



**PROCUREMENT & CONTRACT ADMINISTRATION DIVISION**

**INVITATION FOR BID (IFB)**

**IFB# 28410R**

**FOR**

**MONITORS, THIN CLIENTS, AND WEB CAMS**

***NOTE:*** *The Table of Contents in this document is automated and contains hyperlinks to appropriate pages. Other portions of this document are also automated and hyperlink to referenced areas of the document.*

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**SECTION 01: NOTICE TO BIDDERS**

**1.01 SUMMARY**

The North County Transit District (NCTD) seeks bids for the purchase of Monitors, Thin Clients, and Webcams to replace current equipment at user workstations.

**1.02 BID SUBMISSION INFORMATION**

ELECTRONIC ONLY – Bidder will submit documents exclusively through NCTD’s online bidding system. All required forms must be included with bid as PDF attachments and include signature of an individual authorized to bind firm. Electronic bids will be received by on or before 2:00 PM PDT on Thursday, September 12, 2019 for Monitors, Thin Clients and Webcams. Specific submission requirements are contained in the “General Instruction for Bidders” section of this IFB.

**Federal funds are being utilized in the performance of this agreement.**

**1.03 NON-MANDATORY PRE-BID CONFERENCE-NOT APPLICABLE**

**1.04 COMMUNICATIONS**

All communications relating to this IFB must be directed through the Q&A tab within the solicitation posted on the NCTD bid management system “PlanetBids Vendor Portal”. Any contact with NCTD during the solicitation period outside PlanetBids is grounds for disqualification. Answers to Questions or requests for clarification will be responded to directly on PlanetBids.

Bidders shall submit questions, as specified above, no later than 2:00 PM PDT on August 22, 2019.

NCTD changes to any part of the IFB, technical specifications, or requirements will be through the issuance of an Addendum sent to all prospective bidders who have downloaded the solicitation from the NCTD PlanetBids Vendor Portal.

Bidders are cautioned that oral communication such as opinions, comments, explanations, responses to questions, etc. are not binding on NCTD. Bidders shall not make contact with NCTD staff, other than the assigned Contracting Officer with regard to any aspect of this solicitation.

**1.05 CONE OF SILENCE**

Any verbal or written communications between any potential or actual bidder, or its representatives and any NCTD Board Member, staff member, committee member, or contractor regarding this procurement are strictly prohibited from the date of the IFB advertisement through the date of execution of the agreement. The only exceptions to this are: (1) written requests regarding information or clarification made to NCTD’s designated Contracting Officer during the allowable time period under the solicitation; and (2) any communications at a publicly-noticed meeting of the NCTD Board of Directors. Any violation of the requirements set forth in this section shall constitute grounds for immediate and permanent disqualification of the Bidder from participation in this procurement.

**1.06 CONTRACTING OFFICER**

Responsibility for this IFB has been assigned to:

Kristin Randall- Procurement Contracting Officer  
North County Transit District  
810 Mission Avenue  
Oceanside, CA 92054

Please note that all communication regarding this solicitation must be made through PlanetBids.

**1.07 VENDOR REGISTRATION REQUIREMENTS**

To register to participate in this solicitation, go to [www.gonctd.com](http://www.gonctd.com) and click on “Contracting Opportunities” at the bottom of the page. The Online Bidding System is described and contains a link to the registration page of the PlanetBids Vendor Portal for NCTD at the following web address <http://www.planetbids.com/portal/portal.cfm?CompanyID=20134>.

Contractors must register with PlanetBids to receive email notices for this solicitation. Registered contractors are responsible for ensuring that they have downloaded all documents including addenda, plans, specifications, drawings, and other supporting documentation for the project directly from PlanetBids that are necessary to submit a responsive and responsible bid. Please contact the Contracting Officer if you are unable to comply with this requirement.

For individuals with sensory disabilities, documents may be made available in alternate formats. For information regarding alternate formats, contact the Contracting Officer listed in the solicitation or write Procurement & Contract Administration Division, North County Transit District, 810 Mission Ave., Oceanside, CA 92054.

**1.08 AGREEMENT- NOT APPLICABLE**

**1.09 ESTIMATED BID SCHEDULE (SUBJECT TO CHANGE)**

<b>ACTIVITY</b>	<b>DATE/TIME</b>
IFB Opportunity Advertisement	8/17/2019
Pre-Bid Conference	N/A
Deadline for Submittal of Approved Equal Requests via PlanetBids Only	08/22/19 at 2:00 PM PDT
Deadline for Submission of Questions or Request for Clarifications via PlanetBids Only	08/22/19 at 2:00 PM PDT
Bid Due Date and Time	09/12/19 at 2:00 PM PDT

**END OF SECTION**

## SECTION 02: GENERAL INSTRUCTIONS FOR BIDDERS

### 2.01 DEFINITIONS

Whenever, in the IFB or Agreement Documents, the following words are used, the intent and meaning shall be interpreted as follows:

**Bidder/ Bidders** – persons, Contractors, or corporations providing a submission of a bid to NCTD for a project.

**Contractor(s)** - the company to whom an agreement is awarded.

**Agreement Documents** - all of the contents of the IFB and associated Addenda, Agreement Drawings, Technical Reports, Technical Specifications, and documented Agreements. Said documents shall be considered as part of any agreement made pursuant to this solicitation.

**Days** - calendar days unless otherwise specified.

**Executive Director** - the Chief Executive Officer of NCTD or his/her authorized representative or agent.

**Grand Total Bid Price** - the grand total price of the bid and shall include all direct and indirect labor and material costs, taxes, duties, fees, and any other charges applicable to complete the total requirements as specified in the IFB including all addenda, agreement drawings and technical specifications.

**Hazardous Substances and/or Contaminated Materials** - any substance, waste, or material which is determined by any state, federal, or local governmental authority to be capable of posing a risk of injury to health, safety, and/or the environment, including, but not limited to, all substances, wastes, and materials designated or defined as hazardous, extremely hazardous, or toxic pursuant to Section 311 of the Clean Water Act, 33 USC Sections 1321, et seq., Section 1004 of the Resource and Conservation and Recovery Act, 42 USC Sections 6903, et seq., Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC Sections 9601, et seq.; Section 25141 of the Hazardous Waste Control Law, California Health and Safety Code Sections 25117, et seq.; Section 25316 of the Carpenter Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code Section 25316; Section 25501 of the Hazardous Materials Release Response Plans and Inventory Law, California Health and Safety Code Sections 25280-25299, et seq., as may be hereinafter amended.

**NCTD or Grantee** - NCTD or its authorized representative or agent

**NCTD Board of Directors** - the Governing Board of NCTD.

**NCTD Project Manager** - the authorized agent(s) or representative(s) of NCTD designated to ensure strict engineering, performance, job site review, and related conformance with the agreement documents.

**NCTD Contracting Officer** - the authorized agent(s) of NCTD who is authorized to review and administer, renew or terminate agreements.

**Notice of Intent to Award (NIA)** – an award notification, an NIA, a bid opening, or a revised list of Bidders from NCTD to all Bidders identifying the intent to award to the lowest responsive, responsible Bidder following bid opening and opens the period for protest in accordance with the provisions of this IFB.

### 2.02 BIDDER SATISFACTION

It is the responsibility of the Bidder to thoroughly examine and be familiar with any material such as drawings and specifications provided. The failure or omission of Bidder to receive or examine any Agreement Documents, addenda, other documents or to visit the site to become acquainted with conditions there existing, shall in no way relieve Bidder from obligations with respect to the bid requirements or to the Agreement. The submission of the bid shall be taken as prima facie evidence of compliance with this section.

### 2.03 BID FORM – SUBMISSION INFORMATION

Bids must be submitted on the forms provided. Bids submitted in any other form will be considered non-responsive and shall be rejected. Bids shall include a submission regarding the information and services requested. The bid must be signed with the name and title of the person duly-authorized to sign the offer. Blank spaces on the appropriate bid forms must be properly filled in, and the content thereof must not be

changed. All signatures shall be in ink. Additions or changes shall not be made to the items mentioned therein. Any unauthorized conditions, limitations or provisions attached to a bid shall be cause for its rejection and in no event shall be a part of the Agreement Documents. The bid submitted must not contain any erasures, interlineations, or other corrections unless each such correction is suitably authenticated by affixing in the margin immediately opposite the correction the surname or surnames of the person or persons signing the bid. Bids may be rejected if they show any alteration in form, are incomplete, or contain irregularities of any kind.

Bids are required for the entire Work, unless instructed otherwise in this IFB. Bids that are not for the entire work, or are incompletely written or compiled may be considered non-responsive and be rejected.

In the event that the Bidder is a joint venture or partnership, the bid declaration shall be submitted with the signatures of the authorized officers of both parties to the joint venture or partnership or attach a power of attorney naming the individual authorized to sign all necessary documents. The name of the individual who shall sign all necessary documents for the joint venture or partnership should the joint venture or partnership be awarded the agreement, shall act in all matters relative to the agreement resulting therefrom for the joint venture or partnership, shall be identified in writing on the document.

**Delivery of electronic bid documents:** Bidders will submit documents exclusively through NCTD's online bidding system.

Because bids can at times be ambiguous, NCTD reserves the right to request additional information before making an award. NCTD also reserves the right to seek clarification from any Bidder about any statement or part in its bid that NCTD finds ambiguous.

**2.04 CAMP PENDLETON ACCESS- NOT APPLICABLE**

**2.05 BIDDERS INTERESTED IN MORE THAN ONE BID**

No person, Contractor or corporation shall be allowed to make, file, or be interested in, (as a principal) more than one (1) bid for the project. However, a person, Contractor, or corporation submitting a subcontract bid to a Bidder, or one who has quoted prices on materials to a Bidder, is not thereby disqualified from submitting a subcontract bid or quoting prices to other Bidders or from being a principal Bidder for the same work.

**2.06 IFB/DRAWINGS/SPECIFICATION CHANGES**

NCTD reserves the right to revise or amend the IFB or specifications up to the time set for opening the bids. Such revisions and amendments, if any, shall be issued by addenda to this solicitation. Copies of such addenda shall be sent to all prospective Bidders of the IFB. In the event that an addendum setting forth material changes, additions or deletions is issued when there is seventy-two (72) hours or less to the bid opening date, NCTD will extend the bid opening date by no less than three (3) business days. Clarification notices that do not significantly impact the Bidders ability to submit a bid shall not result in an extension of the bid opening date.

