

January 2019

Request for Proposals

Transit Signal Priority Concept of Operations



Rogue Valley Transportation District

3200 Crater Lake Ave
Medford, OR
97504

TABLE OF CONTENTS

Section	Topic	Page No.
PART 1: GENERAL INFORMATION		
1.1	Agency Information	3
1.2	Background & Objectives	3
1.3	Scope of Work	4
PART 2: INSTRUCTIONS TO PROPOSERS		
2.1	Proposer's Representation	5
2.2	Proposal Documents	6
2.3	Proposal Procedures	6
2.4	Form of Agreement Between Owner and Contractor	7
2.5	Evaluation	7
2.6	Technical Teleconference	8
2.7	Responders List	8
2.8	Technical Questions	8
2.9	Technical Proposal and All Required Material	8
2.10	Evaluation of Proposals	8
2.11	Award	9
2.12	Substantial Project Completion	9
2.13	Required Proposal Forms	9
2.14	Proposer's Qualifications	9
2.15	Owner's Right to Reject Proposals	9
2.16	Negotiation and Request for Best And Final Offer	9
2.17	Insurance Requirements	10
PART 3: REQUIRED FORMS		
3.1	DBE Form	11
3.2	Debarment	12
3.3	Proposer's Representation	13
3.4	Lobbying	14
PART 4: FEDERAL CLAUSES		
		15

PART 1: GENERAL INFORMATION

1.1 Agency Information

Request For Proposal (RFP) No: 012019ML

Procuring Agency: Rogue Valley Transportation District

Address: 3200 Crater Lake Ave
Medford, OR 97504

Project Manager: Melissa Lowry
Phone/Fax: (541) 608-2448

1.2 Background and Objectives

Background

The Rogue Valley Transportation District is a Public Transportation Special District formed in 1975 and serves seven cities in Jackson County, Oregon. RVTD is funded through property taxes, fare revenue, state and federal grants, advertising and other miscellaneous revenue. RVTD operates 20 fixed route vehicles on 9 routes, Monday – Saturday. RVTD’s fixed route 2017-2018 annual ridership was roughly 1.2 million unlinked passenger trips. RVTD experiences schedule adherence issues on several routes during midday. To mitigate these issues RVTD has shortened routes, removed low activity stops and revised the route schedules. Transit Signal Priority System (TSP) has been included in the Long Range Transit Plan and the Rogue Valley Intelligent Transportation System Plan as a priority project. RVTD also received a 5339 Bus and Bus Facilities grant to purchase the TSP system.

Objectives

RVTD is currently seeking proposals from qualified and experienced entities to enter into a contract to provide the Concept of Operations plan for the TSP system. The selected consultant will investigate the current systems in place that will interact with TSP and prepare a relational architecture with various options. Each option will include responsibilities, conditional usage and leverage opportunities beneficial to system users. The consultant will also provide municipal stakeholder coordination through facilitation of meetings, presentations to inform stakeholders and peer agency speakers to provide first-hand knowledge to the community. The consultant will also provide staff support to RVTD and assist with identifying the vendor for TSP hardware, software, configuration and training. The consultant will provide RVTD staff with resources to build the capacity for ongoing support and maintenance of the new system.

RVTD is looking for a scalable Transit Signal Priority System (TSP) along identified major corridors. Qualified proposers will provide project management, a defined project management plan, and facilitate inter-agency communication and coordination.

1.3 Scope of Work

Preliminary consultant tasks will include the following:

1. Kickoff meeting
 - Successful consultant shall hold a kickoff meeting within 20 working days of the effective date of the agreement. Minutes from the meeting shall be submitted to RVTD within five (5) working days. The subject of the kickoff meeting will include a discussion of expectations from the project and approximate timeline.
2. Develop project management plan
 - The project management plan is the main document that describes how the project will be managed. At a minimum the plan should contain:
 - i. Project overview
 - ii. Methodology
 - iii. Schedule
 - iv. Budget
 - v. Project team
 - vi. Communication/public involvement
3. Technology scan
 - Review and provide a summary report of current available Transit Signal Priority (TSP) technologies and implementation in rural and small urban areas.
 - Evaluate the potential for integration with existing current traffic signal technology in the Rogue Valley.
4. Analysis of benefits
 - Review RVTD system performance data, measurement tools and reports to find deficiencies in data or opportunities for ongoing monitoring.
 - Estimate system-level and route-level benefits of implementing a Transit Signal Priority system.
5. Determination of feasibility
 - Determine the capital and operating costs of implementing a Transit Signal Priority system.
 - Identify and estimate possible impacts to traffic due to implementation of Transit Signal Priority.
6. Identification of institutional and implementation issues or opportunities
 - Identify project stakeholders and agencies for implementation of a Transit Signal Priority system.
 - Develop a steering committee to support the development of a project goals, measures of effectiveness, and provide input on prioritization system rules and conditions.

