



**TAMPA BAY AREA REGIONAL TRANSIT AUTHORITY (TBARTA)  
TAMPA, FLORIDA**

**SOLICITATION, OFFER AND AWARD FORM**

**REQUEST FOR QUALIFICATIONS**

<b>1. SOLICITATION #:</b> RFQ-TBARTA-003	<b>4. BRIEF DESCRIPTION:</b>  General Services Consultants (GSC)
<b>2. ISSUE DATE:</b> 12/26/18	
<b>3. FOR INFORMATION CONTACT:</b> <b>NAME:</b> Lisa P. Nooner <b>PHONE:</b> 727-540-1958 <b>FAX:</b> 727-540-0681 <b>E-MAIL:</b> lnooner@psta.net	
<b>5. CONFERENCE:</b> (See Exhibit C for more information.)	
<b>LOCATION:</b> 3201 Scherer Drive St. Petersburg, FL 33716 When it's time, <a href="#">join the meeting</a>	<b>DATE AND TIME:</b> 01/09/2019, Wednesday, 10:00 a.m. Eastern Standard Time, Join by phone: 1-415-655-0002, Meeting number (access code): 730 645 003
<b>6. SUBMIT OFFER TO THE FOLLOWING ADDRESS:</b> <b>TAMPA BAY AREA REGIONAL TRANSIT AUTHORITY (TBARTA)</b> Attn: Procurement Department, RFQ-TBARTA-003 3201 Scherer Drive St. Petersburg, FL 33716	<b>7. OFFER SUBMISSION DUE DATE AND TIME:</b>  01/23/2019, 10:00 a.m., Eastern Standard Time
<b>8. SUBMIT WITH OFFER:</b> One (1) Original Offer, Zero (0) copies and One (1) electronic copy (Flash Drive or CD) including the exhibits and attachments listed on Page 3 of this form.	
<b>9.</b> Offers will not be publicly opened.	
<b>10. FIRM OFFER PERIOD:</b> Offers shall remain firm for a period of 120 calendar days from the date specified in Block 7, above.	
<b>11.</b> This solicitation and any resulting contract, respectively, consists of this Form and the exhibits and documents designated on Page 3 of this form.	

**OFFER**

(To be completed by Offeror)

<b>12. DISCOUNT FOR PROMPT PAYMENT:</b> _____%, _____ Calendar Days (Please refer to Invoice and Payment clauses in Exhibit D)		
<b>13.</b> If this offer is accepted within the period specified in Block 10, above, the offeror agrees to fully provide the goods and/or services covered by this solicitation at the prices and timelines specified in the solicitation.		
<b>14. ACKNOWLEDGEMENT OF AMENDMENTS:</b> The offeror acknowledges receipt of the following solicitation amendments (write in all amendment numbers and amendment dates.		
Amendment Number and Date	Amendment Number and Date	Amendment Number and Date
<b>15. OFFEROR'S NAME AND ADDRESS:</b> (Type or Print)		<b>16. NAME AND TITLE OF OFFEROR'S REPRESENTATIVE (PERSON AUTHORIZED TO EXECUTE CONTRACTS):</b> (Type or Print)
<b>TELEPHONE:</b>	<b>E-MAIL:</b>	<b>17. OFFEROR'S REPRESENTATIVE SIGNATURE &amp; DATE:</b>
<b>CELL PHONE:</b>	<b>FAX:</b>	

**AWARD**

(To be completed by (TBARTA))

18. Offeror is a: DBE: Yes  No  SBE: Yes  No 

19. DBE: A DBE goal of 5% has been established for this solicitation. Federal funds shall be utilized.

20. ACCEPTED AS TO:

21. TOTAL AMOUNT OF AWARD:

22. CONTRACT NUMBER:

23. TBARTA'S CONTRACTING OFFICER'S SIGNATURE &amp; CONTRACT AWARD DATE:

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_

<b>NAME</b>	<b>FORM DESCRIPTION</b>	<b>FORM #</b>	<b>SUBMIT WITH OFFER</b>
Cover Sheet	SOLICITATION, OFFER AND AWARD FORM	CS-01	YES
Exhibit A	REPRESENTATIONS AND CERTIFICATIONS (FEDERALLY ASSISTED SUPPLY/SERVICE CONTRACT)	A-01	YES
Exhibit B	SPECIAL SOLICITATION INSTRUCTIONS and CONDITIONS Architectural and Engineering Services	B-02	
Exhibit C	SOLICITATION INSTRUCTIONS AND CONDITIONS (REQUEST FOR QUALIFICATIONS – ARCHITECT & ENGINEERING SERVICES)	C-06	
Exhibit D	SPECIAL PROVISIONS	D-01	
Exhibit E	ADDENDUM TO GENERAL PROVISIONS (FEDERALLY ASSISTED SUPPLY/SERVICES CONTRACT)	E-01	
Exhibit F	GENERAL PROVISIONS (ARCHITECT / ENGINEERING SERVICES CONTRACT)	F-03	
Exhibit G	DISADVANTAGED BUSINESS ENTERPRISE PROVISIONS (FEDERALLY ASSISTED CONTRACT WITH A DBE GOAL)	G-01	YES, ATTACHMENTS 1 & 2
Exhibit H	SPECIFICATION OR STATEMENT OF WORK	H-01	
Exhibit K	AGREEMENT TO FURNISH A GENERAL CONSULTANT SERVICE CONTRACT	K-01	YES
Ex. K	FTA TERMS AND CONDITIONS	Attach 1	

TAMPA BAY AREA REGIONAL TRANSIT AUTHORITY (TBARTA)
TAMPA, FLORIDA

EXHIBIT A
REPRESENTATIONS AND CERTIFICATIONS
(FEDERALLY ASSISTED SUPPLY/SERVICE CONTRACT)

\*\* NOTE: THIS FORM MUST BE COMPLETED AND RETURNED WITH THE OFFER \*\*

TABLE OF CONTENTS

1. Affirmative Action Compliance ..... 1
2. Contingent Fee..... 1
3. Covenant Against Gratuities ..... 1
4. Disadvantaged Business Enterprise (DBE) ..... 2
5. Interest of Public Officials..... 2
6. Parent Company and Identifying Data ..... 2
7. Type of Business..... 3
8. Certification of Independent Price Determination ..... 3
9. Certification of Non-Segregated Facilities..... 3
10. Communication Policy and Certification ..... 4
11. Conflict of Interest Certification ..... 5
12. Non-Discrimination Assurance..... 5
13. Disadvantaged Business Enterprise Goals..... 5
14. Execution of Contract..... 5
15. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion ..... 6
16. Certification of Restrictions on Lobbying..... 6
17. Scrutinized Companies Certification..... 6

REPRESENTATIONS

1. Affirmative Action Compliance

- (a) The offeror represents as part of its offer that it has a workforce of (# of employees): \_\_\_\_\_
(b) It (Mark one with an "X"):
[ ] has developed and has on file
[ ] has not developed and does not have on file

at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or it (Mark one with an "X"):

- [ ] has [ ] has not

previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

2. Contingent Fee

Except for full-time bona fide employees working solely for the offeror, the offeror represents as part of its offer that it (Mark one with an "X"):

- [ ] has [ ] has not

been employed or retained any company or persons to solicit or obtain this contract, and (Mark one with an "X"):

- [ ] has [ ] has not

paid or agreed to pay any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

3. Covenant Against Gratuities

The offeror represents as part of its offer that no employee, official, or member of the Board of the Authority is or will be pecuniarily interested or benefited directly or indirectly in this contract. The offeror further represents and warrants that it has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any employee, official, or member of the Board of the Authority with a view toward securing favorable treatment in the awarding, amending, or evaluating the performance of any contract resulting from this solicitation. For breach of any representation or warranty in this clause, the Authority shall have the right to annul this contract without liability and/or have recourse to any other remedy it may have at law.

**4. Disadvantaged Business Enterprise (DBE)**

The offeror represents as part of its offer that it (Mark one with an "X"):

- is
- is not

a disadvantaged business enterprise (DBE). A DBE is defined as "a for-profit small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in case of any publicly owned business, at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it." For purposes of this definition, socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Native Americans; women; and any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

**5. Interest of Public Officials**

The offeror represents and warrants that no employee, official, or member of the Board of the Authority is or will be pecuniarily interested or benefited directly or indirectly in this contract.

**6. Parent Company and Identifying Data**

(a) The offeror represents as part of its offer that it (Mark one with an "X"):

- is
- is not

owned or controlled by a parent company. A parent company, for the purpose of this provision, is one that owns or controls the activities and basic business policies of the offeror. To own the offering company means that the parent company must own more than 50 percent of the voting rights in that company. A company may control an offeror as a parent even though not meeting the requirements for such ownership if the company is able to formulate, determine, or veto basic policy decisions of the offeror through the use of dominant minority voting rights, use of proxy voting, or otherwise.

(b) If the offeror is not owned or controlled by a parent company, it shall insert its own Employer's Identification Number below:

(c) If the offeror is owned or controlled by a parent company, it shall enter in the blocks below the name and main office address of the parent company, and the parent company's Employer's Identification Number.

NAME OF PARENT COMPANY AND MAIN OFFICE ADDRESS (INCLUDE ZIP AND PHONE):

PARENT COMPANY'S EMPLOYER'S IDENTIFICATION #:

**7. Type of Business**

(a) The offeror represents as part of its offer that it operates as (Mark one with an "X"):

- an individual
- a sole proprietorship
- a partnership
- a corporation
- another entity \_\_\_\_\_.

(b) If incorporated, under the laws of the State of:

(c) Age of the firm: \_\_ years, \_\_ months

(d) Previous year's annual gross receipts:

- less than \$500K
- \$500K - \$2 mil.
- \$2 mil. - \$5 mil.
- more than \$5 mil.

**CERTIFICATIONS**

**8. Certification of Independent Price Determination**

(a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:

- (1) The prices in this offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor.
- (2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to the opening (in the case of an advertised procurement) or prior to award (in the case of a negotiated procurement), directly or indirectly to any other offeror or to any competitor; and
- (3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit\_or not to submit an offer for the purpose of restricting competition.

(b) Each person signing this offer certifies that:

- (1) He/she is the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or
- (2) He/she: (i) is not the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein but that he has been authorized in writing to act as an agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify; and (ii) has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

**9. Certification of Non-Segregated Facilities**

(a) By the submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained.

- (b) The offeror agrees that a breach of this certification is a violation of the Equal Opportunity Clause in the contract.
- (c) As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or nation origin, because of habit, local custom or otherwise.
- (d) It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:
- (1) obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;
  - (2) Retain such certifications in its files; and
  - (3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods).

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF  
NONSEGREGATED  
FACILITIES**

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for such subcontract or for all subcontracts during a period (i.e., quarterly, semiannually or annually).

Note: the penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

**10. Communication Policy and Certification**

- (a) All oral and written communications with the Authority regarding this solicitation should be exclusively with, or on subjects and with persons approved by, the Purchasing Agent identified in this solicitation. Discussions or communications with any other person could result in disclosure of proprietary or other competitive sensitive information or otherwise create the appearance of impropriety or unfair competition and, thereby, compromise the integrity of the Authority's procurement system.
- (b) By submission of this offer, the offeror certifies that it has not, and will not prior to contract award, communicate orally or in writing with any Authority employee or other representative (including Board members, TBARTA contractors, or TBARTA consultants) other than the individual, or person(s) and on subjects approved by the Purchasing Agent listed in the solicitation, except as described below: (CHECK "NONE" IF NONE EXISTS.)

**NONE**

Name of TBARTA Representative

Date and Subject of Communication

(c) This certification concerns a material representation of fact upon which reliance will be placed in awarding a contract. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to any other remedies the Authority may have, the Contracting Officer may terminate the contract resulting from this solicitation for default and/or recommend that the offeror be debarred or suspended from doing business with the Authority and/or have recourse to any other remedy it may have at law.

(d) The offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, he/she learns that its certification was, or a subsequent communication makes, the certification erroneous.

**11. Conflict of Interest Certification**

By submission of this offer, I certify that:

(a) I have read and understand the General Provisions clause entitled "Interest of Public Officials" that will be incorporated into any contract resulting from this solicitation. I further understand that the pecuniary interest in that clause includes employment relationships.

(b) I understand the Authority has an internal conflict of interest policy for its employees that includes as an actual or possible conflict of interest whether or not a member of the employee's immediate family works for a firm doing, or seeking to do, business with the Authority.

(c) Mark one with an "X":

- To the best of my knowledge and belief, no employee of my firm is related to an Authority employee; or
- An employee of my firm is related to an Authority employee and a letter to the Contracting Officer explaining that relationship is attached to this Exhibit A.

(d) The requirements of this certification have been passed through to all first-tier subcontractors or subconsultants anticipated to be used at the time of the submission of my offer.

**12. Non-Discrimination Assurance**

The offeror certifies that it will not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The offeror understands that it is required to insert the substance of this clause in all subcontracts and purchase orders. 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 Authority deems appropriate. The offeror further agrees by submitting this offer that it will include this certificate, without modification, in all subcontracts and purchase orders.

**13. Disadvantaged Business Enterprise Goals**

If goals have been established, by submission of this offer, the offeror certifies that it will comply with the provisions of Exhibit G entitled "Disadvantaged Business Enterprise Provisions," and will meet such goals as are established in any ensuing contract.

**14. Execution of Contract**

Upon award of this solicitation by TBARTA's Board of Directors, the offeror agrees to execute the contract attached as Exhibit K.

**15. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**

(a) Primary Covered Transactions. [This certification applies to the offer submitted in response to this solicitation and will be a continuing requirement throughout the term of the prime contract.]

(1) In accordance with the provisions of Appendix A to 49 Code of Federal Regulations (CFR) Part 29, the offeror certifies to the best of its knowledge and belief, that it and its principals:

(i) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(ii) have not within a three-year period preceding this offer 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 antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(iii) 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 (1)(ii) of this Certification; and



(iv) have not within a three-year period preceding this offer had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the offeror is unable to certify to any of the statements in this certification, the offeror shall attach an explanation to this offer.

(b) Lower Tier Covered Transactions. [This certification applies to a subcontract at any tier expected to equal or exceed \$25,000 and will be a continuing requirement throughout the term of the prime contract.]

(1) In accordance with the provisions of Appendix B to 49 Code of Federal Regulations (CFR) Part 29, the prospective lower tier participant (subcontractor) certifies, by submission of this offer, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

(c) The Certification required by subparagraph (b), above, shall be included in all applicable subcontracts and a copy kept on file by the prime contractor. The prime contractor shall be required to furnish copies of certifications to the Contracting Officer upon the Contracting Officer's request.

## **16. Certification of Restrictions on Lobbying**

This Certification is applicable if the offer exceeds \$100,000.

(a) By submission of this offer, the offeror certifies, to the best of his or her knowledge or belief, that:

(1) No Federal appropriated funds have been paid, or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, or 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 of Lobbying Activities, in accordance with its instructions [as amended by "Government-wide Guidance for New restrictions on Lobbying," 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.

(b) 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 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 or not more than \$100,000 for each such failure.