**2.07 ADDENDA**

The effect of all addenda to the IFB shall be considered in the bid package, and said addenda shall be made a part of the bid package submitted to NCTD. It is the bidder's sole responsibility to ensure that all addenda have been acknowledged before submitting a bid response. Failure to acknowledge all addenda may render the bid package nonresponsive and result in its rejection.

**2.08 APPROVED EQUAL REQUESTS**

Whenever specification of any materials, process, or item is indicated or specified by grade, patent, or proprietary name or by name of manufacture, such specifications shall be deemed to be used for the purpose of facilitating description of material, process or article desired and shall be deemed to be followed by words "or approved equal" and salient characteristics listed. Bidders may, unless otherwise stated, offer any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified. However, NCTD has adopted certain uniform standards for certain material, processes and fixtures. If material, process or article offered by Bidders is not found to be an approved equal as identified by NCTD, (i.e. equal to or better in every respect to the item specified) the Bidder shall

be required to furnish material, process or item specified in the solicitation at no additional cost to NCTD. The burden of proof as to the equality of any material, process or article shall rest with the Bidder.

Requests for approved equal must be received by NCTD, in writing, by the deadline stated in Planetbids. Any request for an approved equal or complaint concerning the equipment or material specifications must be fully supported with technical data, test results, or other pertinent facts as evidence that the substitute offered is equal to or better than the specification requirement.

Time limitations in this section shall be complied with strictly and in no case will an extension of time for performance of the agreement be granted because of Bidder's failure to request a substitution of an alternative item at the times and manner set forth herein. NCTD has the complete and sole discretion to determine if an item or article is an equal item.

## **2.09 DISCREPANCIES IN BIDS**

Each Bidder shall furnish a price for all bid items as specified in the Line Item section on PlanetBids or indicate "No bid."

## **2.10 WITHDRAWAL OF BIDS**

Prior to Submission Closing: Any Bidder may withdraw its submission, either personally or by written request, at any time prior to the scheduled time for opening of submissions. Any request to withdraw a submission shall be so worded so as not to reveal the amount of the original submissions.

After Submission Closing: No Bidder may withdraw its submission for a period of one hundred twenty (120) days after the submission closing date. Submissions may be subject to acceptance by the NCTD Board of Directors during this one hundred twenty (120) day period.

## **2.11 LATE BIDS**

NCTD's online bidding system will not accept submittals after the date and time specified.

## **2.12 OPENING OF BIDS**

Online public bid opening is available immediately following bid closing.

## **2.13 VALIDITY OF BIDS**

All bids shall remain valid and binding for a period of one hundred twenty (120) days after the bid closing date.

## **2.14 SINGLE BID PROCEDURES**

In the event a single bid is received, NCTD may conduct a price and/or cost analysis of the bid. The Bidder will cooperate with NCTD to assist in this analysis. The analysis is the process of examining the bid and evaluating the separate cost elements.

## **2.15 TIE BID PROCEDURE**

In the event of a tie bid situation, and if two or more Bidders remain equally eligible after determination of responsibility and responsiveness, award shall be made by a drawing between the tied bidders. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least two persons, and the agreement file shall contain the names and company addresses of the witnesses and the person supervising the drawing.

## **2.16 REJECTION OF BIDS**

NCTD reserves the right to reject any and all bids and to waive any informalities or irregularities in the bids. If all bids received are rejected, NCTD reserves the right to re-solicit the services by issuing a new IFB or to cancel the solicitation at any time prior to agreement award and not award an agreement.



**2.17 INCURRED COST**

NCTD will not reimburse the Bidders for costs incurred in the preparation of bids or after submission, during agreement award, or cancellation of the procurement.

**2.18 AWARD OF AGREEMENT**

After the public bid opening, an evaluation of the bid prices and the Bidders' submissions of the required completed forms and certifications will be performed. Determinations of responsiveness and responsibility (technical and financial) are made. The award of the agreement, if made, shall be to the lowest responsive and responsible Bidder whose bid complies with all of the prescribed requirements of the Agreement Documents.

If the agreement value exceeds two hundred thousand dollars (\$200,000), approval to award an Agreement by the NCTD Board of Directors is required. If the agreement value is two hundred thousand dollars (\$200,000) or less, NCTD staff will make the award determination.

NCTD reserves the right to award multiple agreements when if it is determined by NCTD that it is in the best interest of NCTD to do so.

**2.19 PROTEST PROCEDURES**

An actual or prospective bidder who is aggrieved in connection with the solicitation or award of an agreement may submit a protest. The protest must be submitted to the following address:

North County Transit District  
Procurement and Contract Administration Division  
810 Mission Avenue  
Oceanside, California 92054  
Attn: Jennifer M. Taylor, Chief Procurement & Contract Administration Officer

- a) The following information must be included in the protest:
  - a. Name, address, and phone number(s) of the protestor;
  - b. Solicitation number and project title;
  - c. A detailed statement of the basis for the protest. Protests are limited to:
    - i. Violations of State or local laws or regulations (Note: violations of Federal laws or regulations are under the jurisdiction of the FTA);
    - ii. Violations of the District's procurement procedures;
    - iii. Failure to comply with the terms of the solicitation in question;
    - iv. Restrictive or discriminatory specifications; or
    - v. Award recommendation is arbitrary or capricious.
  - d. Supporting evidence or documents to substantiate any arguments; and
  - e. The form of relief requested (e.g., reconsideration of offer).
  
- b) Date and time of receipt of protests
  - a. Protests against contract awards of procurements not subject to PCC 20216-20217. The protest shall be filed with NCTD within five (5) working days after the date of award notification by way of a Notice of Intent to Award.
  - b. Protests based on the content of the solicitation for negotiated procurements subject to PCC 20216-20217. Any bidder or potential bidder may file a protest with NCTD within ten (10) calendar days after the solicitation is first advertised. If the protest is denied, the protest may be renewed by refiling the protest with NCTD within fifteen (15) calendar days after the staff recommendation for award has been made public.
  - c. Protests against contract awards of negotiated procurements subject to PCC 20216-20217. Any bidder may protest the recommended award on any ground not based on the content of

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the solicitation by filing a protest with NCTD within fifteen (15) calendar days after the staff recommendation for award has been made public.

- d. Protests submitted after the protest deadline. Protest submissions received by NCTD after the time periods specified above shall be deemed by the Contracting Officer to be untimely and shall be denied on that basis.
- c) All protests shall be resolved in accordance with NCTD's protest policy and procedures as provided herein. A direct protest to FTA is only available if the protestor believes that there is primarily a Federal concern, pursuant to 2 C.F.R. § 200.318(K). Section (l)(b)(2)(a) of Chapter VII of FTA Circular 4220.1F, which provides for direct appeals to FTA, is no longer applicable.

The Executive Director, or a delegated individual, will make the final determination on all protests. The determination with regard to such protest or to proceed to award shall be final unless appealed by the protester. An informal protest resolution opportunity may be offered to the protestor prior to final determination.

### **Appeal of Protest Decision**

If a protest is appealed, NCTD will provide written correspondence that will identify:

1. Required submittals, including a statement of the factual and legal grounds for reversal or modification, specifying legal errors or new information
2. Designation of Appeal Official(s)
3. Contact and Address for Appeal Submittals
4. Timeframes for Submitting Appeals
5. Timeframe for Decision

## **2.20 PROTEST PROVISIONS FOR FEDERAL TRANSIT ADMINISTRATION (“FTA”) FUNDED PROJECTS**

Reviews of protests by the FTA will be limited to matters that are primarily a Federal concern. Only under extraordinary circumstances will the FTA exercise its discretion to consider a Federal matter before NCTD has completed its review and resolution of a protest. Protestors are advised to clearly articulate the Federal concern, its impact on NCTD’s review of the protest, the prejudice to the protestor that will result if the FTA does not resolve the federal matter immediately, and provide other relevant documents and materials.

## **2.21 TIE BID PROCEDURE**

In the event of a tie bid situation, and if two or more Bidders remain equally eligible after determination of responsibility and responsiveness, award shall be made to the bidder whose bid was received first as evidenced by the time/date stamp recorded by Planetbids.

**END OF SECTION**

**SECTION 03: SCOPE OF WORK**

**3.01 GENERAL BACKGROUND / DESCRIPTION**

North County Transit District (NCTD) intends to procure monitors, thin clients, and webcams to replace current equipment at user workstations. Prices are to be inclusive of Electronic Waste Recycling Fee.

**3.02 CONTRACTOR RESPONSIBILITIES**

- 1) LG 34" Ultrawide Monitor (Part# 34UCB99-W, 34CB88-P, 34UC88-B) or Approved Equal
  - a) Quantity – 140
  - b) Curved screen
  - c) Screen Size 34"
  - d) 3840x1440 (WQHD) Minimum Resolution
  - e) Aspect Ratio 21:9
  - f) Panel type: IPS – LED
  - g) Anti-glare
  - h) 1 x Display Port (v1.2)
  - i) 2x HDMI (v2.0)
  - j) USB 3.0 quick charge
  - k) Tilt – 5-20 degree
  - l) Headphone/audio output (3.5mm jack) and/or built-in speakers
  - m) Warranty – minimum of three (3) year provided by Original Equipment Manufacturer (OEM)
  
- 2) Logitech C270 Webcam (Part# C270 model# 960-000694) or Approved Equal
  - a) Quantity – 137 each
  - b) Black
  - c) 720p
  - d) HD video recording
  - e) Compatible with Win 10
  - f) Warranty – minimum of a year provided by OEM
  
- 3) Velcro Industrial Strength Tape (Part #90881) or Approved Equal
  - a) Quantity – 21 rolls
  - b) 2ft X 1½ in each
  - c) Tape
  - d) Black
  - e) Indoor or Outdoor uses
  - f) Vinyl compatible adhesive
  - g) Works on smooth surfaces
  - h) Professional grade water-resistant adhesive
  
- 4) 10zig 4548v Thin Client (Part #4548V-2400) or Approved Equal
  - a) Quantity – 103 each
  - b) 5x USB ports
  - c) 1x Display Port
  - d) 1x HDMI
  - e) Intel Dual Core N3060 1.6 GHz
  - f) 2 GB RAM
  - g) Audio line-out and Microphone interface
  - h) Gigabit Ethernet
  - i) Blast Extreme protocol must be supported
  - j) PCoIP protocol must be supported
  - k) RDP protocol must be supported
  - l) Form Factor: Mini
  - m) Must include Endpoint Management software
  - n) Video/Resolution 3840x2160

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- o) 802.1x network authentication
- p) Warranty – minimum of a year provided by OEM

### 3.03 CALENDAR SCHEDULE

The items must be received within 30 days of PO issuance.

