Proposals

Not later than twenty-four (24) hours before the time set for Proposal opening, a Bidder may request to withdraw or modify its Proposal. Such a request must be made in writing by a person with authority as identified on the RFP Cover Page, provided their identity is made known and a receipt is signed for the Proposal. All Proposal modifications shall be made in writing executed and submitted in the same form and manner as the original Proposal. Any Proposal or modification of Proposal received at BCRTA's office designated in the solicitation after the exact time specified for Proposal receipt will not be considered.

B. Errors and Administrative Corrections

BCRTA will not be responsible for any errors in Proposals. Bidders will only be allowed to alter Proposals after the submittal deadline in response to requests for clarifications by BCRTA. BCRTA reserves the right to request an extension of the procurement period from Bidders.

BCRTA reserves the right to allow corrections or amendments to be made that are due to minor administrative errors or irregularities, such as errors in typing, transposition or similar administrative errors. Erasures or other changes or entries made by the Bidder must be initialed by the person signing the Proposal.

C. Compliance with RFP Terms and Attachments

BCRTA intends to award a Contract based on the terms, conditions, and attachments contained in this RFP. Bidders are strongly advised to not take any exceptions. Bidders shall submit Proposals which respond to the requirements of the RFP. An exception is not a response to an RFP requirement. If an exception is taken, a "Notice of Exception" must be submitted with the Proposal. The "Notice of Exception" must identify the specific point or points of exception and provide an alternative.

Proposers are cautioned that exceptions to the terms, conditions, and attachments may result in rejection of the Proposal.

D. Collusion

The Bidder guarantees that the Proposal submitted is not a product of collusion with any other Bidder, and no effort has been made to fix the Proposal price of any Bidder or to fix any overhead, profit, or cost element of any Proposal price.

If BCRTA determines that collusion has occurred among Bidders, none of the Proposals from the participants in such collusion shall be considered. BCRTA's determination shall be final.

E. Pricing, Taxes, and Effective Date

The price to be quoted in any Proposal will include all items of labor, materials, tools, equipment, delivery, and other costs necessary to fully meet the requirements of BCRTA. Any items omitted, which are clearly necessary for the completion of this project, will be considered a portion of such specifications, although not directly specified.

Proposals shall include all freight charges, FOB to the designated delivery points.

BCRTA is exempt from payment of Federal Sales, Excise and Transportation Tax, and the Ohio Sales, Excise and Use Tax. proposers will not include these taxes in their price(s). All other government taxes, duties, fees, licenses, permits, royalties, assessments, and charges shall be included in the proposed price.

In the event of a discrepancy between the unit price and the extended amount for a required item, the unit price will govern. The price quoted by the proposing firms will not change for a period of ninety (90) days, beginning from the date the Proposal is opened.

F. Rejection of Proposals

Any Proposal failing to conform to the essential requirements of the RFP, such that it materially affects price, quantity, quality, or delivery of the items offered, or in which the bidder imposes conditions modifying the requirements of the RFP or limiting its liability to BCRTA in a way that gives the bidder an advantage over others, will be rejected as non-responsive. Minor informalities, errors that do not go to the substance of a Proposal, may be waived. A low bidder may be requested to delete certain conditions from its Proposal, provided they do not go to the substance of the Proposal. If the bidder fails to furnish a Proposal guarantee required as a condition of the Proposal, the Proposal must be rejected.

G. Rejection of All Proposals

When it is determined to reject all Proposals, all bidders will be notified that all Proposals were rejected stating the reasons for rejection.

H. Additional Information, Rejection

BCRTA reserves the right to request additional information from any Proposer, or none. It also reserves the right to reject any and all proposals without prior notice; to waive informalities and technicalities; to extend deadlines without notice; to negotiate directly with only those respondents deemed to be qualified according to the criteria on this RFP; and to enter into one, more than one, or no contracts as it shall deem to be in its best interests.

I. Terminology

The terms "proposal", "bid", "Request for Proposals", "RFP", "bidder", "proposer", "contractor" and the like are used interchangeably throughout this RFP. Similarly, the terms "BCRTA", "RTA", "buyer", "purchaser" and "Authority" are used interchangeably.

J. Protests

1. General

Protests may be made by prospective Proposers, vendors or proposers whose direct economic interest would be affected by award of a contract or by failure to award a contract. BCRTA will consider all protests requested in a timely manner regarding the award of a contract, whether submitted before or after an award.

All protests are to be submitted in writing to:

Butler County RTA
3045 Moser Court
Hamilton, Ohio 45011

Protest submissions should be concise, logically arranged, and clearly state the grounds for protest. A protest must include at least the following information:

- i. name, address, and telephone number of protestor,
- ii. identification of contract solicitation number,
- iii. a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents,
and
- iv. a statement as to what relief is requested.

Protests must be submitted to BCRTA in accordance with these procedures and time requirements, must be complete and contain all issues that the protestor believes relevant.