- Conduct up to four (4) meetings of the steering committee to ensure development and adoption of TSP goals, measures, and rules.
 - Coordinate with involved municipalities within RVTD's service boundary in advance of an implementation plan.
 - Identify signals that are planned for replacement within project horizon, data communication and storage that this project can leverage or help to assist stakeholders to leverage replacement or enhancement.
 - Outline roles and responsibilities for implementation.
7. Develop standards, policies, and final report
- Complete a final report detailing the work completed in tasks 1-6.
 - Develop draft of local and agency-level standards, rules, and policies related to the Transit Signal Priority infrastructure/operation.
 - Meet with up to four local boards to determine community acceptance.
8. Develop a draft RFP for TSP system
- In coordination with RVTD, develop a draft document to be used for soliciting bids or proposals.
 - Identify vendors, manufacturers and dealers who should be notified of the opportunity to submit a bid.
 - Assist RVTD with evaluation of proposals or bids by designating a person to be on the evaluation committee.
9. Long term monitoring
- Provide long-term support throughout the final implementation process.
 - Monitor TSP performance and schedule adherence following the implementation and produce progress reports.

PART 2: INSTRUCTIONS TO PROPOSERS

2.1 Proposer's Representation

By submitting a proposal, the proposer represents that:

- 1) Proposer has carefully studied the Proposal Documents. Proposer understands the Proposal Documents and the proposal is fully in accordance with the requirements of those documents,
- 2) Proposer has thoroughly examined the rvtd.org site, has become familiar with RVTD services which might directly or indirectly affect the contract work, and has correlated its personal observations with the requirements of the proposed Contract Documents, and
- 3) Proposal is based on the materials, design, and services required by the Proposal Documents without exception.

2.2 Proposal Documents

a. Copies -

1) Copies of the Instruction to Proposers can be obtained online at www.rvtd.org or in person at 3200 Crater Lake Ave. Medford OR 97504 or request to be mailed by calling Ms. Lerma at 541-608-2417.

b. Interpretation or Correction of Proposal Documents -

1) If any proposer, in their study of the Proposal Documents, is in doubt as to the true meaning of any part of the Proposal Documents or finds errors, discrepancies, or omissions in them, shall request interpretation or correction of those errors, discrepancies, and omissions by the Owner.

2) Request for such clarification shall be in writing and be received by the Owner four working days minimum before scheduled proposal opening. Owner will promptly correct or interpret the portion of the Proposal Documents in question by issuing an Addendum to all proposers. Corrections or interpretations made in any way other than by an Addendum have no validity and shall not be relied upon.

3) If errors, discrepancies, or omissions are discovered in the Proposal Documents less than four working days before proposal opening, proposers shall prepare proposals based on order of precedence given in the General Conditions.

4) Addenda - Addenda, if necessary, will be sent to the Responders List and be available online at www.rvtd.org.

2.3 Proposal Procedures

a. Form & Style of Proposal -

1) Proposal shall be prepared on Contractor's Forms, except forms that must be completed in Part 4 - Required Forms section.

2) Signatures shall be in longhand and executed by representative of proposer duly authorized to make contracts.

b. Submission of Proposals -

1) Submit proposal in opaque envelope containing Technical Proposal, Cost Proposal and all required materials. Envelopes shall be sealed, bear proposer's name, and be addressed as follows -

Rogue Valley Transportation District
Transit Signal Priority Concept of Operations RFP #01209ML
3200 Crater Lake Avenue
Medford, Oregon 97504.
Attention: Mary Lou Lerma – Procurement Specialist



2) It is proposer's sole responsibility to see that its proposal is received at specified time. Proposals received after specified time will be returned unopened.

3) No oral, facsimile transmitted, telegraphic, or telephonic proposals, modifications, or cancellations will be considered.

4) Modification Or Withdrawal Of Proposal - Proposer has the right to withdraw the proposal in full by notifying RVTD in writing within 7 days of proposal due date.

