



# REQUEST FOR QUALIFICATIONS

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

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## REQUEST FOR QUALIFICATIONS COVER PAGE

**Request for Qualifications Issue Date:** November 1, 2021

**Request for Qualifications Title:** On Call A&E

**Request for Qualifications Number:** 2021-041

**Purpose of Request for Qualifications:** Butler County Regional Transit Authority (“Agency”) is soliciting Statements of Qualifications (“SOQs”) from qualified Architectural and Engineering (“A&E”) firms to provide On-Call A&E Services. By submitting an SOQ, the Offeror represents that it has carefully read the terms and conditions of this RFQ and all attachments and Addenda and agrees to be bound by them.

**Issuing & Using Agency:**

**Butler County Regional Transit Authority**

Attn: Procurement

3045 Moser Court

Hamilton, OH 45011

[purchasing@butlercountyrta.com](mailto:purchasing@butlercountyrta.com)

**Using Agency**

**City of Middletown**

One Donham Plaza

Middletown, OH 45042

**SOQ Submission:** Statement of Qualifications (SOQs) should be submitted via email to [purchasing@butlercountyrta.com](mailto:purchasing@butlercountyrta.com) no later than **12/7/21 by end of business (5:00 PM)**. SOQs received by Agency after that date and time will not be considered.

All Inquiries, Questions and Clarifications Should Be Directed To: ISSUING & USING AGENCY

# REQUEST FOR QUALIFICATIONS (RFQ) OVERVIEW

## **SECTION 1: AGENCY DESCRIPTION**

### **1.1 General**

The Butler County Regional Transit Authority (“Agency”) 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. Agency 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 Agency services.

### **1.2 Procurement Website**

All solicitations for Agency are posted to this page: <https://www.butlercountyrta.com/doing-business-with-us/solicitations/>

To register as a proposer with Agency, go here: <https://www.butlercountyrta.com/doing-business-with-us/vendor-registration/>

## **SECTION 2: OVERVIEW OF PROJECT**

### **2.1 General**

Agency is soliciting Statements of Qualifications (“SOQs”) from qualified Architectural and Engineering (“A&E”) firms to provide On-Call A&E Services (“Services”).

### **2.2 Type of Procurement**

This solicitation is a qualifications-based procurement utilizing a request for qualifications (RFQ) process. Agency will evaluate firms based on qualifications in specific categories, taking into considering the evaluation factors set forth in this RFQ. Firm selection will be qualifications-based in accordance with the Brooks Act as defined by FTA Circular 4220.1F.

### **2.3 Scope of Services**

See Attachment A.

### **2.4 Solicitation Schedule**

The following is the Solicitation Schedule. The Agency reserves the right to modify this Schedule via Addenda issued prior to the Questions deadline date set forth below.

<b>RFQ Phase</b>	<b>Date</b>
RFQ Issued Date	November 1 <sup>st</sup> , 2021

Pre-Proposal Meeting (Informational, non-mandatory) Date	November 9 <sup>th</sup> , 2021
Questions/Requests for Clarifications Deadline Date	November 16 <sup>th</sup> , 2021
SOQ Due Date	December 7 <sup>th</sup> , 2021
Follow Up Interviews with Short-Listed Firms	TBD (as needed)

## **2.5 Pre-Proposal Meeting**

A non-mandatory pre-proposal meeting will be held at 10:00 AM on November 9<sup>th</sup>, 2021 via Microsoft Teams meeting. The meeting information will be provided on the solicitations page for this RFQ. The purpose of the pre-proposal meeting is to provide professional firms with information regarding this procurement process and go over the qualifications requested. Attendance at the pre-proposal meeting is not required, but strongly encouraged.

## **2.6 Questions and/or Requests for Clarification**

Questions and/or Requests for Clarifications regarding this solicitation shall be made by emailing the purchasing inbox ([purchasing@butlercountyrta.com](mailto:purchasing@butlercountyrta.com)) by the time and date specified in the solicitation schedule. The Procurement and Compliance Specialist will review all questions and/or requests for clarification that are received by the submission deadline and will post responses via Addenda on the solicitations page of the Agency website.

## **SECTION 3: PROCUREMENT PROCESS**

### **3.1 General Information**

#### **3.1.1 Compliance with Legal Requirements**

This Procurement will be in accordance with the Federal Transit Administrations Third Party Contracting Guidance (Circular 4220.1F) and all other applicable federal, state and local laws and Agency policies and procedures.