## **17. Scrutinized Companies Certification**

By executing this Contract and each and every renewal (if renewal is separately provided for herein), pursuant to section 287.135, Florida Statutes, the Contractor certifies, represents, and warrants that: (a) it is not on the Scrutinized Companies with Activities in Sudan List, (b) it is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, (c) that it does not have business operations in Cuba or Syria, and (d) that it is not participating in a boycott of Israel, and that all such certifications were true at the time it submitted its bid or proposal for this Agreement and as of the effective date of any renewal. Notwithstanding anything contained in this Agreement to the contrary, the City may terminate this Agreement immediately if: (1) the Contractor is found to have submitted a false certification regarding (a) – (d) above in accordance with section 287.135(5), Florida Statutes, or (2) the Contractor is found to have been placed on the Scrutinized Companies that Boycott Israel List as that term is defined and such list is maintained pursuant to

Section 287.135, Florida Statutes, or is otherwise engaged in a boycott of Israel. Such termination shall be in addition to any and all remedies available to the City at law. The provisions of this section shall only apply if the Contract Total is in excess of one million U.S. dollars (\$1,000,000.00).

\*\*\*\*\*

**SIGNATURE BLOCK FOR THE ABOVE  
REPRESENTATIONS & CERTIFICATIONS**

\*\*\*\*\*

NAME OF OFFEROR & ADDRESS (INCLUDE ZIP & PHONE)

Signature:

TYPE NAME:

DATE:

OFFERORS MUST SET FORTH FULL, ACCURATE AND COMPLETE INFORMATION AS REQUIRED BY THIS SOLICITATION (INCLUDING THIS ATTACHMENT). FAILURE TO DO SO MAY RENDER THE OFFER NONRESPONSIVE OR UNACCEPTABLE.

TAMPA BAY AREA REGIONAL TRANSIT AUTHORITY (TBARTA)  
TAMPA, FLORIDA

**EXHIBIT B**  
**SPECIAL SOLICITATION INSTRUCTIONS and CONDITIONS**  
**Architectural and Engineering Services**

**Table of Contents**

- 1. Introduction ..... 1
- 2. Statements of Qualifications & Proposal Format and Preparation..... 1
- 3. Evaluation Criteria ..... 2
- 4. Selection Procedure: ..... 3
- 5. Questions Concerning the Solicitation ..... 4

**1. Introduction**

Created in 2007 pursuant to Chapter 343, Part IV, Florida Statutes, the Tampa Bay Area Regional Transit Authority (TBARTA) is an Independent Special District of the State of Florida and subject to the provisions of Chapter 189, Florida Statutes (Uniform Special District Accountability of 1989).

TBARTA provides safe, affordable public transit to the Tampa Bay community, and helps guide land use decisions and support economic vitality to enhance quality of life.

TBARTA is seeking responses from qualified candidates to provide Architectural and Engineering, Planning, Operational Efficiency, and Marketing services.

**2. Statements of Qualifications & Proposal Format and Preparation**

(a) The selection process of A/E firms for this effort will be accomplished in accordance with the Competitive Consultants Negotiations Act (CCNA) chapter 287.055, Florida Statutes.

(b) The following paragraphs detail the instructions and order to be followed in preparing a response to this RFQ. The Authority reserves the right to reject any proposal as non-responsive, in its sole and absolute discretion, if the proposal fails to include any of the required information or fails to present the information in the specified order.

(c) Proposers shall submit one hard copy, appropriately marked "ORIGINAL," and one electronic copy of the proposal. Proposals must be received in the location and before the time and date on the solicitation cover sheet (Solicitation, Offer and Award Form CS-01).

(d) Each part of the proposal should be clearly labeled and tabbed for easy reference. The proposal shall be submitted in 8 ½" by 11" format with foldouts utilized as necessary. Organization charts can be one (1) 11x17 foldout landscape or Proposer can provide one 8½x11 organization chart for each scope category for a maximum of three (3).

(e) To aid in the timely, effective review of all proposals, it is required that each proposer closely follow the content requirements provided in Paragraphs 3 and 4 below.

(f) Proposals shall be typed in Arial font with a minimum size of 11. Proposals should be prepared as simply and economically as possible while providing straightforward, concise information of the Proposer's capabilities to satisfy the requirements of this RFQ. Fancy binding, colored displays, and promotional material, etc. are neither necessary nor desired. Technical literature about the Proposer's experience and qualifications must be included. The emphasis should be on completeness and clarity of content. Unnecessarily elaborate proposals or lengthy presentations are not desired

(g) Proposals shall include a "Table of Contents" identifying the page numbers of where to find the various sections included in the proposal. Failure by a Proposer to respond to any of the following requirements may be a basis for elimination from consideration during the evaluation.

### 3. Evaluation Criteria

(a) Proposals will be evaluated for award based on the following "Technical acceptability". A breakdown of points is provided in paragraph (2), below for a 1,000 Total Maximum Points for "Technical Acceptability".

No.	Criteria	Maximum Points
1	Cover Letter and Required Submittals	0
2	Qualifications of Key Personnel	400
3	Firm Experience, Expertise, and Demonstrated Results	350
3A	Unique Concepts or Innovative Ideas	150
4	Quality and Project Controls	100
5	Exceptions to Terms and Conditions	0
6	Promotional Literature	0
Total Points		1000

#### (b) Cover Letter – 2 Page Maximum (No Points)

1. A cover letter transmitting the proposal must be submitted and dated. The letter should describe the Proposer's interest in the contract and brief description of general approach or unique features of the Proposer or team.
2. The cover letter shall also contain the name, title, address, E-mail address, and telephone number(s) of an individual(s) with authority to bind the Proposer during the period in which TBARTA is evaluating proposals.
3. The cover letter shall identify the legal form of the Proposer. If the Proposer is a corporation, the cover letter shall identify in which state the company was incorporated. The letter should also include a description of the Proposer. If a consortium, joint venture or team approach is being proposed, provide the above information for all participating entities.
4. The cover letter shall be signed by a principal of the Proposer or other person fully authorized to act on behalf of the Proposer or team. The letter must indicate that the Proposer agrees to be bound by the contract upon award without modifications, unless mutually agreed to upon further negotiations between TBARTA and the Proposer.

#### (c) Section 2 – Qualification of Key Personnel – 6 Page Maximum plus Resumes (400 Maximum Points)

1. The qualifications and relevant experience of the Proposer, including its project manager, and key staff responsible for completing the various elements as described in the Scope of Services shall be given significant consideration. Proposers must present sufficient and competent staff, the capacity to complete the work in a timely manner and appropriate personnel assignments to administer projects. This section should include a brief description of the team organization and skill sets (**3-page maximum**) including subconsultants, plus proposed organization chart(s). Proposers may use charts and tables to express complex ideas or data.
2. Organization charts can be one (1) 11x17 foldout landscape or Proposer can provide one 8½x11 organization chart for each scope category for a maximum of three (3). (**1-3 pages**)
3. Resumes should be limited to key personnel in leadership roles and should not exceed two (2) pages each. The resumes provided should demonstrate how each person's background, education background and experience qualifies him/her for the proposed role. This includes level of security clearance, if appropriate for the team role. Resumes should also include each person's primary office location.

#### (d) Section 3 – Firm Experience, Expertise and Demonstrated Results (Projects and References) – 15 Page Maximum (350 Maximum Points)

1. The Proposer shall be evaluated as to its firm's and the team's knowledge, expertise and demonstrated results in providing the services in one or more of the four (4) scope categories as generally described in the Scope of

Services contained within this solicitation. Proposers should include very brief descriptions of understanding of those services as they relate to the current and potential future needs of TBARTA.

2. Proposers should demonstrate experience with similar projects or relevant related work. Project descriptions should include:
  - I. A reference with the client company name, location (city/state), client point of contact, phone number, email;
  - II. The contract value/project fee (estimate) in USD\$ (International projects may be used and should list fee in native currency and USD conversion.);
  - III. Proposed personnel who worked on the project;
  - IV. Brief project description; and
  - V. Project challenges, lessons learned or methods that could be adjusted to make projects more efficient or cost effective in the future.
3. No less than five (5) related project descriptions/references shall be given for the prime/lead consultant across all scope categories. No more than seven (7) related project descriptions/references shall be given for the entire team in each scope category (for a total maximum of 21).
4. Cross-discipline projects should be indicated as such and not repeated if possible. If a project experience and reference applies to more than one entity on the proposed team, please indicate which entities on the team worked on the project, what role each firm played and if multiple client staff contacts are needed for specialty services. Relevant projects that demonstrate the proposed entities have previously worked together are encouraged.

(e) **Section 3A – Unique Concepts or Innovative Ideas (150 Maximum Points)**

1. Innovative ideas or unique concepts used during the execution of a similar project, and/or contract.

(f) **Section 4 – Commitment to Quality and Project Controls – 2 Page Maximum (100 Maximum Points)**

1. The Proposer should describe the proposed quality control program for the project. This should include a concise description of internal control procedures for scope, schedule and cost as well as proposed interaction with the TBARTA Project Manager or other specialty areas as needed. This section should include any other information helpful to the Evaluation Committee (described below) in determining the Proposer's philosophy and ability to manage, control and coordinate the Project.

Proposers are encouraged to consider how the selection committee will navigate the proposal as a way to demonstrate a commitment to quality.

(g) **Exceptions – (No Points)**. Exceptions to, or variances from, any portion of the solicitation, including the Statement of Work, contract terms and conditions (Exhibits D, E, F and K), etc., shall not be considered unless the offeror specifically identifies them in this Section 4. Exceptions are, however, strongly discouraged and may not be accepted by the Authority. Offerors are strongly encouraged to contact the Contracting Officer well in advance of the deadline for receipt of offers with any proposed changes to the Authority's terms and conditions.

(h) **Promotional Literature (No Points)**. This section should contain any promotional literature submitted for informational purposes only.

**4. Selection Procedure:**

(a) An evaluation committee will be appointed to evaluate proposals submitted in response to this solicitation in accordance with the CCNA and to make a recommendation to PSTA's Board of Directors. The proposals will be evaluated and ranked in accordance with the evaluation criteria outlined above and the CCNA.

(b) The Authority reserves the right to request offerors to appear before the evaluation committee to make an oral presentation of their qualifications and/or to respond to specific questions the committee may have about their response. Offerors may also be requested to respond to specific questions in writing to the evaluation committee. At such time as

these presentations and/or discussions have been completed, the evaluation committee will again evaluate the proposals of the offerors in accordance with the evaluation criteria and the CCNA, taking into consideration the offeror's original proposal, their oral presentations and any clarifications made to their proposals and rank them accordingly. This ranking must be approved by the Board. The committee will then recommend that negotiations be entered into with the most highly ranked qualified firm.

(c) Only after negotiations with the highest ranked offeror have been authorized, the Contracting Officer will request a price proposal from the firm selected as the most highly ranked qualified offeror in the format provided in the Solicitation Schedules. The price proposal must contain information sufficient for the Authority to determine the fairness and reasonableness of price. After receipt of the price proposal, negotiations will be conducted to arrive at a fair and reasonable price.

(d) The most highly ranked offeror shall be required to submit a Certificate of Current Cost or Pricing Data, as specified in Attachment 1 to Exhibit B, with the price proposal. The purpose of the form is to verify that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of submission.

(e) If the Authority is unable to negotiate a satisfactory contract with the most highly ranked qualified offeror, negotiations shall be formally ended with that offeror and begun with the second most highly ranked qualified offeror. Negotiations shall be undertaken in the same sequence until a contract is made or the solicitation is canceled.

(f) The objective of the discussions and negotiations shall be to follow the CCNA to arrive at complete agreement on all requirements, including, but not limited to, the proposed contractual terms and conditions specified in Exhibits D and F. Questions will not be left for later agreement during supplemental proceedings.

(g) The Authority reserves the right to investigate the qualifications of all offerors under consideration and to confirm any part of the information furnished by an offeror, and/or to require other evidence of managerial, financial or technical capabilities which are considered necessary for the successful performance of the work.

**5. Questions Concerning the Solicitation**

(a) The Authority shall provide responses to questions related to Exhibit H, Statement of Work. Only those questions submitted by the firm deemed to be the most highly qualified which relate to the Terms and Conditions shall be addressed.

(b) Questions and requests for clarification relating to this solicitation, shall be submitted in writing, to the contact person identified in the solicitation by mail, facsimile or commercial courier, at least three (3) working days in advance of the scheduled conference to allow sufficient time for responses to be considered and prepared by the Authority. Questions concerning the solicitation that are not addressed at the conference, if one is held, shall be submitted in writing no later than five (5) working days in advance of the offer submission due date and time, which is the minimum time required for the Authority's reply to reach offerors before the offer submission due date and time, as required by the "Acknowledgement of Amendments to the Request for Proposals" clause. Questions received less than five (5) working days in advance of the offer submission due date and time will be responded to only if the Authority determines that the question and its response would have a material and substantive impact on the solicitation.

**ATTACHMENT 1 TO EXHIBIT B  
CERTIFICATE OF CURRENT COST OR PRICING DATA**

This is to certified that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403.4) submitted, either actually or by specific identification in writing, to the Contracting Officer or the Contracting Officer's representative in support to

\_\_\_\_\_ \*

are accurate, complete, and current as of \_\_\_\_\_ \*\*.

This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal. (FAR 52-215-12 and -13).

Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

- \* Identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFQ No.)
- \*\* Insert the day, month, and year when price negotiations were concluded and price agreement was reached, of, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.
- \*\*\* Insert the day, month, and year of signing, which should be as close to practicable to the date when the price negotiations were concluded and the contract price was agreed to.

**TAMPA BAY AREA REGIONAL TRANSIT AUTHORITY (TBARTA)**  
**TAMPA, FLORIDA**  
**EXHIBIT C**  
**SOLICITATION INSTRUCTIONS AND CONDITIONS**  
**(REQUEST FOR QUALIFICATIONS – ARCHITECT & ENGINEERING SERVICES)**

## Table of Contents

1.	Acknowledgment of Amendments to Request for Proposals.....	1
2.	Award of Contract.....	1
3.	Rights of TBARTA in Solicitation Process.....	2
4.	Cancellation of Solicitation .....	2
5.	Confidential Data .....	2
6.	Discounts.....	2
7.	Late Submissions, Modifications, and Withdrawals of Offers .....	3
8.	Multiple or Alternate Offers Not Accepted.....	3
9.	Pre-Proposal Conference and Questions Concerning the Solicitation .....	3
10.	Preparation of Offer.....	3
11.	Solicitation Confidentiality .....	4
12.	Submission of Proposals.....	4
13.	Access to Records .....	4
14.	Omission.....	5
15.	Code of Ethics .....	5
16.	Public Entity Crimes .....	5
17.	Protest Procedures.....	5
18.	FTA Protest Procedures.....	7
19.	Order of Precedence .....	7

### **1. Acknowledgment of Amendments to Request for Proposals**

If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

Offerors shall acknowledge receipt of any amendment to this solicitation: (1) by signing and returning the amendment; or (2) by identifying the amendment number and date in the space provided for this purpose on the offer form; or (3) by letter or telegram. The Authority must receive the acknowledgment by the time and at the place specified for receipt of offers.

