

Rogue Valley Transportation District
REQUEST FOR PROPOSALS
FOR
DOWNTOWN ADMINISTRATION RENOVATION PROJECT
CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES

RFP NO. 122022PW

1. The Rogue Valley Transportation District (RVTD) is soliciting Proposals from qualified general contractors to provide Construction Manager/General Contractor (CM/GC) Services including both preconstruction services and construction services work for the Downtown Administration Renovation Project and Mobility Training Center.
2. **RVTD will receive electronic proposals until 12:00PM (Local Time) on Monday January 16, 2023. Proposals will not be publicly opened.** Offerors should also submit three hard copies to RVTD no later than 12:00PM January 16, 2023.
3. No proposal security will be required. A 100% performance bond and 100% labor and material payment bond on RVTD bond forms will be required when construction services are added to the contract (via a contract modification).
4. Proposers must register with RVTD by notifying RVTD's Procurement Coordinator, Debbie Wilbur at dwilbur@rvtd.org. In the event solicitation addenda are issued only registered Proposers will be notified via email of the availability of addenda for download. **Acknowledgement of addenda will be required (Form 5.1).**
5. **A pre-proposal conference will be held on January 5, at 10:30-11:30am (local time) at RVTD's Downtown Administration Building at 130 E. 8th St, Medford, OR.** Prospective proposers are strongly encouraged to attend.
6. This solicitation is for a public work subject to State of Oregon prevailing wage rate laws (ORS 279C.800 to 279C.870) and Davis-Bacon Act (40 U.S.C. 3141 et seq) when construction services are added to the contract. Proposers must certify compliance with prevailing wage requirements in their proposal.
7. All questions regarding this Request for Proposals must be directed to via email to RFP@RVTD.org.

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FOR
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SECTION 1.0 INTRODUCTION AND BACKGROUND INFORMATION

1.1 General Overview

The Rogue Valley Transportation District of Oregon (“RVTD”) is soliciting written proposals from qualified general contractors to provide Construction Manager/General Contractor (“CM/GC”) Services for work necessary to renovate the interior of RVTD’s Downtown Administration building located at 130 E. 8th St, Medford, OR. The work generally involves renovation to create new office space, breakroom and a community meeting room in a building that formerly housed a dance studio and theater. Additionally, slight renovations to a building located at 220 S. Front St. will be made to create a Mobility Training Center. Reference Section 1.5 and 4.1 for further scope details.

One CM/GC proposal is requested inclusive of pre-construction and construction services solicited by this RFP. Selection will be on a best value basis, in accordance with the evaluation criteria set forth in Paragraph 3.2. RVTD intends to manage the project under one CM/GC contract.

RVTD’s order of magnitude/construction estimate for the construction work falls in the range of approximately \$1,500,000-1,900,000.

1.2 Attorney General Model Rules Followed

Per ORS 279C.337, RVTD will conduct this procurement in accordance with the Model Rules adopted by the Attorney General under ORS 279A.065 (3), including OAR 137-049-0600 to 137-049-0690.

1.3 Project Goals

RVTD’s goals for the Project and this Contract are as follows:

- A. Coordinate activities to ensure effective and efficient interfaces with the public and revenue operations and have the least possible impact to operations for RVTD, traffic, and adjacent businesses.
- B. Maintain very strict controls over project expenditures, and will work closely with RVTD to ensure intended cost outcomes. This project will be partially funded by the Federal Transit Administration and the Oregon Department of Transportation with a 5339 Bus and Bus Facilities grant.
- C. Closely coordinate schedules with RVTD and to identify work times and durations of work.
- D. Maintain open communications between the Contractor, RVTD, and other stakeholders;
- E. Meet or exceed RVTD’s prior successful project safety performance;
- F. Meet Project budget requirements, delivering within or under budget;
- G. Meet RVTD and jurisdictional partner quality standards;
- H. Develop a partnership with a CM/GC that will result in frictionless interfaces with key project stakeholders.
- J. Promote opportunities and include Disadvantaged Business Enterprises (DBEs) as contractors on RVTD’s projects.

1.4 Selection of a CM/GC – RVTD Management Philosophy

The CM/GC is being selected early in the Project to provide RVTD and the design team with expertise and experience that will assist in decision making, constructability reviews, value engineering, budget control, and schedule control. RVTD seeks assistance in ensuring that the design allows for economical and efficient methods of construction and selection of materials. The CM/GC approach should also provide the opportunity to secure contracts for labor and materials that add value and cost controls for the project. RVTD intends to select a CM/GC who can best provide the services needed to achieve these goals.

The selected CM/GC will be a member of a team composed of representatives from RVTD and the design consultant team. This collaborative approach will help advance the necessary design documents to the most buildable 100% construction documents. Willingness and ability to operate as a contractor/owner team will be a high priority in candidate selection.

RVTD intends that the CM/GC provide pre-construction services and serve as general contractor for all work related to the construction of the project. The team approach will continue through construction to continue to foster open communication and creative problem solving.

RVTD's standard construction general provisions and contract special provisions will be added to the contract at the time of the modification to add construction services.

1.5 Project Description

This project will renovate a 12,632 square foot building to house the Administrative, Finance, Planning and IT personnel. The building was recently purchased in December 2021 from Rogue Community College (RCC) and is located at 130 E. 8th St., Medford, OR 97501. The Downtown Administration building was originally constructed in 1922 and is in 'good' condition. However, the prior use of the building was not for administration activities. The majority of the building was devoted to a large theater, dance studio, wardrobe areas, makeup room, showers and storage.

The building is adjacent to RVTD's main transit center, Front Street Station, and provides a unique opportunity to enhance the community's access to RVTD personnel and public meeting spaces. The purchase of this building and the relocation of three departments to downtown is part of the ongoing Campus Master Planning work underway since 2019. The first phase of the Campus Master Plan was completed in 2021 with the conclusion that RVTD's primary headquarters does not have adequate space to meet the needs of the district through 2050. By moving non-critical personnel to another location, it would alleviate some space constraints at the main campus. To that end, this project will renovate the recently acquired building in downtown Medford which previously was occupied by RCC and housed a 1600 square foot theater, a 1,000 square foot dance studio, very large 10 shower locker room, three private offices, and miscellaneous spaces. The renovation will create three office suites with open work areas, 10 private offices, two conference rooms, and a secure file room, in addition to three existing offices that will remain. The project also includes a supply room, renovated toilets and showers, a renovated break room, and a new large meeting room to accommodate 65 people.

RVTD's goal is that by the end of CY 2023 this building will be renovated to accommodate all of the Administration, Finance, Planning and IT personnel, in addition to a large community meeting space that is more accessible to the public.

The project also includes renovation of the building that previously housed the Greyhound Terminal to create a Mobility Training Center. The building located at 220 S. Front St. was built by Medford Urban Renewal Agency for Greyhound in 2006 under the ownership of RVTD. The Greyhound lease is no longer active and RVTD now has the opportunity to occupy the building. A Mobility Training Center will be constructed within the building where the general public can learn how to use RVTD's bus system and Valley Lift. A mock bus equipped with a wheelchair ramp, farebox, and seating area will allow the public to learn how to use transit at their own pace. The project includes renovation of two public restrooms. The building currently has a large passenger waiting area, a ticket counter, one private office, restrooms and a baggage holding area. RVTD's goal is to phase this project so the Downtown Administration Building is completed first.

Both projects are primarily interior office renovations, with the existing building envelope to remain, with minor modifications. The existing HVAC systems are in good condition and will remain, with new distribution as required by the new layout. Existing lighting will be replaced, and the existing power and low voltage systems will be modified as required by the new layout.

1.6 Project Budget

The Project will be partially funded by the Federal Transit Administration and the Oregon Department of Transportation with a 5339 Bus and Bus Facilities grant. The grant was awarded to RVTD in early 2022 and funds are available now to begin construction. The funding available, including local match is \$998,722.

A construction cost estimate prepared by ACC Cost Consultants, LLC in November 2022 totals \$1,861,847 for this project. Adjustments can still be made to the design so that RVTD can bring this project more in line with the available grant funds.

Budget control is critical to the success of this Project. The CM/GC shall provide current market pricing as a basis of its cost estimates. Further, the CM/GC will be expected to make necessary recommendations so that the final construction cost for the work is less than the November 2022 estimate. RVTD's expectation is that bringing on the contractor during pre-construction will provide cost certainty, and assist in decision making.

RVTD will be looking for a CM/GC that can demonstrate their ability to aggressively manage project costs and risk and proactively communicate around budget. Having safeguards in place and a project management plan that explicitly outlines cost assurance and control will be expected of any successful candidate.

All pricing provided by the CM/GC shall be "open book". "Open book" means the Contractor shall provide RVTD access to all bid documents, quotations, takeoffs, other construction cost estimates, staff and labor direct cost information, and overhead or other relevant information during negotiations. Contractor will also ensure all direct costs are shown distinct from all mark-ups, fees, and all other cost components.

The Contractor may be required to procure and store some materials, while other materials may be stored in a container at RVTD's Front Street Station located across the street. RVTD will negotiate with the contractor on space needed for a job trailer at Front Street Station. During pre-construction, the Contractor and RVTD shall negotiate where materials will be delivered and stored. Contractor and RVTD shall negotiate any markups concerning delivery risks and/or worrisome long lead times to the CM/GC during pre-construction.