#### **3.1.2 Conflict of Interest**

- a. Consultants who assisted the Agency in the RFQ/RFP preparations may not propose or participate with any Firm on this project.
- b. The Agency may make a written determination to waive a potential conflict of interest if the following apply:
  - i. The role of the Consultant was limited to provision of preliminary design, reports or similar “low-level” documents that will be incorporated into the Procurement and did not include assistance in development of instructions to Offerors or evaluation criteria; or
  - ii. Where all documents and reports delivered to the Agency by the Consultant are made available to all Offerors

### **3.1.3 Communications with the Agency**

- a. Offerors are required to conduct the preparation of their SOQs with professional integrity and free of lobbying activities. Communication with the Agency regarding this Project shall be via email or regular mail only and directed to the Procurement and Purchasing Specialist. Do not communicate about the Project or the Procurement with any other Agency employees, representatives, or consultants. Communication with other Agency employees, representatives, or consultants regarding the Procurement may cause the firm involved to be disqualified from submitting under this Procurement. Any verified allegation that a responding Offeror or an employee, agent or consultant of the foregoing has made such contact or attempted to influence the evaluation, ranking, and/or selection of short-listed Offerors may be the cause for Agency to disqualify the Offeror team from submitting an SOQ or Proposal, to disqualify the employee/agent/consultant from participating in the Procurement, and/or to discontinue any further consideration of such Offeror.
- b. Following the Agency's approval of the short-listed Offerors, the Agency anticipates that certain communications and contacts will be permitted. The RFQ, RFP and/or other written communications from Agency will set forth the rules and parameters of such permitted contacts and communications. To the extent any Offeror intends at any time to initiate contact with the general public regarding the Project, the nature of such intended contact and the substance thereof must be approved in writing by the Agency prior to the commencement of such activities.

### **3.1.4 Public Disclosure**

All documentation and submittals provided to the Agency may be considered public documents under applicable laws and may be subject to disclosure. Offerors recognize and agree that the Agency will not be responsible or liable in any way for any losses that the Offeror may suffer from the lawful disclosure of information or materials to third parties.

Any materials requested to be treated as confidential documents, proprietary information, or trade secrets must be clearly identified and readily separable from the balance of the SOQ or Proposal. Such designations will not necessarily be conclusive, and Offerors may be required to justify why such material should not, upon written request, be disclosed by the Agency under the applicable public records act. The Agency will endeavor to provide at least two (2) Business Days' notice of a public records request for material submitted pursuant to this Procurement. Offerors must respond to the notice in writing with any objection to the production of the documents within two (2) Business Days of receipt of the notice. All costs incurred by Offerors associated with any public records request are the responsibility of the Offerors.

### **3.1.5 Protest Procedures**

The protest procedures applicable to the Procurement are set forth below:

- a. All Protests will be directed to:  
Attn: Procurement  
3045 Moser Court, Hamilton, OH 45011  
[purchasing@butlercountyrta.com](mailto:purchasing@butlercountyrta.com)
- b. Any Protest based on the form or content of the Procurements documents, which is or should have been apparent prior to the date established for submittal of the SOQ, will not be considered if received by the person set forth above later than ten (10) calendar days prior to specific submittal date.
- c. Protest based on any other circumstances must be received by the person noted above within five (5) business days from the date the Offeror or short-listed Offeror was notified of any selection decision; however, in no event will a protest be considered if all SOQ are rejected or if the Protest is received after award of the Contract.
- d. To be considered, a Protest shall be in writing and shall include: (1) the name, street address and email address of the aggrieved part; (2) the name of the Project for which the Protest is submitted; (3) a detailed description of the specific grounds for the Protest and any supporting legal and/or factual determination; and (4) the specific ruling or relief requested.
- e. In computing any period of time described by this procedure, the day of the act or event from which the designated period of time begins to run shall NOT be included. The last day of the period shall be included. Any document received after the close of regular business hours (8:00 AM to 5:00 PM) shall be deemed received the following Business Day.
- f. By submitting an SOQ in response to this Procurement, the offeror acknowledges that it has reviewed and acquainted itself with the protest procedures herein and agrees to be bound by such procedures as a condition of submitting an SOQ.