### **2. Award of Contract**

(a) The contract for this solicitation will be awarded by TBARTA's Board of Directors, in its sole and absolute discretion, to the responsible offeror whose proposal, conforming to the solicitation, will be most advantageous to the Authority, price and other factors considered. A responsible offeror is one who affirmatively demonstrates to the Authority that the offeror has adequate financial resources and the requisite capacity, capability, and facilities to perform the contract within the delivery period or period of performance, has a satisfactory record of performance on other comparable projects, has a satisfactory record of integrity and business ethics, and is otherwise qualified and eligible to receive award under the solicitation and laws or regulations applicable to the procurement.

(b) The Authority reserves the right to reject any or all offers in part or in total for any reason, to accept any offer if considered best for its interest, and to waive informalities and minor irregularities in offers received.

(c) The Authority may accept any item or group of items of any offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the solicitation, offers may be submitted for any quantities less than those specified, and the Authority reserves the right to make an award on any item for a unit quantity less than the quantity offered at the unit prices offered unless the offeror specifies otherwise in the offer.

(d) Any financial data submitted with any offer hereunder or any representation concerning facilities or financing will not form a part of any resulting contract; provided, however, that if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished hereunder is incomplete, inaccurate, or not current.



### 3. **Rights of TBARTA in Solicitation Process**

TBARTA may investigate the qualifications of any Proposer under consideration. TBARTA may require confirmation of information furnished by a Proposer, and require additional evidence of qualifications to perform the services described in this solicitation. In addition to any rights conveyed by Florida law, TBARTA specifically reserves the right to:

- (a) Disqualify any Proposer in accordance with the information contained in this solicitation
- (b) Reject any or all of the proposals, in its sole and absolute discretion
- (c) Remedy errors in the solicitation documents
- (d) Cancel the entire solicitation
- (e) Issue subsequent solicitation(s) for the same or similar services
- (f) Rank firms and negotiate with the highest ranking firms
- (g) Select the proposal(s) it believes will serve the best interest of PSTA
- (h) Appoint evaluation committees to review proposals
- (i) Seek the assistance of outside technical experts to review proposals
- (j) Approve or disapprove the use of particular subcontractors and suppliers
- (k) Establish a short list of Proposers eligible for discussions after review of written proposals
- (l) Solicit best and final offers (BAFO) as part of its negotiations with the Proposers
- (m) Determine whether or not a Proposer is a responsible Proposer
- (n) Reject any part of a proposal
- (o) Negotiate with any, all, or none of the Proposers
- (p) Award a contract to one or more Proposers
- (q) Accept other than the lowest priced proposal
- (r) Request any necessary clarifications or proposal data without changing the terms
- (s) Disqualify Proposer(s) upon evidence of collusion with intent to defraud or other illegal practices on the part of the Proposer(s)
- (t) Waive any informalities or irregularities in any proposal, to the extent permitted by law

The issuance of this solicitation does not bind or commit TBARTA to enter into a contract with any of the Proposers and does not create any property interest or expectation of any award.

### 4. **Cancellation of Solicitation**

This solicitation may be cancelled by the Authority before or after receipt of offers or proposals (as applicable) in accordance with the Authority's procurement policies.

### 5. **Confidential Data**

Each offeror shall clearly mark each page of the proposal that contains trade secrets or other confidential commercial or financial information which the proposer believes is exempt from disclosure under Chapter 119, Florida Statutes. If a Proposer fails to clearly mark such information, or marks its entire proposal as a confidential trade secret, the Authority will be under no obligation to treat such information as confidential or exempt under Chapter 119, Florida Statutes. Evaluation and disclosure of information marked according to the requirements of this section will be determined by the Authority in accordance with the Florida laws, rules and regulations.

### 6. **Discounts**

(a) Prompt payment discounts will not be considered in evaluating offers for award. However, offered discounts will be taken if payment is made within the discount period, even though not considered in the evaluation of offers.

(b) In connection with any discount offered for prompt payment, time shall be computed from (1) the date of completion of performance of the services or delivery of the supplies to the carrier if acceptance is at a point of origin, or date of delivery at destination or port of embarkation if delivery and acceptance are at either of these points, or (2) the date the correct invoice or voucher is received in the office specified by the Authority, if the latter is later than the date of performance or delivery. For the purpose of computing the discount earned, payment shall be considered to have been made on the date of the Authority's check.

## **7. Late Submissions, Modifications, and Withdrawals of Offers**

- (a) Any offer received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is the only offer received and is received on the date specified for receipt of offers.
- (b) Any modification or withdrawal of an offer is subject to the same conditions as in (a) of this provision.
- (c) The only acceptable evidence to establish:
- (1) the date of mailing of a late offer, modification or withdrawal sent either by registered or certified mail is the U.S. Postal Service postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the offer, modification or withdrawal shall be deemed to have been mailed late. The term "postmark" means a printed, stamped, or otherwise placed impression, exclusive of a postage meter machine impression, that is readily identifiable without further action as having been supplied and affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's-eye "postmark" on both the receipt and the envelope or wrapper; and
  - (2) the time of receipt at the Authority is the time-date stamp of the Authority on the offer wrapper or other documentary evidence of receipt maintained by the Authority.
  - (3) the date of mailing of a late offer, modification, or withdrawal sent by U. S. Postal Service Express Mail Next Day Service - Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service - Post Office to Addressee" label, and the postmark on the envelopes or wrapper and on the original receipt from the U. S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c)(1) of this provision. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's-eye "postmark" on both the receipt and the envelope or wrapper.

## **8. Multiple or Alternate Offers Not Accepted**

Definitions.

- (1) Multiple offers means more than one offer submitted, each satisfying the specific stated requirements of the solicitation.
- (2) Alternate offers means an offer submitted that may depart from the specific stated requirements of the solicitation.

Unless otherwise specified in this solicitation, multiple or alternate offers shall not be accepted in response to this solicitation. All multiple or alternate offers shall be rejected; provided however, that if the offeror clearly identifies a primary offer, it shall be evaluated and considered for award as though it were the only offer submitted.

## **9. Pre-Proposal Conference and Questions Concerning the Solicitation**

A pre-proposal conference is scheduled for all interested parties to discuss the solicitation requirements, if so indicated on the Solicitation, Offer and Award Form. Details concerning the conference date, time and location are also provided.

## **10. Preparation of Offer**

- (a) Offerors are expected to examine the Schedule, solicitation instructions, Special Provisions, General Provisions, all drawings, specifications, the statement of work, and all other provisions of, and exhibits to, the solicitation, whether incorporated by reference or otherwise, prior to the submission of offers. Failure to do so will be at the offeror's risk.
- (b) Each offeror shall furnish the information required by the solicitation. Offers shall be submitted on the offer form contained in the solicitation. Offerors shall sign and print or type their name on the offer form and each continuation sheet on which they make an entry. Erasures or other changes must be initialed by the person signing the

proposal. Offers signed by an agent of the offeror (other than an officer or a partner of the offeror) are to be accompanied by evidence of the agent's authority (unless such evidence has been previously furnished to the Authority).

- (c) Offers for property or services other than those specified in the Schedule will not be considered unless specifically authorized in the solicitation. Any condition, qualification, or limitation of the offer will be a basis for rejection of the offer as nonresponsive.
- (d) The Offeror must state a definite time for delivery of property or for performance of services unless otherwise specified in the solicitation. All measurements shall be in the system of weights and measures in common usage in the United States, and pricing shall be in U.S. dollars.
- (e) In computing any period of time for the solicitation or any resulting contract, "days" means calendar days, and the day of the event from which the designated period of time begins to run shall not be included, but the last day shall be included unless it is a Saturday, Sunday, or Federal or State of Florida holiday, in which event the period shall run to the end of the next business day.
- (f) Proposers are responsible for all costs and expenses incurred preparing and submitting its proposal, and participating in the solicitation process. TBARTA shall not be responsible to any proposer for such costs.

#### **11. Solicitation Confidentiality**

- (a) Offerors are cautioned that until this solicitation is either awarded or cancelled, they may have contact only with the contact person identified in the Solicitation, Offer and Award Form. Discussions or communications regarding this solicitation with any other personnel associated in any capacity with the Authority, its consultants, contractors or members of its Board of Directors, are strictly prohibited.
- (b) Any violation of this restriction may result in the disqualification of the offeror from further participation in this procurement, and from award of any contract or subcontract under this solicitation.

#### **12. Submission of Proposals**

- (a) Proposals and modifications thereof shall be enclosed in sealed envelopes or sealed cartons and submitted to the Authority at the address specified in the solicitation. The offeror shall show the hour and date specified in the solicitation for receipt of offers, the solicitation number, and the offeror's name, address, and telephone number on the face of the envelope or carton.
- (b) Telegraphic or electronic (email, facsimile) proposals will not be considered unless authorized by the solicitation; however, offers may be modified or withdrawn by written, telegraphic or electronic (email, facsimile) notice, provided such notice is received prior to the hour and date specified for receipt of offers.
- (c) Samples of items, when required, must be submitted within the time specified and, unless otherwise specified in the solicitation, at no expense to the Authority. If not destroyed by testing, samples will be returned at the offeror's request and expense, unless otherwise specified in the solicitation
- (d) Each copy of the proposal shall include the legal name of the offeror and a statement whether the offeror is a sole proprietorship, a corporation, or any other legal entity. An offer for a corporation shall further give the state of incorporation.

#### **13. Access to Records**

- A) The offeror agrees to provide TBARTA or any authorized representatives access to any books, documents, papers and records of the Provider which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- B) The offeror agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C) The offeror agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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

Proposer agrees to maintain same until TBARTA or any duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

#### **14. Omission**

Notwithstanding the provision of drawings, technical specifications or other data by TBARTA, the Contractor shall have the responsibility of supplying all details required to make an accurate proposal of services offered even though such details may not be specifically mentioned in the specifications.

#### **15. Code of Ethics**

With respect to this proposal, if any proposer violates or is a party to a violation of the State of Florida per Florida Statutes, Chapter 112, Part III, Code of Ethics for Public Officers and Employees, such proposer may be disqualified from performing the work described in this proposal or from furnishing the goods or services for which the proposal is submitted and shall be further disqualified from submitting any future proposals for work or for goods or services.

#### **16. Public Entity Crimes**

In accordance with Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases or real property to a public entity, may not be awarded or perform work as a proposer, supplier, subproposer, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.0 17 for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.

#### **17. Protest Procedures**

(a) General. Any interested party affected in connection with a solicitation, award of contract or rejection of all offers may submit a written Notice of Intent to Protest and a Formal Written Protest.

(b) Timeline for Notice of Intent to Protest

(1) Protest of Solicitation. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking offers, proposals, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the Notice of Intent to Protest shall be filed in writing within seventy-two (72) hours after the posting of the solicitation.

(2) Failure to submit a Notice of Intent to Protest. Failure to submit the Notice of Intent to Protest within seventy-two (72) hours of the terms, conditions, and specifications of a solicitation and who continues to participate in the solicitation process, will be deemed to have waived any rights to protest the terms, conditions, or specifications of that solicitation.

(3) Protest of Award of Contract or Rejection of All Offers. Any person who is adversely affected by the Authority's decision or intended decision to award a contract or reject all offers shall file a Notice of Intent to Protest in writing within seventy-two (72) hours after the posting of the notice of decision or intended decision. Failure to submit the Notice of Intent to Protest within seventy-two (72) hours will result in the protest being rejected by the Authority without further consideration.

(4) Notice Requirements. The Notice of Intent to Protest shall include at a minimum:

- (i) the Notice of Intent to Protest shall be titled "Notice of Intent to Protest";
- (ii) name and address of the protester;
- (iii) identification of the procurement or contract;
- (iv) name of the attorney and firm representing protestor, if applicable; and reasons for the protest.

(5) Timeline for Formal Written Protest. The formal written protest shall be filed within seven (7) days after the date the Notice of Intent to Protest is timely filed. Failure to submit the Formal Written Protest within seven (7) days will

result in the protest being rejected by the Authority without further consideration.

- (6) Written Protest Requirements. The Formal Written Protest shall include at a minimum:
- (i) the Formal Written Protest shall be titled "Formal Written Protest";
  - (ii) name and address of the protester;
  - (iii) name of the attorney and firm representing protestor, if applicable;
  - (iv) identification of the solicitation;
  - (v) reason(s) for the protest;
  - (vi) requested relief;
  - (vii) the Protest must demonstrate how the protestor has been aggrieved as a result of the Authority's decision and shall include the facts, argument(s), and the law upon which the protest is made;
  - (viii) documents to substantiate the basis or ground for the protest; and
  - (ix) the required Protest Bond.
- (c) No further consideration. Any documents, basis or ground(s) for a protest not set forth or provided in the formal written protest required under this provision shall be deemed waived.
- (d) Protest Bond. Any person who files a protest of a solicitation, award of contract or rejection of all offers pursuant to this section shall post with the Authority, at the time of filing a Formal Written Protest, a bond payable to the Authority in the following amounts:
- (1) for a protest of a solicitation, the bond shall be \$5,000; and
  - (2) for a protest of an award of contract or rejection of all offers, the bond shall be equal to one (1) percent of the lowest offer submitted or \$10,000, whichever is less. If there is no offer submitted, the bond amount shall be \$10,000.
- (c) Condition of Bond. The bond required by this subsection shall be conditioned upon the payment of all costs which may be adjudged against the person filing the protest in the court which the action is brought and any subsequent appellate court proceeding. If, after completion of the court process and any appellate court proceedings, the Authority prevails, it shall recover all costs and charges which shall be included in the final order or judgment, including reasonable attorney fees. Upon payment of such costs and charges by the person filing the protest, the bond shall be returned to him or her. If the person filing the protest prevails, the bond shall be returned to him or her. The entire amount of the bond shall be forfeited if a court determines that a protest was filed for a frivolous or improper purpose, including, but not limited to, the purpose of harassing, causing unnecessary delay, or causing needless cost for the department or parties.
- (d) Failure to Submit a Protest Bond. Failure to submit a protest bond with a Formal Written Protest will result in the protest being rejected by the Chief Executive Officer (CEO) or CEO's designee without further consideration by the Authority.
- (e) Time Computation. Saturdays, Sundays, or Federal or State of Florida holidays shall be excluded in the computation of the time periods provided by this section.
- (f) Delivery. Notice of Intent to Protest, Formal Written Protests, and Protest Bond shall be sent via hand delivery or certified mail. **Electronic forms of delivery are not an acceptable means of delivery.** The protester is solely responsible for verifying that the written protest was received in a timely manner. Written protests should be addressed to:

Tampa Bay Area Regional Transit Authority  
 Attention: Executive Director  
 4350 West Cypress Street, Suite 700  
 Tampa, FL 33607

- (g) Stay of Procurement. Upon receipt of a timely filed Formal Written Protest and Protest Bond, the Authority shall not proceed further with the solicitation or contract award process until the protest is resolved by final Authority action, unless the Chief Executive Officer (CEO) sets forth in writing particular facts and circumstances which require the continuance of the solicitation or contract award process without delay necessary to protect substantial interests of the Authority.
- (h) Resolution of Protest.
- (1) Review of Protest. The CEO or CEO's designee shall review all information and documents provided by the protester including the procurement file to make a determination on the protest.
- (2) Hearing or Opportunity to be heard. The CEO or CEO's designee shall provide the protestor an opportunity to be heard on the issues stated in the protest.
- (3) Written Determination. After the hearing on the protest and review of all evidence, the CEO or CEO designee shall provide a written decision to the protestor if the matter is not mutually resolved. The CEO or CEO designee shall take as much time as necessary to review the protest and make a written determination. The CEO or CEO's designee decision shall be final and conclusive unless within five (5) days of receipt of the written decision, the protesting party delivers a formal written appeal to the CEO.