1.7 Project Organization

The CM/GC Contract will be executed between RVTD and the selected Contractor. RVTD will manage the selection of the CM/GC and administer the Contract through the construction phase. Wherever the term “Owner” is used in this RFP, it shall mean “RVTD.” Wherever the terms “CM/GC” or “Contractor” are used in this RFP, they shall mean “the selected CM/GC Contractor”.

1.8 Project Construction Schedule

The selected Contractor will be required to work with RVTD in the development of an acceptable baseline, amenities procurement, and milestone schedules. RVTD currently anticipates Notice to Proceed for the Pre-Construction phase in February of 2023. Pre-Construction services will extend through the spring of 2023 and potentially beyond and will include tasks generally identified in Section 4.1 of this RFP.

RVTD currently anticipates the design/construction schedule as outlined in the matrix below. Critical schedule items anticipated to be included as requirements in the construction contract documents are identified as “project milestones”:

Activity No.	Project Milestone	Anticipated Date
1	NTP Pre-Construction Services	February 2023
2	60% Design / Estimate Complete	March 2023
3	90% Design / Estimate Complete	May 2023
4	Issue For Construction Design Complete	June 2023
5	NTP – Major Construction	August 2023
6	Construction Substantial Completion	November 2023
7	Construction Completion	January 2024

All construction milestones will be negotiated in contract modification(s) based on the final scope of work and informed by activities performed and decisions made during the pre-construction services phase. The Contractor will be required to manage all work necessary to complete construction within the durations established by the baseline schedule incorporated into the construction contract modification as necessary to meet Project milestones. Construction milestones will be coordinated with RVTD operations and communications teams.

1.9 Project Drawings

30% Design drawings for the Project are included in **Appendix A**. In response to this RFP, the Contractor is not required to perform detailed cost estimate or take-offs of the drawings. The drawings are provided for information and to further describe the scope of the construction as currently designed.

The Contractor will assist the team during the pre-construction period in the advancement of drawings into 100 percent final design and construction documents. The Contractor will be requested to perform a detailed review of design drawings for constructability, cost assurance, savings opportunities, and to provide a detailed schedule and construction cost estimate and take-offs that reflects current market conditions and pricing.

RVTD will provide design drawings for milestones as necessary.

1.10 Award of Contract

RVTD intends to solicit multiple competitive proposals, evaluate each proposal received, rank and select, and then award one CM/GC Contract to the firm with the highest ranked proposal. The initial CM/GC contract will include a Pre-Construction Personal Services Agreement.

In response to this RFP, the Proposer shall submit a firm "Pre- Construction Services Price" and firm "Fixed Fee Percentage Price". The proposed "Pre-Construction Services Price" shall be inclusive of all associated costs and profit. Once successful negotiation of a Total Contract Price ("TCP"), RVTD will issue a contract modification for Construction Services.

All negotiations shall be open book. "Open book" means the offeror shall provide RVTD access to all bid documents, quotations, takeoffs, other construction cost estimates, staff direct cost information, and overhead or other relevant information during negotiations.

The award of the CM/GC contract modification for construction services will be subject to the Contractor posting 100 percent performance and payment bonds.

1.11 Explanation of the Total Contract Price (TCP)

The TCP that will be negotiated between the Contractor and RVTD. The TCP is the sum of the Reimbursable Costs (trade work and general construction), Contractor's Risk, if any, and Fixed Fee. Reimbursable costs and Contractor's Risk will be negotiated with pay items either lump sum priced, unit priced, or cost reimbursed.

The Fixed Fee Percentage Price will be included in the TCP (in proportion to the amount of construction services included in each modification) and will remain fixed through the entire Contract, including Construction Services.

RVTD will not pay any amount that exceeds the TCP unless the amount results from material changes to the scope of work and the parties agree in writing to the material changes. Any savings realized by the Contractor will accrue to RVTD unless provided otherwise by this Contract.

1.12 Organizational Conflict of Interest

An organizational conflict of interest means that because of other activities or relationships with other firms or persons, a Contractor is unable, or potentially unable, to render impartial assistance

or advice to the Owner; or a Contractor's objectivity in performing the contract work is or might be otherwise impaired; or a Contractor has an unfair competitive advantage.

Any Contractor who is interested in participating in this CM/GC contract and who RVTD believes may have a conflict should contact RVTD (see RFP cover for contact information) to provide an explanation as to why no conflict of interest exists or its proposed measures to adequately mitigate the potential conflict prior to the due date for submission of proposals in response to this RFP. RVTD will evaluate potential conflicts of interest on a case-by-case basis.

1.13 Bid Item List

RVTD anticipates providing the Contractor with a task Bid Item List for each design drawing set including descriptions of scope and payment for each item. The Contractor will be expected to use this list as a base for providing quantifications and cost estimates for each task. This will assist with the "open book" policy and assist in negotiations.

1.14 Warranty

Contractor shall warranty all work performed under the contract for a period of one (1) year from the date of final acceptance of construction for each milestone. The warrantied work includes work performed by both the CM/GC, if any, and that of subcontractors.

End of Section

Section 2 – General Requirements

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SECTION 2.0 GENERAL REQUIREMENTS

2.1 Request for Proposals (RFP)

- A. The Rogue Valley Transportation District of Oregon (hereinafter "RVTD") requests proposals for providing Construction Manager/General Contractor (CM/GC) Services for the Downtown Administration Building Project. This RFP sets forth the minimum requirements that all proposals shall meet. Failure to submit proposals in accordance with this RFP may render the proposal unacceptable. All communications pertaining to this RFP shall be directed to RFP@RVTD.org

2.2 Procurement Schedule

The RFP process will consist of the following steps; dates are approximate and subject to change:

Issue RFP	December 13, 2022
Pre-proposal meeting	January 5, 2023 (10:30-11:30am)
Electronic and bound Proposals due to RVTD	January 16, 2023 (12:00pm)
Interviews	January 18, 2023 (1:30-4:30pm)
Deadline for revised Proposals, if any	January 24, 2023
Notification of Intent to Award	January 25, 2023
RVTD Board Approval	January 26, 2023
Award Pre-Construction Services Contract	January 28, 2023
NTP Pre-Construction Services	February 2023 (date TBD)
Submit TCP for construction period services	Fall 2023

RVTD reserves the right to analyze, examine, and interpret the final proposals for a period of not more than 90 calendar days commencing from the final proposal due date and time, in order to determine the successful Proposer and issue a Notice of Intent to Award to the successful Proposer. Proposals shall not be conditioned to allow for less than a **90 calendar day** period for award of the Contract, commencing from the final proposal due date and time.

2.3 Questions and Changes to RFP

RVTD reserves the right to make changes to the RFP. All changes to the RFP, prior to receipt of proposals shall be electronically posted to RVTD's website and send to the registration list.

Failure to acknowledge receipt of an addendum may cause a proposal to be rejected as non-responsive. Following receipt of proposals, any changes to RVTD's RFP will be conveyed in writing by RVTD to those Proposers determined to be in the competitive range.

Proposers may submit questions, request clarification, or request a change to the RFP by submitting a request to RFP@RVTD.org. The request shall specify the provision of the RFP in question, and, if a change is requested, contain an explanation for the requested change. If the requested change is to the Scope of Services, the request must be submitted **at least seven (7) business days prior to the date set for receipt of proposals**. RVTD may decline to respond to questions or change requests received less than seven (7) business days before the date set for receipt of proposals.

RVTD shall evaluate any question or request submitted, but reserves the right to determine whether to respond or accept the requested change. Proposers shall not rely on oral or written representations regarding this RFP unless issued in writing as an addendum by the Procurement & Contracts Department.

2.4 Proposal Format

Proposal documents shall be sectionalized as described below. Each proposal section must fully respond to the Proposal Content described under paragraph 2.5 of this RFP and must be organized to facilitate the review and scoring by the Evaluation Committee.

Proposals should be submitted both electronically to RFP@RVTD.org and in three (3) hard-bound copies to RVTD's Main Offices located at 3200 Crater Lake Ave. Medford, OR on January 16, 2023 no later than 12:00PM (PST). Copies may be mailed or delivered in person.

Proposals shall conform to the following format:

- Introductory Cover Letter (Limit: 1 page)

Offerors shall provide a cover letter with introductory information, such as point of contact, address, and phone and fax numbers. This letter should reference the RFP by name and number, provide a concise summary of the Offeror's organization by firm and responsibility, identify the Project Manager and his/her relevant experience, and generally introduce RVTD to the capabilities of the firm.

- Part I- Proposal (Limit 10 pages, excluding Organization Chart, Schedule, Forms, and Resumes)

Proposals shall include the information required in the following order:

- A. Firm Experience and Past Performance
- B. CM/GC Project Team Staff and Organizational Chart
- C. Draft Project Approach and Work Plan, including Schedule
- D. Draft Contracting Plan, DBE Program and Workforce Diversity
- E. Project Management
- F. Appendix Pages

- Part II- Price Forms
 - A. Price Form 5.3 Pre-Construction Services
 - B. Form 5.4 Construction Services Fixed Fee

Proposals shall be in basic text information no smaller than 11-point type and provide page numbers on the bottom of the sheet. The 10 page limit excludes the following, which shall be included in the proposal as follows:

- Resumes: no page limit, but should be focused on key individuals comprising the proposed professional team and which shall be included in an Appendix to the proposal,
- Organization chart; and
- Schedule.
- DBE Program and Workforce Diversity

2.5 Proposal Content

Proposals should be prepared simply and economically, providing a straightforward, concise description of Proposer's capabilities to satisfy the requirements of the RFP. RVTD shall not be liable for any expense incurred in the preparation of proposals.