2. Protests Before Proposal Opening

Protests alleging restrictive specifications or improprieties which are apparent prior to Proposal opening or receipt of proposals must be submitted in writing at the address above and must be received at least seven (7) days prior to Proposal opening or closing date for receipt of Proposals or proposals. If the written protest is not received by the time specified, Proposals may be received and award made in the normal manner unless BCRTA determines that remedial action is required. Oral protests not followed up by a written protest will be disregarded. BCRTA may request additional information from the appealing party and information or response from other bidders, which shall be submitted to BCRTA not less than ten (10) days after the date of BCRTA's request. So far as practicable, appeals will be decided based on the written appeal, information and written response submitted by the appealing party and other bidders. In failure of any party to timely respond to a request for information, it may be deemed by BCRTA that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response, and in such a case, the protest will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent evaluation that BCRTA deems appropriate, BCRTA shall either:

- i. Render a final decision, or
- ii. At the sole election of BCRTA, conduct an informal hearing at which the interested parties will be afforded opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following the informal hearing, if one is held, the BCRTA will render a decision, which shall be final, and notify all interested parties thereof in writing but no later than ten (10) days from the date of informal hearing.

3. Protests After Proposal/Proposal Opening/Prior to Award

Protests against the making of an award by the BCRTA must be submitted in writing to BCRTA and received within seven (7) days of the award by the BCRTA. Notice of the protest and the basis therefore will be given to all bidders or proposers. In addition, when a protest against the making of an award by the BCRTA is received and it is determined to withhold the award pending disposition of the protest, the bidders or proposers whose Proposals or proposals might become eligible for award shall be requested, before expiration of the time for acceptance, to extend or to withdraw the Proposal. Where a written protest against the making of an award is received in the time period specified, award will not be made prior to seven (7) days after resolution of the protest unless BCRTA determines that:

- i. The items to be purchased are urgently required.
- ii. Delivery or performance will be unduly delayed by failure to make award promptly.

- iii. Failure to make award will otherwise cause undue harm to BCRTA or the federal government.
- 4. Protests After Award

In instances where the award has been made, the Contractor shall be furnished with the notice of protest and the basis therefore. If the contractor has not executed the contract as of the date the protest is received by BCRTA, the execution of the contract will not be made prior to seven (7) days after resolution of the protest unless BCRTA determines that:

 - i. The items to be purchased are urgently required,
 - ii. Delivery or performance will be unduly delayed by failure to make award promptly, or
 - iii. Failure to make award will otherwise cause undue harm to BCRTA or the federal government.
- 5. Decision

Any decision pertaining to a protest following the guidelines contained in this section is final.
- 6. Protests to Federal Transit Administration (FTA)

Under certain limited circumstances, an interested party may protest to the FTA the award of a contract pursuant to an FTA grant. FTA's review of any such protest will be limited to:

 - i. Alleged failure by BCRTA to have written protest procedures or alleged failure to follow such procedures, or
 - ii. Alleged violations of specific federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that federal regulation.
 - iii. Protestors shall file a protest with FTA not later than five (5) working days after BCRTA renders a final decision under the BCRTA protest procedure. In instances where the protestor alleges that BCRTA failed to make a final determination on the protest, the protestor shall file a complaint with FTA no later than five (5) Federal working days after the protestor knew or should have known of BCRTA's failure to render a final determination in the protest.
- 7. Submission of Protest to FTA

Protests submitted to FTA should be submitted to the FTA Region 5 Office in Chicago, Illinois with a concurrent copy to BCRTA. The protest filed with FTA shall:

 - i. Include the name and address of the protestor
 - ii. Identify the BCRTA project number and the number of the contract solicitation
 - iii. Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow BCRTA's protest procedures, or the alleged failure to have procedures, and be fully supported to the extent possible
 - iv. Include a copy of the local protest filed with BCRTA and a copy of the BCRTA decision, if any.

SECTION 4 - PROPOSAL EVALUATION & CONTRACT AWARD

A. General

BCRTA shall employ the scored-criteria based selection in a negotiated purchase method in making the award for this procurement. Experience, technical capacity, implementation plan, and price information will be evaluated. Proposers will be required to submit supporting documentation on the technical aspects and cost. The Evaluation Committee may elect to interview proposers in order to clarify their proposals and/or for the Proposers to make oral presentations. If interviews, presentations, or negotiations are held, the evaluation team may reevaluate the proposals of those firms interviewed. BCRTA expects all offerors to fully cooperate with its evaluation process. The contract will be awarded to the responsive and responsible bidder with the highest score that is in the best interest of BCRTA.

Due to COVID-19 related restrictions and policies, BCRTA may ask providers to do a virtual interview instead of in-person at this time. All correspondence will come from the BCRTA Procurement staff for interview scheduling.

B. Evaluation of Proposals

The Evaluation Committee will evaluate the proposals in accordance with the criteria set forth below. The total evaluation points, as separately determined by each team member, will be added and each proposer will be ranked in numerical sequence, from the highest to the lowest score. BCRTA may then select the proposal that is considered to be the most advantageous to BCRTA.

