

Thin Clients & Docking Stations



REQUEST FOR QUOTE

Thin Clients & Docking Stations

Federally Funded: Yes No

<p>RFQ NO. 28750</p> <p>Liquidated Damages: <input type="checkbox"/>Yes <input checked="" type="checkbox"/>No</p> <p>Amount \$ _____ Per Calendar Day</p> <p>Days for Completion: _____ Calendar Days</p> <p>Contractor License Required : <input type="checkbox"/>Yes <input checked="" type="checkbox"/>No</p> <p>License Classification:</p> <p>QUOTE SHALL BE VALID FOR 60 DAYS SECTION 03 TO BE RETURNED WITH QUOTE</p>	<p>DATE ISSUED: 9/13/19</p> <p>Non-Mandatory Solicitation Conference: <input type="checkbox"/>Yes <input checked="" type="checkbox"/>No</p> <p>Location: _____</p> <p>Date: _____ Time: _____</p> <p>Insurance Required: <input type="checkbox"/>Yes <input checked="" type="checkbox"/>No</p> <p>Prevailing Wage: <input type="checkbox"/>Yes <input checked="" type="checkbox"/>No <i>(CA State or Davis-Bacon, whichever is greater)</i></p> <p><i>NCTD RESERVES THE RIGHT TO CANCEL THIS SOLICITATION</i></p>
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NCTD reserves the right to award multiple or individual line items to one or more vendors.

The award of a Purchase Order or Contract, if made by NCTD, shall be to the lowest responsible Bidder whose bid complies with all of the prescribed requirements of the RFQ, however quotes that include services and materials may be awarded based on overall lead time and pricing.

For commodities, pricing shall be unit prices, including freight and applicable taxes unless specified to be priced otherwise. Labor shall be fully burdened hourly rates, identifying profit and overhead rates. Lump sum totals for all items will not be accepted. All items shall be priced, unless otherwise stated.

Product provided must be compliant with salient characteristics and scope of work. Equals must be approved by NCTD prior to closing of Question and Answer (Q&A) period.

Ordered items are required to be delivered within 30 days of issuing the Purchase Order (PO), unless otherwise stated.

All new vendors, shall include the Vendor Information Sheet (VIS) when submitting pricing, or vendor may be deemed non-responsive. Existing vendors, are to submit updated information on the VIS, as applicable.

Payment terms are Net30 after inspection and acceptance, unless approved otherwise during Q&A period.

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SECTION 01: SCOPE OF WORK

01.01 Project Background

North County Transit District (NCTD) intends to procure new thin client laptops to replace current, outdated laptops.

01.02 Salient Characteristics

- A. HP mt44 Mobile Thin Client Laptop (Part # 4LB57UT#ABA) or Approved Equal
1. Quantity – 5 each
 2. Operating System - Windows 10 IoT (internet of Things) Enterprise for Thin Clients 64 or Approved Equal
 3. Processor - AMD Ryzen 3 PRO 2300U APU with Radeon Vega Graphics or Approved Equal
 - a. Includes 2 GHz base frequency, up to 3.4 GHz burst frequency, 6 MB cache, 4 cores)
 4. Display – 14” diagonal
 - a. anti-glare with
 - b. led-backlit
 5. Ports:
 - a. One (1) USB 3.1
 - b. One (1) Docking Connector
 - c. One (1) AC Power
 - d. One (1) USB type C
 6. Memory - 8 GB DDR4-2400 SDRAM (2 x 4GB)
 7. Hard Drive – 128 GB Solid State Drive (SSD)
 8. Speakers
 9. Microphone
 10. Weight – 3-3.75 lbs.
 11. Warranty – 12 months manufacturer warranty that includes:
 - a. Exchange of equipment with no onsite repair
- B. Lenovo ThinkPad Thunderbolt 3 Dock Gen 2 (Part # 40AN0135US) or Approved Equal
1. Quantity – 5 each
 2. Operating System Requirements – Windows 10 or Approved Equal
 3. Output power – 90 watts
 4. Includes 135 watt power adapter and power cord
 5. Includes standard Thunderbolt 3 cable
 6. Ports:
 - a. Two (2) HDMI
 - b. Two (2) DisplayPort
 - c. One (1) ThunderBolt 3 Gen 2
 - d. One (1) USB-C
 - e. Four (4) USB 3.1 Gen 2
 - f. One (1) USB 3.1 Gen 2 with always on charging
 - g. One (1) RJ-45 Gigabit Ethernet
 - h. One (1) 3.5mm Audio Connector
 - i. One (1) Security-lock Slot
 7. Compatible with Lenovo ThinkPad Laptop Yoga 370 and X380 Yoga Laptop
 8. Warranty – Manufacturer 3-year warranty

01.03 Deliverables

- A. Laptops
- B. Docking Stations

01.04 Delivery Location

810 Mission Ave.
Oceanside, Ca 92054

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01.05 Schedule

All products within this scope must be received within 60 (sixty) days of Purchase Order issuance.