A. Firm Experience and Past Performance

1. The Proposer shall provide an outline of their experience over the last three years, or longer if applicable, with recent projects similar in scope and budget to this project highlighting experience relevant to the project, including, but not limited to, experience on other CM/GC contracts; Value Engineering (VE); projects where the budget and schedule were met or expectations were exceeded.

Provide the following key information for each noted project:

- Name of the project contact person (Owner and Project Manager, if applicable) and current phone number.
 - Location of the project and completion date.
 - Brief description of the project, highlighting scope, budget, complexity, context, key interfaces, project similarities, schedule constraints, and project delivery method similarities.
 - Outline of unique project needs/ challenges, and how you successfully addressed them.
 - Identify the specific role of the Proposer's member firm and, where applicable, identify proposed team staff that participated in the project and their specific role.
 - Indicate how role selection was matched with individual staff strengths, and specifics on how the team was structured to create a complementary set of skills that contributed to constructive collaboration.
 - Amount of Proposer's initial contract award and final contract close-out or projected price. Proposer's portion of contract, scope of Proposer's portion, and value of Proposer's portion, and identification of whether Proposer was a prime or subcontractor on the project.
 - Number of claims greater than \$100,000, and the value of each, that required mediation, arbitration or litigation to settle, and their current disposition.
2. Proposal shall include annual volume figures for the last five years, current firm commitments, current bonding capacity and expected availability of proposed staff in 2023. List your firm's primary equipment that would be used on a project of this nature.
 3. In the event Proposer is a joint venture, a copy of the Joint Venture Agreement must be submitted in a separate, sealed envelope. To the extent Proposer believes portions of the Joint Venture Agreement are confidential or proprietary, they should be marked as such. The Joint Venture Agreement will not count against the page limit.

B. CM/GC Project Team Staff and Organizational Chart

1. Proposed Team: Each of the key staff personnel identified in this section will provide the management for the Project. Key personnel proposed are expected to predominantly reside in the Rogue Valley region for the duration of the Project. Some individuals may fulfill multiple positions on the Project, but the Proposer should demonstrate how multiple assignments are within the capacity of the management team.

RVTD believes that a major factor for success of this Project will be the experience of the management team in performing similar work. The qualifications specified below will be used to evaluate the key personnel on the team proposed. The Proposer shall clearly identify and describe the key personnel's proposed roles for the Project and relevant

professional experience. Finally, the Proposer shall highlight successful past project experiences where the individuals proposed have worked as a team.

a. Project Manager

The Project Manager (PM) should have demonstrated a minimum of ten years experience in this role, and should have significant additional experience in construction and management of construction on major civil/road projects with similar scope, budget, complexity, context, key interfaces, and project delivery method as this Project. The PM shall have experience in the delivery of projects using methods other than low bid design-bid-build, and preferably have experience in the delivery of projects making use of the CM/GC contracting method. The PM should be able to estimate and schedule at a high level, and be able to demonstrate superior communication skills with the public and jurisdictions.

b. Construction Manager

The Construction Manager (CM) should have:

- Minimum of ten years relevant construction and management experience in similar complex civil, with systems integration, and transit projects of similar scope where the construction schedule is constrained and the budget is limited.
- Knowledge of working around operating transit, and auto traffic, including constrained right of ways..
- Demonstrated experience with projects that required regular interaction and coordination with stakeholders similar to RVTD operations and communications teams, and traffic jurisdictions, such as PBOT, ODOT, and City of Gresham
- Roadway Worker Protection (RWP) training.
- Be familiar with traffic control in high pedestrian/bicycle traffic and public interface areas.
- Familiarity with managing/mitigating impacts on adjacent business owners/residents, and capabilities in representing this project in a positive and cooperative manner.

c. Safety Manager

The Safety Manager should have a minimum of ten years experience working on safety programs for civil construction projects and experience in a management role. The Safety Manager should have past experience with OSHA safety regulations, and be RWP trained.

The Safety Manager should be available during Pre-Construction services to review safety issues regarding phasing and construction systems and shall be available for construction inspection on a daily basis.

d. Quality Control Manager

The Quality Control (QC) Manager should have demonstrated a minimum of ten years experience in construction and should have at least five years experience in QC activities, including preparation and implementation of quality control plans and procedures for construction. The QC should be RWP trained.

e. DBE and Workforce Utilization Manager

The DBE and Workforce Utilization Manager should have demonstrated a minimum of five years experience in contract management, established understanding of DBE and workforce training programs. The DBE manager should have demonstrated experience with subcontracting recruitment of DBE firms.

f. Cost Estimating and Budget Manager

The Cost Estimating and Budget Manager (CE) should have a minimum of ten years experience with at least five years recent experience in budget management and cost estimating of similar projects, including experience with Generally Accepted Accounting Principles (GAAP). The CE may fulfill multiple roles on the Project as their relevant experience and availability allow.

2. Organization Chart

Provide an organization chart for the project. The organization chart may present as much detail as the Proposer determines is sufficient to demonstrate the organization that it will use to deliver the project within the established page limit. The organization chart shall identify position titles, and for key personnel only, the names of the people proposed to fulfill these roles, along with the proposed percentage of time that each of the key personnel will be dedicated to the project. The organization chart shall also indicate reporting and chain of command structure for the team. Finally, the organization structure shall suggest interfaces with RVTD's management and project controls staff. Implementation of these interfaces will be at RVTD's sole discretion and will be negotiated and adjusted if needed post-award with the successful Proposer.

3. Resumes

Resumes shall be included in an appendix for all key personnel listed on the organizational chart. Additional resumes and individuals may be included, but it is strongly suggested that the rationale for their inclusion be made clear within the proposal. Resumes shall include each individual's educational background, work history, length of tenure with the firm, professional certifications (if applicable), and experience on other projects. Resumes should be tailored to highlight past experience with projects of a similar scope, budget, complexity, context, key interfaces, and project delivery method as this project where the role for the individual proposed is also similar. The Proposer shall provide three (3) references for proposed full-time individuals..

C. Draft Project Approach and Work Plan, including Schedule

1. Approach Narrative

Proposers shall provide a brief narrative describing their approach to this work and how that approach will achieve efficiency, schedule adherence, budget certainty, and minimal impact on businesses and the adjacent transportation system. Proposers shall indicate their work philosophy, and how it relates to informing their interface with owner project management groups, sub-contractors, and their own employees. Define the company or joint venture values, and how that informs their approach.

2. Work Plan, including Schedule

Provide a preliminary baseline schedule, incorporating the schedule information provided in this RFP, refer to section 1.8, and drawings/schedule information included in the appendices, showing proposed phasing, sequencing of work, proposed CMGC amenity procurement deliverables, shop drawing reviews, durations, and options to be considered by RVTD that provides value. Baseline schedule should assume the current schedule shown in section 1.8 provides a starting point for planning.

The accompanying work plan shall describe the approach to be used in performing the work described in this RFP, with emphasis upon the following (use specific examples from previous projects whenever possible):

- Construction staging, including mobilization of equipment and materials to the work site.
- Long or delayed material procurement.
- Approach to coordinating work with utilities.
- Flexibility within the schedule to balance impacts to businesses/residents with expediency of construction.
- Any other work plan elements that may have an impact to the public and RVTD operations.
- Process for replacing key personnel in the event of unavailability.

3. Conduct of Construction

Proposers should describe actions and procedures they will use to minimize adverse impacts to the public, RVTD operations, and the adjacent property owners and institutions.

Proposals should discuss how work will be managed to complete construction activities during the established timeframes and controls that could be put in place to ensure schedule needs are met.

Proposers should describe their approach to ensuring coordinated and frictionless interfaces during construction around operating buses, traffic, business deliveries, bikes/peds, and other operational components.

D. Draft Contracting Plan, DBE Program and Workforce Diversity

1. Draft Contracting Plan

Describe a proposed construction contracting plan for full the scope of the Project's construction work. Show and describe rationale for recommended division or segmentation of the work to facilitate bidding and award of trade contracts.

The selection process must be competitive, meaning that the process should be based on low bid competitive method, low quote competitive method or a method whereby both price and qualifications are evaluated in a competitive environment. No sole source selection of a subcontractor will be considered by RVTD without submission of a written justification explaining the circumstances that support a non-competitive selection.

The Proposer shall identify in its proposed contracting plan construction trade work that it proposes to be accomplished by other than low bid subcontracting. The Proposer may propose to accomplish such work either by subcontractors who are selected on a best

value basis, or by self-performing it with its own work crews. The Proposer shall explicitly indicate any work it proposes be procured through value-based competitive selection in lieu of low bid and provide a concise rationale. RVTD reserves the right to request alternative procurement of this scope of work during negotiations.