### **3.1.6 Identification of Projects**

For each Project identified in the SOQ, provide the following information. This information must be provided as a separate table for the identified Projects as an attachment to the SOQ. Any graphics or images associated with these projects can be incorporated into the attachment outside of the table format.

- a. Name of Project;
- b. Agency/Customer (including if the Agency was a government entity);
- c. Location of Project (include address);
- d. Description of the delivery method and integration of design and construction, identifying the firm(s) role as a prime consultant, subconsultant, contractor, subcontractor, or other;



- e. Project description and applicability and relevance of the referenced Project to the evaluation criteria for this Project;
- f. Name of all personnel who played a significant role on the Project example, including a description of their Project responsibilities and functions;
- g. The initial contract price, the final contract price, and an explanation for any difference between the two amounts;
- h. The initial date scheduled for substantial completion, the actual date of substantial completion, and an explanation for any difference between the two dates; and
- i. Project contact of the Agency or customer (current address, e-mail, and phone number) who can verify the characteristics of the submitted Project example.

### **3.1.7 Solicitation Terminology**

**Business Day:** any day on which the Agency is open for regularly conducted business.

**Butler County Regional Transit Authority** (also referred to as “BCRTA”, “RTA”, “Authority”, “Contractor”, “Buyer” or “Purchaser”): the government entity who is soliciting submissions for qualifications with the RFQ.

**Procurement** (also referred to as “Solicitation”): The Agency’s process for selecting a Firm for this Project.

**Projects of Similar Scope and Complexity:** projects that had completion dates within the last 5 years and that have many or all of the following characteristics:

Projects of a similar size and budget that include design and construction of office spaces, vehicle maintenance and storage facilities

Complex projects that require coordination with multiple stakeholders and/or regulatory agencies

Projects that require complex scheduling with minimal disruption to a facility that operates, in part, on a 24/7 basis

Projects that utilize an integrated delivery method that require strong coordination and integration of the design and construction professionals and early involvement of the construction professionals during design; and/or

Projects where the Design-Builder was selected prior to the establishment of the final price and schedule where the Design-Builder collaborated with the Agency to develop the final price and schedule

**Request for Proposals (RFP):** Agency's request for proposals, which will be issued to those short-listed Firms who are selected to proceed to the next phase of this Procurement.

**Request for Qualifications** (also referred to as the "RFQ"): the solicitation document prepared by the Agency requesting specific qualifications from potential Firms.

**Respondent** (may also be referred to as "Firm", "Offeror", "Submitter"): the entity providing the Submission of Qualifications (SOQ).

**Solicitation Documents:** All documents issued by the Agency in connection with the Procurement or Project.

**Statement of Qualifications** (also referred to as "SOQ", "SOQs"): the document prepared by potential Firms/Offerors which outlines the Firms' qualifications to be eligible for the solicitation(s) and to perform the work described.

### **3.2 Agency Rights and Procurement Conditions**

The Agency reserves without limitation, and may exercise at its sole discretion, the following rights and conditions with regard to this Procurement process:

- a. To cancel the Procurement Process and reject any and all SOQs at any point in the Process;
- b. To waive any informality or irregularity;
- c. To revise the Procurement Documents and Schedule via an Addendum and provide notification to all relevant parties of the same;
- d. To reject any Offeror that submits an incomplete or inadequate response or is not responsive to the requirements of this RFQ;
- e. To require confirmation of information furnished by an Offeror, require additional information from an Offeror concerning its SOQ and require additional evidence of qualifications to perform the work described in this RFQ or a subsequent RFP;
- f. To provide clarifications or conduct discussions, at any time, with one or more Offerors;
- g. To contact references who are not listed in the Offeror's SOQs and investigate statements on the SOQs and/or qualification of the Offeror and any firms or individuals identified in the SOQ;
- h. To consider Alternative Technical Concepts and/or approaches identified by Offerors;
- i. To take any action affecting the RFQ process, the RFP process or the Project that is determined to be in the Agency's best interests; and
- j. Approve or disapprove of the use of particular Subconsultants, subcontractors or Firm employees and/or substitutions and/or changes to Subconsultants, Subcontractors or Firm employees from those identified in the SOQ. Such approval or disapproval shall not be unreasonably exercised.