01.06 General Requirements for Products in this Scope

- A. The equipment shall be new in original Manufacturer packaging, not refurbished, and no surplus equipment will be accepted.
- B. 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.
- C. 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.
- D. 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**. In the event the **Manufacturer** Products have been acquired from unauthorized channels, **North County Transit District** further reserves the right to reject the Vendor bid and/or return the products for a full refund.

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SECTION 02: INSTRUCTIONS TO OFFERORS

02.01 COMMUNICATIONS

All communications relating to this RFQ 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 September 19, 2019. NCTD changes to any part of the RFQ, 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.

02.02 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 RFQ 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.

02.03 BID SUBMISSION INFORMATION

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 Monday, September 30, 2019 for . Specific submission requirements are contained in the "General Instruction for Bidders" section of this RFQ.

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

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 RFQ. 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

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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.

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.

02.04 RFQ/DRAWINGS/SPECIFICATION CHANGES

NCTD reserves the right to revise or amend the RFQ 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 RFQ. 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.

02.05 ADDENDA

The effect of all addenda to the RFQ 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.

02.06 SAFETY TRAINING AND RWP TRAINING- NOT APPLICABLE

02.07 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 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.

02.08 DISCREPANCIES IN QUOTES

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

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02.09 LATE BIDS

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

02.10 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 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

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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

02.11 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.

02.12 TIE QUOTE PROCEDURE

In the event of a tie quote 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.

02.13 FLAGGING- NOT APPLICABLE

02.14 SIGNAL MAINTAINER- NOT APPLICABLE

END OF SECTION

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SECTION 03: SUBMISSION DOCUMENTS

As indicated below, the documents of this part of the RFQ must be completed by the Offeror and submitted with the quote. If all documents identified below are not submitted and/or are not complete and executed with wet signature, 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. WORKER'S COMPENSATION CERTIFICATE
2. CERTIFICATION OF RESTRICTIONS ON LOBBYING
3. ELIGIBILITY CERTIFICATION
4. CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS
5. PUBLIC RECORDS ACT INDEMNIFICATION CERTIFICATE
6. NON-COLLUSION AFFIDAVIT
7. EEO CERTIFICATE
8. FALSE CLAIMS CERTIFICATE
9. DISADVANTAGED BUSINESS ENTERPRISE INFORMATION – PRIME
10. DISADVANTAGED BUSINESS ENTERPRISE CERTIFICATION, IF APPLICABLE
11. DISADVANTAGED BUSINESS ENTERPRISE INFORMATION – FOR EACH SUBCONTRACTOR (ATTACH COPY OF CERTIFICATION)

The following items shall be provided by the Successful Offeror 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 has never done business with NCTD-available from NCTD Contracting Officer.*)

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WORKERS' COMPENSATION CERTIFICATE

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of the Labor Code and I will comply with such provisions before commencing the performance of the Work of this Agreement.

Official, legal name of Contractor or individual (Offeror) (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

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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-consultants, 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 Contractor or individual (Offeror) (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

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ELIGIBILITY CERTIFICATION

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 Offeror for federally-financed or assisted contracts is not eligible for this contract.

If federally funded, the Firm shall certify the following:

I hereby certify that neither I, the Offeror, nor any officers or holders of a controlling interest are on the U.S. Comptroller General's list of ineligible Offerors 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.

Not federally funded

NCTD has determined that any name appearing on the Comptroller General's list of ineligible Offeror for federally-financed or assisted contracts is not eligible for this contract, regardless of the funding source.