Proposal of best value and/or self-performing work does not obligate RVTD to accept that portion of the plan, or invalidate the contract should RVTD not accept that portion of the plan. The Proposer shall obtain RVTD's approval of this approach to these specific scopes of work. Construction trade work proposed to be performed by other than low bid subcontracting and approved by RVTD in the final contracting plan is considered exempted work.

The Proposer may propose to self-perform portions of the construction work. The Proposer shall explicitly identify all work the Proposer intends to self-perform. Proposal of self-performing work does not obligate RVTD to accept the Proposer's proposal(s), or invalidate the contract should RVTD not accept that portion of the plan. The Proposer shall obtain RVTD's approval of this approach to these specific scopes of work. Such work shall be identified in the Contracting Plan and approved by RVTD. In all cases, RVTD will require the Proposer demonstrate that it can self-perform work at a competitive price.

2. DBE Program & Workforce Diversity

The proposal must incorporate and address how elements of the DBE program, as described below, will be implemented for both pre-construction and construction activities.

It is the policy of RVTD that DBEs, as defined in 49 CFR Part 26, shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. The DBE requirements of 49 CFR Part 26 apply to this procurement. By submitting its proposal, Proposer certifies that it will take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs are given an equal opportunity to compete for and participate in the performance of this Contract. Proposer further certifies and agrees that it has not and will not discriminate on the basis of race, color, national origin, or sex in the award of subcontracts under this Contract or in performance of this Contract.

This section of the proposal shall contain narratives for workforce diversity and DBE utilization as more fully described below. The narratives should include identification of Offeror's certifications and/or nondiscrimination practices, and any historical DBE/DBE joint ventures, subcontracting, or mentoring plans congruent with RVTD's diversity policies.

a. Subcontractor Utilization

The Offeror shall provide a narrative description of its experience in encouraging participation on the part of DBE as contractors, consultants or suppliers on previous projects. Discuss any innovative or particularly successful measures that the Offeror has undertaken. Include a list of those certified DBE firms with which it has had a contractual relationship during the last 36 months.

b. Project Subcontracting Plan

The Offeror shall provide a plan for obtaining utilization of DBE firms on this project. The outreach plan shall be realistic, and based on Offeror's successful past experience. Include in the plan documentation of the results achieved by Offeror's past DBE outreach efforts, a detailed schedule of events, and those steps that will or have been taken to support DBE participation.

The Offeror shall describe any plans, which shall be realistic and achievable, to provide innovative mentoring, technical or other business development services to DBE team members needing or requesting such services. Possible elements of an expanded DBE plan are shown below:

- Outreach efforts regarding announcement of subcontracting opportunities to minority, women, emerging small business, and service disabled veteran organizations through pertinent organizations or channels.
- Commitment of staff and resources to provide administrative assistance, financial, technical or other support to the subcontracting team.
- If appropriate to the Project, opportunities for one or more DBE firms to develop small prime contracting skills under mentorship of the Offeror.
- If appropriate to the Project, equipment sharing programs to reduce costs for DBE firms.
- Documented, successful experience at fostering DBE firms and minorities and women in the workforce; demonstration of success in working with DBE firms and minorities and women in the workforce; complete an innovative plan for accomplishing and supporting utilization of DBE firms.

Offeror shall also complete and submit Probable Subcontracting Opportunities Form 5.2.

The State of Oregon's Certification Office of Business Inclusion and Diversity (COBID) is the state agency responsible for DBE certification and state certifications. Proposers are encouraged to use information available through COBID in preparing proposals pursuant to this RFP. COBID maintains a directory of all firms certified as DBE/MBE/WBE/ESB/SDVBE's. Copies of the directory may be obtained from:

State of Oregon, Certification Office of Business Inclusion and Diversity
775 Summer St. NE, Suite 200
Salem, Oregon 97301
PH: 503-986-0075
Website: <http://www.orcobid.com>

c. Workforce Diversity

The Offeror should include in this section information available regarding its EEO Certification if available. Additionally, the Offeror should include information regarding EEO Certification of subcontractors proposed if available.

E. Project Management
1. Preconstruction Services

Proposals shall outline a specific approach to guide the review of preliminary drawings and specifications and the review of subsequent revisions to final construction documents. RVTD anticipates that the Downtown Administration Building documents will include 60% and 90% design submittals. Contractor shall detail how the review will ensure constructability, reliability in costing, and how the Contractor will successfully propose changes to the drawings or approach if deemed necessary.

2. Design Review/Value Engineering (VE)

The Proposer shall describe projects where VE has been an integral part of the relationship with the owner, including VE processes that were not successful and VE means and methods successfully used on past projects.

3. Price Negotiations/Estimates

The Proposer shall explain how it will approach cost estimating and price negotiations, including, interaction with RVTD's designer(s) to complete the project within the established timeline and budget.

The Proposer shall describe how opportunities will be identified that will make the project a better value. The Proposer shall include the means and methods that will be used and, specifically, how its key personnel will interact with stakeholders and the designer to introduce VE proposals and work through the price negotiation process.

4. Permitting

Proposals shall describe Contractor's approach to define what permits are required, their lead times, and related costs. Proposers shall describe how they will incorporate this information into the project baseline construction schedule and budget.

5. Quality Assurance/Quality Control Plan

Proposals shall describe Contractor's approach and specific quality control methods including inspection and testing, and recommended interfaces with the Owners' quality assurance plan. Specific examples of successful implementation of these actions and procedures from past projects are encouraged. Quantitative measures illustrating successful implementation of quality programs on past projects are also encouraged.

6. Safety Plan

Provide your most recent Workers Compensation insurance experience modifier for the past 3 years (not included in proposal page limit). For this project, identify your proposed plan and approach to incident-free management of public safety risks, including your firm's safety experience and performance on projects involving construction.

7. Project Controls

Proposals shall describe Contractor's approach to project controls, including mechanics of schedule updates and cost estimating. Schedule approach should include software and other scheduling tools and techniques used. Cost estimating approach should include discussion of cost estimating at required intervals during the pre-construction phase, as well as pricing for change orders during the construction phase.

8. Closeout

Proposals shall describe means and methods to accomplish successful turnover and Owner occupancy to include the means of contract closeout information, spare parts, warranty certifications, operation and maintenance manuals and training, and other information and materials as required by RVTD and the project specifications. The Proposer shall provide a preliminary summary describing the process to implement the one (1) year warranty required under this contract, and for transferring O&M manuals and maintenance instructions for equipment, systems, architectural features, and civil elements.

F. Price (submit in a separate, sealed envelope – do NOT include in Technical Proposal)

1. Pre-Construction Services Price: Offeror shall provide a not-to-exceed price based upon units in Form 5.3 and the scope of services identified in Section 4.1 of this RFP. Offeror shall submit Proposal Form 5.3.
2. Fixed Fee Price: Offeror shall submit Proposal Form 5.4, Pricing Form – Construction Services Fixed Fee, setting forth its “Fixed Fee” for construction services as a percentage of the construction phase. RVTD’s current construction estimate totals \$1,500,000-1,900,000. The proposed Fixed Fee Price shall not change regardless of the negotiated TCP.

2.6 Cost/Price Analysis

Proposers may be required to supply additional pricing information to support RVTD’s cost/price analysis of each proposal evaluated. Additional information may include personnel cost elements, including direct salary (hourly rates by individual position), overhead on salary (expressed as a verifiable rate), direct non-salary (travel, or subcontractor work directly related to this contract), and proposed profit. Failure to submit accurate cost data upon request, or to allow RVTD to verify the same, may result in rejection of the proposal.

Cost/price information will be evaluated to determine reasonableness and proper allocation according to federal cost/price principles, and in accordance with the evaluation criteria set forth elsewhere in this RFP.

RVTD reserves the right to audit home-office costs proposed for this project under general conditions. Contractor shall permit RVTD to inspect and audit all materials related to its proposed fixed fee, including payrolls, books, accounts, and other data and records of Contractor.

2.7 Supplements to Proposals

- A. If any proposal indicates minor noncompliance or variance with the RFP, RVTD may, but need not, request that the proposal be supplemented.
- B. If requested, the Proposer may submit a supplement to the proposal responsive to such a request within the time period established in such request, which RVTD will receive and evaluate in conjunction with the proposal. Supplements shall not be considered to be Best and Final Offers unless so indicated.

2.8 Submission of Proposals

Proposal documents shall be sectionalized as described below. Each proposal section must fully respond to the Proposal Content described under paragraph 2.5 of this RFP and must be organized to facilitate the review and scoring by the Evaluation Committee.

Proposals should be submitted both electronically to RFP@RVTD.org and in three (3) hard-bound copies to RVTD's Main Offices located at 3200 Crater Lake Ave. Medford, OR on January 16, 2023 no later than 12:00PM (PST). Copies may be mailed or delivered in person.

Proposals must be submitted as follows:

- Part I- Technical proposal with cover letter, including all forms except for Forms 5.3 and 5.4, Price Proposal forms; and
- Part II- Price Proposal Forms (Forms 5.3 and 5.4) as a separate document

2.9 Cancellation of RFP

RVTD reserves the right to cancel this RFP at any time without liability prior to execution of the contract by RVTD if cancellation is deemed to be in RVTD's best interest. In no event shall RVTD have any liability for the cancellation of award. The proposer assumes the sole risk and responsibility for all expenses connected with the preparation of its proposal.