2.4 Form of Agreement Between Owner & Contractor

a. Agreement Form To Be Used - Project Contract and Agreement form will be provided by awarded Contractor and reviewed by RVTD Legal Council.

2.5 Evaluation

Proposal and the required proposal documents described in Part 4. The Proposal will be evaluated by a committee of RVTD Support Services and Procurement personnel. Proposals will be evaluated based on the following scoring criteria:

1	Technical Capacity	30%
	<ul style="list-style-type: none"> • Ability to meet RVTD's requirements • Design and Concept of Operations Approach • Understanding of Transit Signal Priority technology • Timeliness of project schedule with deliverables 	
2	Qualifications & Experience	30%
	<ul style="list-style-type: none"> • Experience in performing work similar in nature and/or related to the work described in Scope of Work • Experience working with transit agencies, strength and financial stability of the firm • Demonstrated competence as evidenced by supporting references. 	
3	Record of Past Performance	20%
	<ul style="list-style-type: none"> • Proven Track record of performance • Satisfaction of key references 	
4	Cost	20%
	<ul style="list-style-type: none"> • Competitive and reasonable 	

2.6 Technical Teleconference

A Technical Teleconference will be held Thursday, February 14, 2019 from 10:00 am – 12:00pm. Proposers can submit questions in advance via email (due on February 11, 2019) to be read and answered during the teleconference to Ms. Lerma at: mmlerma@rvtd.org and Ms. Lowry at: mmlowry@rvtd.org. Additional questions may be asked during the teleconference if time permits. Participants may call in 541-842-2103 (Pin: 3203) or attend in person at 3200 Crater Lake Ave. Medford, OR 97504.

2.7 Responder List

Only those persons who contact the Procurement Specialist by email or in writing will be on the Responders List. The Responders List is used to send updates and amendments regarding this RFP. RVTD will not automatically send notifications regarding this RFP to other outlets, however updates will be available on our website at www.rvtd.org. To participate in the Responders List please contact Ms. Lerma at: mmlerma@rvtd.org or send to 3200 Crater Lake Ave. Medford, OR 97504.

2.8 Technical Questions

Final Technical Questions shall be received by RVTD by 5:00 pm Monday, February 18, 2019. RVTD will respond to the questions by Wednesday, February 20, 2019 via written response only. Responses will be sent to the Responders list and posted online at www.rvtd.org. If necessary, RVTD will issue addendums this same day. Questions, Responses and if necessary, Addendums will be available online at www.rvtd.org. ALL TECHNICAL QUESTIONS SHOULD BE SENT TO: mmlerma@rvtd.org and mmlowry@rvtd.org.

2.9 Technical Proposals and All Required Material

Technical Proposals and All Required Material are due to RVTD no later than 2:00pm Monday, March 4, 2019 to: 3200 Crater Lake Ave., Medford OR, 97504 with “TSP Concept of Operations” written on the package. Technical Proposals that are mailed must arrive by the deadline. Proposals can be dropped off in person at 3200 Crater Lake Ave., Medford, OR, 97504.

2.10 Evaluation of Proposals

Proposers’ responsiveness to all required materials will be determined and a ‘competitive range’ will be determined on Tuesday, March 19, 2019 and RVTD reserves the right to allow proposers to submit incomplete or missing information by the end of the day Wednesday, March 20, 2019. RVTD intends to have proposal evaluations completed by Thursday, March 21, 2019 and will notify proposers who are deemed to not be within a competitive range and will not continue to be considered by RVTD.

2.11 Award

Written requests for Best and Final Offer will be published to proposers who remain within the competitive range. Best and Final Offers will be due to RVTD no later than 2:00 p.m. Friday, March 29, 2019. Notice of Award is scheduled on or before Monday, April 8, 2019. Contractor shall not begin work until Notice to Proceed Letter has been received, which is scheduled to occur on Monday, April 22, 2019.

2.12 Substantial Project Completion

Substantial Project Completion shall occur by Tuesday, December 31, 2019. Final Completion shall be determined with the TSP RFP/IFB.

2.13 Required Proposal Forms

Subcontractor designations, Insurances, Contractor Licenses and DBE Participation must be submitted with the Proposal for a proposal to be considered responsive. All required forms are contained within the proposal documents and located in Section 3: Required Proposal Forms. Non-responsive proposals may be rejected.