## **18. FTA Protest Procedures**

Federal Transit Administration (FTA) Circular 4220.1F prescribes the limited circumstances under which FTA will review a protest and establishes the detailed procedures that must be followed by a protestor. Under those procedures, FTA will only review protests submitted by an "interested party" regarding: (1) the alleged failure of the Authority to have or follow its written protest procedures, or its alleged failure to review a complaint or protest; or (2) violations of Federal law or regulation.

## **19. Order of Precedence**

In the event of any inconsistency between the provisions of the solicitation, the inconsistency shall be resolved by giving precedence in the following order: (1) the Form of Contract (attached as Exhibit K); (2) the Schedule; (3) Representations and Certifications; (4) Federal Provisions; (5) Special Solicitation Instructions and Conditions; (6) Solicitation Instructions and Conditions; (7) Addendum to General Provisions (8) Special Provisions; (9) General Provisions; (10) the specifications or statement of work; (11) Solicitation, Offer and Award Form; and (12) Disadvantaged Business Enterprise (DBE) Provisions.

TAMPA BAY AREA REGIONAL TRANSIT AUTHORITY (TBARTA)  
TAMPA, FLORIDA

**EXHIBIT D**  
**SPECIAL PROVISIONS**

**Table of Contents**

- 1. Type of Contract ..... 1
- 2. Term of Contract ..... 1
- 3. Exercise of Option ..... 1
- 4. Ordering ..... 1
- 5. Availability of Funds ..... 2
- 6. Invoicing and Payment ..... 2
- 7. Warranty of Service ..... 2
- 8. Minimum Insurance Requirements ..... 3
- 9. Key Personnel ..... 5
- 10. Contract Identification Number ..... 5

**1. Type of Contract**

- a) This is a fixed price indefinite quantity, indefinite delivery contract for the supplies and/or services specified elsewhere in the contract.
- b) Except for any limitations on quantities, which may be specified elsewhere in this contract, there is no limit on the number of orders that may be issued.
- c) Orders issued during the effective period of this contract, but not completed within that period, shall be completed by the Contractor within the time specified in the order.
- d) The contract shall govern the Contractor's and Authority's rights and obligations with respect to that order, to the same extent as if the order were completed during the contract's effective period.

**2. Term of Contract**

The term of contract shall be for three (3) years from the date of the award of contract, with two (2) one-year options to follow.

**3. Exercise of Option**

- (a) The Authority may exercise the option listed on the Schedule of this contract by written notice to the Contractor within the term of the contract. If feasible, the Authority shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Authority to an extension, and any absence of notice shall not affect the validity of any exercise of the option to extend the term of this contract.
- (b) If the Authority exercises this option, the extended contract shall be considered to include this option provision.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed five (5) year(s) from contract award.

**4. Ordering**

- (a) Any services to be furnished under this contract shall be obtained by the issuance of orders. The Contracting Officer and his designated representative(s) are the only individuals with the authority to place orders against this contract.
- (b) All orders are subject to the terms and conditions of this contract. In the event of conflict between an order and this contract, the contract shall control.
- (c) Orders may be issued by electronic mail with an attached order.

## **5. Availability of Funds**

Funds are not presently available for performance under this contract beyond the current fiscal year. The Authority's obligation for performance of this contract beyond the current fiscal year is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Authority for any payment may arise for performance under this contract beyond the current fiscal year, until the Contractor receives notice of availability of funds, in writing, from the Contracting Officer.

## **6. Invoicing and Payment**

(a) The Contractor may offer a discount for prompt payment.

(b) Invoices shall be submitted once per month and shall conform to policies or regulations adopted from time to time by the Authority. Invoices shall be legible and shall contain, as a minimum, the following information: (1) the contract and order number (if any); (2) a complete itemization of all costs including quantities ordered and delivery order numbers (if any); (3) any discounts offered to the Authority under the terms of the contract; (4) evidence of the acceptance of the supplies or services by the Authority; (5) unique traceable invoice number(s); and (6) any other information necessary to demonstrate entitlement to payment under the terms of the contract. Failure to provide the above critical information may result in the rejection and return of the invoice for resubmission with complete data.

(c) Invoices shall be paid in accordance with the Florida Prompt Payment Act, section 218.72, et. seq. To ensure timely processing of payments, all invoices must be sent to the attention to Office of Financial Administrator or by mail to the following address:

Tampa Bay Area Regional Transit Authority (TBARTA)  
Attn: Susan Ebner  
4350 West Cypress Street, Suite 700  
Tampa, FL 33607

(d) Progress payments will be allowed where a determination of work performed can be verified by PSTA's Project Manager and where the schedule extends beyond a two-week period. TBARTA reserves the right to hold back all or part of payments due until any defective work is corrected or cured. This holdback shall not constitute a breach by TBARTA. If defective work cannot be cured or Contractor refuses to cure defective work upon request by TBARTA within a reasonable time as specified herein, TBARTA may use the holdback payments as partial liquidated damages for cost and expenses to cure the defective work. However, TBARTA has the right to seek additional damages beyond the holdback payments to cure defective work caused by the Contractor to the extent allowed by law.

(e) The Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contract receives from TBARTA. The prime contractor agrees further to return retainage payments to each subcontractor within 10 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of TBARTA.

## **7. Warranty of Service**

(a) "Acceptance" as used in this clause, means the act of an authorized representative of the Authority by which the Authority assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.

(b) "Correction," as used in this clause, means the elimination of a defect.

(c) Notwithstanding inspection and acceptance by the Authority or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor within 45 days after discovery of the defect. This notice shall state either (1) that the Contractor shall correct or re-perform any defective or nonconforming services, or (2) that the Authority does not require correction or re-performance.



(d) For a period of 180 days after the date of Acceptance by TBARTA, known hereafter as the "Warranty Period", Contractor is required to correct or re-perform at no cost to the Authority, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Authority thereby, or make an equitable adjustment in the contract price.

## **8. Minimum Insurance Requirements**

(a) Before performing any contract work, the successful Proposer shall procure and maintain, during the life of the contract, unless otherwise specified, insurance to be determined by TBARTA. The policies of insurance shall be primary and written on forms acceptable to TBARTA and placed with insurance companies approved and licensed by the Insurance Department in the State of Florida in accordance with all laws, and meet a minimum financial **AM Best rating** of no less than:

- "A - Excellent: FSC VII."

Insurance certificates are to be provided to the Procurement and Contracts Administration Department as part of the bid response.

(b) The following amounts and types of insurance are the minimum requirements of the Contractor/Vendor. The required policies of insurance shall be performable in Pinellas County, Hillsborough County, Manatee County, Hernando County & Pasco County, Florida, and shall be construed in accordance with the laws of the State of Florida. TBARTA reserves the right but not the obligation to revise any insurance requirement, or reject any insurance coverage which fails to meet the criteria stated herein at any time. TBARTA reserves the right to require Contractor/Vendor to provide and pay for any other insurance coverage TBARTA deems necessary, depending upon the possible exposure to liability or loss. These insurance requirements shall not limit the liability of the Contractor/Vendor. TBARTA does not represent these types or amounts of insurance to be sufficient or adequate to protect the Contractor/Vendor's interests or liabilities, but are merely minimums.

(c) To document required insurance is in effect, Certificates of Insurance shall be provided to TBARTA during the life of the contract or work performed. No work shall commence under the Contract unless and until the required Certificates of Insurance are provided and approved by TBARTA. The required certificates shall be supplied with your proposal, on or within seven (7) calendar days of the Authority's request.

(d) Required insurance shall be documented by Certificates of Insurance which provide that TBARTA will be notified at least 10 days in advance of cancellation, non-renewal or adverse changes. If notice provision is not provided by the insurance policies, Contractor/Vendor is responsible for such notification directly to TBARTA Procurement and Contracts Administration Department.

(e) Renewal Certificates of Insurance must be provided to TBARTA at least 10 days prior to expiration of current coverages so that there shall be no interruption in the service due to lack of proof of insurance coverages required of the Contractor/Vendor.

Any certificate of insurance evidencing coverage provided by a leasing company for either workers' compensation or commercial general liability shall have a list of employees certified by the leasing company attached to the certificate of insurance. TBARTA shall have the right, but not the obligation to determine that the Contractor is only using employees named on such a list to perform work on the jobsite. Should employees not be named be utilized by the Contractor, the Contractor has the option to work without penalty until TBARTA identify proof of coverage or removal of the employee by the Contractor occurs, or alternately find the Contractor to be in default and takes over the protective measures as needed.

Should at any time the Contractor not maintain the insurance coverages required of it, TBARTA may either cancel or suspend delivery of goods or services as required by Contractor/Vendor or, at its sole discretion, shall be authorized to purchase such coverage and charge the Contractor/Vendor for such coverages purchased. TBARTA shall be under no obligation to purchase such insurance or be responsible for the coverages purchased or the responsibility of the insurance

company/companies used. The decision of TBARTA to purchase such insurance coverages shall in no way be construed to be a waiver of its rights. Contractor/Vendor is responsible for providing or requiring the same insurance and conditions for any subcontractors utilized for this project.

Notices and Certificates shall be issued to:

Tampa Bay Area Regional Transit Authority  
 Attn: Office and Financial Administrator  
 Address: 4350 West Cypress Street, Suite 700,  
 Tampa, FL 33607

(f) Except for workers' compensation coverage and professional liability coverage, the Contractor/Vendor's policies shall be endorsed to name "Tampa Area Regional Transit Authority, Board Members, Officers and Employees" as an additional insured to the extent of TBARTA's interests arising from this agreement, contract or lease.

(g) The Contractor/Vendor is responsible for the amount of any deductibles, self-insurance or self-insured retentions.

(h) Insurance required of the Contractor/Vendor shall be considered Primary and Non-Contributory, and insurance or self-insurance retention of TBARTA shall be considered excess, as may be applicable to claims which arise out of the Hold Harmless, Payment on Behalf of TBARTA, Insurance, Certificates of Insurance and any Additional Insurance provisions of this agreement, contract or lease.

(i) Workers' Compensation and Employers' Liability Insurance shall be maintained in force during the term of this Contract for all employees, subcontractors, or other persons engaged in the work under this contract, and shall not be less than:

Coverage A: Workers Compensation	Statutory benefits
Coverage B: Employers Liability	\$100,000 Limit Each Accident
	\$500,000 Limit Disease Aggregate
	\$100,000 Limit Disease Each Employee

(j) Commercial General Liability insurance with Occurrence Form shall be maintained by the Contractor/Vendor. Coverage shall include bodily injury and property damage liability for premises, operations, products and completed operations, personal & advertising injury, independent contractors, contractual liability covering this agreement, contract or lease, broad form property damage, with the following minimum limits:

- \$1,000,000 each occurrence for bodily injury and property damage
- \$1,000,000 general aggregate (Per Job – Projects over \$100,000)
- \$1,000,000 products completed operations aggregate
- \$1,000,000 personal & advertising injury

The Contractor/Vendor shall purchase and maintain coverage on forms no more restrictive than the latest editions of the Commercial General Liability Policies of the Insurance Services Office. Excess or Umbrella Insurance Coverage may be used to make up the difference between the policy limit of the underlying policy and the total amount of coverage required.

(k) Business Automobile Liability Insurance with Occurrence Form shall be maintained by the Contractor/Vendor for the ownership, maintenance and use of all its owned, non-owned, leased or hired vehicles with limits of not less than:

- \$1,000,000 Combined Single Limit Each Accident Bodily Injury and Property Damage

The Contractor/Vendor shall purchase and maintain coverage on forms no more restrictive than the latest editions of the Business Auto Policies of the Insurance Services Office. Excess or Umbrella Insurance Coverage may be used to make up the difference between the policy limit of the underlying policy and the total amount of coverage required.

(l) Umbrella Liability Insurance or Excess Liability Insurance, if used to reach the limits of liability required, shall be follow form any underlying insurance and in compliance with underlying requirements, including Additional Insured Provisions.

## OTHER PROVISIONS

✓ **Professional Liability/Errors & Omissions Liability** Insurance shall be maintained for professional services rendered in accordance with this contract:

- \$1,000,000 Limit Per Occurrence

Insurance will be maintained for at least two (2) years from the termination of this contract with no change of the retroactive date on this insurance coverage. If there is a change that reduces or restricts the coverage carried during the contract, TBARTA must be notified within 10 days of the change.

✓ **Cyber Liability** Required for products or services that involve website or other electronic data or systems to include Data Breach, Media content, Privacy Liability, and Network Security. Contractor shall maintain limits of:

- \$500,000 per occurrence.

If coverage is claims-made, the retroactive date shall be prior or equal to the effective date of any contract with TBARTA. The coverage shall include a “tail” or Discovery, or continuous renewal of coverage for a period of three (3) years following the completion of the project.

If work includes systems or other design work, Professional Liability/Errors & Omissions Liability shall also be provided.

### **9. Key Personnel**

The Contractor shall not remove or reassign any key personnel without submitting a written request to and obtaining written consent from the Contracting Officer prior to taking such action. However, the Contractor shall, if requested to do so by the Contracting Officer, remove or reassign any key personnel not acceptable to the Authority. For performance of this contract, the key personnel are those persons whose names are specified in the Offeror’s proposal.

### **10. Contract Identification Number**

The contract number shall be clearly displayed on all correspondence, invoices and submittals.

**EXHIBIT E**  
**ADDENDUM TO GENERAL PROVISIONS**  
**(FEDERALLY ASSISTED SUPPLY/SERVICES CONTRACT)**

**TABLE OF CONTENTS**

1. No Obligation by the Federal Government .....	1
2. Program Fraud and False or Fraudulent Statements or Related Acts .....	1
3. Access to Records .....	2
4. Federal Changes.....	2
5. Nondiscrimination.....	2
6. Access Requirements for Individuals with Disabilities .....	3
7. Clean Air and Water Act.....	3
8. Contract Work Hours and Safety Standards Act- Overtime Compensation-Nonconstruction .....	4
9. Disadvantaged Business Enterprise (DBE) Program .....	5
10. Energy Policy and Conservation Act.....	5
11. Fly America Requirements.....	5
12. Notice of Federal Requirements .....	5
13. Officials Not to Benefit.....	5
14. Restrictions on Lobbying.....	6
15. Incorporation of Federal Transit Administration (FTA) Terms .....	6
16. Recycled Products .....	6
17. Buy America Provision.....	6
18. Government-Wide Debarment and Suspension .....	6

The Contract clauses and provisions in this Exhibit apply to all Federally-assisted supply and service contracts. These provisions supersede and take precedence over any other clause or provision contained within this contract that may be in conflict therewith.