2.10 Administrative Remedies

A Proposer may seek administrative remedies under Proposal Protest Procedures of RVTD's Contracting Procedures. Copies of RVTD's Protest Procedures are available upon request from RVTD's Procurement Department and on RVTD's website at <https://rvtd.wpengine.com/wp-content/uploads/2021/02/BID-PROTEST-PROCEDURES.pdf>.

2.11 Confidentiality of Proposal

Prior to Contract award, RVTD believes that the public interest will be harmed by disclosure of Proposals, Proposal supplements, and all communications made in the course of procurement negotiations, and will hold all such documentation in confidence, until after Contract award, pursuant to ORS 192.502(4).

After Contract award, RVTD will treat Proposals, Proposal supplements, and all communications made in the course of procurement negotiations a matter of public record, except to the extent they contain trade secrets, confidential information, or are otherwise exempt from disclosure under Oregon or federal law.

2.12 Trade Secrets and other Confidential Information

Proposers must clearly and specifically identify confidential or trade secret information in their Proposals and must cite statutory or regulatory authority for every asserted exemption from public disclosure. When exempt information is mixed with nonexempt information, the nonexempt information must be disclosed. The fact that a proposer marks and segregates certain information as exempt from disclosure does not mean that the information is necessarily exempt. RVTD will make an independent determination regarding exemptions applicable to information that has been properly marked.

if a proposer does not properly mark TRADE SECRET AND CONFIDENTIAL INFORMATION IN A PROPOSAL, RVTD may disclose such information in response to a public records request.

RVTD disclaims liability for disclosure of trade secrets or other information entitled to confidential treatment if the Proposer fails to identify trade secrets or other confidential information clearly, has failed to cite statutory or regulatory authority for keeping such information confidential, or identifies an entire proposal or proposal supplement as confidential or exempt.

If, in response to a public records request, RVTD refuses to release the records in question due to such information being properly marked by the Proposer as trade secrets or other confidential information, the Proposer agrees to provide information sufficient to sustain RVTD's position to the District Attorney of Jackson County, who currently considers such appeals. If the District Attorney orders that the records be disclosed, RVTD will notify the Proposer in order for the Proposer to take all appropriate legal action. The Proposer agrees to hold harmless, defend, and indemnify RVTD for all costs, expenses, and attorney fees that may be incurred by RVTD as a result of any legal proceeding regarding the disclosure of the Proposer's records.

2.13 Procurement Confidentiality

Proposers are cautioned that until submission of their proposal, they may have contact concerning this RFP with only those District representatives, agents, or personnel designated in writing herein. Discussions or communications concerning this RFP with District Project Managers, District employees, its consultants, or members of the RVTD Board of Directors, are strictly prohibited. Any violation of this restriction may result in disqualification of the Proposer from further participation in this procurement and from award of any contract or subcontract under this solicitation.

2.14 Board Approval

Approval by RVTD's Board of Directors is required when projects exceed \$250,000. RVTD intends to bring this project to the RVTD Board in January 2023.

Revenue contracts and other contracts for routine and ongoing operational expense are approved or delegated for approval by RVTD's General Manager.

2.15 Pre-Contractual Expenses

Pre-contractual expenses are defined as expenses incurred by the firm in: 1) preparing its proposal in response to the RFP; 2) submitting that proposal to RVTD; 3) negotiating with RVTD any matter related to this proposal; and 4) any other expenses incurred by the firm prior to the effective date of award, if any, of a contract resulting from this solicitation.

RVTD shall not, in any event, be liable for any pre-contractual expenses incurred by firms in the preparation of their proposal. Firms shall not include any such expenses as part of their proposal.

2.16 Notice to Unsuccessful Proposers

Following contract award, RVTD may inform unsuccessful Proposers of:

- (1) The number of proposals RVTD received;
- (2) The name of the successful Proposer; and
- (3) The total contract price.

RVTD will attempt to give the notice under this paragraph promptly after contract award. RVTD's failure to give that notice shall not be deemed to affect the validity of the selection process or contract.

2.17 Multiple Proposals

Multiple proposals from a single Proposer will not be considered.

2.18 Late Proposals

A proposal is late if RVTD receives it after the deadline stated in this RFP for delivery of proposals. A proposal shall be deemed received by RVTD when it has been submitted via RFP@RVTD.org. Proposals received after the exact date and time set forth in this RFP may be rejected.

End of Section

Section 3 – Evaluation of Proposals

3.1 Evaluation Procedure

3.2 Evaluation Criteria and Scoring

3.3 Compensation

SECTION 3.0 EVALUATION OF PROPOSALS

3.1 Evaluation Procedure

RVTD's General Manager shall appoint a Evaluation Committee (EC) to evaluate proposals.

A. Determination of Competitive Range Based upon Written Proposals

Following receipt of written proposals, the EC will evaluate and score the proposals against the criteria set forth in the RFP in order to determine a competitive range, which will include the proposals that have a reasonable chance of being selected for contract award. Only those firms within the competitive range will be considered for award.

RVTD anticipates that the competitive range will consist of 3 Proposals, but this size may be decreased if the number of Proposers that submit responsive Proposals is less than the specified number, or may be increased if the evaluation of Proposals establishes a natural break in the scores of the Proposers indicating a number of Proposers greater than 3 are closely competitive, or have a reasonable chance of being selected for award.

B. Interview Process

RVTD, at its sole discretion, may choose to conduct interviews of the competitive range of highest ranked firms. If interviews are held, only the firms in the competitive range will be further considered for award of a contract. Each firm will be notified in advance regarding the schedule of its interview. The purpose of the interview is to allow Proposers to clarify written proposals in response to questions from the EC.

Following the interviews, Proposers will be given a date and time for submission of any changes to their original Proposal, which the EC will consider along with original Proposal as revised Proposals. Upon receipt of revised Proposals, the EC may adjust the interviewed Proposers' scores based on any revisions to the written Proposals and the quality of responses in the interviews, as they both relate to the evaluation criteria, and rank the revised Proposals based on the criteria scoring.

If no interviews are held, the initial Proposal scores will be final and serve as a basis of award.

A recommendation for award will be presented to RVTD's General Manager and to RVTD's Board of Directors for authorization.

3.2 Evaluation Criteria and Scoring

The EC will evaluate the proposals and consider the Proposer who scores the most points out of a possible 200 total points as having submitted the most favorable proposal. Favorable proposals will be those that best address the information requested, and demonstrate through specific examples how their knowledge, skills and abilities are best suited for this particular project. Proposers in the competitive range shall be ranked from highest to lowest score. Should RVTD be unsuccessful in negotiating an acceptable contract with the top scorer, RVTD, at its sole discretion, may proceed to negotiate with the second highest scorer, and so on.

Proposal Scoring

A. Proposer Experience/Past Performance **35 points**

The Proposer's experience submitted as described in section 2.5.A of this RFP will be evaluated based on the relevance of similar project experience. An important factor in this scoring is the effective description of the Proposer's role in prior projects and how that experience, whether through key staff involvement or firm policies and practices will be central to this Project's success.

B. Proposed Project Team **40 points**

Proposals will be scored based on the Proposed Project Team members and the Organization chart as described in section 2.5.B of this RFP. The evaluation committee will review the selected team members along with the relevant background and project experience as provided in the Proposal and resumes.

Additionally, the evaluation committee will gauge the effectiveness of the organizational chart to address internal Contractor interfaces as well as key interfaces with the Owner and Project stakeholders.

C. Draft Project Approach, Work Plan & Schedule **35 points**

This section will be scored based on the comprehensive understanding and thoughtful approach to the construction work plan as described in 2.5.C of this RFP.

D. Draft Contracting Plan and DBE Program **20 points**

The Contracting Plan narrative will be scored based on the responsiveness to requirements identified in Section 2.5.D of this RFP.

E. Project Management **30 points**

The Proposer's narratives for the approach on this Project and relative success on recent projects in the areas of Quality Control, Safety, Cost Control, and On-Time Performance, as described in section 2.5.E of this RFP, will be the basis of scoring.

F. Price **40 points**

The basis for evaluation and ranking of Price Proposals will be the sum of the Total Pre-Construction Services Price set forth in Form 5.3 plus the Fixed Fee Percentage Price set forth in Form 5.4. The evaluation committee will check Form 5.4 for mathematical errors and will correct any errors and recalculate prices on the assumption that (the lowest) unit prices are correct and thus predominate. RVTD reserves the right to review its recalculation of a mathematical error with that Proposer. The lowest proposed price will be assigned a Price Score of fifty five (55) points. *All other Price Proposals will be prorated by the following formula:*

$$\text{Price score} = \frac{\text{Lowest Proposed Price}}{\text{Proposed Price}} \times 55 \text{ points}$$

Price scores cannot be less than zero.

Total possible score **200 points**

The EC will evaluate the proposals and consider the Proposer who scores the most points out of a possible 200 total points as having submitted the most favorable proposal. Proposers in the competitive range shall be ranked from highest to lowest score. Should RVTD be unsuccessful in negotiating an acceptable contract with the top scorer, RVTD, at its sole discretion, may proceed to negotiate with the second highest scorer, and so on.