### **3.3 Outline of the Request for Qualifications Process and Contract Procedures**

#### **3.3.1 Request for Qualifications (RFQ) Process**

- a. This RFQ invites firms to submit SOQs describing in detail their technical, management, and financial qualifications to design, permit, construct, commission and close out the Project. The issuance of this RFQ is the first phase of the Procurement Process.
- b. Offerors will submit their SOQ and other deliverables required pursuant to this Procurement at the time and in the manner set forth in this RFQ and any addenda. The Agency will not consider SOQ or other deliverables that are submitted after the Time set forth in the RFQ. Offerors are solely responsible for making sure that the Agency receives the SOQ in a timely fashion.
- c. The Agency will evaluate the information submitted by each Offeror to 1) determine whether the Offeror meets the mandatory minimum requirements and 2) evaluate the SOQ provided by each Offeror pursuant to the evaluation system described below. Any Offeror who fails to meet the mandatory minimum requirements set forth in this SOQ will be deemed non-responsive and will not be considered further by the Agency in this Procurement.
- d. All SOQ will be evaluated solely in accordance with the criteria established in the RFQ and any Addenda issued thereto. The evaluation criteria are listed below, including the relative weight or importance given to each criterion.
- e. Not more than five (5) responsive and responsible firms will be awarded contracts under this RFQ. Only those firms that are under contracts will be selected for future A&E tasks.
- f. The results of the SOQ Evaluations will be carried forward through the task assignment process and used, along with price and availability, as a method of selection for each A&E task.
- g. Each Firm's personnel will be used as a basis for selection. Once awarded a contract, and absent extraordinary circumstances, neither the Offeror or personnel that are submitted to the Agency as part of the SOQ may substitute a listed consultant, subconsultant or subcontractor or any other individual listed; a change to any submitted key personnel will result in re-evaluation and may result in a change to the evaluation and ranking of the Offeror.

#### **3.3.2 Post-Qualification Contracts**

- a. Agency intends to enter into one or more "On-Call", Indefinite Delivery/Indefinite Quantity ("IDIQ") agreements to a panel of qualified A&E firms.
- b. Awarded A&E Firms will provide services to Agency on an as-needed basis using Task Orders, which will be issued on a Firm Fixed Price basis. These services shall

cover all engineering and architectural disciplines necessary to complete the subject project.

- c. Agency may elect to award a single Task Order or Multiple Task Orders for the same or similar services to two or more sources under this solicitation.

## **SECTION 4: SOQ DOCUMENTATION REQUIREMENTS**

### **4.1 SOQ Format Requirements**

The SOQs shall comply with the following format requirements:

- In searchable .pdf format.
- Substantive portions organized into the parts and subparts outlined below. Each part must be clearly labeled and identifiable.
- Contain a Table of Contents and pagination

### **4.2 SOQ Organization**

SOQs shall consist of the following parts:

1. **PART 1: Cover Letter, Company Overview, Minimum Qualifications, Experience and References**
  - A. **Cover Letter**
    - Must be signed by an official of the Firm with responsibility to bind the Firm contractually
    - Must contain a summary of the Firm's qualifications and a commitment to provide the requested Services
    - Must contain the contact information of the Firm's RFQ Point of Contact
  - B. **Company Description**
    - Introduce your Firm and provide all locations (if multiple offices)
    - Must include a brief overview of the Administration, organization and staffing of the Firm
  - C. **Minimum Qualifications**
    - Explain how your Firm (and any subcontractors) meets each of the minimum qualifications as specified in the Scope of Services of this solicitation
    - Must include a statement confirming the Firm's ability to provide insurance
  - D. **Direct Experience**
    - Provide three (3) to five (5) recent project examples that are evidence of your Firm's (and any subcontractor's) direct experience and collaborative experience with transit/government agencies in performing services of similar scope and complexity