### 3.04 LOCATION OF SERVICE(S)

Deliver to 810 Mission Ave., Oceanside, CA 92054 or deliver electronically.

### 3.05 GENERAL REQUIREMENTS

1. Vendor shall certify that it is a **Manufacturer** Partner as of the date of the submission of their offer, and that it has the certification/specialization level required by **Manufacturer** to support both the product sale and product pricing, in accordance with the applicable **Manufacturer** certification/specialization requirements. ***Please provide proof of this partnership with your submission.*** The equipment shall be new in original Manufacturer packaging, not refurbished, and no surplus equipment will be accepted.
2. The Vendor confirms to have sourced all **Manufacturer** products submitted in this offer from **Manufacturer** or through **Manufacturer** Authorized Channels, in accordance with all applicable laws and policies at the time of purchase.
3. Vendor shall provide **North County Transit District** with a copy of the End User license agreement and shall warrant that all **Manufacturer** software is licensed originally to **North County Transit District** as the original licensee authorized to use the **Manufacturer** Software.
4. In the event there are questions pertaining to the validity of the **Manufacturer** products, **North County Transit District** reserves the right to verify the origin of the **Manufacturer** products with **Manufacturer**, Inc. In the event the **Manufacturer** Products have been acquired from un-authorized channels, **North County Transit District** further reserves the right to reject the Vendor bid and/or return the products for a full refund.

**END OF SECTION**

**SECTION 04: INSURANCE REQUIREMENTS- NOT APPLICABLE**

**END OF SECTION**

**SECTION 05: GENERAL CONDITIONS**

**5.01 AGREEMENT DOCUMENTS- NOT APPLICABLE**

**5.02 SENSITIVE SECURITY INFORMATION (SSI)- NOT APPLICABLE**

**5.03 RELATIONSHIP OF PARTIES**

Nothing contained herein shall be construed as creating the relationship of employer and employee between NCTD and the Contractor or its agents and employees. The Contractor shall perform its services as an independent Contractor in accordance with its own methods, this agreement, applicable laws and regulations. The Contractor shall have exclusive and complete control over its employees and sub-contractors.

**5.04 INDEMNIFICATION**

Indemnity. Contractor shall, to the fullest extent permitted by law, hold harmless, protect, defend and indemnify NCTD and its Board of Directors and each member of the Board, officers, agents and employees, representatives and their successors and assigns (“NCTD” and/or “Indemnified Parties”), from and against any and all losses, liabilities, claims, suits, damages, expenses and costs including reasonable attorney’s fees and costs, and expert costs and investigation expenses arising out of or attributable, in whole or in part, by the performance or failure to perform by Contractor, its employees, representatives, sub-contractors, or agents regardless of whether or not such claim, loss or liability is caused, in part by a party indemnified hereunder.

General Indemnity Provisions. This indemnity is in addition to any other rights or remedies which NCTD may have under the law or this Agreement. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, NCTD may, at its sole discretion, reserve, retain or apply any monies due to Contractor under this Agreement for the purpose of resolving such claims; provided however, that NCTD may release such funds if Contractor provides NCTD with reasonable assurances of protection of NCTD’s interest. NCTD shall, in its sole discretion determine whether such assurances are reasonable.

Contractor agrees that its duty to defend the Indemnified Parties arises upon an allegation of liability based upon the performance of services under this Agreement by Contractor, its officers, agents, representatives, employees, sub-consultants, or anyone for whom Contractor is liable and that an adjudication of Contractor’s liability is not a condition precedent to Contractor’s duty to defend. Contractor shall defend, at Contractor’s own cost, expense and risk, with counsel of NCTD’s choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the Indemnified Parties. To the extent of its liability, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the Indemnified Parties, in any such suit, action or other legal proceeding. Contractor shall reimburse the Indemnified Parties for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

Comprehensive Environmental Responses, Compensation, and Liability Act: Contractor acknowledges that the indemnifications contained herein are intended, in part, to operate as indemnifications under Section 9607(e)(1) of the Comprehensive Environmental Responses, Compensation, and Liability Act (42 USC Section 9601, et seq.) as may be hereinafter amended.

Public Records: Contractor agrees to indemnify and defend NCTD in the event NCTD withholds production of records which Contractor has marked “Confidential” “Trade Secret” “Proprietary”, or similar designations, that are responsive to a Public Records Act request pursuant to California Government Code sections 6250, et. seq. or a Freedom of Information Act request.

Prevailing Wages: Contractor shall defend, indemnify and hold NCTD, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with Prevailing Wage Laws, if applicable.

**5.05 GOVERNING LAW**

The law of California shall govern the resolution of any issue arising in connection with the Agreement Document, including but not limited to, all questions concerning the validity of the Agreement Document; the authorities of the parties to enter herein; and modifications or amendment thereto; and the rights and obligations of the parties hereunder. The Contractor warrants that in the performance of an Agreement it shall comply with all applicable Federal, State and Local laws and ordinances and all lawful orders, rules, and regulations thereunder.

The Contractor agrees that the venue for any legal proceeding relating to or concerning this agreement is San Diego County, California.

**5.06 PUBLIC RECORDS ACT/CONFIDENTIALITY OF PROPOSALS**

Access to government record is governed by the laws of the State of California under the California Public Records Act (Gov. Code 6250, et seq.) [Act]. Proposal price forms submitted to NCTD in response to this RFP are public records and may, therefore, be disclosed in accordance with the California Public Records Act. Any such proprietary information, trade secrets or confidential commercial and financial information which a Proposer believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not ensure confidentiality.

The Proposer shall submit proprietary information, trade secrets or confidential commercial and financial information, which a Proposer believes should be exempted from disclosure, in a separate volume specifically identified and marked as “Confidential”, or “Trade Secret”, or “Proprietary”, or a similar designation.

NCTD will release proposal cost or price forms in response to a Public Records Act request subject to the requirements of California Government Code §§ 6250 et seq., so long as the proposal cost or price form does not contain trade secrets as defined by the Civil Code. Proposal price forms submitted to NCTD are public records and may, therefore, be disclosed in accordance with the California Public Records Act.

The Proposer agrees to indemnify and defend NCTD in the event NCTD withholds production of Proposers records which Proposer has marked “Confidential”, or “Trade Secret”, or “Proprietary”, or similar designations, that are responsive to a Public Records Act request pursuant to California Government Code section 6250. et seq. or a Freedom of Information Act request. See attached Public Records Act Indemnification Certificate.

**5.07 PREVAILING WAGE MONITORING REQUIREMENTS – SB 854- NOT APPLICABLE**

**5.08 FEDERAL REQUIREMENTS**

All contractual provisions required by the Department of Transportation, as set forth in FTA Circular 4220.1F, must be in all of the prime contractor’s subcontracts. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NCTD requests which would cause NCTD to be in violation of the FTA terms and conditions.

Inasmuch as the services herein described are to be purchased with Federal assistance authorized by the Department of Transportation and Federal Transit Administration (FTA) laws and regulations codified at 49 USC § 5301 et seq.; or Title 23, United States Code (Highways); or the Transportation Equity Act for the 21st Century, Pub. L. 105-178, June 9, 1998, 23 USC § 101 note, as amended by the TEA-21 Restoration Act, Pub. L., 105-206, July 22, 1998, 23 USC § 101 note, (TEA-21), Moving Ahead for Progress in the 21st Century Act (MAP 21), Pub. L. 112-141, July 6, 2012, and other further amendments thereto, Fixing America’s Surface Transportation (FAST) Act, Public Law No: 114-94 , as may be amended, or other Federal enabling laws administered by FTA and guidance thereto, including without limitation FTA Circular 4220.1F and amendments thereto, and 2 CFR Part 200, the Contractor will be required to comply with all terms and conditions prescribed for third party contract in a grant contract

between the United States Department of Transportation and NCTD and to flow all applicable federal provisions down to Subcontractors at every tier. Federal provisions applicable to this Agreement and third party contracting in general are provided in Section 06 of the IFB.

Specific guidelines shall be those prescribed by "Federal Transit Administration Master Agreement" (Form FTA-MA) 49 C.F.R., Part 18, Federal Transit Administration (FTA) Circular 4220.1 F, "Third-party Contracting Requirements", OMB Circular A-1 02 "Uniform Requirements for Grants and Cooperative Agreements with State and Local Governments" and 49 CFR Part 200. Where a conflict between FTA Circular 4220.1F and 2 CFR Part 200, 2 CFR Part 200 controls and supersedes.

#### **5.09 INTEREST OF MEMBERS OF CONGRESS**

In accordance with 18 U.S.C. 431, no member of, or delegates to, the Congress of the United States shall be admitted to a share or part of this IFB, any resulting agreements, or to any benefit arising therefrom.

#### **5.10 INTEREST OF MEMBERS OF PUBLIC AGENCY**

No member, officer, or employee of NCTD or of a local public body during their tenure or one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Successful Contractors shall attest that to their knowledge, no Board member, officer or employee of NCTD has any interest, whether contractual, non-contractual, and financial or otherwise in this transaction, and that if the Successful Contractor becomes aware of any such interest at any time, a full and complete disclosure of all such information will be made in writing to NCTD.

#### **5.11 FRAUD**

The Contractor certifies and affirms through execution of False Claims Certificate, contained in this solicitation, the truthfulness and accuracy of any statement it has made, it makes, it may make or causes to be made, pertaining to the underlying agreement or the FTA-assisted project for which this agreement 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 or fictitious, or fraudulent claim, statement, or 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 an agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two (2) clauses in each sub-contractor agreement 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 sub-contractor who will be subject to the provisions.