Scored Criteria	Weighting
Experience of Personnel	30%
Total Contract Price (Based on Attachment B submission)	20%
Experience – Capabilities (DBE Participation)	20%
Experience – Similar Organizations	20%
Quality of Proposal	10%

C. Eligibility for Award

1. In order to be eligible for award, Bidders must be responsive and responsible.
2. Responsive Proposals are those complying in all material aspects of the solicitation, both as to the method and timeliness of submission and as to the substance of the resulting Contract. Proposals that do not comply with all the terms and conditions of the solicitation may be rejected as non-responsive.
3. Responsible Bidders are those prospective Proposers who, at a minimum, must:
 - i. Have adequate financial resources, as required during performance of the Contract.
 - ii. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.
 - iii. Have a satisfactory record of past performance.
 - iv. Have necessary technical capability to perform.

- v. Certify that they are not on the U.S. Comptroller General's list of ineligible Proposers.
- vi. Are qualified as a manufacturer or regular provider of the equipment being offered.
- vii. Are otherwise qualified and eligible to receive an award under applicable laws and regulations.

D. Single Proposal Response

BCRTA may award a contract to a single bidder provided that an analysis can be completed which documents the price is fair and reasonable. Price analysis will be used when price reasonableness cannot be established based on catalog or market price of a commercial product sold in quantity or set by law or regulation. A cost analysis is required in all other cases of single Proposal evaluation.

FTA Circular 4220.1F specifies that single Proposals must be considered as non-competitive negotiations, and negotiated procurement procedures must be followed.

E. Cost or Price Analysis

BCRTA reserves the right to conduct a cost or price analysis for any purchase. BCRTA may be required to perform a cost analysis when competition is lacking for any purchase. Sole source procurements which result in a single Proposal being received will be subject to a cost analysis which will include the appropriate verification of cost data, the evaluation of specific elements of costs and the projection of data to determine the effect on Proposal prices. BCRTA may require a Pre-Award Audit and potential Proposers shall be prepared to submit data relevant to the proposed work which will allow BCRTA to sufficiently determine that the proposed price is fair, reasonable, and in accordance with Federal, State, and local regulations. Procurements resulting in a single Proposal will be treated as a negotiated procurement and BCRTA reserves the right to negotiate with the single Bidder to achieve a fair and reasonable price. If a negotiated price cannot be agreed upon by both parties, BCRTA reserves the right to reject the single Proposal. Contract change orders or modifications will be subject to a cost analysis.

F. Contract Award

Contract award, if any, will be made by BCRTA to the responsible Proposer whose proposal best meets the requirements of the RFP, and will be the most advantageous to BCRTA with respect to the criteria listed above, as evaluated by BCRTA.

The proposals will be evaluated by a Selection Committee established by the RTA. Proposals will be evaluated on the criteria noted above.

RTA reserves the right to reject any or all proposals, to accept other than the lowest price proposal, to negotiate separately with any source whatsoever, and to accept the proposal considered to be most advantageous to the RTA. The RTA reserves the right to select the contractor on the basis of proposals received without seeking further information or clarification from proposers.

Upon review of the proposals, the RTA staff will designate the most qualified proposers as finalists. These finalists may be invited to make an oral/visual presentation and participate in a question-and-answer session to clarify their proposal with the RTA Selection Committee members. If interviews or presentations are held, the Selection Committee may re-evaluate the proposals of those firms.

If negotiations are held, they will be held with all proposed finalists in the competitive range. The RTA staff would then negotiate with the most highly qualified firms, as evidenced by the ranking

given a Proposer by the Selection Committee.

Following the negotiations, each of the proposers in the competitive range will be afforded the opportunity to amend their proposal and submit their best and final offer. The best and final offers will then be evaluated using the same criteria as for the initial proposals, and the rankings adjusted. If there is one (1) proposal that is the most advantageous offer for the RTA, then an award may be made to that proposer. If not, the RTA reserves the right to request another best and final offer.

If the RTA staff is unable to negotiate a satisfactory contract with the first-ranked proposer at a fair and reasonable price, negotiations will be formally terminated. Negotiations would be undertaken with the second-ranked proposer, and so on, until a satisfactory contract could be negotiated.

The negotiated contract recommendations would then be presented to the RTA Board of Trustees for approval.

Contract award will occur when BCRTA signs the Contract and/or issues a purchase order. No other act of BCRTA shall constitute Contract award. The Contract will establish the Contract value and incorporate the terms of this document but will not be the authorization for Contractor to proceed.

G. Execution of Contract and Notice to Proceed

The Proposer to whom BCRTA intends to award the Contract shall sign the Contract and return it to BCRTA. Upon authorization by BCRTA's Board of Trustees, or designee, the Contract will be countersigned. Upon receipt by BCRTA of any required documentation and submittals by the Proposer, a Notice to Proceed may be issued, if appropriate.

SECTION 5 – GENERAL TERMS & CONDITIONS

A. Assignability

BCRTA reserves the right to assign all or any portion of the award under this contract including option quantities. BCRTA's right of assignment will remain in force over the specified contract period or until completion of the contract to include options, whichever occurs first.