- Ideally this experience should be within the last 5 years and must include the following information:
    - Total Value of the Project
    - Firm's role and responsibilities (Prime Contractor, etc.)
    - Location of Project
    - Year Each Project Began and was Completed
- E. **References.** 5 References from the transit/government agencies cited in the Direct Experience section, including the following:
- Reference Contact Name and Job Title
  - Reference Contact Phone Number and Email Address
  - Project Name
  - Role of Contact in the Project
2. **PART 2: Understanding of the RFQ**
- Provide a summary of your Firm's understanding of the Scope of Services
  - Include any additional tasks or deliverables your Firm believes are necessary to meet this Scope as outlined
  - Include any strategies or information demonstrating how your Firm would exceed performance metrics, if applicable
3. **PART 3: Project Team**
- A. **Organizational Chart and Key Personnel**
- Provide an organizational chart of the proposed project personnel and all the sub-contractor's lead personnel
  - Identify the key members of both the Firm's personnel and the subcontractor's personnel, including their qualifications, certifications, previous experience, specialties, etc.
- B. **Firm's Expectations of Agency.** Outline Firm's expectations of Agency, including communication methods and any resources required by Firm of Agency to complete all deliverables timely
4. **PART 4: DBE Commitment and Other Requirements**
- A. **DBE Commitment.** All firms responding to this solicitation shall provide a brief narrative identifying the extent to which disadvantaged and diverse contractors or sub-contractors including small, veteran owned, minority-owned, and women-owned business enterprises would be used in the performance of this proposed Contract as well as the firm's prior level of commitment to using these small businesses in the performance of prior contracts. A subcontracting plan is not required with this submittal.
- B. **Required Forms.** The following forms and certifications must be completed, signed and submitted with the SOQ in order to be deemed responsive:
- Attachment B – Summary of SOQ Requirements
  - Attachment C – Corporate Structure Questionnaire and Subcontractor Information
  - Attachment D – Receipt of Addenda
  - Attachment E – Lobbying Restrictions Certification

- Attachment F – Buy America Certification
  - Attachment G – Debarment and Suspension Certification (needs to be completed by both the Firm and any sub-contractor)
5. **PART 5: Additional Information**. Include any additional information that is pertinent but not specifically asked for elsewhere.

**SECTION 5: SOQ EVALUATION CRITERIA AND SUBMITTAL INFORMATION**

**5.1 Evaluation Committee and Process**

The Evaluation Committee, made up of various Agency personnel, will evaluate and score the submitted SOQs in accordance with the criteria set forth in section 5.2 below (and any Addenda issued, if applicable). During evaluation, Agency reserves the right to make reasonable inquiry to determine the responsibility of the professional Firm(s). This may include requests for financial statements, additional references, more details on past performance, etc. Failure to respond to these requests could result in the Firm being deemed non-responsive or irresponsible.

Agency shall, in its discretion, award the contract to the top-ranking professional Firm(s), whose qualifications received the highest scores and are most advantageous to Agency.

**5.2 Evaluation Criteria**

The following criteria will be the basis for selection of the most qualified Firms, with the relative percentage weight assigned to reflect each criteria’s importance in the selection process:

<b>Percentage Weighted in Scoring</b>	<b>Evaluation Criteria</b>
30%	Technical and Specialized Experience and Expertise
25%	Technical Capacity
20%	Past Performance on Contracts
10%	Professional Qualifications
10%	Sustainability
5%	Diversity, Equity and Inclusion

**Technical and Specialized Experience and Expertise:** demonstrated experience and expertise in architectural design, engineering and construction project support, including qualifications of the personnel of the primary contractor in each relative discipline for providing the required services.

**Technical Capacity:** demonstrated capacity to complete deliverables and required tasks on schedule and the ability to handle multiple projects at the same time. The Firm must also have sufficient resources to successfully perform the work. These resources include, but are not limited to:

- Adequate number of Experienced Personnel
- Adequate support staff and structure
- Required software and other tools
- Firm and all Personnel have sufficient time available

**Past Performance on Contracts:** based on discussions with provided references and review of past projects, how well the Firm performed on past contracts with transit/government agencies on projects of similar scope and complexity. This includes, but is not limited to, Firm's demonstrated excellence in the following as prime contractor:

- Collaborating successfully as a team with consultants, specialty subcontractors and trade contractors (as applicable)
- Developing project schedules and ensuring the deliverables and tasks were completed according to these schedules
- Resolving any issues with scheduling in a timely and cost-efficient manner
- Generating a budget and managing reasonable costs
- Identifying and successfully resolving issues that arose during a project or projects
- Utilizing and managing software used by the Firm and any subcontractors to perform services

**Professional Qualifications:** list all relevant professional certifications, licenses and education for the primary contractor's personnel and any subcontractors.