**1. No Obligation by the Federal Government**

(a) The 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 Authority, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

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

(a) 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.

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

(c) 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.

### **3. Access to Records**

The following access to records requirements apply to this contract:

(a) The Contractor agrees to provide the Authority, 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 Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor'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.

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

(c) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 Contractor agrees to maintain same until the Authority, 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).

### **4. Federal Changes**

The 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 the Authority 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.

### **5. Nondiscrimination**

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and 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, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 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. 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), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. 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, creed, national origin, sex, 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 FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 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.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(d) The Contractor also 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.

## **6. Access Requirements for Individuals with Disabilities**

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.* and 49 U.S.C. 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. 1612; and the following regulations and any amendments thereto:

- (a) US. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR. Part 37;
- (b) US. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR. Part 27;
- (c) US. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 CFR. Part 38;
- (d) Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR. Part 35;
- (e) DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR. Part 36;
- (f) General Services Administration regulations, "Construction and Alteration of Public Buildings," "Accommodations for the Physically Handicapped," 41 CFR. Part 101-19;
- (g) Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR. Part 1630;
- (h) Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR. Part 64, Subpart F; and
- (i) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.

## **7. Clean Air and Water Act**

(a) Definitions:

- (1) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401 *et seq.*).
- (2) "Clean air standards," as used in this clause, means:
  - (i) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;
  - (ii) An applicable implementation plan as described in Section 110(d) of the Air Act [42 U.S.C. 7410(d)];
  - (iii) An approved implementation procedure or plan under Section 110(c) or Section 111(d) of the Air Act [42 U.S.C. 7411(c) or (d)]; or
  - (iv) An approved implementation procedure under Section 112(d) of the Air Act [42 U.S.C. 7412(d)].
- (3) "Clean water standards," as used in this clause, means any enforceable limitation, control, condition,

prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pre-treatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

(4) "Compliance," as used in this clause, means compliance with:

(i) Clean air or water standards; or

(ii) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

(5) "Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised, by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee of the Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

(6) "Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251 et seq.).

(b) The Contractor agrees:

(1) To comply with all the requirement of Section 114 of the Clean Air Act (42 U.S.C. 7414) and Section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best effort to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this paragraph (b)(4).

## **8. Contract Work Hours and Safety Standards Act- Overtime Compensation-Nonconstruction**

(a) Overtime Requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess for forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

(b) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the provisions set forth in paragraph (a) of this clause.

(c) Withholding for Unpaid Wages and Liquidated Damages. The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal Contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be

determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) Payrolls and Basic Records.

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

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

**9. Disadvantaged Business Enterprise (DBE) Program**

It is the policy of the Authority and the Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26 shall have a level playing field and an opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 26 apply to this contract.

**10. Energy Policy and Conservation Act**

The Contractor shall recognize mandatory standards and policies relating to energy efficiency contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. Section 6321 et seq.).

**11. Fly America Requirements**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**12. Notice of Federal Requirements**

The Contractor is advised that Federal requirements applicable to this contract as set forth in federal law, regulations, policies, and related administrative practices will be incorporated by reference and are material to the terms and conditions of the contract pursuant to paragraph 15 below. The Contractor is further advised that such requirements may change during the performance of this contract and that any such changes shall be automatically incorporated and deemed to apply to this contract.

**13. Officials Not to Benefit**

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.



---

**14. Restrictions on Lobbying**

- (a) The Contractor shall timely comply with the requirements of the lobbying restrictions set forth in 31 U.S.C. § 1352 and 49 CFR Part 20, and as those authorities may be hereafter amended.
- (b) If a Standard Form LLL, Disclosure of Lobbying Activities, is required to be completed by the Contractor or subcontractor at any tier, such disclosure form shall be furnished to the Contracting Officer.

**15. Incorporation of Federal Transit Administration (FTA) Terms**

These provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth herein. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any TBARTA requests which would cause TBARTA to be in violation of the FTA terms and conditions.

**16. Recycled Products**

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**17. Buy America Provision**

This solicitation and the resulting contract are subject to the Buy America requirements of 49 U.S.C. § 5323(j) and the Federal Transit Administration's implementing regulations found at 49 CFR § 661, the provisions of each of which are incorporated herein by reference. These regulations require, as a matter of responsiveness, that the bidder or offeror submit with its offer a completed certification in accordance with 49 CFR § 661.6 or § 661.12, as appropriate. These certifications are set forth in Exhibit U of this solicitation.

**18. Government-Wide Debarment and Suspension**

- (a) This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.
- (b) The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.
- (c) By signing and submitting its bid or proposal, the proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Pinellas Suncoast Transit Authority. If it is later determined that the proposer or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Pinellas Suncoast Transit Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

**EXHIBIT F**  
**GENERAL PROVISIONS**  
**(ARCHITECT / ENGINEERING SERVICES CONTRACT)**

**TABLE OF CONTENTS****Contents**

1. Definitions .....	1
2. Changes.....	1
3. Excusable Delays .....	2
4. Examination and Retention of Records .....	2
5. Compliance with Public Records Law.....	3
6. Inspection.....	3
7. Notice of Labor Disputes .....	3
8. Licenses and Permits .....	4
9. Compliance with the Law .....	4
10. Federal, State, and Local Taxes.....	4
11. Publicity Releases.....	4
12. Interest of Public Officials .....	4
13. Civil Rights .....	4
14. Soliciting or Accepting Gifts .....	5
15. Prohibited Interest.....	5
16. Termination .....	5
17. Resolution of Contract Claims and Disputes .....	6
18. Assignment .....	7
19. Order of Precedence .....	7
20. Governing Law.....	7
21. Ownership of Information.....	7
22. Independent Contractor .....	8
23. Composition of Contractor .....	8
24. Subcontractors and Outside Consultants .....	8
25. Standards of Performance.....	8
26. Suspension of Work.....	9
27. Removal of Contract Personnel.....	9
28. Design According to Regulatory and Statutory Requirements .....	9
29. Drawings and Other Data .....	9
30. Notice and Approval of Restricted Designs .....	9
31. Removal of Subcontractor and Outside Consultant .....	9
32. Responsibility of the Architect-Engineer .....	10

**1. Definitions**

As used throughout this contract, the following terms shall have the meaning set forth below:

The term "Contract" means the contract to be awarded as a result of this solicitation, which shall consist of the Contract Documents and any duly executed addenda thereto.

The term "Contracting Officer" means the person executing this contract on behalf of the Authority or his duly appointed successor; and the term includes, except as otherwise provided in this contract, the authorized representative of the Contracting Officer acting within the limits of his authority.

The term "Contract Documents" shall mean and refer to this solicitation and all schedules and exhibits attached thereto, including all duly executed and issued addenda, Contractor's Best and Final Offer (BAFO), if any, and Contractor's proposal in response to the solicitation.

**2. Changes**

The Contracting Officer may, at any time, by written order, make changes within the scope of the services to be performed. However, no such change shall serve to increase the maximum contract amount as approved by TBARTA's

CEO (for all contracts under \$100,000) or awarded by TBARTA's Board of Directors (for all contracts exceeding \$100,000) ("Contract Total"), to give the Contractor a claim for any compensation that would exceed the Contract Total, nor to increase the Contract Term as set forth in Exhibit D. In the event any change would result in an increase in the Contract Total or Contract Term, Contractor shall notify TBARTA within seven (7) days in writing. The written notice shall state in all capital, bold letters that the change order would result in an increase in the Contract Total and/or Contract Term and shall include a statement outlining the reasons for the change, a complete description of the change, and detailed description of all matters related thereto. Such notice must be submitted and approved by TBARTA's Board of Directors at a duly noticed public meeting prior to performing any work contemplated by the change order.

No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Contracting Officer and no such additional costs or fees shall serve to increase the Contract Total.

### **3. Excusable Delays**

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Authority in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(b) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the schedule of services may be revised subject to all other rights of the Authority under the Contract.

### **4. Examination and Retention of Records**

If this is a cost-reimbursement type, incentive, time and materials, labor hour, or price re-determinable contract, or any combination thereof, the Contractor shall maintain, and the Contracting Officer and his representatives shall have the right to examine, all books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. Such right of examination shall include inspection at all reasonable times at the Contractor's plants, or such parts thereof, as may be engaged in or maintain records in connection with the performance of this contract.

If the Contractor submitted certified cost or pricing data in connection with the pricing of this contract or if the Contractor's cost of performance is relevant to any change or modification to this contract, the Contracting Officer and his representatives shall have the right to examine all books, records, documents, and other data of the Contractor related to the negotiation, pricing, or performance of such contract, change, or modification for the purpose of evaluating the costs incurred and the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the costs incurred and the cost or pricing data submitted, along with the computations and projections used therein.

The materials described in (b) and (c), above, shall be made available at the office of the Contractor at all reasonable times for inspection, audit, or reproduction until the expiration of three (3) years from the date of final payment under this contract, except that:

if this contract is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any final settlement; and

records which relate to appeals under the Disputes Clause of this contract or litigation, or the settlement of claims arising out of the performance of this contract, shall be made available until such appeals, litigation, or claims have been resolved.

The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts exceeding \$10,000 hereunder, altered to reflect the proper identification of the contracting parties and the Contracting Officer under the prime contract.

## **5. Compliance with Public Records Law**

Pursuant to section 119.0701, Florida Statutes, for any tasks performed by the Contractor on behalf of TBARTA, the Contractor shall: (a) keep and maintain all public records, as that term is defined in chapter 119, Florida Statutes ("Public Records"), required by TBARTA to perform the work contemplated by this Agreement; (b) upon request from TBARTA's custodian of public records, provide TBARTA with a copy of the requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the costs provided in chapter 119, Florida Statutes, or as otherwise provided by law; (c) ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion or termination of this Agreement, if the Contractor does not transfer the records to TBARTA in accordance with (d) below; and (d) upon completion or termination of this Agreement, (i) if TBARTA, in its sole and absolute discretion, requests that all Public Records in possession of the Contractor be transferred to TBARTA, the Contractor shall transfer, at no cost, to TBARTA, all Public Records in possession of the Contractor within thirty (30) days of such request or (ii) if no such request is made by TBARTA, the Contractor shall keep and maintain the Public Records required by TBARTA to perform the work contemplated by this Agreement. If the Contractor transfers all Public Records to TBARTA pursuant to (d)(i) above, the Contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements within thirty (30) days of transferring the Public Records to TBARTA and provide TBARTA with written confirmation that such records have been destroyed within thirty (30) days of transferring the Public Records. If the Contractor keeps and maintains Public Records pursuant to (d)(ii) above, the Contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to TBARTA, upon request from TBARTA's custodian of public records, in a format that is compatible with the information technology of TBARTA. If the Contractor does not comply with a Public Records request, or does not comply with a Public Records request within a reasonable amount of time, TBARTA may pursue any and all remedies available in law or equity including, but not limited to, specific performance. The provisions of this section only apply to those tasks in which the Contractor is acting on behalf of TBARTA.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**Telephone number: 813-282-8200 E-mail address: [susan.ebner@tbarta.com](mailto:susan.ebner@tbarta.com)**

**Mailing address: Attn: 4350 West Cypress Street, Suite 700, Tampa, Florida 33607**

## **6. Inspection**

"Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Authority during contract performance and for as long afterwards as the contract requires.

The Authority has the right to inspect and test all services called for by the contract, to the extent practicable, at all times and places during the term of the contract. The Authority shall perform inspections and tests in a manner that will not unduly delay the work.

If any of the services do not conform with the Contract Documents, the Authority may, in addition to all other remedies available, require the Contractor to perform the services again in conformity with contract requirements, at no increase in Contract Total. When the defects in services cannot be corrected by reperformance, the Authority may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; (2) reduce the contract price to reflect the reduced value of the services performed; or (3) proceed with all other remedies available under the Contract Documents, at law, or in equity.

## **7. Notice of Labor Disputes**

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor immediately shall give notice, including all relevant information, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract under which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that

in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

## **8. Licenses and Permits**

The Contractor shall, without additional expense to the Authority, be responsible for obtaining any necessary licenses, permits, and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to the performance of the work or to the products or services to be provided under this contract including, but not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

## **9. Compliance with the Law**

The Contractor shall comply with all federal, state, county, and local laws, rules and/or regulations, and lawful orders of public authorities including those set forth in the Contract Documents that, in any manner, could bear on the Contract. Omission of any applicable laws, ordinances, rules, regulations, standards or orders by TBARTA in the Contract Documents shall be construed as an oversight and shall not relieve the Contractor of its obligations to comply with such laws fully and completely. Upon request, the Contractor shall furnish to TBARTA certificates of compliance with all such laws, orders and regulations.

## **10. Federal, State, and Local Taxes**

The Authority is exempt from Florida state and local sales and use taxes, and any such taxes included on any invoice or voucher received by the Authority shall be deducted from the amount of the invoice or voucher for purposes of payment.

## **11. Publicity Releases**

All publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning this contract or the work hereunder which the Contractor or any of its subcontractors desires to make for purposes of publication in whole or in part, shall be subject to approval by the Contracting Officer prior to release.

## **12. Interest of Public Officials**

The Contractor represents and warrants that no employee, official, or member of the Board of the Authority is or will be pecuniarily interested or benefited directly or indirectly in this contract. The Contractor further represents and warrants that it has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any employee, official, or member of the Board of the Authority with a view toward securing favorable treatment in the awarding, amending, or evaluating the performance of this contract. For breach of any representation or warranty in this clause, the Authority shall have the right to annul this contract without liability and/or have recourse to any other remedy it may have at law.

## **13. Civil Rights**

(a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and 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, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity.

Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 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. 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), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. 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, creed, national origin, sex, 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 FTA may issue.

Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 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.

Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

#### **14. Soliciting or Accepting Gifts**

Pursuant to section 112.3148(3), Florida Statutes, no TBARTA employee shall solicit anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, when they know, or with the exercise of reasonable care should know, that it is given to influence a vote or other official action.

#### **15. Prohibited Interest**

No member, officer, or employee of TBARTA or of a local public body during his tenure or two years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof, except as provided by law.

#### **16. Termination**

The Contract may be terminated with or without cause in accordance with the provisions below.

Termination for Convenience: For and in consideration of \$10.00, if TBARTA determines that it is in its best interest to do so, TBARTA may terminate the Contract without cause upon thirty (30) days' written notice to the Contractor. If TBARTA terminates the Contract pursuant to this subsection, Contractor shall promptly submit to TBARTA its costs to be paid on work performed up to the time of termination. If the Contractor has any property belonging to TBARTA in its possession, Contractor shall account for the same and dispose of it as directed by TBARTA.