If not federally funded, Firm shall certify the following:

I hereby certify that neither I, the Offeror, nor any officers or holders of a controlling interest are on the U.S. Comptroller General's list of ineligible Offerors 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 Contractor or individual (Offeror) (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

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

Contractor 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 agreement under a public (Federal, State or local) transaction or agreement 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 agreement is subject to a financial assistance agreement between the NCTD and the U.S. Department of Transportation. Any name appearing on the Comptroller General's list of ineligible Firm for federally financed or assisted agreements is not eligible for this agreement.
6. The Firm 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 Firms for federally funded and assisted agreements. 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 Offeror) 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 OFFEROR FOR A MAJOR THIRD PARTY AGREEMENT), CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Official, legal name of Contractor or individual (Offeror) (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

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

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PUBLIC RECORDS ACT INDEMNIFICATION CERTIFICATE

I, _____ hereby agree, on behalf of
(Type name)

_____,
Official, legal name of Contractor or individual (Type or Print) making offer

to indemnify and defend NCTD in the event NCTD withholds production of any records submitted in response to this RFQ 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 Contractor or individual (Offeror) (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

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NON-COLLUSION DECLARATION

The undersigned hereby declares:

I am the _____ of _____ (“Offeror”), the party making the foregoing quote.

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

Any person executing this declaration on behalf of a Offeror 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 Offeror.

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 Contractor or individual (Offeror) (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

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EEO CERTIFICATE

The Offeror 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 Contractor or individual (Type or Print) offering the proposal

Print Name: _____ Title: _____

Signed by: _____ Date: _____

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FALSE CLAIMS CERTIFICATION

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

I hereby certify that if awarded the Agreement of which this certificate shall be made a part of, Offeror 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 Offeror 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 Contractor or individual (Offeror) (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

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

This form must be completed by the Contractor submitting the quote 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. Contact Information: 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.): _____ (show in 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 follows:
A for-profit small business concern that is:

- 1. at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of corporation, in which fifty-one percent (51%) of the stock is owned by one (1) or more such individual;
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 Agreements, 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 49CFR26.81.

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.

Certified DBE Contractors can be found at the State of California web site:
http://www.dot.ca.gov/hq/bep/find_certified.htm

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

This form must be completed by the Contractor submitting the quote 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. Contact Information: 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.): _____ (show in 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 follows:
A for-profit small business concern that is:**

- 3. at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of corporation, in which fifty-one percent (51%) of the stock is owned by one (1) or more such individual;
- 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 Agreements, 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 49CFR26.81.

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.

Certified DBE Contractors can be found at the State of California web site:
http://www.dot.ca.gov/hq/bep/find_certified.htm

END OF SECTION

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SECTION 04: GENERAL CONDITIONS

04.01 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: Special Conditions.

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.

04.02 PREVAILING WAGE MONITORING REQUIREMENTS – SB 854- NOT APPLICABLE

04.03 COMPLIANCE WITH LABOR CODE REQUIREMENTS/PREVAILING WAGES- NOT APPLICABLE

04.04 SUBMITTAL OF CERTIFIED PAYROLLS- NOT APPLICABLE

04.05 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 to 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.

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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-contractors, 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 Successful Offeror'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: 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]. Bid price forms submitted to NCTD in response to this RFQ 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 Bidder 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 Bidder shall submit proprietary information, trade secrets or confidential commercial and financial information, which a Bidder 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 bid 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 bid cost or price form does not contain trade secrets as defined by the Civil Code. Bid price forms submitted to NCTD are public records and may, therefore, be disclosed in accordance with the California Public Records Act.

The Bidder agrees to indemnify and defend NCTD in the event NCTD withholds production of Bidders records which Bidder 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.

Prevailing Wage: 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.

04.06 TERMINATION

Mutual Termination: This Agreement may be terminated by mutual agreement of the Parties. Any other act of termination shall be in accordance with section titled "Termination for Convenience" and "Termination for Default" of this agreement.

Termination for Convenience: NCTD may terminate the Agreement, in whole or in part, at any time and for any reason by giving written notice to the Contractor and specifying the effective date thereof, at least fifteen (15) days prior to the effective date. If the Agreement is terminated for convenience as provided in this Section, Contractor shall be entitled to receive compensation for any satisfactory work completed up to the receipt by Contractor of notice of termination, less any payments theretofore made and not to exceed the amount payable herein, and for satisfactory work completed between the receipt of notice of termination and the effective date of termination pursuant to a specific request by NCTD for the performance of such

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work. If the Contractor has any property in its possession belonging to NCTD, the Contractor will account for the same and dispose of or return it in the manner NCTD directs.

Termination for Default: NCTD may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include: (a) a material violation of any of the covenants, agreements, or stipulations of this Agreement by Contractor, (b) Contractor, through any cause, failing to fulfill in a timely and proper manner its obligations under this Agreement, (c) any act by Contractor exposing NCTD to liability to others for personal injury or property damage, or (d) if Contractor is adjudged bankrupt, Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Contractor's insolvency. Written notice by NCTD of termination for cause shall contain the reasons for such intention to terminate and shall specify the effective date thereof. Unless prior to the effective date of the termination for cause the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall cease and terminate on the effective date specified in the written notice by NCTD.