The terms and provisions of the Contract Documents shall be binding upon BCRTA and the Contractor and their respective partners, successors, heirs, executors, administrators, assigns and representatives. The rights and obligations of the Contractor under the Contract may not be transferred, assigned, sublet, mortgaged, pledged, or otherwise disposed of or encumbered in any way. The Contractor may subcontract a portion of its obligations to other firms or parties but only after having obtained the written approval by BCRTA of the subcontractor, which approval shall not be unreasonably withheld. BCRTA may assign its rights and obligations under the Contract to any successor to the rights and functions of BCRTA or to any governmental agency to the extent required by applicable laws and governmental regulations or to the extent BCRTA deems necessary or advisable under the circumstances.

B. Indemnifications

The Contractor shall indemnify and save harmless RTA, its trustees, officers and employees from and against all loss, costs, liability, damage and expense whether direct, consequential or incidental, for personal injury and for property damage, such loss, costs, liability, damage and expense arising out of, or resulting in whole or in part, directly or indirectly, from work or operations under the contract but not limited to the acts, errors, omissions and negligence of Contractor's employees and agents, except to the extent of liability imposed due to RTA's own negligence.

C. Laws of Ohio

The rights and duties of the parties hereto shall be determined by the laws of the State of Ohio, and to that end the contract shall be construed and considered as a contract made and to be performed in the County of Butler, Ohio.

D. Defective Work, Materials or Services

When and as often as BCRTA determines that the work, materials, or services furnished under the Contract are not fully and completely in accordance with any requirement of the Contract, it may give notice and description of such non-compliance to Contractor. Within seven (7) calendar days of receiving such written notification, Contractor must supply BCRTA with a written detailed plan which indicates the time and methods needed to bring the work, materials, or services within acceptable limits of the Contract. BCRTA may reject or accept this plan at its discretion. In the event this plan is rejected, the work, materials, or services will be deemed not accepted and returned to Contractor at Contractor's expense. This procedure to remedy defects is not intended to limit or preclude any other remedies available to BCRTA by law, including those available under the Uniform Commercial Code.

E. Contract Term

The term of any Contract arising from this RFP shall be for the duration of contract which shall be THREE (3) YEARS AND TWO (2) OPTION YEARS commencing in 2021. The contract will be awarded to one (1) firm with an effective date upon execution of the contract.

F. Option to Extend the Term of the Contract

The Butler County Regional Transit Authority may extend the term of this contract by written notice to the Contractor within 30 days, provided that the RTA shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the RTA to an extension. If the RTA exercises this option, the extended contract shall be considered to include this option provision. The total duration of this contract, including the exercise of any options under this clause, shall not exceed 60 months.

G. Insurance

The Contractor shall maintain, at its own expense, throughout the period of the Contract and any extensions thereof and provide the following minimum insurance coverages of the types and in the amounts described below that are applicable to the scope of work being performed:

1. **Worker's Compensation and Employer's Liability Insurance.** Contractor must carry Workers' Compensation Insurance (including occupational disease) in compliance with Workers' Compensation statutes of any applicable jurisdiction in which the Work is to be performed. For the attainment of Workers Compensation in monopolistic states, including Ohio, coverage must be secured through the state fund.

If Contractor is a qualified self-insurer in compliance with the laws of the state, this is also acceptable. A certificate of compliance from the appropriate workers' compensation bureau or board must be provided with the certificate of insurance.

- Part A – Statutory
- Part B – Employers Liability
 - Bodily Injury by Accident \$500,000
 - Bodily Injury by Disease (Policy Limit) \$500,000
 - Bodily Injury by Disease (Each Employee) \$500,000

Contractor must also carry Employer's Liability Insurance with minimum limits of \$1,000,000 each accident; \$1,000,000 for disease (per employee); and \$1,000,000 for disease (policy limit). This policy must include Ohio "Stop Gap" coverage, including coverage for "substantially certain" claims.

2. **Commercial General Liability Insurance.** Contractor must carry Commercial General Liability Insurance written on ISO form CG 00 01 10 01 (or its equivalent) with limits of \$1,000,000 per occurrence and in the aggregate.
3. **Commercial Auto Liability Insurance.** Contractor shall carry Commercial Automobile Liability Insurance covering all owned, leased and non-owned vehicles used in connection with the work to be performed under this contract, with limits of not less than \$1,000,000 combined single limit per accident for bodily injury and property damage.
4. **Professional Liability Insurance.** Professional shall carry Professional Liability/Errors & Omissions/Malpractice Insurance in an amount of no less than \$1,000,000 per occurrence and in the aggregate.
5. **Fidelity Bond/Crime.** If Professional or its employees will be on the premises of BCRTA in connection with performance of work under this contract, Professional shall carry no less

than \$1,000,000 in Third Party Crime Coverage for the benefit of BCRTA in the event of theft or other intentional harm to BCRTA's property by Professional's employees.