- (a) Termination for Default: TBARTA may terminate the Contract for cause at any time immediately upon written notice to the Contractor, if: (1) the Contractor fails to fulfill or abide by any of the terms or conditions specified in the Contract Documents; (2) the Contractor fails to perform in the manner called for in the Contract Documents; or (3) the Contractor does not provide services in accordance with the requirements of the specifications in the Contract Documents. In its sole discretion, TBARTA may allow the Contractor an appropriately short period of time in which to cure a defect in performance or non-performance. In such case, TBARTA's written notice of termination to the Contractor shall state the time period in which cure is permitted and other appropriate conditions, if applicable. Should this Agreement be terminated by TBARTA for cause under this Section, Contractor shall be liable for all expenses incurred by TBARTA in reprocurring elsewhere the same or similar items or services offered by Contractor. Any such termination for default shall not in any way operate to preclude the Authority from also pursuing all available remedies against Contractor and its sureties for said breach or default. The Contractor may terminate the Contract for cause if TBARTA fails to fulfill or abide by any duties or conditions specified in the Contract Documents, provided that Contractor must first provide notice of the alleged breach to TBARTA and give TBARTA thirty (30) days written notice to cure the alleged breach. If TBARTA cures the alleged breach or is making a good faith effort to cure said breach during the thirty (30) day cure period, Contractor may not terminate this Agreement.
- (b) If it is later determined by the Authority that the Contractor's failure to perform is a result of Force Majeure, the Authority may, in its sole and absolute discretion, may allow Contractor to continue performance under a new time for performance or treat the termination as if terminated without cause under Paragraph 233(a) above.
- (c) In the event TBARTA, in its sole discretion, determines that sufficient budgeted funds are not available to appropriate for payments due to Contractor under this Agreement, TBARTA shall notify Contractor of such occurrence and this Agreement shall terminate on the last day of the current fiscal period without any penalty or expense to TBARTA.

## 17. Resolution of Contract Claims and Disputes

- (a) Claims and Disputes Authority to Resolve. All claims or disputes by the Contractor against the Authority relating to the Contract shall be submitted in writing to the designated Contracting Officer of the Procurement Department for a determination in accordance with this Section.
- (b) Definition. Claims and disputes include controversies raised by the Contractor arising under the Contract and those based upon breach of contract, mistake, misrepresentation or other cause of contract modification, termination or rescission.
- (c) Notice of Claim or Dispute. The Contractor shall submit a Notice of Claim or Dispute to TBARTA in writing within ten (10) days of issue giving rise to claim or dispute. The date of the issue shall include when the contractor knew of the issue or should have known of the issue that gave rise to the claim or dispute.
- (d) Notice Requirements. The Notice of Claim or Dispute shall include at a minimum:
- (e) the Notice of Claim or Dispute shall be titled "Notice of Contract Claim or Notice of Contract Dispute";
- (f) name and address of the contractor;
- (g) name of the attorney and firm representing contractor, if applicable;
- (h) identification of the contract; and
- (i) Reasons for the claim or dispute.
- (j) Failure to timely submit Notice. Failure to submit the Notice of Claim or Dispute within ten (10) days of the issue that gave rise to the dispute or claim will result in the claim or dispute being rejected by the Authority without further consideration. The date of the issue shall include when the contractor knew of the issue or should have know of the issue that gave rise to the claim or dispute.
- (k) Delivery. A Notice of Claim or Dispute shall be sent via hand delivery or certified mail. **Electronic forms of delivery are not an acceptable means of delivery.** The contractor is solely responsible for verifying that the Notice of Claim or Dispute was received in a timely manner. Notice of Claim or Dispute should be addressed to:

Tampa Bay Area Regional Transit Authority  
Attention: Executive Director  
4300 West Cypress Street, Suite 700  
Tampa, Florida 33607

(l) Timeline for Formal Written Claim or Dispute. The Formal Written Claim or Dispute shall be filed within seven (7) days after the date the Notice of Claim or Dispute is timely filed. Failure to submit the Formal Written Claim or Dispute within seven (7) days will result in the Claim or Dispute being rejected by the Authority without further consideration.

(m) Written Claim or Dispute Requirements. The Formal Written Claim or Dispute shall include at a minimum:

- (1) the Formal Written Claim or Dispute shall be titled "Formal Written Contract Claim or Dispute";
- (2) name and address of the contractor;
- (3) name of the attorney and firm representing contractor, if any;
- (4) identification of the solicitation;
- (5) reason(s) for the claim or dispute;
- (6) requested relief;

(7) the claim or dispute must demonstrate how the contractor has been aggrieved as a result of the Authority's decision and shall include the facts, argument(s), and the law upon which the claim or dispute is made;

(8) documents to substantiate the basis or ground for the claim or dispute.

(n) No further consideration. Any documents, basis or ground(s) for the claim or dispute not set forth or provided in the formal written contract claim or dispute required under this provision shall be deemed waived.

(o) Written determination. The Contracting Officer shall issue a decision in writing within ten (10) days of the hearing of Claim or Dispute and shall mail to the contractor. The decision shall state the reasons for the decision reached.

(p) Administrative Remedies. This process is considered to be an administrative remedy and all contractors agree to exhaust their administrative remedies under the Authority policies prior to seeking judicial relief of any type in connection with any matter related to the suspension or debarment.

(q) Continue with work. Unless otherwise directed by TBARTA, Contractor shall continue performance under the Contract while matters in dispute are being resolved.

## **18. Assignment**

The terms and provisions of the Contract Documents shall be binding upon TBARTA and Contractor their respective partners, successors, heirs, executors, administrators, assigns and legal representatives. However, the rights and obligations of the Contractor may not be transferred, assigned, sublet, mortgaged, pledged or otherwise disposed of or encumbered in any way without TBARTA's prior written consent. The Contractor may subcontract a portion of its obligations to other firms or parties but only after having first obtained the written approval of the subcontractor by TBARTA. TBARTA may assign its rights and obligations under the Contract Documents to any successor to the rights and functions of TBARTA or to any governmental agency to the extent required by applicable laws or governmental regulations or to the extent TBARTA deems necessary or advisable under the circumstances.

## **19. Order of Precedence**

In the event of any inconsistency between the provisions of the solicitation, the inconsistency shall be resolved by giving precedence in the following order: (1) the Form of Contract (attached as Exhibit K); (2) the Schedule; (3) Representations and Certifications; (4) Special Solicitation Instructions and Conditions; (5) Solicitation Instructions and Conditions; (6) Addendum to General Provisions (7) Special Provisions; (8) General Provisions ; (9) the specifications or statement of work; (10) Solicitation, Offer and Award Form; and (11) Disadvantaged Business Enterprise (DBE) Provisions.

## **20. Governing Law**

- (a) The Contract Documents shall be governed by, construed and interpreted in accordance with the laws of the State of Florida. Contractor consents to jurisdiction over it and agrees that venue for any state action shall lie solely in the Sixth Judicial Circuit in and for Pinellas County, Florida, and for any state actions shall lie solely in the U.S. District Court, Middle District of Florida, Tampa Division.
- (b) If any one or more of the provisions of the Contract Documents shall be held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby and the Contract Documents shall be treated as though that portion had never been a part thereof.

## **21. Ownership of Information**

- (a) All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract, including, but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under the Contract shall be and remain the property of the TBARTA and shall be delivered to TBARTA upon 30 days' notice from TBARTA. With respect to software computer programs and/or source codes developed for TBARTA, the work shall be considered "work for hire", i.e., TBARTA, not the Contractor or subcontractor, shall have full and complete ownership of all software computer programs and/or source codes



developed. To the extent that any of such materials may not, by operation of law, be a work made for hire in accordance with the terms of the Contract, the Contractor or subcontractor agrees to assign to TBARTA all right, title and interest in and to any copyright, and TBARTA shall have the right to obtain and hold in its own name any copyrights, registrations and any other proprietary rights that may be available.

- (b) Should the Contractor anticipate bringing pre-existing intellectual property as part of its work under the Contract, the intellectual property must be identified in the Contractor's proposal. Otherwise, the language in the first paragraph of this section prevails. If the contractor identifies such intellectual property ("Background IP") in its proposal, then the Background IP owned by the Contractor on the date of the contract, as well as any modifications or adaptations thereto, remain the property of the Contractor. However, upon the Notice of Award, the Contractor or subcontractor shall grant TBARTA a non-exclusive, royalty free license to use any of the Contractor's/subcontractor's Background IP delivered to TBARTA for the purposes contemplated by the Contract.

## **22. Independent Contractor**

The Contractor at all times shall be an independent contractor. The Contractor shall be fully responsible for all acts and omissions of its employees, subcontractors, and their suppliers, and shall be specifically responsible for sufficient supervision and inspection to ensure compliance in every respect with the Contract Documents. There shall be no contractual relationship between any subcontractor or supplier of the Contractor and the Authority by virtue of the Contract. No provision of the Contract shall be for the benefit of any party other than the Authority and the Contractor.

## **23. Composition of Contractor**

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

## **24. Subcontractors and Outside Consultants**

- (a) Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the Contract Documents will be limited to such individuals or firms as were specifically identified and agreed to by the Authority in connection with the award of this contract. Any substitution in subcontractors, associates, or consultants will be subject to the prior approval of TBARTA.
- (b) The Contractor shall not employ any subcontractor, subconsultant, or other person or organization to provide services under the Contract against whom TBARTA may have reasonable objection. A subcontractor or other person or organization identified in writing to TBARTA by Contractor in its proposal and not objected to in writing by TBARTA prior to the Notice of Award will be deemed acceptable to TBARTA. Acceptance of any subcontractor, or other person or organization by TBARTA, shall not constitute a waiver of any right of TBARTA to reject defective work or otherwise hold the Contractor responsible for such work. If TBARTA after due investigation has reasonable objection to any subcontractor, subconsultant, other person or organization proposed by the Contractor after the Notice of Award, Contractor shall submit an acceptable substitute and the prices negotiated as part of this solicitation shall not be adjusted.
- (c) TBARTA may furnish to any subcontractor, subconsultant, or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific work done.
- (d) All work performed by a subcontractor or subconsultant will be pursuant to an appropriate agreement between the Contractor and the subcontractor or subconsultant which specifically binds the subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of TBARTA. However, TBARTA shall not be a party to such contracts.
- (e) In the event of any noncompliance by any of the subcontractors, Contractor shall be directly and wholly responsible for the noncompliance and shall bear all attributable costs.

## **25. Standards of Performance**

The Contractor shall perform all services required by this contract in accordance with high professional standards prevailing in the Contractor's field of work.

**26. Suspension of Work**

- a. The Contracting Officer may order the Contractor in writing to suspend all or any part of the work for such period of time as he or she may determine to be appropriate for the convenience of the Authority.
- b. Contractor shall not be entitled to any claim for additional compensation or damages on account of hindrances or delays in the work from any cause whatsoever, including any delays or hindrances caused by TBARTA suspending all or any part of the work to be performed.

**27. Removal of Contract Personnel**

(a) The Contractor and any subcontractor acknowledge that any person assigned to work under this contract must perform their duties so as to not unduly impair contract performance. By assigning a person to work under this contract, the Contractor agrees to be responsible for the behavior of that person during contract performance.

(b) The Contractor acknowledges that the Authority has the right to require the removal of any Contractor or subcontractor employee that the Contracting Officer determines, at his sole discretion, to be negatively effecting performance of work under the contract. Examples of such behavior include: (1) conduct which poses a threat to the safety of anyone working under the contract; (2) conduct which is disruptive to contract performance; (3) careless work performance; and (4) other behavior determined by the Contracting Officer to be objectionable or unduly hindering contract performance.

(c) Upon receipt of written notice from the Contracting Officer that a person's behavior is unduly impairing contract performance, the Contractor agrees to remove that person from doing any further work on the contract, and to cause that person to be removed from the worksite. The Contractor agrees that it is not entitled to any additional costs it may incur as a result of the removal of the person named by the Contracting Officer.

**28. Design According to Regulatory and Statutory Requirements**

The Contractor warrants that designs and specifications meet all applicable statutes, codes, regulations and ordinances; and shall indemnify and hold harmless the Authority from claims and costs arising out of errors and omissions relating to such statutes, codes, regulations and ordinances.

**29. Drawings and Other Data**

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Authority and may be used on any other design or construction without additional compensation to the Contractor. The Authority shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights or establish any claim under the design patent or copyright laws. The Contractor, for a period of three years after completion of the project, agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

**30. Notice and Approval of Restricted Designs**

In the performance of this contract, the Contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer, Contractor shall not, in the performance of the work called for by this contract, produce a design or specification such as to require in this construction work the use of structures, products, materials, construction equipment, or processes which are known by the Contractor to be available only from a sole source. As to any such design or specification, the Contractor shall report to the Contracting Officer giving the reason or reasons why it is considered necessary to so restrict the design or specification.

**31. Removal of Subcontractor and Outside Consultant**

The Contracting Officer may require, in writing, that the Contractor remove or terminate any subcontractor, outside associate, consultant, supplier, or materialmen that the Contracting Officer deems objectionable.

**32. Responsibility of the Architect-Engineer**

(a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in his designs, drawings, specifications, and other services.

(b) Neither the Authority's review, approval, or acceptance of, nor payment for, any of the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and Contractor shall be and remain liable to the Authority in accordance with applicable law for all damages to the Authority caused by the Contractor's negligent performance of any of the services furnished under this contract.

(c) The rights and remedies of the Authority provided for under this contract are in addition to any other rights and remedies provided by law.

**TAMPA BAY AREA REGIONAL TRANSIT AUTHORITY (TBARTA)**  
**EXHIBIT G**  
**DISADVANTAGED BUSINESS ENTERPRISE PROVISIONS**  
**(FEDERALLY ASSISTED CONTRACT WITH A DBE GOAL)**

**TBARTA's FY19, DBE Goal is 5%. TBARTA HAS ESTABLISHED A 5% DBE GOAL ON THIS CONTRACT. For assistance or with questions concerning the provisions in this Exhibit ONLY, contact Susan Ebner, at (813) 282-8200.**

**TABLE OF CONTENTS**

1. Definitions and Interpretations.....	1
2. Banks and Financial Institutions.....	1
3. Certification and Directory of DBEs.....	1
4. Credit Toward Goals.....	1
5. DBE Modifications or Substitutions.....	2
6. Demonstration of Good Faith Effort.....	2
7. Offeror's DBE Obligation.....	4
8. Prompt Payment Documentation and Reporting.....	4
9. Sanctions for Noncompliance with the Authority's DBE Program Provisions.....	4
10. Submission of Subcontractor Utilization Forms and Related Documentation.....	4
ATTACHMENT 1 TO EXHIBIT G.....	6
ATTACHMENT 2 TO EXHIBIT G.....	7

**1. Definitions and Interpretations**

The Authority will utilize the following definitions to identify Disadvantaged Business Enterprise (DBE) Program eligibility standards. The definitions defined in 49 CFR Part 26 are hereby incorporated by reference.

**2. Banks and Financial Institutions**

The Contractor is encouraged to utilize the services of disadvantaged, minority and woman-owned banks and financial institutions.