**Sustainability:** demonstrated use of sustainable methods in completing past projects and brief descriptions of these methods and their benefits; description of sustainable approaches to A&E projects in general and which portions of future work would be completed using these approaches

**Diversity, Equity and Inclusion:** demonstrated inclusion of disadvantaged business enterprises, women business enterprises and minority business enterprises in selection of subcontractors and demonstrated diversity in assembling key personnel for this project.

## **SECTION 6: GENERAL AGENCY TERMS AND CONDITIONS**

### **Assignability**

Agency reserves the right to assign all or any portion of the award under this contract including option quantities. Agency'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 Agency 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 prior written approval by Agency of the subcontractor, which approval shall not be unreasonably withheld. Agency may assign its rights and obligations under the Contract to any successor to the rights and functions of Agency or to any governmental agency to the extent required by applicable laws and governmental regulations or to the extent Agency deems necessary or advisable under the circumstances.

### **Indemnifications**

The Contractor shall indemnify and save harmless Agency, 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 Agency 's own negligence.

### **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.

### **Defective Work, Materials or Services**

When and as often as Agency 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 Agency 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. Agency 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 Agency by law, including those available under the Uniform Commercial Code.

### **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:



**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.

**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.

**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.

**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.

**Fidelity Bond/Crime.** If Professional or its employees will be on the premises of Agency 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 Agency in the event of theft or other intentional harm to Agency's property by Professional's employees. NOTE: this need not be provided at SOQ submission but can be provided at a later date.

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

### **Payment Procedures**

Payments for products delivered or services performed shall be made after presentation of Contractor’s invoices to Agency. Such invoices shall be computed in accordance with the fee schedule agreed to by Agency 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 Agency. 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 Agency.

Invoices should clearly identify the Agency purchase order number and any prompt payment discount offered to Agency for paying within ten (10) days of receipt. Agency 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. Agency 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 7: LIST OF ATTACHMENTS**

- A. Scope of Services
- B. Summary of SOQ Requirements
- C. Corporate Structure Questionnaire and Subcontractor Information
- D. Receipt of Addenda
- E. Lobbying Restrictions Certification
- F. Buy America Certification
- G. Debarment and Suspension Certification
- H. Federal Transit Administration (FTA) Requirements

## ATTACHMENT A – SCOPE OF SERVICES

Consultants should carefully review the Scope of Services when compiling teams. Agency anticipates that a variety of A&E services will be required during the given contract timeframe, at multiple locations. Agency requires that quality control and quality assurance measures are taken in preparation of all documents and submittals to local, state and federal agencies. Attendance at Agency staff and board meetings, public/stakeholder group meetings, and other planning support services meetings may be required.

The Consultant shall provide all labor, materials, facilities, transportation, supervision, and necessary management to provide the required Services. The Consultant(s) should have experience and be prepared to assist in disciplines to include but not limited to:

1. Architectural Services
  - a. Facility Design
  - b. Facility Planning and Development
  - c. Interior Design and Space Planning
  - d. Landscaping and Urban Design
2. Civil/Structural/Engineering
  - a. Boundary and Topography Surveying
  - b. Site Design, including Bus Shelter Site Design
  - c. Conceptual and Preliminary Engineering
  - d. Construction Management
  - e. Construction Surveying
  - f. Geotechnical/Material Testing
  - g. Hazardous Waste Remediation
  - h. Irrigation and Drainage
  - i. Pavement Marking, Signage, and Resurfacing
  - j. Pedestrian Improvements
  - k. Real Estate Analysis
  - l. Right-of-Way Work
  - m. Street/Intersection Design Related to Transit Infrastructure
  - n. Structural Design
  - o. Transit Oriented Development
3. Mechanical/Electrical/Plumbing
  - a. Electrical Design
  - b. Fire Protection
  - c. Gas Systems (Propane, Natural Gas, Etc.)
  - d. Heating, Ventilation and Air Conditioning
  - e. Interior/Exterior Lighting Design
  - f. IT Infrastructure Design

- g. Petroleum Fuel Storage and Distribution
- h. Plumbing and Piping Design
- 4. Supplemental Services
  - a. Bid Support Services
  - b. Construction Management Services
  - c. Budget Development
  - d. Cost Estimating
  - e. Life Cycle Cost Analysis
  - f. Public & Stakeholder Meetings/Presentations
  - g. Renderings
  - h. 3D Modeling
  - i. National Environmental Policy Act (NEPA) Studies & Document Preparation

The successful Consultant(s) must be able to provide comprehensive resources and in any or all aspects of Architectural Services, Civil/Structural Engineering, Mechanical/Electrical/Plumbing, and Supplemental Services.