RVTD reserves the right to investigate the qualifications of all Proposers under consideration and to confirm any part of the information furnished by a Proposer, or to require additional evidence of managerial, financial, technical or other capabilities which are considered necessary for the successful performance of the work.

RVTD reserves the right to award based on the submittal of initial proposals. If RVTD determines that further clarification is needed during the interview phase, RVTD may ask Proposers to submit supplemental information.

The EC will employ only those evaluation criteria set forth in this RFP or in addenda that may be issued prior to receipt of proposals. An evaluation criterion is deemed to include any unstated "subcriterion" that logically might be included within the scope of the stated criterion.

3.3 Compensation

RVTD will enter into a contract where compensation is based upon cost plus a percentage of cost. Compensation will be at the prices set forth in the successful Proposer's initial proposal and/or best and final offer (BAFO).

End of Section

Section 4 – Scope of Services

4.1 Scope of Pre-Construction Services

4.2 Scope of Construction Services

4.3 Special Requirements

SECTION 4 - SCOPE OF SERVICES

4.1 SCOPE OF PRE-CONSTRUCTION SERVICES

- A. The Contractor will assist the design team during the pre-construction period in the advancement of construction for each of the milestones. The Contractor will be requested to perform a detailed review of the design drawings for constructability and cost savings opportunities, and to provide a detailed construction cost estimate and take-off that reflects current market conditions and pricing. In addition, the Contractor shall provide construction phasing recommendations, and input (cost and schedule) on alternatives.
- B. Pre-construction services shall be provided under the terms of a Personal Services contract to be executed by the parties.
- C. The final scope of pre-construction services task(s) below may be subject to negotiation. However, it is understood that by responding to this RFP, the Contractor agrees that the unit prices proposed in Form 5.3, Pricing Form – Pre-Construction Services, are firm, and RVTD will not re-negotiate these prices, regardless of any changes to the anticipated quantities. The unit price submitted for each task order shall be inclusive of all costs and markups, including profit.
- D. The anticipated scope of pre-construction services under this CM/GC contract, identified by task order number, is as follows:

Pre-Construction Task No.	Description
1	<p><u>On-Going Design Input/Constructability Review(s):</u> Contractor will advise, assist, and provide recommendations to Owner and design team(s) on amenities, civil, structural, electrical, and mechanical design elements as requested by RVTD. Recommendations will focus on constructability, duration of work phases, sequencing, value engineering ideas, and the cost and schedule implications of design decisions and design alternatives.</p> <p>Major Deliverables: Written design review comments/recommendations on the 30%, 60%, and 90% design plans and specifications for each project milestone requiring design. Attendance at design and/or field investigative meetings (approximately 2 meetings per project milestone).</p>

2	<p><u>Conduct of Construction Plan:</u> Submit a preliminary and final “Conduct of Construction” plan to RVTD. The preliminary plan will be reviewed by all interested parties and used to establish the final plan, which should be completed 30 days prior to mobilization for construction. In each plan, address proposed construction phasing, staging, sequencing of work, duration of work, typical hours of work, areas and variances required where work outside of typical hours is anticipated including number of shifts and weekends, field office needs, contractor parking requirements during construction, approaches to limiting contractor parking demand, use of public roadways and plans for storage of construction equipment, job trailers, protection of private and public properties, dust control measures, dirt/debris control measures, maintenance of access to the property by RVTD personnel and inspections.</p> <p>Major Deliverables: Preliminary and final Conduct of Construction plan</p>
3	<p><u>Construction Approach Alternatives:</u> In collaboration with RVTD PM and stakeholders, gather information about operational requirements for proposed work. With this information, develop 1-2 construction approach alternatives that speak to (jointly or individually) speed of construction, safety, minimizing cost. Each alternative should address pros/cons, risks, schedule/cost differences, staging, mobilization, phasing, and workflow. These alternatives will provide a basis for establishing a preferred option that reflects project goals and internal feedback. Based on this work, the contractor will provide a final detailed Conduct of Construction Plan (with diagrams, defined tasks, hours of work, and schedule breakdowns) to provide clear direction during construction. The final Conduct of Construction Plan requirements are outlined in Task # 4.</p> <p>Major Deliverables: Existing Parameters & Findings report and Construction Alternatives report.</p>
4	<p><u>Construction Contracting Plan:</u> Work with RVTD to finalize and submit a contracting plan for accomplishment of all construction. Recommend packaging of the work to facilitate competitive bidding, use of local businesses and suppliers, and award of trade contracts. Recommend which work, if any, should be procured through best value selection, in lieu of low bid. Identify work which the general contractor proposes to self perform, and how competitive pricing will be accomplished for that work. The contracting plan shall seek to maximize DBE and mentoring opportunities in accordance with the DBE program and address how the Contractor will oversee DBE program implementation and ensure DBE program consideration during change management activities. It will be up to the CM/GC to determine whether a single plan can be utilized for each milestone or should separate ones be required.</p> <p>Major Deliverables: Draft and final plan(s) (incorporating RVTD comments)</p>
5	<p><u>Overall Construction Schedule:</u> Prepare and submit an overall detailed, baseline, critical path method (CPM) schedule in an agreed upon cloud-based software, for RVTD approval. The schedule shall be used to establish the work windows and durations for each milestone activity and for schedule management and shall be updated monthly through the duration of the contract to be consistent with progress</p>

	<p>payments during construction and updates and/or changes to work. The schedule shall be tied to the milestone and anticipated construction windows/durations as listed in the RFP.</p> <p>Major Deliverables: Initial draft and monthly schedule updates.</p>
6	<p><u>Detailed Construction Schedule:</u> Submit a detailed schedule for procuring materials. Identify dates when materials are needed, and an acceptable delivery schedule that may assume incremental deliveries over time. Tie this schedule into the overall construction schedule.</p> <p>Major Deliverable: Draft and final schedule that are ultimately included in the overall schedule update and updated monthly.</p>
7	<p><u>Construction Cost Estimates:</u> Prepare and submit to RVTD construction cost estimates for each project milestone activity. For milestones with design reviews, submit additional cost estimates for 60%, and 90% plans. As part of this task, suggest alternatives for payment methodology. Structure the estimate and payment methodology for open book review. Highlight specific items where assumptions were required to identify cost risks so that RVTD can focus design and value engineering efforts in these areas in order to minimize risks and help clarify costs. If RVTD’s preliminary construction cost estimate is exceeded, identify feasible cost reduction options, including projected cost savings offset with any additional design costs, to bring construction costs within RVTD’s budget. Ensure cost reduction options are coordinated with RVTD. Intent is that new options and recommendations are offered with each deliverable. Include an itemization of general conditions and estimated costs with each estimate.</p> <p>Major Deliverables: 60%, 90% and final estimates (the final estimate is primarily a calibration of the previous estimate to be utilized for the construction services contract mod) including cost risk and VE opportunities and recommendations.</p>
8	<p><u>Construction Quality Control Plan:</u> Prepare and submit an overall quality control plan for use during construction. Include the outline of an inspection and testing plan as an appendix to the quality control plan submittal.</p> <p>Major Deliverables: Draft and final plan (incorporating RVTD comments)</p>
9	<p><u>Contractor Furnished Permitting Plan:</u> Define what permits are required along with their respective lead times and costs. Incorporate this information into the baseline construction schedule and budget.</p> <p>Major Deliverables: Draft and final plan (incorporating RVTD comments)</p>

4.2 SCOPE OF CONSTRUCTION SERVICES

- A. A separate Construction Services Agreement will be authorized under modification(s) to the Pre-Construction Services Contract. In the event RVTB is unable to negotiate an acceptable amount for reimbursable costs for construction services, RVTB may terminate the pre-construction services agreement, and issue a separate procurement to obtain a new contractor for construction services.

Assuming the parties are successful in negotiating a construction services agreement, duties of the CM/GC shall include, but are not necessarily limited to, the following tasks:

Construction Task No.	Description
1	<u>Construction Safety & Security Plan:</u> Prepare and submit an overall project specific safety & security plan for use during construction. The plan shall be amended for each milestone to include site specific plans for that activity. Major Deliverables: Draft and final plans (incorporating RVTB comments) and milestone updates.
2	<u>Environmental Compliance Plan:</u> Prepare and submit a plan(s) to ensure environmental compliance for each phase and milestone, including a plan to manage dust and removal of demolished materials during construction in accordance with the criteria of the applicable jurisdiction(s).
3	<u>Project Construction, per Milestone:</u> Implement the Contracting Plan for each milestone, based on the agreed-upon pricing as developed under the pre-construction services. Solicit bidding for all construction work and incorporation of local labor and materials and resources except what RVTB agrees to exempt. Provide all necessary resources to complete overall work within established, milestones, and the agreed-upon schedule. Provide a project manager and field superintendent on-site as needed to coordinate, direct and manage construction work for the entire duration of construction work. The Project Manager shall establish, coordinate, conduct, and document weekly job meetings leading up to and during construction of milestone activities. Job meetings shall be scheduled as needed but during active construction shall be no less than weekly. The CM/GC shall prepare and distribute record meeting minutes within 72-hours of each meeting. Complete all construction work for a price not to exceed the established TCP.
4	<u>Detailed Construction Cost Loaded Baseline Schedule and Schedule Maintenance/Reporting, per Milestone:</u> Finalize a cost-loaded baseline Critical Path Method (CPM) schedule in and agreed upon cloud-based software. For each milestone activity as approved per the overall construction schedule developed during the preconstruction services. Maintain and update it monthly against the baseline for progress payments, monitoring project progress, managing the work, and tracking changes. Keep RVTB fully advised of the work status through submission of a monthly report identifying any delays or impacts to schedule progress. Prepare detailed weekly and sometimes hourly look-ahead work schedules that accomplish work in accordance with the

	overall CPM. Attend meetings with RVTD and coordinate with RVTD's consultants to discuss the schedule, construction methods, work windows, approvals and inspections, and opportunities for schedule or cost savings.
5	<u>Construction Cost Tracking:</u> Make available to RVTD all construction cost estimates, including supporting data, takeoffs, bids and other cost records. Provide monthly reports in format agreed to by RVTD of actual costs and work progress as compared to estimated cost projections, scheduled work progress, and as a percent of project completion. Explain significant variations and provide information as requested by RVTD. Identify variations being developed as potential change orders with RVTD assigned numbers.
6	<u>Construction Quality Control:</u> The Contractor shall develop, implement and submit to RVTD an effective Contractors Quality Control Plan (CQCP) that provides for systematic, consistent and authoritative control of the quality of work produced by the Contractor and all Subcontractors and Suppliers, in accordance with the approved arrangement developed during the pre-construction services phase. Cooperate with owner safety certification program.
7	<u>Construction Record Drawings and Specifications (“As-Builts”):</u> Maintain current, electronic copies of as-built drawing and specification revisions to the IFC construction drawings and specifications per RVTD standards, including work performed by all subcontractors, and submit as-built information monthly to RVTD. Identify revisions by RVTD assigned numbers and in accordance with all approved change procedures. The Contractor will input as-built information into the CAD documents.
8	<u>Construction Submittals, Requests for Information, and Change Order Tracking:</u> Work with RVTD to establish and implement procedures for tracking, expediting and processing all submittals, change orders, and requests for information.
9	<u>Construction Safety and Security Plan Implementation:</u> Implement an effective public and worker safety program, in accordance with the plan developed during the pre-construction phase. Manage the construction work so that it is completed in accordance with. Document safety certifiable items per plan and prior to RVTD turnover.
10	<u>DBE and Workforce Training Plan Implementation:</u> Implement the DBE and Workforce Training & Hiring programs, in accordance with the plans developed during the pre-construction phase.
11	<u>Weekly Construction Meetings:</u> Establish, Coordinate, Conduct and Document weekly job meetings. Prepare and distribute within 72 hours record minutes of each meeting.
12	<u>Invoicing:</u> Review and process all applications for payment by sub-contractors and material suppliers in accordance with the terms of their contract. Provide all backup documentation. Review and resolve all sub-contractors' and/or material suppliers' payment requests in accordance with the agreed-upon TCP.

13	Community Affairs Coordination: Coordinate with RVTD to represent RVTD as a good neighbor. Such coordination may include sharing work plans in advance, developing plans that minimize impacts to businesses and residents, adjusting work hours to minimize noise impacts, and promptly responding to neighbors' substantive concerns.
14	Contractor Furnished Permitting: Obtain necessary contractor furnished permits for construction. Integrate permitting timelines into baseline schedule to ensure these are initiated, tracked, and obtained to support construction schedule.
15	Construction Communications (Conduct of Construction) Plan Implementation: Manage all work in accordance with the agreed-upon "Conduct of Construction" plan.
16	Project Closeout: Prepare and submit all final contract closeout information, spare parts, warranty certifications, operation and maintenance manuals and training, and other information and materials as required by RVTD and the project specifications.

4.3 SPECIAL REQUIREMENTS

- A. RVTD shall retain the right to require competitive bidding for all work, to negotiate firm prices, or to allow work on a cost reimbursable basis.
- B. No changes outside the scope of the total contract price (TCP) shall be executed without authorization by RVTD change order to increase the TCP. Any matters considered outside the scope of the TCP shall be immediately brought in writing to RVTD's attention by the Contractor.
- C. At a minimum, all workers on this project shall be paid in accordance with the provisions of the Prevailing Wage Rates under BOLI or Davis Bacon Act, whichever prevails. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction."

End of Section

Section 5 – Forms

- 5.1 Receipt of Addenda**
- 5.2 Probable DBE Subcontracting Opportunities**
- 5.3 Pricing Form – Pre-Construction Services (Under Separate Cover)**
- 5.4 Pricing Form- Construction Services Fixed Fee (Under Separate Cover)**
- 5.5 Certificate Regarding Ineligible Contractors**
- 5.6 Lobbying Certificate**
- 5.7 Buy America Certificate/Steel, Iron, or Manufactured Products**

Form 5.1 Receipt of Addenda

ADDENDA RECEIVED:

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

If no addendum was received, write "None Received": _____

Date: _____

Signature: _____

Name: _____

Company: _____

Form 5.3 Pricing Form – Pre-Construction Services (Under Separate Cover)

FIRM NAME: Unit Price Rates

TASK NUMBER	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
1	On-Going Design Input/Constructability Review(s)	LS	1	\$	\$
2	Conduct of Construction Approach	LS	1	\$	\$
3	Construction Approach Alternatives	LS	1	\$	\$
4	Construction Contracting Plan	LS	1	\$	\$
5	Overall Construction Schedule	LS	1 w/monthly updates	\$	\$
6	Detailed Construction Schedule – Amenity Procurement Schedule	LS	1 w/monthly updates	\$	\$
7	Construction Cost Estimates	EA	2	\$	\$
8	Construction Quality Control Plan	LS	1	\$	\$
9	Construction Workforce Training and Hiring Plan	LS	1	\$	\$
10	Contractor Furnished Permitting Plan	LS	1	\$	\$
TOTAL PRICE			\$		
(SUM OF ITEMS 1 THROUGH 10)					

(signature on following page)

Form 5.3 Pricing Form – Pre-Construction Services Authority and Guarantee

Date:

Signature:

Name (Print):

Title:

Company:

Fixed Fee Percentage Price:

Written number (e.g. one point five percent)

Actual number (e.g. 1.5%)

The amount of the Fixed Fee will not change. For evaluation purposes, RVTD's estimate for construction services totals \$1,500,000 – 1,900,000

Form 5.2 Construction Services Fixed Percentage Fee Authority and Guarantee

Date:

Signature:

Name (Print):

Title:

Company:

Form 5.5 Certificate Regarding Ineligible Contractors

CERTIFICATION OF LOWER-TIER PARTICIPANTS REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

The Lower Tier Participant (potential sub-grantee or sub-recipient under an FTA project, potential third party contractor, or potential subcontractor under a major third party contract) certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(If the Lower Tier Participant (potential sub-grantee or sub-recipient under an FTA project, potential third party contractor, or potential subcontractor under a major third party contract) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal.)

THE LOWER-TIER PARTICIPANT (POTENTIAL SUB-GRANTEE OR SUB-RECIPIENT UNDER AN FTA PROJECT, POTENTIAL THIRD PARTY CONTRACTOR, OR POTENTIAL SUBCONTRACTOR UNDER A MAJOR THIRD PARTY CONTRACT) CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature and
Title of Authorized Official _____

Business Name _____

Date _____

CHECK APPROPRIATE BOX BELOW:

The undersigned chief legal counsel for the _____ (company name) hereby certifies that the _____ (title of authorized official) has authority under State and Local law to comply with the subject assurances and that the certification above has been legally made.

Signature of Applicant's Attorney

Date _____

Bidder or proposer does not have a "chief legal counsel."

Form 5.6 Lobbying Certificate

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 any 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 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 subawards at all tiers (including subcontracts, subgrants, 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: _____

Name: _____
(Please print)

Title: _____

Company/Firm: _____

NOTE: CONTRACTORS ARE REQUIRED, PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN SUBCONTRACTS OVER \$100,000 AND TO OBTAIN THIS LOBBYING CERTIFICATE FROM EACH SUBCONTRACTOR BEING PAID \$100,000 OR MORE UNDER THIS CONTRACT.

Form 5.7 Cargo Preference Certificate

If any equipment, materials, or commodities are transported by ocean vessel, the Bidder agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping by commercial vessel any equipment, materials, or commodities pursuant to this contract, to the extent that such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

2. To furnish within thirty (30) days following the date of loading for shipments originating within the United States, or within thirty (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 Paragraph 1 of this Certificate to RVTD (through the bidder in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C., 20590, marked with the appropriate identification of this contract.

3. To insert the substance of the provisions of this Certificate in all subcontracts issued pursuant to this contract.

Date: _____

Signature: _____

Name: _____
(Please print)

Title: _____

Company/Firm: _____

Form 5.8 Buy America Certificate/Steel, Iron, or Manufactured Products

Certification Requirement for Procurement of Steel, Iron, or Manufactured Products

Please check ONE box:

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 C.F.R. Part 661.5.