In the event of such termination, Contractor shall be paid the reasonable value of satisfactory services rendered up to the date of receipt of the notice of termination in accordance with this Agreement, less any payments theretofore made, as determined by NCTD, not to exceed the amount payable herein, and Contractor expressly waives any and all claims for damages or compensation arising under this Agreement in the event of such termination, except as set forth herein.

If it is later determined by NCTD or any other decision maker including a court of competent jurisdiction and/or arbitrator, that the Contractor had an excusable reason for not performing, such as force majeure events which are not a default; NCTD, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience, at NCTD's sole option.

Rights of NCTD in the Event of Termination for Default: In the case of a termination of the Agreement for default by the Contractor, the Contractor agrees that NCTD may procure the materials and services to complete the project from other sources at the sole discretion of NCTD and may be deducted from the unpaid balance due the Contractor, or, if applicable, may collect against the Contractor's bond of surety, or may invoice the Contractor for all costs so paid. The prices paid by NCTD to complete the project shall be considered the prevailing market price at the time such purchase is made or such Agreement is entered into.

Separate Agreement negotiations maybe entered into, at the sole discretion of NCTD, after the Agreement termination concerning the disposition and materials, supplies and equipment acquired by the Contractor for the requirements of the agreement.

Remedies and Rights of Contractor: The Contractor shall not be relieved of any responsibility under the Agreement for work accepted by NCTD before the termination of the agreement. Furthermore, the termination of the Agreement shall in no way relieve the Contractor from any of its covenants, undertakings, duties and obligations under this Agreement nor limit the rights and remedies of the Board hereunder in any manner whatsoever.

Work Stopped by Court or Other Public Authority: If the work should be stopped under an order of any court or other public authority, for a period of three (3) months or more through no act or default of the Contractor or anyone employed by them, or if NCTD has failed to comply with its obligations in any way or if NCTD should fail to issue any certificate for payment within thirty-five (35) days after it is due, then the Contractor may, upon fifteen (15) days written notice to NCTD, stop work or terminate the Agreement and recover from NCTD payment for all work executed and all losses sustained, and reasonable profit.

Opportunity to Cure: In the case of a termination for breach or default, NCTD will allow the Contractor ten (10) days in which to cure the defect, except that if the nature of the cure requires more than ten (10) days to complete, then the cure period was in the sole and absolute discretion of NCTD be extended sufficiently to allow completion of the cure to be diligently pursued by the Contractor. If the Contractor fails to remedy to NCTD's satisfaction the breach or default of any of the terms, covenants, or conditions of the Agreement within ten (10) days or other cure period after receipt by Contractor or written notice from NCTD setting forth the nature of said breach or default, NCTD shall have the right to terminate the Contractor without any

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further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude NCTD from also pursuing all available remedies against the Contractor and its sureties for said breach or default.

04.07 SUSPENSION FOR CAUSE OR CONVENIENCE

NCTD may, without cause, order the Contractor in writing to suspend, or interrupt performance of the services in whole or in part for such period of time as NCTD may determine. An adjustment may be made for an increase in the cost of performance of the Agreement including profit on the increased cost of performance, if any, caused by any such suspension or interruption. An equitable adjustment may be made of the price or prices specified in the Agreement relating to the portion of the work not suspended or interrupted by the notice of suspension or interruption. No adjustment shall be made to the extent:

1. That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
2. An equitable adjustment is made or denied under another provision of this Agreement.

04.08 SITE INVESTIGATION- NOT APPLICABLE

04.09 CAMP PENDLETON ACCESS- NOT APPLICABLE

04.10 INSPECTION AND ACCEPTANCE

All items are subject to final inspection and acceptance by NCTD at destination notwithstanding any payment or prior inspection at contractor's facilities. Final inspection will be made within a reasonable time after receipt of items hereunder.

04.11 CHANGES

By written notice or order, NCTD may, from time to time, order work suspension or make changes in quantities, drawings, designs, specifications, place of delivery or delivery schedules, methods of shipment and packaging, and property and services furnished. If any such change causes an increase or decrease in the price of this Agreement or in the item required for its performance, Contractor or NCTD shall promptly notify the other party thereof and assert its claim for adjustment within thirty (30) days after the change is ordered, and an equitable adjustment shall be made. However, nothing in this clause shall excuse Contractor from proceeding immediately with the Agreement as changed.