**3. Certification and Directory of DBEs**

- (a) All prospective DBEs must be certified through the Florida Unified Certification Program (UCP). The UCP provides "one-stop shopping" to applicants for DBE certification, such that an applicant need apply only once for a DBE certification that will be honored by all UCP members in Florida. TBARTA is a member of the Florida UCP.
- (b) The DBE firm will be verified as a certified DBE through the Florida UCP Directory. The UCP maintains an electronic DBE directory of all firms certified in Florida. The directory is located at <https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/>. The local certifying UCP agency is the Hillsborough County Aviation Authority (HCAA) located at the Tampa International Airport. Appropriate forms to apply for DBE certification are available at <http://tampaairport.com/minority-and-disadvantaged-business-contracting>.
- (c) The eligibility of a DBE certified joint venture will be determined on a project-by-project basis by PSTA.
- (d) Offerors are reminded that only certified DBEs may participate in Authority contracts in such capacities. If Offerors propose using a DBE not currently certified, it is strongly urged that HCAA be contacted well in advance of the date set for receipt of offers in order to enable review of the proposed DBE's eligibility.

**4. Credit Toward Goals**

The Authority will count DBE participation toward the overall and contract goals as provided in 49 CFR 26.55. In addition, if the materials or supplies are purchased from a **DBE** regular dealer, count 60 percent of the cost of the materials or supplies toward **DBE** goals; do not count 100 percent of the cost.

## 5. DBE Modifications or Substitutions

This Provision applies to all modifications and substitutions under this Contract. The Contractor will be required to comply with this Provision to the extent needed to achieve the DBE goals agreed to at the time of contract award.

- (a) If a prime contractor wishes to terminate or substitute a DBE subcontractor listed as fulfilling its contract goal, and then performs the work of the terminated DBE subcontractor with its own forces, an affiliate, a non-DBE subcontractor or with another DBE subcontractor, it must submit written documentation prior to the termination or substitution of the DBE subcontractor to the Contracting Officer. This will include any changes to items of work, material, services, or DBE firms that differ from those identified on the Intent to Perform as a DBE Subcontractor form(s) on file with the Contracting Officer. The Offeror/Contractor must provide any and all documentation and information as may be requested with respect to the requested change.
- (b) The Offeror's/Contractor's documentation shall include the specific reasons for the proposed change. Specific reasons that are acceptable include, but are not limited to: the DBE was not able to perform; the DBE was unable to produce acceptable work; and/or the DBE has submitted an unreasonable escalation in price. In the case of a DBE subcontractor being substituted by another DBE subcontractor, the Contractor should include the name, address, certification number and principal office of the proposed DBE firm. After providing an opportunity to the DBE Liaison to make a recommendation, the Contracting Officer will approve or disapprove the change.
- (c) If the change involves a subcontractor substitution, the Offeror/Contractor must make good faith effort to replace one DBE with another DBE. The substitute DBE firm must be certified by the Florida UCP in order for the Offeror/Contractor to receive credit toward fulfilling its DBE participation goal for the contract. In the event that the Offeror/Contractor is unable to contract with another DBE firm, good faith effort documentation must be provided to the Contracting Officer describing the unsuccessful attempts to locate a substitute DBE. In all situations, the Contractor may not terminate or substitute a DBE subcontractor without the prior written consent of the Contracting Officer.
- (d) The Offeror/Contractor must submit a new Intent to Perform as a DBE Subcontractor form for the substitute DBE firm(s) with the request for change, to verify that the new DBE firm(s) is certified by the Florida UCP. The Contracting Officer shall notify the Offeror/Contractor in writing of his decision as expeditiously as possible. If the contract has been awarded and the Contracting Officer approves the proposed substitution in writing, the Contractor shall provide a copy of the executed subcontract agreement with the proposed DBE firm to the Contracting Officer within ten (10) business days of its receipt of the substitution approval.
- (e) If the change involves a modification, the Contractor must submit, if applicable, the Intent to Perform as a DBE Subcontractor form specified for contract modifications for any DBE subcontractor affected by this change. This form may be obtained from the Contracting Officer.
- (f) If the Contractor does not comply with this Provision, the Authority may elect to apply contract remedies as defined in 49 CFR Part 26, or other contract remedies, as appropriate. Additionally, the Contracting Officer may order that the profits from the terminated portion of the DBE subcontract be forfeited by the Contractor.

## 6. Demonstration of Good Faith Effort

- (a) If an Offeror does not meet the DBE goal, it shall nevertheless be eligible for award of the contract if it can demonstrate to the Contracting Officer that it has made a good faith effort to meet the DBE goal. This good faith efforts documentation should be submitted when the initial response to the Authority's solicitation is due. All contractors, including DBE prime contractors, are required to submit good faith efforts documentation, if necessary. In evaluating an Offeror's good faith effort submission, the Authority will only consider those documented efforts that occurred prior to the good faith efforts determination.
- (b) In the event that a firm submitted by an Offeror in accordance with the requirements of the Submission of DBE Utilization Forms and Related Documentation provision cannot be certified, the Offeror will be notified and given an opportunity to substitute that firm with a certified DBE firm. The Offeror will have ten (10) calendar days from the date of notification to accomplish the substitution. In the event the Offeror is unable to contract with another substitute DBE firm, the good faith efforts that the Offeror made in attempting to contract with a substitute DBE firm must be documented to the Contracting Officer at the end of the same ten (10) calendar day period.

- (c) In making a determination that the Offeror has made a good faith effort to meet the DBE goal, the Offeror shall furnish to the Authority, as part of its DBE utilization information provided under the Submission of DBE Utilization Forms and Related Documentation provision, such specific documentation concerning the steps it has taken to obtain DBE participation. By way of illustration and not limitation, the Authority will consider the following information:
- (1) Whether the Offeror attended any pre-bid or pre-proposal meetings scheduled by the Authority to discuss, among other matters, DBE participation opportunities and acknowledged receipt of DBE certified vendor lists;
  - (2) Whether the Offeror advertised in general circulation, trade association, and/or minority/women-focus media concerning subcontracting opportunities;
  - (3) Whether the Offeror provided written notice to a reasonable number of DBEs that their interest in the contract was being solicited in sufficient time to allow DBEs to participate effectively;
  - (4) Whether the Offeror followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
  - (5) Whether the Offeror selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals (including, where appropriate, breaking down the contract into economically feasible subcontracts to facilitate DBE participation);
  - (6) Whether the Offeror provided interested DBEs with adequate information about the plans, specifications, scope of work and requirements of the contract;
  - (7) Whether the Offeror negotiated in good faith with interested DBEs regarding their capabilities, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation;
  - (8) Whether the Offeror negotiated in good faith with interested DBEs regarding price, using good business judgment and not rejecting reasonable quotes from interested DBE firms;
  - (9) Whether the Offeror made efforts to assist interested DBEs in obtaining bonding, lines of credit, insurance, etc., as required by the Authority or the Offeror;
  - (10) Whether the Offeror made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services;
  - (11) Whether the Offeror effectively used the services of available minority and women community organizations; contractor groups; local, State, and Federal business assistance offices; and other organizations that provide assistance in the identification of DBEs;
  - (12) Whether the Offeror obtained written documentation from a bona fide surety company indicating that bonding was denied and for what reason(s), prior to the DBE being rejected as a potential subcontractor for failing to obtain Offeror-required bonding. Documentation furnished by a surety company will be subject to verification by the Authority; and
  - (13) Whether other Offerors have attained a sufficient level of DBE participation to meet the contract goals.
- (d) The Authority will look not only at the different kinds of efforts that the Offeror has made, but also the quantity and intensity of those efforts. Efforts that are merely pro forma are not good faith efforts to meet the goal (even if they are sincerely motivated) if, given all relevant circumstances, the Offeror's efforts could not reasonably be expected to produce a level of DBE participation sufficient to meet the goal.
- (e) Offerors are reminded that the issue of whether or not the Offeror has met or exceeded the established goal and/or demonstrated good faith efforts is considered a matter of the Offeror's responsibility. The Authority will only award contracts to Offerors determined to be responsible. The Contracting Officer, after affording the Authority's DBE personnel an opportunity to make a recommendation, shall be responsible for determining the sufficiency of an Offeror's good faith effort to meet contract goals.

- (f) An Offeror that the Contracting Officer determines is not responsible may request administrative review and reconsideration under the Authority's Procurement Regulations. As part of any reconsideration, if requested, the Offeror may elect to meet in person with the Reconsideration Official (Chief of Administration) to discuss credit toward meeting the DBE goal or whether the Offeror made adequate good faith efforts.

## **7. Offeror's DBE Obligation**

The Offeror's DBE Obligation is outlined in an Exhibit C provision entitled Disadvantaged Business Enterprise (DBE) Participation, and the provision entitled Non-Discrimination Assurance found in Exhibit E of this Contract.

The requirements of 49CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of TBARTA to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract

The bidder will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

## **8. Prompt Payment Documentation and Reporting**

The Contractor agrees to pay each subcontractor under the prime contract for satisfactory performance of its contract no later than 10 calendar days from receipt of each payment the prime contractor receives from TBARTA. The prime contractor must agree further to return retainage payments to each subcontractor within 10 calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced period may occur only for good cause following written approval of TBARTA. This language applies to both DBE and non-DBE subcontracts. Failure to satisfy prompt payment to subcontractors no later than 10 calendar days from the receipt of payment from TBARTA may constitute a breach of contract and may result in termination of the Contractor for default or such remedy as the Authority may deem appropriate.

The Contractor and any subcontractors shall report and verify prompt payment through the Authority's Vendor Compliance System. The Contractor and all subcontractors are responsible for responding by any noted response date or due date to any instructions or request for information, and to check the Vendor Compliance System on a regular basis to manage contract information and contract records.

As provided elsewhere in this Contract, the Authority may withhold all or part of any payment otherwise due the Contractor if the Contractor fails to respond to the Authority by noted response dates and/or make prompt payments to its subcontractors, suppliers, materialmen or laborers.

## **9. Sanctions for Noncompliance with the Authority's DBE Program Provisions**

Failure of the Contractor to carry out the Authority's DBE program provisions shall constitute a breach of contract and may result in termination of the Contractor for default or such remedy as the Authority may deem appropriate. The Authority reserves the right to apply legal and contract remedies available under Federal, state and local law, including but not limited to, responsibility determinations in future contracts, suspension and debarment procedures as outlined in 49 CFR Part 29, and forfeiture of profits as provided for elsewhere. The Authority will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take steps provided in 49 CFR Section 26.107.

## **10. Submission of Subcontractor Utilization Forms and Related Documentation**

(a) Each Offeror should submit to the Authority an executed Intent to Perform As a DBE Subcontractor form (Attachment 1) for each proposed subcontractor when the initial response to the Authority's solicitation is due. Good faith documentation (if necessary) should also be submitted at this time. The submission of this information is

---

considered an issue of responsibility, and the Authority will not award a contract to any Offeror who has not supplied this documentation.

(b) The Intent to Perform As A DBE Subcontractor form for each proposed subcontractor shall constitute a representation by the Offeror to the Authority that it believes such firm is ready, willing, and able to perform the work indicated. It shall also represent a commitment by the Offeror that if it is awarded the contract, it will enter into a subcontract with such subcontractor for the work described at the approximate price set forth in the Intent to Perform As A DBE Subcontractor form.

(c) If the DBE Subcontractor participation changes after the forms have been submitted, but prior to award of the contract, the Offeror will be required to immediately notify the Contracting Officer of the changed amount and the reason(s) for the change. The modification and substitutions of DBE firms that occur shall be governed by DBE Modification or Substitutions provision of this Exhibit.

(d) Except as authorized by the Contracting Officer, the successful Offeror shall enter into formal agreements with the subcontracting firms shown in the submitted Intent to Perform As A DBE Subcontractor form(s) within ten(10) business days after receipt of a contract executed by the Authority. The successful offeror (Contractor) shall provide the Contracting Officer two copies of each agreement within three (3) business days of execution.

(e) If an Offeror is a DBE and lists itself on the Intent to Perform As A DBE Subcontractor form, it is required to perform the work indicated with its own work force.



TAMPA BAY AREA REGIONAL TRANSIT AUTHORITY (TBARTA)  
TAMPA, FLORIDA

**ATTACHMENT 1 TO EXHIBIT G  
(INTENT TO PERFORM AS A DBE SUBCONTRACTOR FOR A CONTRACT AWARD)**

**All DBE subcontracting firms to be used on this solicitation must fill out this form.**

DBE firms participating in TBARTA's contracting opportunities must have "current" certification status with Florida's Unified Certification Program (UCP) prior to award of this contract. If TBARTA determines that the firm is not an eligible DBE firm for TBARTA contracts and subcontracts, the prime contractor will be notified of the ineligibility of the listed firm. The submission of this form is considered an issue of responsibility and TBARTA will not award a contract to any Offeror who has not supplied this documentation.

1. TBARTA Solicitation #: \_\_\_\_\_
2. Name of **DBE** Subcontracting Firm \_\_\_\_\_.
3. Has the **DBE** subcontractor been certified as a DBE by a Florida UCP agency? \_\_\_\_\_
4. The **DBE** subcontractor is prepared to perform the following described work and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both):

\_\_\_\_\_ and at the following price \$ \_\_\_\_\_. (If the materials or supplies are purchased from a **DBE** regular dealer, count 60 percent of the cost of the materials or supplies toward **DBE** goals).

BY: \_\_\_\_\_  
(Signature of **DBE** subcontracting Owner, President or Authorized Agent)

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

PHONE: (\_\_\_\_) \_\_\_\_\_

\_\_\_\_\_  
(Print or Type - Name of Signature of Owner, President or Authorized Agent of **DBE** subcontracting firm)

**DECLARATION OF PRIME CONTRACTOR**

I HEREBY DECLARE AND AFFIRM that I am the \_\_\_\_\_  
(Title of Declarant)

and a duly authorized representative of \_\_\_\_\_  
(Name of Prime Contractor)

to make this declaration and that I have personally reviewed the material and facts set forth in this Intent to Perform As A DBE subcontractor form. To the best of my knowledge, information and belief, the facts and representations contained in this form are true, the owner or authorized agent of the subcontracting firm signed this form in the place indicated, and no material facts have been omitted.

Except as authorized by the Contracting Officer, the undersigned will enter into a formal agreement with the listed DBE subcontracting firm for work as indicated by this form within ten (10) business days after receipt of the contract executed by the Tampa Bay Area Regional Transit Authority. The undersigned will provide the Contracting Officer a copy of that agreement within three (3) business days of execution.

The Prime contractor designated the following person as their DBE Liaison Officer:

\_\_\_\_\_  
(Name-Please Print) (Phone)

Pursuant to 49 CFR Section 26.107, any person [entity] who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes and may be referred to the Department of Transportation, and possibly the Department of Justice, for prosecution.

Name of Declarant \_\_\_\_\_  
Signature \_\_\_\_\_  
(Date) \_\_\_\_\_

TAMPA BAY AREA REGIONAL TRANSIT AUTHORITY (TBARTA)  
TAMPA, FLORIDA

**ATTACHMENT 2 TO EXHIBIT G**

**(SUBCONTRACTOR UTILIZATION - SUMMARY OF SUBCONTRACTOR(S)/SUBCONSULTANT(S)/SUPPLIER(S))**

Offerors should provide information on **all** of their prospective subcontractor(s) subconsultant(s) supplier(s) who will participate on this solicitation. Use additional sheets as necessary.