6. **Requirements Common to All Policies.** Contractor shall issue certificates of insurance to BCRTA in advance of any contract execution naming Butler County Regional Transit Authority as Additional Insured.

H. Payment Procedures

Payments for products delivered or services performed shall be made after presentation of Contractor's invoices to BCRTA. Such invoices shall be computed in accordance with the fee schedule agreed to by BCRTA and Contractor, and incorporated into the final contract, and are due and payable within thirty (30) calendar days of receipt of a correct invoice as agreed upon by BCRTA. Each invoice shall contain Contractor's list of products or services delivered. Contractor agrees to supply with each invoice, additional information as may be requested by BCRTA.

Invoices should clearly identify the BCRTA purchase order number and any prompt payment discount offered to BCRTA for paying within ten (10) days of receipt. BCRTA may, at any time, conduct an audit of any and/or all records kept by the Contractor for this project. Any overpayment uncovered in such an audit may be charged against the Contractor's future invoices. BCRTA may withhold payment for services it believes were improper, failed to meet with project specifications, or are otherwise questionable. Invoices should be submitted on a monthly basis to: Butler County RTA, Attn: Accounts Payable, 3045 Moser Ct., Hamilton, OH 45011

SECTION 6 – FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS

A. Incorporation of FTA Terms

The following provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause BCRTA to be in violation of the FTA terms and conditions.

B. No Obligation by Federal Government

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

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

C. Program Fraud and False or Fraudulent Statements or Related Acts

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

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

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

D. Audit and Inspection of Records

Contractor shall permit the authorized representatives of BCRTA, its member entities, the Ohio Auditor of State, the U.S. Department of Transportation, and the Comptroller General of the United

States access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract, for the purpose of making audit, examination, excerpts and transcriptions until the expiration of three (3) years after final payment under this contract. Contractor further agrees to include all its subcontracts hereunder, a provision to the effect that the subcontractor agrees that BCRTA, its member entities, the Ohio Auditor of State, the U.S. Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to books, documents, papers and records of such subcontractor involving transactions, related to the subcontractor for the purpose of making audit, examination, excerpts and transcriptions. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$10,000 and (2) subcontractor or purchase orders for public utility services at rates established for uniform applicability to the general public.

The periods of access and examination described above, for records which relate to (1) appeals under the "Disputes" clause of this contract, (2) litigation of the settlement of claims arising out of the performance of this contract, or (3) costs and expense of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed.

E. Federal Changes

Contractor 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 \(26\)\)](#) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

F. Nondiscrimination (EEO)

Federal Requirements and Guidance. The Recipient agrees to prohibit, and assures that each Third Party Participant will prohibit, discrimination on the basis of race, color, religion, sex, or national origin, and:

- (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*,
- (b) Facilitate compliance with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and as further amended by Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," July 21, 2014,
- (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 13.a of this Master Agreement, and
- (d) Follow Federal guidance pertaining to Equal Employment Opportunity laws and regulations, and prohibitions against discrimination on the basis of disability,

Specifics. The Recipient agrees:

- (a) Prohibited Discrimination. As provided by Executive Order 11246, as amended, and as specified by U.S. Department of Labor regulations, to ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their:
 - 1. Race,
 - 2. Color,
 - 3. Religion,

4. National origin,
 5. Disability,
 6. Age,
 7. Sexual origin,
 8. Gender identity, or
 9. Status as a parent, and
- (b) Affirmative Action. Take affirmative action that includes, but is not limited to:
1. Recruitment advertising, recruitment, and employment,
 2. Rates of pay and other forms of compensation,
 3. Selection for training, including apprenticeship, and upgrading, and
 4. Transfers, demotions, layoffs, and terminations, but
- (c) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer," and

Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures that each Third Party Participant will comply, with:

- (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and
- (b) Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note

G. Title VI, Civil Rights Act of 1964, Compliance

The Butler County Regional Transit Authority (BCRTA), in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit Proposals in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

During the performance of this contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. Compliance with Regulations: The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-Proposers, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all

solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports: The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the RTA or the Federal Transit Administration (hereinafter, "FTA") to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the BCRTA, or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with nondiscrimination provisions of this contract, the BCRTA shall impose contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
 - i. withholding of payments to the Contractor under the contract until the Contractor complies; and/or
 - ii. Cancellation, termination, or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The Contractor shall include the provisions of paragraphs (E) through (F) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the BCRTA or the FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the BCRTA to enter into such litigation to protect the interests of the BCRTA, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

H. Americans with Disabilities Act (ADA)

The Contractor agrees to comply with, and assure that any subcontractor under this Project complies with all applicable requirements for the American with Disabilities Act of 1990 (ADA), 42 U.S.C. Section 12101 et seq. and 49 U.S.C. Section 322; Section 504 of the Rehabilitation Act of 1973, as amended., 29 U.S.C. Section 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. Section 1612, and the following regulations and any amendments thereto:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
3. U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
4. Department of Justice (DOJ) regulations, Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
5. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
6. General Services Administration, "Construction and Alteration of Public Building."