2.14 Proposer's Qualifications

Proposals must meet insurance requirements on the project (Section 2.17). All proposers must execute the certification forms provided in the Instructions to Proposers for proposals to be considered responsive. Non-responsive proposals may be rejected. Proposer's past performance, organization, subcontractor selection (if applicable) and ability to perform and complete its contract in manner and within time specified, together with amount of proposal cost, will be elements considered in award of contract. Proposal must list qualifications and information for the team positions used on this project.

2.15 Owner's Right to Reject Proposals

The Owner reserves the right to reject any or all proposals and to waive any irregularity therein. Owner reserves the right to award all or portions of the proposal titled "Project Options".

2.16 Negotiation and Request for Best and Final Offer

The Owner reserves the right to conduct written or oral negotiations with offerors who submit proposals within a competitive range, price and evaluation factors considered. RVTD reserves the right to request Best and Final Offers (BAFO) from proposers who are considered to be within a competitive range.

2.17 Insurance Requirements

During the project, the contractor shall maintain the following insurance:

- Comprehensive General Liability of at least \$1,000,000
- Automotive Liability of at least \$1,000,000
- Bodily Injury of at least \$1,000,000
- Property Damage of at least \$1,000,000
- Worker's Compensation (Limits required by the State of Oregon)
- Employer's Liability of at least \$1,000,000

The contractor will be asked to provide proof of the above insurance before or during contract negotiations.

PART 3: REQUIRED FORMS

3.1 DBE Form

Disadvantaged Business Enterprise Certification

(1)

Policy – It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 C.F.R. part 26 shall have the maximum opportunity to participate in the performance or contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 C.F.R. Part 26 applies to this agreement.

(2)

DBE Obligation – The supplier or contractor agrees to ensure that disadvantaged business enterprises as defined in 49 C.F.R. part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard all recipients or contractors shall take necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, creed, color, national origin, age or sex in the award and performance of DOT-assisted contracts.

DBE Certification

The contractor hereby agrees to subcontract a minimum of ____% of the contract to disadvantaged business enterprises.

Firm Name: _____

Signature: _____

Title: _____

Date: _____

Note: If there is no participation then this must be indicated on the form, the form executed and returned with this proposal.

(Failure to complete this form may render this bid non-responsive).

3.2 Debarment

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

The Primary Participant _____ 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-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction,- violation of Federal or State anti-trust 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 three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.

Contractor (name) _____ 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.

Dun & Bradstreet Number: _____
(must be an active D&B # registered with the System For Award Management (www.sam.gov))

Date: _____ Authorized Official: _____

Signature: _____



3.3 Representation

PROPOSER'S REPRESENTATIONS

By the act of submitting a bid for the proposed Contract, the Proposer represents that:

- The Proposer and all subcontractors the Proposer intends to use have carefully and thoroughly reviewed the Drawings, Specifications and other Documents and found them complete and free from ambiguities and sufficient for the purpose intended.
- The Proposer and all workers, employees and subcontractors the Proposer intends to use shall follow all applicable codes and regulations, including but not limited to, the Americans with Disabilities Act (ADA) requirements. To that effect the successful Proposer shall be responsible to verify and construct the Project in compliance with the above stated regulations and coordinate any installations as required in order to meet the respective codes. In the event that the Project or any part thereof is found to be non-compliant, the successful Proposer shall be held solely responsible to remedy all found deficiencies at no additional cost to the Owner, or the Owner's employees or agents including Architects, Engineers or Consultants.
- The Proposer and all workers, employees and subcontractors the Proposer intends to use are skilled and experienced in the type of construction represented by the Construction Contract Documents bid upon.
- The proposed figure is based solely upon the Construction Contract Documents and properly issued written Addenda and not upon any other written representation.
- Neither the Proposer nor any of the Proposer's employees, agents, intended suppliers or subcontractors have relied upon any verbal representations from the Owner, or the Owner's employees or agents including Architects, Engineers or Consultants in assembling the bid figure.

Acknowledged:

By: _____

For: _____

Date: _____

3.4 Certificate Regarding Lobbying

Project Name: Transit Signal Priority RFP #012019ML

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal 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 making lobbying contacts to 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 [as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. 3801, et. seq., apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date



PART 4: FEDERALLY REQUIRED AND OTHER MODEL CONTRACT CLAUSES

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

ACCESS TO RECORDS AND REPORTS

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

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

**CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT
(Contracts that exceed \$150,000)**

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

The Contractor agrees:

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

CIVIL RIGHTS LAWS AND REGULATIONS

The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

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

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

U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 C.F.R. part 26

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

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

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

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

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

Overview

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

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

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

Contract Assurance

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the AGENCY deems appropriate.