The Contractor acknowledges that NCTD has the right to revoke acceptance if it was deceived into an acceptance by fraud. Fraud involves an intentional deceit or falsehood. Acceptance due to fraud may be revoked even if the defect was patent.

#### **5.12 CONTRACTOR SAFETY TRAINING AND RWP TRAINING- NOT APPLICABLE**

#### **5.13 BUSINESS ETHICS EXPECTATIONS**

During the performance of work under this agreement, Contractor agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the dealings with NCTD.



Contractor shall take reasonable actions to prevent any actions or conditions which could result in a conflict with NCTD's best interests. These obligations shall apply to the activities of Contractor employees, agents, Sub-contractors, material suppliers (or their representatives), etc. **The Contractor is responsible for implementing and maintaining an internal compliance program to ensure compliance with agreement requirements and to monitor business ethics and potential conflicts of interest.**

Contractor employees, agents, Sub-contractors, material suppliers (or their representatives) should not make or provide to be made any employment, gifts, entertainment, liquor, lodging, travel, food, and tickets to public functions (sports events, theater, etc.), payments, loans, free work, substantially discounted work, or other considerations to NCTD representatives, employees or their relatives. Similarly, Contractor employees, agents or Sub-contractors (or their relatives) should not receive any commissions, gifts, entertainment, payments, loans, free work, substantially discounted work or any other considerations from representatives of Sub-contractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with any work performed under this Agreement.

Contractor agrees to notify the NCTD's Compliance Officer, within forty eight (48) hours of any instance where the Contractor becomes aware of a failure to comply with the provisions of this article.

Upon request by NCTD, Contractor agrees to provide a certified Management Representation Letter executed by Contractor representatives in a form agreeable to NCTD stating that they are not aware of any situations violating the business ethics expectations outlined in this agreement or any similar potential conflict of interest situations.

Contractor shall permit interviews of employees, reviews and audits of accounting or other records by NCTD representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of Contractor employees, agents, representatives, vendors, Sub-contractors, and other third parties paid by Contractor in their relations with NCTD's current or former employees or employee relatives.

Contractor agrees to include this clause in all agreements with Sub-contractors and payees receiving more than ten thousand dollars (\$10,000) in funds in connection with the work of NCTD.

#### **5.14 CONTRACTOR(S) ASSOCIATED WITH THE PROJECT**

The Contractor listed below have been associated with the development and/or the preparation of this IFB and are provided for informational purposes only. This list is not intended to be relied on for purposes of compliance with any conflict of interest rules or applicable laws or regulations affecting this IFB. Bidders are solely responsible for due diligence in identifying and avoiding all potential conflicts of interest related to contracting for, and performing the services as required by this IFB and resulting Agreement.

- NONE

#### **5.15 PERFORMANCE OF WORK ON NCTD PROPERTY- NOT APPLICABLE**

#### **5.16 SOCIAL MEDIA**

Bidders or the Contractor is prohibited from using any social media to reference any ongoing bid or solicitation process without NCTD's express written permission. Please see the terms of the Agreement as provided in the contract documents for any additional requirements or obligations.

#### **5.17 PERFORMANCE AND PAYMENT BONDING REQUIREMENTS- NOT APPLICABLE**

#### **5.18 PROMPT PAYMENT**

The Prime contractor shall make prompt payment of all monies due and owed to DBE and non-DBE firms within 7 business days upon receipt of payment from North County Transit District (NCTD) as per Agreement. Payment of retention shall be made to all DBE and non-DBE subcontractors within 10 days after satisfactory completion of the subcontracted work. The prime contractor shall utilize the PlanetBids "My Contracts" portal to report monthly subcontractor payment reports during the reporting month. Prime contractor(s) shall ensure that their subcontractors are added into the PlanetBids "MyContracts" portal once the Agreement has been awarded. Prime contractors shall submit a monthly subcontractor payment report on the PlanetBids "MyContracts" portal by the 20th of each month following the end of the reporting

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month and should reflect all payments made to subcontractor(s) through the last day of the previous month, even if the subcontractor(s) did not perform any work. Prime contractors shall ensure that its subcontractor(s) use the PlanetBids "MyContracts" portal to verify the payment amounts the prime contractor submitted by the 25th of each month following the end of the reporting month. In order for the prime contractor to submit a properly executed monthly subcontractor payment report, the prime contractor must verify that their subcontractors' DBE certification is current at the time of payment. Certified Contractors can be found at the following State of California website: [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)

The Contractor or subcontractor shall pay to any subcontractor for the satisfactory performance of their contracts not later than 10-days of receipt of each progress payment, in accordance with 49 CFR 26.29 and Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 10-days may take place only for good cause and with NCTD's prior written approval. Any violation of 49 CFR 26.29 or Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor.

In addition, for projects that invoice only at the completion of the project, within seven (7) days of the Contractor's receipt of released retention from NCTD upon completion of the project as defined in California Public Contract Code section 7107, the Contractor shall pay each of its sub-contractors from whom retention has been withheld each subcontractor's share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. For projects that issue progress payment invoices, upon incremental acceptance of any portion of the work by NCTD, the Contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and California Public Contract Code section 7107. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

The Construction Manager/Project Manager shall notify the Project Manager and Contracting Officer immediately if the Contractor fails to meet any of the requirements of the Fabrication, Inspection and Test Plan, or at any time the Construction Manager/Project Manager determines that the work performed is substandard. The Project Manager is responsible to determine the course of action to be taken by NCTD upon notification from the Construction Manager/Project Manager.

Disputes between the Contractor and any lower tier DBE subcontractors, which cannot be settled by discussions between the parties involved, shall be settled as described herein. Contractor shall notify NCTD in writing of such dispute within ten (10) days of failure to resolve. If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint. NCTD's DBELO will coordinate meeting requests to assist in the resolution of disputes between Contractor and subcontractor. The assigned NCTD representative will conduct the resolution meetings with parties in dispute. All parties must agree to the procedure. If filing a prompt payment complaint with NCTD's DBELO does not result in timely and meaningful action by NCTD to resolve prompt payment disputes, affected subcontractor may contact the responsible Federal Transit Administration contact. The Contractor and Subcontractors shall include the dispute resolution provision in their contract.

## 5.19 TERMINATION

Termination for Cause. NCTD may, without prejudice to any other right or remedy, serve written notice upon Contractor and its Surety of its intention to terminate the awarded Contract if the Contractor (i) refuses or fails to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the time specified or any extension thereof, or (ii) fails to complete said Work within such time, or (iii) if the Contractor should file a bankruptcy petition or be adjudged a bankrupt, or (iv) if the Contractor should make a general assignment for the benefit of its creditors, or (v) if a receiver should be appointed on account of its insolvency, or (vi) if it should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the work in time specified, or (vii) if it should fail to make prompt payment to Subcontractors or for material or labor, or (viii) persistently disregard laws, ordinances or instructions of the NCTD or those of NCTD's Representatives, or (ix) otherwise be guilty of a substantial violation of any provision of the Contract, or (x) if it or its Subcontractors should violate any of the provisions of an awarded Contract.

The notice of intent to terminate shall contain the reasons for such intention to terminate. Unless within ten (10) calendar days after the service of such notice, such condition shall cease or such violation shall cease and satisfactory arrangements for the correction thereof be made, the awarded Contract shall, upon the expiration of said ten (10) calendar days, cease and terminate. In such case, Contractor shall not be entitled to receive any further payment until Work is finished. In event of any such termination, NCTD shall immediately serve written notice thereof upon surety and Contractor written notice of termination stating that the contract has ceased and is terminated. Surety shall have the right to investigate, take over and perform this contract, provided, however, that if Surety, within fifteen (15) calendar days after service upon it of said notice of termination, does not give NCTD written notice of its intention to take over and perform this contract and does not commence performance thereof within twenty (20) calendar days from the date of service upon it of such notice of termination, NCTD may take over the Work and prosecute same to completion by contract or by any other method it may deem advisable for the account and at the expense of Contractor. Contractor and its Surety shall be liable to NCTD for any excess cost or other damages occasioned NCTD thereby. If NCTD takes over the Work as hereinabove provided, NCTD may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the site of the Work and necessary therefore. If Surety does not perform the Work itself, the Surety shall consult with NCTD regarding its planned choice of a Contractor or Contractor to complete the Project, and upon request by NCTD, Surety shall provide NCTD evidence of responsibility of Surety's proposed Contractor or Contractor. NCTD shall be entitled to reject Surety's choice of Contractor or Contractor if NCTD determines in its sole discretion that the Contractor or Contractor are non-responsible. If Surety provides NCTD written notice of its intention to take over and perform an awarded Contract, within fifteen (15) calendar days of such written notice of intent to take over and perform, Surety or its chosen Contractor or Contractor (if such Contractor or Contractor are approved by NCTD) shall provide NCTD a detailed Progress Schedule. The Contractor and its Surety shall be liable to NCTD for any excess cost or other damages occasioned NCTD as a result of Surety or Surety's Contractor or Contractor's takeover and performance.

If the unpaid balance of the awarded contract price exceeds the expense of finishing work, including compensation for additional architectural, managerial, and administrative services, such excess shall be paid to Contractor. If such expense shall exceed such unpaid balance, Contractor shall pay the difference to NCTD. Expense incurred by NCTD as herein provided, and damage incurred through Contractor default, shall be certified by the appropriate NCTD Representative. Should NCTD determine that environmental considerations mandate that the underlying project should not go forward, NCTD may notify Contractor that the awarded contract is terminated due to environmental considerations and NCTD shall only be obligated to pay Contractor for the Work that Contractor had performed at the time of notification of termination of the awarded Contract for environmental considerations.

Termination for Convenience: NCTD may terminate performance of the Work called for by the Contract Documents in whole or, from time to time, in part, if NCTD determines that a termination is in NCTD's interest. The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a

Notice of Termination specifying that the termination is for the convenience, the extent of termination, and the Effective Date of such termination. After receipt of Notice of Termination, and except as directed by NCTD, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

1. Stop Work as specified in the Notice.
2. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
3. Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
4. Terminate all subcontracts to the extent that they relate to the portions of the Work terminated.
5. Place no further subcontracts or orders, except as necessary to complete the continued portion of the awarded Contract.
6. Submit to NCTD, within ten (10) calendar days from the Effective Date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of NCTD's exercise of its right to terminate the awarded Contract pursuant to this clause, which costs the Contractor is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by NCTD no later than thirty (30) calendar days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs occasioned by NCTD's Termination for Convenience."