- Accommodations of the Physically Handicapped," 41 C.F.R. Part 10119;
7. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
 8. Federal Communications regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
 9. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49
 10. C.F.R. Part 609

I. Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. Termination of Contract for Default

If, through any cause, the Contractor shall fail to perform fully, timely and in proper manner its obligations under this contract, or if the Contractor shall breach any of the covenants, conditions or agreements contained in the contract, the BCRTA shall thereafter have the right to terminate this contract by giving notice in writing which shall specify the effective date thereof, to the Contractor of such termination. In such event, any goods delivered and/or installed by the Contractor under this contract shall, at the option of BCRTA, become the BCRTA's property and the Contractor shall be entitled to receive just and equitable compensation therefor, not to exceed the maximum aggregate compensation payable by BCRTA to contractor as stated in Blanket Purchase Order. In the event of a termination pursuant to this Article, the BCRTA may elect instead to remove any goods delivered and/or installed and redeliver the same to the Contractor, all at the Contractor's sole expense, including reasonable charges for any time and/or labor expended by the BCRTA's employees.

Notwithstanding the above, the Contractor shall not be relieved of any liability to the BCRTA for damages sustained by the BCRTA by virtue of any breach of contract or warrants, or of both, by the Contractor for the purpose of setoff and/or recoupment until such time as the exact amount of damages due the BCRTA from the Contractor is determined.

K. Termination for Convenience of BCRTA

The BCRTA may terminate this contract any time by a notice in writing that shall specify the effective date thereof, from the BCRTA to the Contractor, at least thirty (30) days before the effective date of such termination. In that event, any goods accepted by the BCRTA prior to the effective date of the termination shall become the BCRTA's property and the Contractor shall be entitled to receive just and equitable compensation therefor and for any services accepted by the BCRTA prior to the effective date; provided, nevertheless, that the amount of such compensation shall not, in any event, exceed the maximum aggregate compensation payable by BCRTA to contractor as stated in Blanket Purchase Order, properly attributable to the goods and/or services so accepted.

Neither the acceptance, by the BCRTA, of any goods and/or services; the payment, by the BCRTA, for any goods and/or services; nor both acceptance and payment, shall be deemed to waive, to compromise, or to affect in any manner the liability of the Contractor for any breach of contract, of warranty, or both of contract and of warranty.

L. Debarment and Suspension

The Contractor agrees to comply with U.S. Department of Transportation regulations, "Government

Debarment and Suspension (Non-procurement)", 49 CFR Part 29, and otherwise comply with the requirements of those regulations. This includes the requirement of the proposer to submit the Certification of Primary Contractor Regarding Debarment, Suspension, and Other Responsibility Matter for all projects when the total aggregate value of the Contract exceeds \$100,000 and to submit a Certification of Lower Tier Participation Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusions for each subcontractor which will have a financial interest in this Project which exceeds \$25,000 or will have a critical influence on or a substantive control over the Project.

BCRTA will not make payment to the Contractor or subcontractor which 1) does not comply with this contract provision or 2) is not in compliance with the above-cited federal requirements or 3) fails to sign and agree to the language in Government-Wide Debarment and Suspension Certification (Attachment E).

M. Breaches and Dispute Resolution

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

Performance During Dispute - Unless otherwise directed by BCRTA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the BCRTA and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the BCRTA is located.

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

N. Lobbying

During the term of this Contract, the Contractor agrees to comply with the provisions of 31 USC Section 1352, which prohibits the use of federal funds for lobbying by any official or employee of any federal agency, or member or employee of Congress; and requires the Contractor to disclose any lobbying of any official or employee of any federal agency, or member or employee of Congress in connection with federal assistance. The Contractor agrees to comply with U.S. DOT regulations, "New Restrictions on Lobbying," 49 CFR Part 20 and include these requirements in any subcontract

which exceeds \$50,000.

BCRTA will not make any payment to the Contractor or subcontractor which 1) does not comply with the contract provisions or 2) is not in compliance with the above-cited federal requirements or 3) fails to sign and agree to the language in Lobbying Certification (Attachment E) which is mandated by 49 CFR Part 19, Appendix A, Section 7.

O. Environmental Violations

Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the **Clean Air Act**, 42 USC (1857(h); Section 508 of the **Clean Water Act**, 33 USC 1368; Executive Order 11738 and Environmental Protection Agency regulations (40 CFR, Part 15) which prohibit the use under non-exempt federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. Contractor shall report violations to FTA and to the U.S. EPA Assistant Administrator.

P. Fly America

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their Proposers are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act.

The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

The bidder or offeror must submit to BCRTA the appropriate Fly America certification with its Proposal or offer. Proposals or offers that are not accompanied by a completed Fly America certification will be rejected as nonresponsive.