DBE Participation

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

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

DBE Participation Goal

The DBE participation goal for this Contract is set at .375%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for

amounts totaling not less than % of the total Contract price. Failure to meet the stated goal at the time of proposal submission may render the Bidder/Offeror non-responsive.

Proposed Submission

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

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

Good Faith Efforts

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

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

5. Efforts made to identify specific portions of the work that might be performed by DBE's.

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

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

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

Administrative Reconsideration

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

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

Termination of DBE Subcontractor

The Contractor shall not terminate the DBE subcontractor(s) listed in the DBE Participation Schedule (see below) without the AGENCY's prior written consent. The AGENCY may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the

proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the AGENCY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

Continued Compliance

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

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

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

The successful Bidder/Offeror shall permit:

- The AGENCY to have access to necessary records to examine information as the AGENCY deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of the AGENCY, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- All data/record(s) pertaining to DBE shall be maintained as stated in Section [insert reference to record keeping requirements for the Project.]

Sanctions for Violations

If at any time the AGENCY has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section,

the AGENCY may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

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

DBE UTILIZATION FORM

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

_____ The Bidder/Offer is committed to a minimum of .375% DBE utilization on this contract.

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

DBE PARTICIPATION SCHEDULE

The Bidder/Offeror shall complete the following information for all DBE’s participating in the contract

That comprises the DBE Utilization percent stated in the DEB Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

DBE IDENTIFICATION AND INFORMATION FORM

Name and Address	Contact Name and Telephone Number	Participation Percent (Of Total Contract Value)	Description of Work To Be Performed	Race and Gender of Firm

ENERGY CONSERVATION

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

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

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

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

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

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

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

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

LOBBYING RESTRICTIONS - contracts that exceed \$100,000

31 U.S.C. § 1352 2 C.F.R. § 200.450 2 C.F.R. part 200 appendix II (J) 49 C.F.R. part 20

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date



NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

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

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

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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

RECYCLED PRODUCTS

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

Recovered Materials

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA),

“Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.

SAFE OPERATION OF MOTOR VEHICLES

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

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

Distracted Driving

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

TERMINATION

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

Termination for Convenience (General Provision)

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

Termination for Default (Breach or Cause (General Provision)

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

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

Opportunity to Cure (General Provision)

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

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

Waiver of Remedies for any Branch

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

Termination for Convenience (Professional or Transit Service Contracts)

The AGENCY, by written notice, may terminate this contract, in whole or in part, when it is in the AGENCY's interest. If this contract is terminated, the AGENCY shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Default (Supplies and Service)

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

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

Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the AGENCY may terminate this contract for default. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination

specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of AGENCY goods, the Contractor shall, upon direction of the AGENCY, protect and preserve the goods until surrendered to the AGENCY or its agent. The Contractor and AGENCY shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

Termination for Default (Construction)

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

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

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

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

Termination for Convenience or Default (Architect and Engineering)

The AGENCY may terminate this contract in whole or in part, for the AGENCY's convenience or because of the failure of the Contractor to fulfill the contract obligations. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the AGENCY's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. AGENCY has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the AGENCY, the AGENCY's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the AGENCY may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the AGENCY.

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

Termination for Convenience or Default (Cost-Type Contracts)

The AGENCY may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of AGENCY or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the AGENCY, or property supplied to the Contractor by the AGENCY. If the termination is for default, the AGENCY may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the AGENCY and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of AGENCY, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the AGENCY determines that the Contractor has an excusable reason for not performing, the AGENCY, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

VIOLATION AND BREACH OF CONTRACT - contracts that exceed \$150,000
2 C.F.R. § 200.326 2 C.F.R. part 200, Appendix II (A)

Rights and Remedies of the AGENCY

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

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

Rights and Remedies of Contractor

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

Remedies

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

Disputes

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

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

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

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

Performance during Dispute

Unless otherwise directed by AGENCY, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

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

Remedies

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

Rights and Remedies

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

FEDERAL CHANGES

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

PRIVACY ACT

Contracts involving Federal Privacy Act Requirements – The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract.

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974.

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

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

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS

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 FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any RVTD requests which would cause RVTD to be in violation of the FTA terms and conditions.