Termination of the Contract shall not relieve Surety of its obligation for any just claims arising out of or relating to the Work performed. In the event that NCTD exercises its right to terminate an awarded Contract pursuant to this provision, NCTD shall pay the Contractor, upon the Contractor submission of the documentation required by this clause and other applicable provisions of the Contract Documents, all actual reimbursable costs incurred according to the provisions of the awarded Contract.

Termination of Contract by Contractor: The Contractor may terminate the awarded Contract upon ten (10) calendar days written notice to NCTD, whenever: (1) the entire Work has been suspended for ninety (90) consecutive days through no fault or negligence of the Contractor, and notice to resume the Work or to terminate the Contract has not been received from NCTD within this time period; or (2) NCTD should fail to pay the Contractor or any substantial sums due it in accordance with the terms of the Contract and within the time limits prescribed. In the event of such termination, the Contractor shall have no claims against NCTD except for Work performed as of the date of termination.

The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to NCTD.

Notwithstanding the foregoing provisions, the awarded Contract may not be terminated or modified where a trustee-in-bankruptcy has assumed the Contract pursuant to 11 U.S.C. section 365 (Federal Bankruptcy Act).

## 5.20 INVOICING

- a. Contractor shall be paid for services once rendered. **Advance payments are prohibited.**
- b. NCTD shall make payment to the Contractor within thirty (30) days from the date of the invoice and after confirmation of services performed or milestones achieved.
- c. Invoicing shall not be submitted more often than monthly.
- d. All invoices require the submittal of a "Monthly Subcontractor Payment/Report" to [apclerks@nctd.org](mailto:apclerks@nctd.org) and [CivilRightsOffice@nctd.org](mailto:CivilRightsOffice@nctd.org).

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- e. Invoices may be mailed or delivered to 810 Mission Avenue, Oceanside, CA 92054, Attn: Accounts Payable or emailed to [apclerks@nctd.org](mailto:apclerks@nctd.org). Only one method of delivery may be used for the life of the Agreement.
- f. Contractor is to submit invoices in a form that clearly identifies the date that the work was completed, a brief description of the work performed, and the amount due.
- g. Contractor is to submit back-up documentation to support authorized expenses. These items, if applicable, must be attached to each invoice. Time sheets must accompany each invoice with the classification listed clearly.
- h. No payment will be made for work performed by any classification not listed in the original Agreement or added to the Agreement by NCTD or for work performed after the performance period.
- i. The format of invoice to be submitted is subject to change based on the discretion of NCTD.
- j. If payments to Contractor will be based on percentages of work completed, invoices must contain a progress report showing percent complete against the project schedule of the Agreement.
- k. All invoices must reference the Agreement number and, if applicable, the Task Order number that authorized work.
- l. No payment will be made for any work performed outside of the performance period of the Agreement.
- m. Contractor shall submit an account statement with the invoice(s) on the 1st of every month.
- n. If the Contractor fails to submit a deliverable required by the Agreement, payment shall not be made until the deliverable is received.
- o. If the Contractor fails to satisfactorily complete each of the milestones of the Agreement, no further progress payment will be made until the milestone has been satisfactorily achieved.

### **5.21 TITLE**

- a. Title shall pass to NCTD at the time of payment.
- b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.
- c. The transfer of title as specified above shall not imply Acceptance by NCTD, nor relieve the Contractor from the responsibility for strict compliance with the Contract, including of work, and for any loss of or damage to the Work.
- d. The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the NCTD proper bills of sale or other written instruments of title in a form as required by NCTD; said instruments shall convey to the NCTD title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.
- e. Contractor shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they have delivered, unloaded, and received by NCTD at the FOB Destination specified herein. Contractor's responsibility for loss or damage except for loss or damage resulting from Contractor's negligence, shall cease when title passes to NCTD.

**END OF SECTION**

**SECTION 06: SPECIAL CONDITIONS****FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES**

It is the responsibility of the Bidder to ensure that all clauses applicable to the Work of the Agreement resultant from this IFB are adhered to by the Contractor and its Sub-contractors when applicable.

Sec.	Contract Clause	APPLICABILITY TO TYPE OF PROCUREMENT
		Materials & Supplies
1	No Federal Government Obligation to Third Parties by Use of a Disclaimer	All
2	Program Fraud and False or Fraudulent Statements and Related Acts	All
3	Access to Records	All
4	Federal Changes	All
5	Civil Rights (EEO, Title VI & ADA)	All
6	Incorporation of FTA Terms	All
7	Energy Conservation	All
8	Termination Provisions	> 10K
9	Debarment and Suspension	> 25K
10	Provisions for Resolution of Disputes, Breaches and Other Litigation	> 100K
11	Lobbying	> 100K (NCTD Requires All)
12	Clean Air	> 100K
13	Clean Water	> 100K
14	Cargo Preference	All
15	Fly America	All
16	Disadvantaged Business Enterprises (DBEs)	All
17	Prompt Payment	All
18	Recycled Products	Value > 10K In Fiscal Year
19	Privacy Act	All
20	Metric Requirements	IFBs: All
21	Conformance with National ITS Architecture	Contracts and Solicitations for ITS projects only
22	Veterans Employment	Capital Projects

**1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES BY USE OF A DISCLAIMER**

**Applicability to Contracts:** Applicable to all contracts.

**Flow down Requirements:** This concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

**No Obligation by the Federal Government.**

(1) NCTD and the Consultant 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 NCTD, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

**2. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

**31 U.S.C. 3801 et seq.**

**49 CFR Part 31**

**18 U.S.C. 1001**

**49 U.S.C. 5307**

**Applicability to Contracts:** These requirements are applicable to all contracts.

**Flow down Requirements:** These requirements flow down to consultants and sub-consultants who make, present, or submit covered claims and statements.

**Program Fraud and False or Fraudulent Statements or Related Acts**

(1) The Consultant 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 Consultant certifies 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 Consultant 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 Consultant to the extent the Federal Government deems appropriate.

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

(3) The Consultant agrees to include the above two (2) 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 sub-consultant who will be subject to the provisions.

**3. ACCESS TO RECORDS**

**49 U.S.C. 5325**

**18 CFR 18.36(i)**

**49 CFR 633.17**

**Applicability to Contracts:** Reference Chart "Requirements for Access to Records and Reports by Type of Contracts", Item 6 of this Section.

**Flow down Requirements:** FTA does not require the inclusion of these requirements in subcontracts.

**Access to Records -** The following access to records requirements apply to this Contract:

(1) The Consultant agrees to provide NCTD, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Consultant access to

Monitors, Thin Clients, and Webcams

Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C.

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>Non State Grantees</u>						
a. Contracts below SAT (\$100,000)	Yes <sup>1</sup>	Those imposed on non-state Grantee pass thru to Consultant	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/ Capital Projects	Yes <sup>1</sup>		Yes	Yes	Yes	Yes

5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(2) Where NCTD or a sub-grantee of NCTD in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a) 1) through other than competitive bidding, the Consultant shall make available records related to the contract to NCTD, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

(3) The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(4) The Consultant agrees to maintain all books, records, accounts and reports required under this contract for a period of 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 Consultant agrees to maintain same until NCTD, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).

(5) FTA does not require the inclusion of these requirements in subcontracts.

(6) Requirements for Access to Records and Reports by Types of Contract

Sources of Authority: <sup>1</sup> 18 CFR 18.36 (i)

**4. FEDERAL CHANGES**

**49 CFR Part 18**

**Applicability to Contracts:** The Federal Changes requirement applies to all contracts.

**Flow down Requirements:** The Federal Changes requirement flows down appropriately to each applicable changed requirement.

**Federal Changes** - Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between NCTD and FTA , as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of this contract.

**5. CIVIL RIGHTS (EEO, TITLE VI & ADA)**

**29 U.S.C. § 623, 42 U.S.C. § 2000  
42 U.S.C. § 6102, 42 U.S.C. § 12112  
42 U.S.C. § 12132, 49 U.S.C. § 5332  
29 CFR Part 1630, 41 CFR Parts 60 et seq.**

**See Section 07- "Civil Rights and Disadvantaged Business Enterprise Requirements," of this solicitation.**



**6. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

**FTA Circular 4220.1F**

**Applicability to Contracts**: The incorporation of FTA terms applies to all contracts and subcontracts at every tier.

**Flow Down Requirements** The incorporation of FTA terms has unlimited flow down.

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the most current FTA Circular 4220, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any NCTD requests which would cause NCTD to be in violation of the FTA terms and conditions.

**7. ENERGY CONSERVATION**

**42 U.S.C. 6321 et seq.  
49 CFR Part 622**

**Applicability to Contracts**: The Energy Conservation requirements are applicable to all contracts.

**Flow down Requirements**: The Energy Conservation requirements extend to all third party consultants and their contracts at every tier and, sub-recipients and their sub-agreements at every tier.

**Energy Conservation** - The Consultant 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. The consultant agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, "Requirements for Energy Assessments," 49 CFR part 622, subpart C.

**8. TERMINATION PROVISIONS**

**49 CFR Part 18  
FTA Circular 4220.1F**

**See Section 5.19, "Termination," of the Solicitation**

**9. DEBARMENT AND SUSPENSION**

**49 CFR 18  
2 CFR 1200  
2 CFR 180**

**Executive Orders 12549 and 12689  
31 U.S.C. 6101**

**Background and Applicability**: In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a consultant, sub-consultant, supplier, Consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered non-procurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation non-procurement suspension and debarment requirements to all lower tiers of subcontracts under covered non-procurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180). This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

These provisions apply to all NCTD contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for federally required auditing services.

These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, consultants, and sub-consultants (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System (EPLS), (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract.

Grantees, consultants, and sub-consultants who enter into covered transactions also must require the entities they contract with to comply 2 CFR 180 and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

**Flow down Requirements:** These requirements flow down to consultants and sub-consultants at all levels.

**Suspension and Debarment:** This contract is a covered transaction for purposes of 49 CFR Part 18. As such, the consultant is required to verify that none of the consultant, its principals, are excluded or disqualified as defined under Executive Orders Nos. 12549 and 12689.