Q. Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification

of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its sub-Proposers at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

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

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics

includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination

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

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The Recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-

assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Recipient may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Proposers employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Recipient for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all sub-Proposers.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or

indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a

different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the sub-Proposers to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its sub-Proposers) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

R. Disadvantaged Business Enterprise Participation

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises *in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. BCRTA has established a 0.29% race-neutral transit DBE goal for FFY 2021-2023. A separate contract specific goal has not been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the **Recipient** deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments
- 2) Assessing sanctions
- 3) Liquidated damages, and/or
- 4) Disqualifying the contractor from future bidding as non-responsible

c. The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed in its written documentation of its contract commitment to the Recipient unless the contractor obtains written consent from the Recipient.

d. The contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the DBEs as listed in its written documentation of its commitment to the Recipient unless the contractor obtains written consent from the Recipient.

e. The contractor will be required to report its DBE participation obtained throughout the period of performance.

f. **Prompt Payment** - The contractor is required to pay its sub-Proposers performing work related to this contract for satisfactory performance of that work no later than **10** calendar days after the contractor's receipt of payment for that work from the **Recipient**. In addition, the contractor is required to return any retainage payments to those sub-Proposers within **10** calendar days after

incremental acceptance of the subcontractor's work by the **Recipient** and contractor's receipt of the partial.

g. The contractor shall not terminate a DBE subcontractor listed in its written documentation of its commitment to the **Recipient** to use a DBE subcontractor (or an approved substitute DBE firm) without the **Recipient's** prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

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

For purposes of this paragraph, good cause includes the following circumstances:

- i. The listed DBE subcontractor fails or refuses to execute a written contract.
- ii. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor.
- iii. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
- iv. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- v. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- vi. BCRTA determined that the listed DBE subcontractor is not a responsible contractor;
- vii. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- viii. The listed DBE is ineligible to receive DBE credit for the type of work required;
- ix. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- x. Other documented good cause that compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

i. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the **RECIPIENT**.

j. Before transmitting to BCRTA its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to BCRTA, of its intent to request to terminate and/or substitute, and the reason for the request.

S. Prompt Payment

We will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory

performance of its contract no later than 15 days from the receipt of each payment the prime contractor receives from BCRTA. The prime contractor agrees further to return retainage payments to each subcontractor within 15 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the BCRTA. This clause applies to both DBE and non-DBE sub-Proposers.

When applicable, the BCRTA may use the following mechanisms to ensure prompt payment.

1. Language providing that prime Proposers and sub-Proposers will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.
2. Language providing that prime Proposers will not be reimbursed for work performed by sub-Proposers until the prime contractor ensures that the sub-Proposers are paid promptly for work they have performed.
3. Enforcement of public funds liens law and use of a similar mechanism for nonpublic improvement projects.
4. Other applicable mechanisms as necessary.

T. Recycled Products

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

U. Safe Operation of Motor Vehicles

Seat Belt Use: The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company A-60 rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY.

Distracted Driving: The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

V. Veterans Employment

Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that Proposers working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed, or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

W. Privacy Act

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal

Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA

ATTACHMENT A – SUMMARY OF PROPOSAL REQUIREMENTS

Failure to Submit Any of the Following Documents May Render Your Proposal
Non-Responsive

Proposal Submission: Complete the following checklist indicating that the documents required for this proposal are enclosed.

- _____ RFP Cover Page
- _____ ATTACHMENT A – SUMMARY OF PROPOSAL REQUIREMENTS
- _____ Attachment B - Price Proposal Form (Bid Form) -
- _____ Attachment C – Approved Request for Approved Equals
- _____ Attachment D – Receipt of Addenda
- _____ Attachment E – Federal Clauses for Signature
- _____ Attachment F – Disadvantaged Business Enterprise (DBE) Good Faith Efforts
- _____ Attachment G – DBE Contractor Commitment
- _____ Attachment H – Evidence of DBE Certification
- _____ Bureau of Worker’s Compensation Certificate
- _____ Commercial General Liability Insurance Certificate
- _____ Commercial Auto Liability Insurance Certificate
- _____ Professional Liability Insurance Certificate
- _____ Certificate of Fidelity Bond/Crime Coverage

Authorized Signature *Title*

Signature Name Printed *Title Printed*

Company Printed *Date*

ATTACHMENT B – PRICE PROPOSAL FORM (BID FORM)

Price Proposal Form can be found on the website under the procurement for 2021-001 IT Services.

ATTACHMENT C – APPROVED REQUEST FOR APPROVED EQUAL

Please submit with NA if no Approved Equals Requested

DATE: _____

BIDDER: _____

SECTION: _____ PAGE: _____

BIDDERS REQUEST:

BCRTA RESPONSE:

APPROVED: _____

DENIED: _____

COMMENTS: _____

SIGNATURE

_____ DATE _____

ATTACHMENT D – RECEIPT OF ADDENDUMS

The undersigned acknowledges receipt of the following addenda to the Documents.

(Give number and date of each. Please submit with NA if no addendums issued)

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Failure to acknowledge receipt of all addenda may cause the Proposal to be considered non-responsive to this Request for Proposal, which will require rejection of the Proposal.