04.12 ASSIGNMENTS AND SUBCONTRACTORS

Neither this Agreement nor any interest herein nor claim hereunder may be assigned by Contractor either voluntarily or by operation of law, nor may all or substantially all of this Agreement be further subcontracted by Contractor without the prior written consent of NCTD. No consent shall be deemed to relieve Contractor of its obligations to comply fully with the requirements hereof.

04.13 DISADVANTAGED BUSINESS ENTERPRISE (DBE)

In connection with the performance of this agreement, the Contractor will cooperate with the NCTD in meeting its commitments and goals with regard to the maximum utilization of Disadvantaged business Enterprises, and Contractor will use its best efforts to insure that Disadvantaged Business Enterprises shall have an equitable opportunity to compete for subcontract work under this agreement. See Federal Transit Administration Required Clauses.

04.14 EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this agreement and in compliance with Title VII of the Civil Rights Act of 1964 and the California Fair Employment and Housing Act, the Contractor shall not discriminate against any employee or applicant because of race, color, ancestry, marital status, medical conditions, genetic information, religion, national origin, sex, sexual orientation, gender identity, gender expression, age, or disability. The Contractor shall take affirmative action to ensure applicants are employed, and that

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employees are treated during their employment without regards to their race, color, ancestry, marital status, medical conditions, genetic information, religion, national origin, sex, sexual orientation, gender identity, gender expression, age, or disability. Such actions shall include, but not limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

04.15 CONTRACTOR'S WARRANTIES

Contractor warrants all goods and materials to meet the specification or other requirements of this order. NCTD may return any goods or materials which are defective, unsatisfactory, or of inferior quality or workmanship. Such goods or materials shall, unless used by NCTD, remain the property of Contractor and may be returned at Contractor's risk and expense. Contractor shall reimburse NCTD for all prior payments therefor and/or costs incurred in connection with delivery or return of such goods or materials.

04.16 SALES AND USE TAX

Unless otherwise specified, Contractor acknowledges that prices stated in the order portion of this agreement do not include sales or use tax.

04.17 DELAYS

Contractor will not be held liable for failure or delay in the fulfillment if hindered or prevented by fire, strikes or Acts of God.

04.18 TITLE AND RISK OF LOSS

Unless otherwise provided in this Agreement, Contractor shall have title to and bear the risk of any loss of or damage to the items purchased hereunder until they are delivered in conformity with this Agreement at the F.O.B. point specified herein, and upon such delivery title shall pass from Contractor and Contractor's responsibility for loss or damage shall cease, except for loss or damage resulting from Contractor's negligence. Passing of title upon such delivery shall not constitute acceptance of the item by NCTD.

04.19 AVAILABILITY OF FUNDING

NCTD's obligation for payment of any Agreement beyond the current fiscal year is contingent upon the availability of funding from which payment can be made. NCTD shall, at its sole discretion, have the right to terminate or suspend the Agreement or reduce compensation and service levels or scope of work proportionately upon thirty (30) days' written notice to the Contractor in the event that federal, state or other funding for the resulting contract ceases or is reduced prior to the ordinary completion date of the term of the resulting contract. In the event of reduction of funding for the contract, NCTD and Contractor shall meet within ten (10) days of written notice to renegotiate the contract based upon the modified level of funding. In this case, if no Agreement is reached between NCTD and Contractor within ten (10) days of the first meeting, either party shall have the right to terminate the Agreement within ten (10) days written notice of termination. In the event of termination of the Agreement in accordance with the terms of this section, Contractor shall be entitled to any payment offset to which NCTD may be entitled, for damages or otherwise, under the terms of the Agreement. In the event of termination of the Agreement pursuant to this section, in no event shall Contractor be entitled to any loss of profits on the portion of the Agreement so terminated, or to other compensation, benefits, reimbursements or ancillary services other than as expressly provided herein.

04.20 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.**

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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 an awarded 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 contract 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, Subcontractors, 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 contracts with Subcontractors and payees receiving more than ten thousand dollars (\$10,000) in funds in connection with the work of NCTD.

04.21 AUDIT AND INSPECTION OF RECORDS

Contractor shall provide NCTD such access to Contractor's books, records and facilities as may be deemed necessary to examine, audit, and inspect all work data, documents and activities related to the goods or services described herein. Contractor shall maintain such books, records, data, documents and activities related to the goods or services described herein. Contractor shall maintain such books, records, data and documents on a generally accepted accounting basis and shall clearly identify and make such items readily accessible to such parties during Contractor's performance hereunder and for a period of four (4) years from the date of final payment by NCTD hereunder.