The consultant is required to comply with 2 CFR 1200, and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into.

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

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

## 10. PROVISIONS FOR RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

### 49 CFR Part 18 FTA Circular 4220.1F

**Applicability to Contracts:** All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

**Flow Down Requirements:** The Breaches and Dispute Resolutions requirements flow down to all tiers.

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

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

**Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore 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 NCTD and the Consultant 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 NCTD 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 NCTD or Consultant 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.

## 11. LOBBYING

### 31 U.S.C. 1352 49 CFR Part 19 49 CFR Part 20

**Applicability to Contracts:** The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

**Flow Down Requirements** The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7. **Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]** - Consultants who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a Federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier certifies to the tier above that it will not and has not taken any action involving the Project or the Underlying Agreement for the Project, including any award, extension, or modification. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to NCTD.

## 12. CLEAN AIR

### 42 U.S.C. 7401 – 7601(q)

#### 40 CFR 15.61

#### 49 CFR Part 18

**Applicability to Contracts:** The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

**Flow down Requirements:** The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

**Clean Air** - (1) The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7601(q) et seq . The Consultant agrees to report each violation to NCTD and understands and agrees that NCTD, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## 13. CLEAN WATER

### 33 U.S.C. 1251 - 1377

**Applicability to Contracts:** The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

**Flow down Requirements:** The Clean Water Act requirements flow down to NCTD third party consultants and their contracts at every tier, and sub-recipients and their sub-agreements at every tier.

**Clean Water** - (a) The consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. 1251 – 1377 et seq.

(b) The consultant agrees to report each violation to NCTD and understands and agrees that NCTD will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office in compliance with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368

(c) The consultant agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f – 300j-6.

(d) The consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## 14. CARGO PREFERENCE

### 46 U.S.C. 55305

**Applicability to Contracts:** The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

**Flow down Requirements:** The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel. Cargo Preference - Use of United States-Flag Vessels - 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 leading 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.) 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.

**Cargoes Procured, Furnished, or Financed by the United States Government** - (a) Definition.- In this section, the term "privately-owned commercial vessel of the United States" does not include a vessel that, after September 21, 1961, was built or rebuilt outside the United States or documented under the laws of a foreign country, until the vessel has been documented under the laws of the United States for at least three (3) years.

(b) Minimum Tonnage.-When the United States Government procures, contracts for, or otherwise obtains for its own account, or furnishes to or for the account of a foreign country, organization, or persons without provision for reimbursement, any equipment, materials, or commodities, or provides financing in any way with Federal funds for the account of any persons unless otherwise exempted, within or without the United States, or advances funds or credits, or guarantees the convertibility of foreign currencies in connection with the furnishing or obtaining of the equipment, materials, or commodities, the appropriate agencies shall take steps necessary and practicable to ensure that at least fifty percent (50%) of the gross tonnage of the equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) which may be transported on ocean vessels is transported on privately-owned commercial vessels of the United States, to the extent those vessels are available at fair and reasonable rates for commercial vessels of the United States, in a manner that will ensure a fair and reasonable participation of commercial vessels of the United States in those cargoes by geographic areas.

(c) Waivers.-The President, the Secretary of Defense, or Congress (by concurrent resolution or otherwise) may waive this section temporarily by-

- (1) Declaring the existence of an emergency justifying a waiver; and
- (2) Notifying the appropriate agencies of the waiver.

(d) Programs of Other Agencies.-

(1) Each department or agency that has responsibility for a program under this section shall administer that program with respect to this section under regulations and guidance issued by the Secretary of Transportation. The Secretary, after consulting with the department or agency or organization or person involved, shall have the sole responsibility for determining if a program is subject to the requirements of this section.

(2) The Secretary-

(A) shall conduct an annual review of the administration of programs determined pursuant to paragraph (1) as subject to the requirements of this section;

(B) may direct agencies to require the transportation on United States-flagged vessels of cargo shipments not otherwise subject to this section in equivalent amounts to cargo determined to have been shipped on foreign carriers in violation of this section;

(C) may impose on any person that violates this section, or a regulation prescribed under this section, a civil penalty of not more than \$25,000 for each violation willfully and knowingly committed, with each day of a continuing violation following the date of shipment to be a separate violation; and

(D) may take other measures as appropriate under the Federal Acquisition Regulations issued pursuant to section 25(c)(1) 1 of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1) 2 or contract with respect to each violation.

(e) Security of Government-Impelled Cargo.-

(1) In order to ensure the safety of vessels and crewmembers transporting equipment, materials, or commodities under this section, the Secretary of Transportation shall direct each department or agency (except the Department of Defense), when responsible for the carriage of such equipment, materials, or commodities, to provide armed personnel aboard vessels of the United States carrying such equipment, materials, or commodities if the vessels are transiting high-risk waters.

(2) The Secretary of Transportation shall direct each department or agency responsible to provide armed personnel under paragraph (1) to reimburse, subject to the availability of appropriations, the owners or operators of applicable vessels for the cost of providing armed personnel.

(3) In this subsection, the term “high-risk waters” means waters so designated by the Commandant of the Coast Guard in the Port Security Advisory in effect on the date on which an applicable voyage begins. (Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1642; Pub. L. 110–417, div. C, title XXXV, §3511(a), (b), Oct. 14, 2008, 122 Stat. 4769; Pub. L. 112–213, title V, §503, Dec. 20, 2012, 126 Stat. 1575.)

## 15. FLY AMERICA

### 49 U.S.C. §40118

#### 41 CFR Part 301-10.131 - 301-10.143

**Applicability to Contracts:** The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

**Flow down Requirements:** The Fly America requirements flow down from NCTD to first tier consultants, who are responsible for ensuring that lower tier consultants and sub-consultants are in compliance.

**Fly America** - The Consultant agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10.131 - 301-10.143, which provide that recipients and sub-recipients of Federal funds and their consultants are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Consultant agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## 16. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

### 49 CFR Part 26

#### Section 1101(b) of MAP-21 (23 U.S.C. § 101 note)

**See Section 07 – “Civil Rights and Disadvantaged Business Enterprise Requirements,” of this solicitation.**

## 17. PROMPT PAYMENT

### 49 CFR 26.29

**See Section 07 – “Civil Rights and Disadvantaged Business Enterprise Requirements,” of this solicitation.**

## 18. RECYCLED PRODUCTS

### 42 U.S.C. 6962

#### 40 CFR Part 247

#### Executive Order 12873

**Applicability to Contracts:** The Recycled Products requirements apply to all contracts for items designated by the EPA, when the Consultant procures \$10,000 or more of one (1) of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds.

**Flow down Requirements:** These requirements flow down to all consultant and sub-consultant tiers.

**Recovered Materials** - The consultant agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The consultant agrees to comply with the U.S. Environmental Protection Agency (US EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR part 247.

## 19. PRIVACY ACT

### 5 U.S.C. 552

**Applicability to Contracts:** When NCTD maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

**Flow down Requirements:** The Federal Privacy Act requirements flow down to each third party consultant and their contracts at every tier.

**Contracts Involving Federal Privacy Act Requirements:** The following requirements apply to the Consultant and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Consultant agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Consultant agrees to obtain the express consent of the Federal Government before the Consultant or its employees operate a system of records on behalf of the Federal Government. The Consultant understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

## 20. METRIC REQUIREMENTS

### 15 U.S.C. §§205 2007-Pub. L. 110-69

As required by U.S. DOT or FTA, NCTD agrees to use the metric system of measurement in its Project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, the NCTD agrees to accept products and services with dimensions expressed in the metric system of measurement.

## 21. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS

### 23 U.S.C. Section 517(d) 23 U.S.C. §502

Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 *et seq.*, January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

## 22. VETERANS EMPLOYMENT

### 49 U.S.C. 5325 (k)

Veterans Employment. As provided by 49 U.S.C. § 5325(k):

- a. To the extent practicable, Contractor agrees that it:
  1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
  2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and
- b. Contractor also assures that its sub-contractor will:
  1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and

Monitors, Thin Clients, and Webcams

2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

**END OF SECTION**

**SECTION 07: CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS**

**A. CIVIL RIGHTS**

1. The Contractor will be required to comply with these applicable civil rights, nondiscrimination, and equal employment opportunity laws and regulations:
  - i. 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 26, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, et seq., 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6101 – 6107, 42 U.S.C. § 12101, et seq., 42 U.S.C. § 12132, 49 U.S.C. § 5307 (c)(1)(D)(ii), 49 U.S.C. § 5332, California Civil Code § 51, California Government Code § 11135
  - ii. 29 CFR Part 1630, 41 CFR Part 60, 29 U.S.C. § 623, 42 U.S.C. § 2000e, 42 U.S.C. § 12112, California Government Code § 12900 - 12996
  - iii. 49 U.S.C. § 5325 (k).
  - iv. Fixing America's Surface Transportation (FAST) Act, Public Law No: 114-94, as may be amended.
2. The Civil Rights requirements flow down to all third party sub-contractors and their subcontracts at every tier.
3. The following requirements apply to a contract awarded as a result of this solicitation:
  - i. Nondiscrimination - In accordance with U.S. Department of Transportation (DOT), Federal, and State of California regulations 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, the Rehabilitation Act of 1973, as amended, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6102, 42 U.S.C. § 6101 – 6107, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, 42 U.S.C. § 12132, Federal transit law 49 U.S.C. § 5307 (c)(1)(D)(ii), Federal transit law 49 U.S.C. § 5332, FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients.", DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations, Executive Order No. 13166 and DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (70 FR 74087, Dec. 14, 2005), the Unruh Civil Rights Act, California Civil Code § 51, and California Government Code § 11135, the Contractor agrees that it will comply with the identified Federal and State of California laws and regulations, pertaining to NCTD programs and activities, to ensure that no person will be denied the benefits of, or otherwise be subjected to, discrimination (particularly in the level and quality of transportation services and transportation-related benefits) on the bases of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, marital status, genetic information, medical condition, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations, other implementing requirements that DOT or FTA may issue, and any other applicable Federal and State of California statutes and/or regulations that may be signed into law or promulgated.
  - ii. Equal Employment Opportunity - The following equal employment opportunity requirements apply to a contract awarded as a result of this solicitation:
    - a. Race, Color, Ancestry, Marital Status, Medical Condition, Genetic Information, Religion, National Origin, Sex, Sexual Orientation, Gender Identity, Gender Expression - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 49 U.S.C. § 5332, FTA Circular 4704.1, "Equal Employment Program Guidelines for Grant Recipients", and , the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, including "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60, et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), Fair Employment and Housing Act, California Government Code Sections 12900 - 12996 and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect Bidder agrees



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to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, ancestry, religion, marital status, medical condition, genetic information, national origin, sex, sexual orientation, gender identity, gender expression, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue, and any other applicable Federal statutes that may be signed into law or Federal regulations that may be promulgated.