A coordinated team effort will be required to effectively accomplish tasks under the contract. The consultant's knowledge of the current transportation planning and improvement efforts in the region will be valued and is an important consideration in the Consultant selection process.

Although this is not a comprehensive list, examples of tasks that may be requested during the contract period might include:

- Moser Court facility master planning
- Moser Court working landscape design & drawings
- Developing, engineering, and costing battery-electric bus storage charging infrastructure
- Developing, engineering, and costing battery-electric in-line route charging infrastructure
- Developing, engineering, and costing hydrogen fueling infrastructure
- Planning and providing specifications for facility LED lighting retrofits
- Concept design and study for regional passenger transit stations and associated public input
- Concept design, study, and specifications for bus shelters and associated public input
- Completion of required NEPA studies for new or expanded facilities and development of associated documents and narratives
- Facility and shelter concept renderings for grant applications

## ATTACHMENT B – SUMMARY OF SOQ REQUIREMENTS

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

Statement of Qualifications Submission: Complete the following checklist indicating that the documents required for this SOQ are enclosed.

\_\_\_\_\_SOQ Cover Page

\_\_\_\_\_Statement of Qualifications (All Sections Completed)

\_\_\_\_\_Attachment B – Summary of SOQ Requirements

\_\_\_\_\_Attachment C – Corporate Structure Questionnaire and Subcontractor Information (for ALL Parties)

\_\_\_\_\_Attachment D – Receipt of Addenda

\_\_\_\_\_Attachments E - G – Federal Clauses for Signature

\_\_\_\_\_Bureau of Worker’s Compensation Certificate

\_\_\_\_\_Employer Liability Insurance Certificate

\_\_\_\_\_Commercial General Liability Insurance Certificate

\_\_\_\_\_Commercial Auto Liability Insurance Certificate

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*Authorized Signature*

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*Signature Name*

*Title*

---

*Company Name*

*Date*

## ATTACHMENT C – CORPORATE STRUCTURE QUESTIONNAIRE AND SUBCONTRACTOR INFORMATION

Offerors shall complete the following information for the proposed Offeror/Prime Contractor and one for each proposed subcontractors and key personnel, as applicable:

<b>Legal Name</b>	
<b>Street Address</b>	
<b>Mailing Address</b>	
<b>Point of Contact</b>	
<b>Position</b>	
<b>Email Address</b>	
<b>Telephone Number</b>	
<b>Fax Number</b>	
<b>Type of Business</b>	
<b>D-U-N-S Number</b>	
<b>Federal Tax Identification Number</b>	
<b>State Contractor's Registration Number (if applicable)</b>	
<b>State Business License Number (if applicable)</b>	

## ATTACHMENT D – RECEIPT OF ADDENDA

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)

<b>Addendum Number</b>	<b>Date of Addendum</b>

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

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Signature

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Title

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Date

## ATTACHMENT E – LOBBYING RESTRICTIONS

### **LOBBYING RESTRICTIONS**

**31 USC § 1352**

**2 CFR § 200.450**

**2 CFR part 200 Appendix II (J)**

**49 CFR 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 – BUY AMERICA CERTIFICATION

## BUY AMERICA REQUIREMENTS

**49 U.S.C. 5323(j)**

**49 CFR Part 661**

**Certification requirement for procurement of steel, iron, or manufactured products.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

# ATTACHMENT G – DEBARMENT AND SUSPENSION CERTIFICATION

## **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 subProposers 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: \_\_\_\_\_

## ATTACHMENT H – FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS

The below clauses apply to all contracts entered into between Agency and Offeror.