04.22 PROHIBITED INTEREST

Contractor covenants that no member of, or delegate to, the Congress of the United States shall have any interest, direct or indirect, in the agreement or the proceeds hereof Contractor further covenants that, for the terms of this agreement, no director, member, officer, or employee of NCTD during his tenure in office or one (1) year thereafter shall have any interest, direct or indirect, in this agreement or the proceeds thereof.

04.23 CONTRACTOR(S) ASSOCIATED WITH PROJECT

The Contractor(s) listed below have been associated with the development and/or the preparation of this RFQ 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 RFQ. Contractors 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 RFQ and resulting Agreement.

- NONE

04.24 WHISTLEBLOWER HOTLINE

NCTD is an organization with strong values of responsibility and integrity and has developed a number of policies and procedures to provide Contractor with clear direction and guidance to ensure that NCTD's business is carried out with fairness, efficiency, impartiality and integrity. NCTD is committed to an

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environment where open, honest communication is the expectation, not the exception. If the Contractor believes that a violation of law, regulations, Board policies, NCTD's Standard of Conduct Policy or any deviation from established business practices has occurred, NCTD encourages Contractor to report the suspected violation via the anonymous Whistleblower Hotline managed by third-party vendor, Navex Global at www.nctd.ethicspoint.com or by calling 855-877-6048.

04.25 PERFORMANCE OF WORK ON NCTD PROPERTY- NOT APPLICABLE

04.26 NOTICE OF LABOR DISPUTE

Whenever Contractor has knowledge that any actual or potential labor dispute may delay this Agreement, Contractor shall immediately notify and submit all relevant information to NCTD. Contractor shall insert the substance of this entire clause in any sub-contract hereunder as to which a labor dispute may delay this Agreement. However, any sub-contractor need give notice and information only to its next higher tier sub-contractor.

04.27 SOCIAL MEDIA

Contractor is prohibited from using any social media to reference any ongoing proposal 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.

END OF SECTION

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SECTION 05: CONTRACTOR'S RESPONSIBILITIES

05.01 CONTRACTOR'S LICENSE CLASSIFICATION- NOT APPLICABLE

05.02 CONTRACTOR'S RESPONSIBILITY FOR THE WORK AND MATERIALS- NOT APPLICABLE

05.03 RESPONSIBILITY OF CONTRACTOR TO PERFORM- NOT APPLICABLE

05.04 PERFORMANCE EVALUATION- NOT APPLICABLE

05.05 PERMITS AND INSPECTION COSTS- NOT APPLICABLE

05.06 PROTECTION OF EXISTING IMPROVEMENTS- NOT APPLICABLE

05.07 SAFETY LAWS AND REGULATIONS- NOT APPLICABLE

05.08 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 and CivilRightsOffice@nctd.org.
- e. Invoices may be mailed or delivered to 810 Mission Avenue, Oceanside, CA 92054, Attn: Accounts Payable or emailed to 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.

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05.09 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.

05.10 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 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

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

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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.

END OF SECTION

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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 RFQ 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	Lobbying	> 100K (NCTD Requires All)
10	Cargo Preference	All
11	Fly America	All
12	Disadvantaged Business Enterprises (DBEs)	All
13	Prompt Payment	All
14	Recycled Products	Value > 10K In Fiscal Year
15	Privacy Act	All
16	Metric Requirements	RFQs: All
17	Conformance with National ITS Architecture	Contracts and Solicitations for ITS projects only
18	Veterans Employment	Capital Projects

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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.

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

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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 ¹	Those imposed on non-state Grantee	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/ Capital Projects	Yes ¹	pass thru to Consultant	Yes	Yes	Yes	Yes

Sources of Authority: ¹ 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,

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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 4.06, "Termination," of this Solicitation

9. 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.

10. 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.

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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;

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(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.)

11. 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.

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12. 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.

13. PROMPT PAYMENT

49 CFR 26.29

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

14. 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.

15. 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.

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16. 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.

17. 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.

18. 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
 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

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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,

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executive orders, regulations, and Federal policies that may in the future affect Bidder agrees 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

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Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this 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

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;

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- b. Assessing sanctions;
 - c. Liquidated damages; and/or
 - d. Disqualifying the Contractor from future bidding as non-responsible.
6. DBE Prompt Payment (49 CFR 26.29)
 - i. See Section 5.10 of the RFQ.
 - 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