- b. Sex – The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1975, as amended, 20 U.S.C. § 1681, and 49 CFR part 25. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
  - c. Age - The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, 45 CFR part 90, the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, and Equal Employment Opportunity Commission (EEOC) implementing regulations 29 CFR part 1625. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
  - d. Disabilities - The Contractor agrees to comply with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(d), 36 CFR part 1194, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, 49 CFR parts 27, 37, 38, and 39, and FTA Circular 4710.1, “Americans with Disabilities Act: Guidance”. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
4. The Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

### **B. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

1. NCTD encourages DBE participation in this solicitation. In order to qualify as a DBE, a Contractor, or a Contractor’s sub-contractor, must be certified as a DBE under 49 CFR Part 26. As a recipient of Federal funds, NCTD must comply, and insure that its Contractor(s) comply with 49 CFR Part 26 and Section 1101(b) of the Fixing America’s Surface Transportation Act (FAST Act).
2. DBE Requirements/DBE Obligation:
  - i. The Contract to be awarded may be funded in part by the U.S. Department of Transportation (DOT) FTA. As a condition of financial assistance agreements between NCTD and the U.S. DOT, NCTD has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
  - ii. The Contract to be awarded may be funded in part by the U.S. DOT FTA. As a condition of financial assistance agreements between NCTD and the U.S. DOT, NCTD has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
  - iii. Pursuant to Race-Neutral DBE policy directive issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving v. Washington State Department of Transportation* and the FTA’s Guidance (Docket No. FTA-2006-24063; dated March 23, 2006), NCTD will strictly utilize race-neutral measures to meet its overall DBE goals and objectives. Contractors are encouraged to afford small businesses, including DBEs, an equitable opportunity to compete for and perform on a contract resulting from this solicitation.
  - iv. The Contractor, and any of its sub-contractors, are to ensure that DBE as defined in 49 CFR Part 26 have equal opportunities to participate in the performance of NCTD contracts. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the equal opportunities to compete for and are awarded contracts. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the

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performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Each subcontract the Contractor signs with a sub-contractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

- v. 1101(b) of the FAST Act extends the Federal statutory requirement that FTA make available at least 10 percent (10%) of its funding under that Act for contracts with small business concerns owned and controlled by socially and economically disadvantaged people. NCTD and sub-recipients (Contractor and its sub-contractors) of FTA-funding assists FTA in meeting this national goal. To receive FTA assistance, NCTD and sub-recipients (Contractor and its sub-contractors) of FTA-funding must comply with applicable requirements of DOT regulations 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs".

### 3. DBE Financial Institutions

- i. The Contractor is to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage sub-contractors to make use of these institutions also.
- ii. A list of Minority Owned Banks is on the Federal Reserve website at <http://federalreserve.gov/releases/mob/current/default.htm>. The Federal Reserve website is updated periodically.
- iii. The Contractor is encouraged to use the services offered by banks in the community which are owned and controlled by minorities or women when feasible and beneficial.

### 4. DBE Reporting and Certification

- i. Monthly reporting requires the submittal of a "Monthly Sub-contractor Payment Report", which is used by NCTD to verify payments to DBE and non-DBE sub-contractors. When completing this form, the Contractor must designate DBE sub-contractors by placing an asterisk in front of their name. As Federal law requires that NCTD have proof of payment to a DBE sub-contractor, the sub-contractor must initial the form and verify payment received. Failure to submit a properly executed form will result in delayed payment. Failure to submit these reports in a timely manner may result in a penalty of \$10 per day, per report.
- ii. In order for the Contractor to submit a properly executed "Monthly Sub-contractor Payment Report," the Contractor must verify that Sub-contractors DBE certification is current at time of payment.
- iii. Certified Contractors can be found at the State of California web site: [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)

### 5. DBE Contract Assurance (49 CFR 26.13)

- i. NCTD does not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. NCTD takes all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT assisted contracts. NCTD's DBE Program as required by 49 CFR Part 26 and as approved by U.S. DOT will be incorporated by reference into the contract resulting from this solicitation.
- ii. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted procurements and contracts of products and services. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
  - a. Withholding monthly progress payments;
  - b. Assessing sanctions;
  - c. Liquidated damages; and/or
  - d. Disqualifying the Contractor from future bidding as non-responsible.

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### 6. DBE Prompt Payment (49 CFR 26.29)

- i. See Section 5.18 of the IFB.
- ii. Failure to comply with these provisions or delay in payment without prior written approval from NCTD will constitute noncompliance, which will result in appropriate administrative sanctions, including, but not limited to a penalty of 2% of the amount due per month for every month that payment is not made.

### 7. Civil Rights Policy Statements

- i. NCTD's DBE Policy Statement for its FTA approved DBE program is located at the following website: [https://fportal.nctd.org/WebLink/0/edoc/111437/Board%20Policy%2025%20-%20Disadvantaged%20Business%20Enterprise%20\(DBE\)%20Policy.pdf](https://fportal.nctd.org/WebLink/0/edoc/111437/Board%20Policy%2025%20-%20Disadvantaged%20Business%20Enterprise%20(DBE)%20Policy.pdf)
- ii. NCTD's Discrimination Complaint Procedures Policy Statement for its Title VI/Unruh program is located at the following website: <https://fportal.nctd.org/WebLink/0/edoc/111438/Board%20Policy%2026%20-%20Discrimination%20Complaint%20Procedures.pdf>
- iii. NCTD's EEO Policy Statement for its EEO program is located at the following website: [https://fportal.nctd.org/WebLink/0/edoc/111439/Board%20Policy%2027%20-%20Equal%20Employment%20Opportunity%20\(EEO\).pdf](https://fportal.nctd.org/WebLink/0/edoc/111439/Board%20Policy%2027%20-%20Equal%20Employment%20Opportunity%20(EEO).pdf)

**END OF SECTION**

**SECTION 08: SUBMISSION DOCUMENTS**

As indicated below, the documents of this part of the IFB must be completed by the Bidder and submitted with the bid. If all documents identified below are not submitted and/or are not complete and executed, the bid may be classified as non-responsive and may not be considered further. Typed or electronic signatures will not be accepted.

The following check-off list is provided to assist in assuring a complete submission:

1.  BIDDER'S QUESTIONNAIRE FORM
2.  LIST OF SUB-CONTRACTORS FORM
3.  CERTIFICATION OF RESTRICTIONS ON LOBBYING
4.  CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS
5.  PUBLIC RECORDS ACT INDEMNIFICATION CERTIFICATE
6.  EEO CERTIFICATE
7.  FALSE CLAIMS CERTIFICATE
8.  DISADVANTAGED BUSINESS ENTERPRISE INFORMATION – PRIME & SUB-CONTRACTOR
9.  DISADVANTAGED BUSINESS ENTERPRISE CERTIFICATION, IF APPLICABLE
10.  DISADVANTAGED BUSINESS ENTERPRISE INFORMATION – FOR EACH SUBCONTRACTOR (ATTACH COPY OF CERTIFICATION)
11.  NON-COLLUSION AFFIDAVIT
12.  ELIGIBILITY CERTIFICATION

The following items shall be provided by the Successful Contractor within three (3) business days of NCTD's request and are required in order to issue an Agreement.

1.  VENDOR INFORMATION SHEET (*From Successful Contractors who have never done business with NCTD-available from NCTD Contracting Officer.*)

**BIDDER'S QUESTIONNAIRE FORM**

1. Name of Contractor: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_  
Company DUNS #: \_\_\_\_\_

2. Name your principal financial institution for financial responsibility reference:  
Name of Bank: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City and State: \_\_\_\_\_ Telephone: (\_\_\_\_) - \_\_\_\_\_  
Officer Familiar with Bidder's Account: \_\_\_\_\_

3. Name the surety company from which you have previously obtained Performance Bonds.  
Name of Surety Company: \_\_\_\_\_  
Local Street Address: \_\_\_\_\_  
City and State: \_\_\_\_\_ Telephone: (\_\_\_\_) - \_\_\_\_\_  
Person Familiar with Bidder's Account: \_\_\_\_\_

4. State your average receipts in each of the past three (3) fiscal years:  
\$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

5. Contractor's State License No. \_\_\_\_\_  
Original Date Issued \_\_\_\_\_ Expiration Date \_\_\_\_\_

6. Contractor's DIR Registration No. \_\_\_\_\_  
Original Date Issued \_\_\_\_\_ Expiration Date \_\_\_\_\_

**Note:** The above representations regarding the Contractor's license and DIR registration numbers are made under penalty of perjury.

7. The following are the names, titles, addresses, and phone numbers of all individuals, Contractor members, partners, joint ventures, and/or corporate officers having a principal interest in this bid:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. The date of any voluntary or involuntary bankruptcy judgments against any principal having an interest in this bid are as follows:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. All current and prior DBAs, alias, and/or fictitious business names for any principal having an interest in this bid are as follows:

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10. Has Bidder ever failed to complete any work awarded to it? If so, when, where and why?

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11. Provide three (3) References that NCTD can contact to verify experience with SOW outlined in this solicitation:

(1) Name of Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

(2) Name of Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

(3) Name of Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

12. Corporation organized under the laws of the State of \_\_\_\_\_.

\_\_\_\_\_  
Official, legal name of bidding Contractor or individual (Type or Print)

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signed by: \_\_\_\_\_ Date: \_\_\_\_\_

**LIST OF SUB-CONTRACTORS**

The Successful Contractor shall not substitute any sub-contractor, permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original sub-contractor listed in the original proposal, or sublet/subcontract any portion of the work without the written permission of NCTD.