### A. Incorporation of FTA Terms

The following provisions include, in part, certain Standard Terms and Conditions required by DOT, whether those Terms and Conditions were expressly set forth in the preceding contract provisions or not. 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:

1. Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*,
2. 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,
3. Comply with Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 13.a of this Master Agreement, and
4. Follow Federal guidance pertaining to Equal Employment Opportunity laws and regulations, and prohibitions against discrimination on the basis of disability,

Specifics. The Recipient agrees:

1. 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:
  - i. Race,
  - ii. Color,
  - iii. Religion,
  - iv. National origin,
  - v. Disability,
  - vi. Age,
  - vii. Sexual orientation,
  - viii. Gender identity, or
  - ix. Status as a parent
2. Affirmative Action. Take affirmative action that includes, but is not limited to:
  - i. Recruitment advertising, recruitment, and employment,
  - ii. Rates of pay and other forms of compensation,
  - iii. Selection for training, including apprenticeship, and upgrading, and
  - iv. Transfers, demotions, layoffs, and terminations, but
3. Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer"

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:

1. U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and
2. 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 subShort-listed Offerors, 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 Agency 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 Agency, become the Agency's property and the Contractor shall be entitled to receive just and equitable compensation therefor, not to exceed the maximum aggregate compensation payable by Agency to contractor as stated in Blanket Purchase Order. In the event of a termination pursuant to this Article, the Agency 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 Agency's employees.

Notwithstanding the above, the Contractor shall not be relieved of any liability to the Agency for damages sustained by the Agency 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 Agency 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 Agency to the Contractor, at least thirty (30) days before the effective date of such termination. In that event, any goods accepted by the Agency prior to the effective date of the termination shall become the Agency's property and the Contractor shall be entitled to receive just and equitable compensation therefor and for any services accepted by the Agency 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 Agency to contractor as stated in Blanket Purchase Order, properly attributable to the goods and/or services so accepted.

Neither the acceptance, by the Agency, of any goods and/or services; the payment, by the Agency, 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 Short-listed Offeror 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 F).

#### 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 Agency'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 Agency, 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 or damage.

*Remedies* - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Agency 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 Agency 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 Agency, 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 F**) 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 Short-listed Offerors 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. Buy America

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provides that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content for FY2016 and FY2017, a minimum 65% domestic content for FY2018 and FY2019 and a minimum 70% domestic content for FY2020 and beyond.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

## R. 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 subShort-listed Offerors 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. Short-listed Offerors 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-Short-listed Offerors.
- 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-Short-listed Offerors 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-Short-listed Offerors) 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.

#### S. Disadvantaged Business Enterprise (DBE) Participation

1. 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%. Agency has established a .29% race-neutral transit DBE goal for FFY 2021-2023. A separate contract specific goal has not been established for this procurement.
2. 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:
  - i. Withholding monthly progress payments
  - ii. Assessing sanctions
  - iii. Liquidated damages, and/or
  - iv. Disqualifying the contractor from future bidding as non-responsible
3. 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.
4. 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.
5. The contractor will be required to report its DBE participation obtained throughout the period of performance.
6. **Prompt Payment** - The contractor is required to pay its subcontractors 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 subcontractors within

- 10** calendar days after incremental acceptance of the subcontractor's work by the **Recipient** and contractor's receipt of the partial.
7. 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.
  8. 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:

1. The listed DBE subcontractor fails or refuses to execute a written contract.
2. 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.
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. 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;
6. BCRTA determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
  - i. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
  - ii. 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.
9. 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**.
10. 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.

#### T. 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-Short-listed Offerors.

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

1. Language providing that prime Short-listed Offerors and sub-Short-listed Offerors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.
2. Language providing that prime Short-listed Offerors will not be reimbursed for work performed by sub-Short-listed Offerors until the prime contractor ensures that the sub-Short-listed Offerors 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.

## U. Bonding Requirements

### **Bid Bond Requirements**

a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove

inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

### **Performance and Payment Bonding Requirements**

The Contractor shall be required to obtain performance and payment bonds as follows:

- a) Performance bonds
  - 1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
  - 2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- b) Payment bonds
  - 1. The penal amount of the payment bonds shall equal:
    - i. Fifty percent of the contract price if the contract price is not more than \$1 million.
    - ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
    - iii. Two and one half million if the contract price is more than \$5 million.
  - 2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

### V. 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.

### W. 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.

## X. Veterans Employment

Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that Short-listed Offerors 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.

## Y. 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.

## Z. Seismic Safety

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

## AA.Cargo Preference

The contractor agrees:

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