Signature

Title

ATTACHMENT E – FEDERAL CLAUSES FOR SIGNATURE

Please sign and date each clause as required:

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

**2 CFR part 180
2 CFR part 1200
2 CFR § 200.213
2 CFR part 200 Appendix II (I)
Executive Order 12549
Executive Order 12689**

Debarment, Suspension, Ineligibility and Voluntary Exclusion

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Non-procurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and sub-Proposers are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Date: _____

Signature: _____

Company Name: _____

Title: _____

Lobbying Restrictions
31 USC § 1352
2 CFR § 200.450
2 CFR part 200 Appendix II (J)
49 CRF part 20

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering A-48 into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Date: _____

Signature: _____

Company Name: _____

Title: _____

ATTACHMENT F - DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS

PART 1: GUIDELINES

On DOT-assisted projects that have an established DBE Contract Goal or establish a DBE Participation expectation (no specific contract goal), the Prime Contractor must make sufficient Good Faith Efforts (“GFEs”) to meet the goal or expectation. The Prime Contractor can meet this requirement in either one or two ways. First, the Prime Contractor can meet the requirement with sufficient DBE participation. Second, the Prime Contractor can document adequate GFEs to meet the DBE requirement on the project. Both ways require review and approval. CFR Title 49, Part 26, Appendix A, states that determination concerning the sufficiency of the Prime Contractor’s GFEs is a judgement call and using quantitative formulas is not permitted to make the determination.

Demonstration of GFEs

A Prime Contractor must show that it took all necessary and reasonable steps to achieve a DBE goal which could reasonably be expected to obtain sufficient DBE participation, even if it was not successful. The documentation should reflect that the Prime Contractor was actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not an acceptable demonstration of a Prime Contractor’s GFEs in meeting the DBE requirements.

A Prime Contractor selecting portions of work to be performed by DBEs will increase the likelihood that the DBE requirements will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (i.e. smaller tasks or quantities) to facilitate DBE participation, even when the Prime Contractor might otherwise prefer to perform these work items with its own forces.

Documentation of GFEs

Evidence of GFEs should include, but are not limited to, a list of names, a number of contact attempts, how firms were contacted (i.e. copies of e-mail, letters, etc.), addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why agreements could not be reached for DBEs to perform the work. Please note that documentation provided may be subject to audit.

Additional Considerations

The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Prime Contractor’s failure to meet the contract DBE requirement, as long as such costs are reasonable.

The ability or desire of a Prime Contractor to perform the work of a contract with its own organization does not relieve the Prime Contractor of the responsibility to make GFEs.

Prime Contractors are not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. It should be noted that excessive or unreasonable will be evaluated on a case by case basis while reviewing the Prime Contractor’s total GFEs submittal.

In the event of a substitution or a replacement of a DBE on a project, a Prime Contractor’s inability to find a replacement DBE at the original price is not alone sufficient to demonstrate GFEs.

Prime Contractors should select DBE firms that have been DBE certified with the proper NAICS codes for the work the DBE will be performing. Conversely, DBE firms should not commit to work that they do not have the proper NAICS codes to perform.

PART 2: DBE UNAVAILABILITY CERTIFICATION

(Affiant) _____ *(Date)*

of _____
(Prime or General Bidder)

certify that prior to the bid opening date, I contacted the following DBE contractors to obtain a bid/proposal for services/supplies necessary to be performed on RFP-2020-014.

Disadvantaged Service/Supplies

Date	Contractor <i>(Must be DBE)</i>	Item(s) Sought <i>(i.e., Unit Price, Material & Labor, Labor Only, etc.)</i>

Attach a detailed narrative of efforts made to involve disadvantaged contractors, subcontractors, & suppliers as suggested in Attachment J, Part 1.

To the best of my knowledge and belief, said disadvantaged contractor(s) was unavailable (exclusive of unavailability due to lack of agreement on price) for work on this project, or unable to prepare a bid/proposal for the following reasons:

Signature: _____
(Prime or General Contractor)

Date: _____

_____ was offered an opportunity
(DBE firm)s
 participate on the above identified Legal Notice on _____ by _____
(date) *(Source)*

ATTACHMENT G - DBE CONTRACTOR COMMITMENT

PART 1: DBE UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____ % DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract a submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____

(Signature / Title)

PART 2: DBE PARTICIPATION CONFIRMATION

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____

(Signature / Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)

ATTACHMENT H - EVIDENCE OF DBE CERTIFICATION

AFFIDAVIT OF DISADVANTAGED BUSINESS ENTERPRISE

State of _____

County of _____

I hereby declare and affirm that I am the _____
(Title)

and duly authorized representative of _____
(Name of Company)

whose address is _____

I hereby declare and affirm that I am a disadvantaged business enterprise and can be found listed in the Ohio Unified Certification Program (UCP) as AWP Vendor ID: _____

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

By: _____
(Affiant) (Date)

On this _____ day of _____, 20 _____, before me,

_____, known to me to be the person described in the foregoing affidavit acknowledged that he/she executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(Notary Public)

My Commission Expires: _____ (SEAL)