Name of Sub-contractor	If Applicable, License Number/Expiration Date	Address and Phone Number	Total Compensation of Sub and % of Total Contract	Specific Description of Subcontract	CALTRANS Certified DBE (Yes/No)

1. Do not list alternative Sub-contractors for the same work.
2. Use additional sheets as necessary.
3. Certified DBE Contractors can be found at the State of California web site: [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)

**CERTIFICATION OF RESTRICTIONS ON LOBBYING**

I, \_\_\_\_\_ hereby certify on behalf of  
(Type name)

\_\_\_\_\_ that:  
(Name of company)

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 sub-awards at all tiers (including sub-contractors, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance is 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.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Official, legal name of bidding Contractor or individual (Type or Print)

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signed by: \_\_\_\_\_ Date: \_\_\_\_\_



**CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

Bidder certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
5. The award of this contract is subject to a financial assistance contract between the NCTD and the U.S. Department of Transportation. Any name appearing on the Comptroller General's list of ineligible Contractor for federally financed or assisted contracts is not eligible for this contract.
6. The Contractor hereby certifies that neither it nor any of its officers or holders of a controlling interest are on the U.S. Comptroller General's list of ineligible Contractors for federally funded and assisted contracts. In the event any of the above persons or parties becomes included on such a list during the performance of this project, NCTD shall be promptly informed of this fact.

[If the primary participant (applicant for a FTA grant, or cooperative agreement, or potential third party Successful Bidder) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.]

THE PRIMARY PARTICIPANT (APPLICANT FOR AN FTA GRANT OR COOPERATIVE AGREEMENT, OR POTENTIAL SUCCESSFUL BIDDER FOR A MAJOR THIRD PARTY CONTRACT), CERTIFIES OR AFCONTRACTORS 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.

\_\_\_\_\_  
Official, legal name of bidding Contractor or individual (Type or Print)

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signed by: \_\_\_\_\_ Date: \_\_\_\_\_

NOTE: Lower-tier Participants in the Contract (sub-contractors, suppliers) are required to complete and submit identical certifications as the above to NCTD prior to award.

**PUBLIC RECORDS ACT INDEMNIFICATION CERTIFICATE**

The Bidder certifies that:

It will indemnify and defend NCTD in the event NCTD withholds production of any records submitted in response to this IFB that are marked "Confidential", "Trade Secret", "Proprietary", or similar designations, in response to a Public Records Act request pursuant to California Government Code section 6250 or a Freedom of Information Act request

\_\_\_\_\_  
Official, legal name of bidding Contractor or individual (Type or Print)

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signed by: \_\_\_\_\_ Date: \_\_\_\_\_

**EEO CERTIFICATE**

The Bidder hereby certifies that the company has \_\_\_\_\_ **OR** has not \_\_\_\_\_ been found, adjudicated, or determined to have violated any laws of Executive Orders relating to employment discrimination or affirmative action including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d); Executive Order 10925, 11114, or 11246; or the California Fair Employment and Housing Act (Government Code 12460 et seq.); by any Federal or California court or agency, including but not limited to the Equal Employment Opportunity Commission, the Office of Federal Contract compliance Programs, and the California Fair Employment and Housing Commission.

If yes, please explain the circumstance.

\_\_\_\_\_  
Official, legal name of bidding Contractor or individual (Type or Print)

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signed by: \_\_\_\_\_ Date: \_\_\_\_\_

**FALSE CLAIMS CERTIFICATION**

BIDDER'S CERTIFICATION OF COMPLIANCE  
WITH  
LAWS RELATING TO  
FALSE CLAIMS

I hereby certify that if awarded the Contract of which this certificate shall be made a part of, Contractor will not violate any provisions of the False Claims Act or any other applicable federal or state laws and regulations relating to the filing of false claims against a public agency, including laws and regulations hereinafter enacted. I additionally certify that in the event it is determined that Contractor has violated the False Claims Act that such violation shall be grounds for, among other things, debarment pursuant to the policies established by Federal, State, or local law.

\_\_\_\_\_  
Official, legal name of bidding Contractor or individual (Type or Print)

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signed by: \_\_\_\_\_ Date: \_\_\_\_\_

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION**  
**(TO BE COMPLETED BY THE PRIME CONTRACTOR)**

This form must be completed by the Contractor submitting the bid and for each Sub-contractor listed in the "List of Sub-contractors" Form. **FAILURE TO SUBMIT A COMPLETED FORM FOR THE PRIME AND ALL SUB-CONTRACTORS MAY RESULT IN A NON-RESPONSIVE DETERMINATION.**

**A.** Regardless of your Contractors DBE status, the following must be provided:

1. Name of Contractor: \_\_\_\_\_
2. Address: \_\_\_\_\_
3. Contact Name: \_\_\_\_\_
4. Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_
5. Is Contractor currently certified as a DBE under 49 CFR Part 26?  Yes  No
6. Date business started (formed, incorporated, began operations, etc.): \_\_\_\_\_ (MM/DD/YY)
7. Contractor's gross receipts for last year (check one):  Less than 1 million  Less than 5 million  Less than 10 million  Less than 15 million  More than 15 million
8. General Industry Classification (check one):  
 (1) Professional/Consulting Services  (2) Construction  (3) Supplies  (4) Equipment  
 (5) Other; Please list: \_\_\_\_\_

**B.** A Disadvantaged Business Enterprise is defined as a for-profit small business concern:

1. That is at least 51 percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of corporation, in which 51 percent (51%) of the stock is owned by one or more such individual; and
2. whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Small business concern means, with respect to Contractors seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR 26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who meets the criteria set forth in 49 CFR 26.5.

The entity must be certified as socially and economically disadvantaged under the Uniform Certification Programs (UCPs) established pursuant to the provisions of 49 CFR 26.81.

If your Contractor is a DBE, as defined above, please indicate below:

\_\_\_\_\_ Yes, my Contractor does qualify as a Disadvantaged Business Enterprise.

\_\_\_\_\_ No, my Contractor is not a Disadvantaged Business Enterprise.

If you answered "yes" above, please attach your DBE Certification to this page. NCTD accepts certification from only the agencies listed at

[http://www.dot.ca.gov/hq/bep/documents/Roster\\_of\\_Certifying\\_Agencies.pdf](http://www.dot.ca.gov/hq/bep/documents/Roster_of_Certifying_Agencies.pdf).

Certified DBE Contractors can be found at the State of California web site:

[http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION**  
**(TO BE COMPLETED BY EACH SUB-CONTRACTOR)**

This form must be completed by the Contractor submitting the bid and for each Sub-contractor listed in the "List of Sub-contractors" Form. **FAILURE TO SUBMIT A COMPLETED FORM FOR THE PRIME AND ALL SUB-CONTRACTORS MAY RESULT IN A NON-RESPONSIVE DETERMINATION.**

**C. Regardless of your Contractors DBE status, the following must be provided:**

9. Name of Contractor: \_\_\_\_\_
10. Address: \_\_\_\_\_
11. Contact Name: \_\_\_\_\_
12. Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_
13. Is Contractor currently certified as a DBE under 49 CFR Part 26?  Yes  No
14. Date business started (formed, incorporated, began operations, etc.): \_\_\_\_\_ (MM/DD/YY)
15. Contractor's gross receipts for last year (check one):  Less than 1 million  Less than 5 million  Less than 10 million  Less than 15 million  More than 15 million
16. General Industry Classification (check one):  
 (1) Professional/Consulting Services  (2) Construction  (3) Supplies  (4) Equipment  
 (5) Other; Please list: \_\_\_\_\_

**D. A Disadvantaged Business Enterprise is defined as a for-profit small business concern:**

3. That is at least 51 percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of corporation, in which 51 percent (51%) of the stock is owned by one or more such individual; and
4. whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Small business concern means, with respect to Contractors seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR 26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who meets the criteria set forth in 49 CFR 26.5.

The entity must be certified as socially and economically disadvantaged under the Uniform Certification Programs (UCPs) established pursuant to the provisions of 49 CFR 26.81.

If your Contractor is a DBE, as defined above, please indicate below:

\_\_\_\_\_ Yes, my Contractor does qualify as a Disadvantaged Business Enterprise.

\_\_\_\_\_ No, my Contractor is not a Disadvantaged Business Enterprise.

If you answered "yes" above, please attach your DBE Certification to this page. NCTD accepts certification from only the agencies listed at

[http://www.dot.ca.gov/hq/bep/documents/Roster\\_of\\_Certifying\\_Agencies.pdf](http://www.dot.ca.gov/hq/bep/documents/Roster_of_Certifying_Agencies.pdf).

Certified DBE Contractors can be found at the State of California web site:

[http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)

**NON-COLLUSION DECLARATION**

The undersigned hereby declares:

I am the \_\_\_\_\_ of \_\_\_\_\_ (“Contractor”), the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid. The Bidder has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham bid, or to refrain from bidding. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Bidder. All statements contained in the bid are true. The Bidder has not, directly or indirectly, submitted its bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ [date], at \_\_\_\_\_ [city], \_\_\_\_\_ [state].

\_\_\_\_\_  
Official, legal name of bidding Contractor or individual (Type or Print)

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signed by: \_\_\_\_\_ Date: \_\_\_\_\_

**ELIGIBILITY CERTIFICATION**

**Federally funded** (Some or all Task Orders may be federally funded)

**Not federally funded**

If federally funded, the award of this contract is subject to a financial assistance contract between the North San Diego County Transit Development Board and the U.S. Department of Transportation. Any name appearing on the Comptroller General's list of ineligible Contractors for federally financed or assisted contracts is not eligible for this contract.

If federally funded, the Bidder shall certify the following:

I hereby certify that neither I, the Bidder nor any officers or holders of a controlling interest are on the U.S. Comptroller General's list of ineligible Contractors for federally funded and assisted contracts. In the event any of the above persons or parties become included on such a list during the performance of this project, NCTD shall be promptly informed of this fact.

\_\_\_\_\_  
Official, legal name of bidding Contractor or individual (Type or Print)

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signed by: \_\_\_\_\_ Date: \_\_\_\_\_