Date: _____

Signature: _____
Certified by Corporate Officer, Owner, or Partner

Name: _____
(Please print)

Title: _____

Company/Firm: _____

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: _____
Certified by Corporate Officer, Owner, or Partner

Name: _____
(Please print)

Title: _____

Company/Firm: _____

Section 6. FEDERALLY REQUIRED AND OTHER MODEL CONTRACT CLAUSES

<https://www.transit.dot.gov/funding/procurement/best-practices-procurement-manual>

ACCESS TO RECORDS AND REPORTS

49 U.S.C. § 5325(g) 2 C.F.R. § 200.333 49 C.F.R. part 633

- a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

BONDING REQUIREMENTS

2 C.F.R. § 200.325 31 C.F.R. part 223

Bid Guarantee

Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to the RECIPIENT. The amount of such guaranty shall be equal to \$\$\$\$ or X% of the total bid price. In submitting this bid, it is understood and agreed by bidder that the RECIPIENT reserves the right 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 [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 [90] days after the bid opening without the written consent of the RECIPIENT, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent RECIPIENT'S damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security thereof. It is further understood and agreed that to the extent the defaulting bidder's bid guaranty 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 guarantee

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 herein, other than that requested will render the bid unresponsive.

Performance Guarantee

A Performance Guarantee in the amount of **100%** of the Contract value is required by the Recipient to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Agreement. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the RECIPIENT within ten (10) business days from Contract execution. The RECIPIENT requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the RECIPIENT and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. RECIPIENT may require additional performance bond protection when the 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 amount of the existing bond or to obtain an additional bond. If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the RECIPIENT if:

1. A bank in good standing issues it. The RECIPIENT will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
4. The RECIPIENT is identified as the Beneficiary.
5. It is in an amount equal to **100%** of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract
7. The expiration date of the Letter of Credit coincides with the term of this Agreement.
8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the RECIPIENT and the Contractor the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft (similar to the attached forms contained in Sections X and Y) to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

Payment Bonds

A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Recipient as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

BUY AMERICA

49 U.S.C. 5323(j) 49 C.F.R. part 661

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in

FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The [bidder or offeror] must submit to [Recipient] the appropriate Buy America certification below with its [bid or offer]. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

CARGO PREFERENCE – Use of United States-Flag Vessels

46 U.S.C. § 55305 46 C.F.R. part 381

The contractor agrees:

- a. 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;
- b. 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.); and
- c. 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.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

42 U.S.C. §§ 7401 – 7671q 33 U.S.C. §§ 1251-1387 2 C.F.R. part 200, Appendix II (G)

The Contractor agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- 3) It will report violations of use of prohibited facilities to FTA; and
- 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

CIVIL RIGHTS LAWS AND REGULATIONS

The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the

requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
4. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 C.F.R. part 26

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The contractor, subrecipient or subcontractor 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 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

As an additional resource, recipients can draw on the following language for inclusion in their federally funded procurements.

Overview

It is the policy of the AGENCY and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the AGENCY to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The AGENCY shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the AGENCY may consider during its review of the Bidder/Offeror's submission package, the Bidder/Offeror's documented history of non-compliance with DBE requirements on previous contracts with the AGENCY.

Contract Assurance

The Contractor, subrecipient or subcontractor 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 C.F.R. part 26 in the award and administration of DOT-assisted contracts. 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 AGENCY deems appropriate.

DBE Participation

For the purpose of this Contract, the AGENCY will accept only DBE's who are:

1. Certified, at the time of bid opening or proposal evaluation, by the [certifying agency or the Unified Certification Program (UCP)]; or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
3. Certified by another agency approved by the AGENCY

DBE Participation Goal

The DBE participation goal for this Contract is set at 3.25%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling not less than % of the total Contract price. Failure to meet the stated goal at the time of proposal submission may render the Bidder/Offeror non-responsive.

Proposed Submission

Each Bidder/Offeror, as part of its submission, shall supply the following information:

1. A completed DBE Utilization Form that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
2. A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the DBE Participation Schedule (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the AGENCY
3. An original DBE Letter of Intent (see below) from each DBE listed in the DBE Participation Schedule.

4. An original DBE Affidavit from each DBE stating that there has not been any change in its status since the date of its last certification.

Good Faith Efforts

If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the AGENCY will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the AGENCY will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

1. Documented communication with the AGENCY's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, the AGENCY generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
3. The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and
5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

Administrative Reconsideration

Within five (5) business days of being informed by the AGENCY that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to the AGENCY's [Contact Name]. The [Contact Name] will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The AGENCY will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Termination of DBE Subcontractor

The Contractor shall not terminate the DBE subcontractor(s) listed in the DBE Participation Schedule (see below) without the AGENCY's prior written consent. The AGENCY may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the AGENCY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

Continued Compliance

The AGENCY shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, it will be the responsibility of the Contractor to submit quarterly written reports to the AGENCY that summarize the total DBE value for this Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the [Agency Name1] and [Agency Name2]. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- The AGENCY to have access to necessary records to examine information as the AGENCY deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of the AGENCY, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data

and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.

- All data/record(s) pertaining to DBE shall be maintained as stated in Section [insert reference to record keeping requirements for the Project.]

Sanctions for Violations

If at any time the AGENCY has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the AGENCY may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

EMPLOYEE PROTECTIONS

49 U.S.C. § 5333(a) 40 U.S.C. §§ 3141 – 3148 29 C.F.R. part 5 18 U.S.C. § 874 29 C.F.R. part 3 40 U.S.C. §§3701-3708 29 C.F.R. part 1926

Prevailing Wage and Anti-Kickback

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

Contract Work Hours and Safety Standards

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701- 3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a

rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

The FTA 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 any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

Contract Work Hours and Safety Standards for Awards Non Involving Construction

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

ENERGY CONSERVATION

42 U.S.C. 6321 et seq. 49 C.F.R. part 622, subpart C

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.

FLY AMERICA

49 U.S.C. § 40118 41 C.F.R. part 301-10 48 C.F.R. part 47.4

- a) Definitions. As used in this clause—

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S. – Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

(End of statement)

- e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

2 C.F.R. part 180 2 C.F.R part 1200 2 C.F.R. § 200.213 2 C.F.R. part 200 Appendix II (I)
Executive

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement 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 (Nonprocurement),” 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 subcontractors 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 ay 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.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The Recipient 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 to this Contract and shall not be subject to any obligations or liabilities to the Recipient, 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 the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

49 U.S.C. § 5323(l) (1) 31 U.S.C. §§ 3801-3812 18 U.S.C. § 1001 49 C.F.R. part 31

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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) 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.

RECYCLED PRODUCTS

42 U.S.C. § 6962 40 C.F.R. part 247 2 C.F.R. part § 200.322

Recovered Materials

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and

facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.

SAFE OPERATION OF MOTOR VEHICLES

23 U.S.C. part 402 Executive Order No. 13043 Executive Order No. 13513 U.S. DOT Order No. 3902.10

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 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.

SEISMIC SAFETY

42 U.S.C. 7701 et seq. 49 C.F.R. part 41 Executive Order (E.O.) 12699

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 (DOT) Seismic Safety Regulations 49 C.F.R. 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.

SUBSTANCE ABUSE REQUIREMENTS

49 U.S.C. § 5331 49 C.F.R. part 655 49 C.F.R. part 40

FTA's drug and alcohol rules, 49 C.F.R. part 655, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with part 655. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

The recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under Option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that, without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

TERMINATION

2 C.F.R. § 200.339 2 C.F.R. part 200, Appendix II (B)

Termination for Convenience (General Provision)

The AGENCY may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the AGENCY's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to AGENCY to be paid the Contractor. If the Contractor has any property in its possession belonging to AGENCY, the Contractor will account for the same, and dispose of it in the manner AGENCY directs.

Termination for Default Breach or Cause (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the AGENCY may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the AGENCY that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the AGENCY, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

The AGENCY, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to AGENCY's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from AGENCY setting forth the nature of said breach or default, AGENCY shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude AGENCY from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Branch

In the event that AGENCY elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by AGENCY shall not limit AGENCY's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract

Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the AGENCY may terminate this contract for default. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the AGENCY.

Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, AGENCY may terminate this contract for default. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the AGENCY may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the AGENCY resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is

terminated. This liability includes any increased costs incurred by the AGENCY in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of AGENCY, acts of another contractor in the performance of a contract with AGENCY, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies AGENCY in writing of the causes of delay. If, in the judgment of AGENCY, the delay is excusable, the time for completing the work shall be extended. The judgment of AGENCY shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of AGENCY.

VIOLATION AND BREACH OF CONTRACT

2 C.F.R. § 200.326 2 C.F.R. part 200, Appendix II (A)

Rights and Remedies of the AGENCY

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include (AGENCY to define).

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the AGENCY, the Contractor expressly agrees that no default, act or omission of the AGENCY shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the AGENCY directs Contractor to do so) or to suspend or abandon performance.

Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the AGENCY will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the AGENCY takes action contemplated herein, the AGENCY will provide the Contractor with sixty (60) days written notice that the AGENCY considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes

Example 1: Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of AGENCY's [title of employee]. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. 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 [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Example 2: The AGENCY and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the AGENCY and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the AGENCY's direction or decisions made thereof.

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 its employees, agents or others for whose acts it 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.