Project Name: \_\_\_\_\_ TBARTA Solicitation # \_\_\_\_\_

NAMES AND ADDRESSES OF SUBCONTRACTOR(S)/ SUBCONSULTANT(S)	TYPE OF WORK TO BE PERFORMED	ETHNICITY & GENDER OF OWNER	PREVIOUS YEAR'S ANNUAL GROSS RECEIPTS	\$ AMOUNT ON CONTRACT
NAME: ADDRESS: PHONE: FAX: E-MAIL: CONTACT PERSON:	TYPE OF WORK:  AGE OF FIRM:  IS THE FIRM A CERTIFIED DBE IN THE STATE OF FLORIDA BY THE UCP? YES <input type="checkbox"/> NO <input type="checkbox"/>	Ethnicity Black Hispanic Native American Subcont. Asian American Asian Pacific American Non-Minority Woman Other	<input type="checkbox"/> less than \$500K <input type="checkbox"/> \$500K - \$2 mil. <input type="checkbox"/> \$2 mil. - \$5 mil. <input type="checkbox"/> more than \$5 mil.	
NAME: ADDRESS: PHONE: FAX: E-MAIL: CONTACT PERSON:	TYPE OF WORK:  AGE OF FIRM:  IS THE FIRM A CERTIFIED DBE IN THE STATE OF FLORIDA BY THE UCP? YES <input type="checkbox"/> NO <input type="checkbox"/>	Ethnicity Black Hispanic Native American Subcont. Asian American Asian Pacific American Non-Minority Woman Other	<input type="checkbox"/> less than \$500K <input type="checkbox"/> \$500K - \$2 mil. <input type="checkbox"/> \$2 mil. - \$5 mil. <input type="checkbox"/> more than \$5 mil.	
NAME: ADDRESS: PHONE: FAX: E-MAIL: CONTACT PERSON:	TYPE OF WORK:  AGE OF FIRM:  IS THE FIRM A CERTIFIED DBE IN THE STATE OF FLORIDA BY THE UCP? YES <input type="checkbox"/> NO <input type="checkbox"/>	Ethnicity Black Hispanic Native American Subcont. Asian American Asian Pacific American Non-Minority Woman Other	<input type="checkbox"/> less than \$500K <input type="checkbox"/> \$500K - \$2 mil. <input type="checkbox"/> \$2 mil. - \$5 mil. <input type="checkbox"/> more than \$5 mil.	

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

\_\_\_ The bidder/offeror is committed to a minimum of \_\_\_% DBE utilization on this contract.

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

Name of bidder/offeror's firm: \_\_\_\_\_

Print Name/Title of Person completing this form: \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Email \_\_\_\_\_ Phone \_\_\_\_\_

TAMPA BAY AREA REGIONAL TRANSIT AUTHORITY (TBARTA)
EXHIBIT H
STATEMENT OF WORK

Table of Contents

Background ..... 1
General Consultant Procurement ..... 1
Task Order Based Contract ..... 2
Scope of Services ..... 2
1. Architectural & Engineering Services ..... 3
2. Planning, Capital Project Development, & Environmental Compliance ..... 4
3. Operational Efficiency/Technology Assessment/Deployment ..... 4
4. Marketing, Outreach, Advertising and Public Relations Services..... 5

Background

The Tampa Bay Area Regional Transit Authority (TBARTA) provides public transportation and mobility services in cooperation with transit partners and planning agencies within its five-county area, comprised of Hernando, Pasco, Pinellas, Hillsborough and Manatee Counties (hereinafter, the "TBARTA area"). TBARTA continually works to improve operational efficiencies of current services, maintain a state of good repair for current assets, implement new services, and develop innovative mobility solutions while maintaining local, state and federal partnerships. TBARTA is also dedicated to an active dialogue with the public for all projects and system changes.

TBARTA is seeking up to four (4) General Services Consultants (GSC) to augment staff capabilities in the general areas of Architectural and Engineering, Planning, Operational Efficiency, and Marketing Services. Applicable projects under this contract may include, but will not be limited to:

- Regional Transit Development Plan support;
• Regional Transit Feasibility Plan support;
• Development of Regional Transit Projects in the above plans, including;
o Design Services;
o Feasibility Studies;
o Project Capital Investment Grant Rating Submittal;
o Transportation Demand Management (TDM) Outreach and Program Management;
o GIS assistance, and
o Public engagement.
• Agency and Project-Specific Marketing, Branding, and Public Relations

Partnerships with related agencies and local jurisdictions are critical to the success of TBARTA. Projects are frequently jointly funded and managed with partners such as the Florida Department of Transportation (FDOT), Pinellas County, Pinellas County MPO, the Hillsborough Transit Authority (HART), and cities throughout the TBARTA area.

General Consultant Procurement

TBARTA is issuing this Request for Qualifications (RFQ) for a recommended consultant team to provide professional services in four core areas:

- Architectural and Engineering;
• Planning, Project Development, and Environmental Compliance;
• Operational Efficiency and Technology Assessment/Deployment; and
• Marketing, Outreach, Advertising and Public Relations Services

The intent of this solicitation is to award a three (3) year general services contract with two (2) potential one-year options totaling up to five (5) qualified consultant teams. Maximum cumulative contract value for this task work order-based contract will be up to \$3 million.

TBARTA will seek to award based on the firm or combination of firms that provide TBARTA with the highest ranked team of consultants. As this procurement will be for Architectural & Engineering and other similar services, TBARTA will use a qualifications based procurement in recommending the top ranked teams. TBARTA's DBE Program encourages Proposer's to include small, local, and/or DBE firms on their teams, when possible. Once the ranking has been identified based on qualifications, TBARTA will negotiate billing rates with the top firms/teams as part of the contracting process.

## **Task Order Based Contract**

This will be a task work order based contract and will have no minimum guarantee of contract value. The issuance of Task Orders will be ongoing throughout the contract and multiple task orders may be assigned simultaneously. Completed work on a task will be billed at hourly rates by personnel classification established in the contract. TBARTA will issue Task Orders in writing.

Task work order scope concepts will be initiated by TBARTA staff and detailed in writing by the consultant performing the work. The Consultant(s) must provide a written estimate of the person-hours required and corresponding cost for each task order. TBARTA must approve each scope and cost estimate in writing before the Consultant(s) initiates work on the task(s). Each Task Order will contain its own completion date. The completion date of a Task Order may extend beyond the expiration date of the Contract, as long as the Task Order is issued prior to the expiration date of the Contract.

TBARTA and the Consultant(s) shall negotiate a Maximum Fee for each individual Task Order. The Maximum Fee shall be determined in accordance with the following provisions:

- A. The Maximum Fee amount established for each Task Order shall be the agreed person-hour effort required for performance of the desired services at the approved hourly rates, plus miscellaneous and out-of-pocket expenses, plus the cost of negotiated expenses (if any).
- B. The approved hourly rates per job classification for the Prime Consultant(s) and any Sub-consultant(s) to be applied to this contract are set forth in the Fee Structure section below.
- C. Miscellaneous and out-of-pocket expenses for the Prime Consultant(s) and Sub-consultant(s) shall be established for each Task Order covered by this Agreement and will consist of the following:
  - (1) Out-of-pocket expenses include incidental costs of printing, materials, expendable equipment, and travel within the limits of Florida Statute 112.061, equipment rental, long distance calls, and tolls.
  - (2) Compensation for additional services, if required, shall be negotiated for each task work order assigned prior task work order notice to proceed.

Each Task Order will define the deliverables. Data collected from research and deliverables shall be provided in a savable, editable digital format along with a written summary of the contents to TBARTA at the close of each task work order. Deliverables shall be accepted by the assigned TBARTA Task Manager before payment for such work is approved.

## **Scope of Services**

TBARTA will seek consultants in four (4) general categories:

- Architectural and Engineering;
- Planning, Project Development, and Environmental Compliance;
- Operational Efficiency and Technology Assessment/Deployment; and
- Marketing, Outreach, Advertising and Public Relations Services

Examples of the types of tasks under each discipline are listed within each category, however, in practice multi-disciplinary scope items may not fit discretely in a single category. While the list of potential services is lengthy in order to maximize the authority's flexibility in the use of this contract, TBARTA does not consider the list to be exhaustive.

## 1. Architectural & Engineering Services

Scope of Services:

TBARTA desires State Certified Consultant(s) to have the capability of providing the full spectrum of Architectural and Engineering Services for transit related needs such as, but not limited to:

- Architectural Services
- Capital Project Design
- Civil/Site Improvement Design (e.g., pavement rehab, storm drains)
- Construction Inspection
- Construction Management
- Constructability Review
- Cost Estimating
- Cost and Schedule Controls
- Data Management
- Design and Analysis (Civil, Structural, Schematic, Mechanical, Electrical)
- Engineering Reports & Studies (e.g., infrastructure assessment)
- Environmental Studies, Compliance & Permitting
- Equipment Analysis/Design (e.g., bus washer)
- Facilities and Asset Management
- Field Testing
- Fueling Station Construction and Evaluation
- Geotechnical Analysis and Evaluation
- Intermodal Facility/ Transit Center Design
- Landscape Architecture
- Maintenance Facility Design
- Materials and Testing services
- Mechanical, Electric and Plumbing Services
- Permit Submittal Development and Management
- Project Closeout
- Project Progress Reporting
- Quality Assurance and Quality Control
- Resident Engineering
- Shop Drawing Review
- Site and Drainage Planning
- Specification Development for Bid/Proposal Process
- Specialty Environmental Engineering and Remediation Analysis (Geotechnical, Subsurface Utility Engineering, and Contamination)
- Station and Station Area Design
- Surveying and Mapping
- Technology and Communications
- Vehicle Engineering and Procurement

- Quality Assurance and Quality Control

## **2. Planning, Capital Project Development, & Environmental Compliance**

- TBARTA desires the Consultant(s) to have the capability to undertake various transportation planning and project development assistance tasks including, but not limited to:
  - Americans with Disabilities Act (ADA) Assessments
  - Bus Rapid Transit System and Corridor Planning
  - Capital Plan Development and Cost Estimating
  - Comprehensive Operational Analyses
  - Financial Planning
  - FTA Triennial Review Preparation and Assistance
  - Geographic Information System (GIS) Analysis and Mapping
  - Light and Commuter Rail System and Corridor Planning
  - Multi-modal Planning and Integration
  - National Environmental Policy Act (NEPA) Compliance
  - Categorical Exclusions
  - Class of Action Determinations
  - Environmental Assessments
  - Environmental Impact Statements
  - Specialty Environmental Analysis (Noise and Vibration, Biological Assessments, Cultural Resources, etc.)
  - Partner and Public Engagement Strategy and Implementation
  - Graphic Design
  - Meeting/ Workshop Facilitation Services
  - Stakeholder Coordination
  - Performance Measures and Prioritization
  - Procurement Assistance, Including Scope Development and Selection Assistance
  - Service Planning
  - Station Area Planning, including Urban Design
  - Strategic Planning
  - Traffic Impact Analysis
  - Transit Development Plans
  - Transit Master Plans
  - Transit-Oriented Development
  - Travel Demand Modeling and Ridership Forecasting
  - Transportation Demand Management (TDM) Program Outreach and Management
  - Quality Assurance and Quality Control

## **3. Operational Efficiency/Technology Assessment/Deployment**

- TBARTA desires the Consultant(s) to have the capability to undertake various tasks related to agency operational functions and use of technology solutions including, but not limited to;
  - Administration Organization and Cost Review
  - Alternative Fuel Vehicle Analysis
  - Automatic Passenger Counting Systems
  - Bus Maintenance Audits and Training
  - Cost Allocation and Analysis Recommendation
  - Development of System Evaluation Criteria
  - Facility and Vehicle Overhaul Programs & Cost Estimates
  - Facility Utilization Audits and Recommendations
  - Fleet Utilization Audits and Recommendations
  - Fuel Management Systems

- GIS Mapping
- Implementation Analysis of Implementing Alternative Fuel Vehicles
- Intelligent Transportation Systems Planning
- Maintenance Plan & Procedures Development
- Maintenance Practices/Procedures Audits
- Manpower Utilization Audits and Recommendations
- Next Stop/Real Time Passenger Display Systems & Integration
- Operational Efficiency Reviews
- Performance Reporting
- Planning Information System Applications
- Radio Communication Infrastructure Technical Support
- Safety and Security Audits and Training
- Service Performance Monitoring Analysis and Reporting
- Strategic Planning and Facilitation Services
- Transit Signal Priority Systems
- Technology Best Practices and Implementation
- Technology Specification and Scope Development
- Transit Demand Modeling
- Transit Scheduling
- Vehicle CAD/AVL/GPS Systems
- Vehicle Fleet Plan Development
- Vehicle Technology Assessments
- Video Surveillance Systems (Facility and Vehicle)
- Quality Assurance and Quality Control

#### **4. Marketing, Outreach, Advertising and Public Relations Services**

- TBARTA desires the Consultant(s) to have the capability to undertake various tasks related to agency Marketing, Advertising and Public Relations Services including, but not limited to;
- Website Design, Maintenance, and Optimization
- General Agency Advertising and Marketing
- Event Planning, Management, and Coordination
- Public Relations and News Media Assistance
- Agency and Project Branding and Sub-Branding
- Creative strategy development
- Promotional campaigns and materials
- Graphic Design
- Development of Branding and Design Guidance Manuals
- Development of collateral products such as brochures, book covers, bookmarks, resource cards and booklets, promotional stickers, pins, buttons, pencils and other items
- Other Creative Services, such as copywriting; editorial and digital design; video production; editing and photography; and social media engagement



## EXHIBIT K

### AGREEMENT TO FURNISH A GENERAL CONSULTANT SERVICE CONTRACT

THIS AGREEMENT is made on \_\_\_\_\_, by and between the Tampa Bay Area Regional Transit Authority ("TBARTA"), an independent special district with its principal place of business located at 4350 Cypress Street, Suite 700, Tampa, FL 33607 and \_\_\_\_\_ ("Contractor"), a \_\_\_\_\_ with its principal place of business located at \_\_\_\_\_ (collectively, the "Parties").

WHEREAS, TBARTA issued a Request for Qualifications No. RFQ-TBARTA-003 for General Service Consultant(s) on December 26, 2018 (the RFQ); and

WHEREAS, Contractor timely submitted a proposal in response to the RFQ on or before January 23, 2019 ("Contractor's Response"); and

WHEREAS, TBARTA's Board of Directors awarded the RFQ to Contractor at its Board of Directors Meeting on \_\_\_\_\_, and the parties wish to set forth the terms and conditions of their agreement for a total amount not to exceed \$\_\_\_\_\_ ("Total Contract Price").

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. **RECITALS.** The above recitals are true and correct and incorporated herein by reference.
2. **CONTRACT DOCUMENTS.** The "Contract Documents" shall mean and refer to this Agreement, the RFQ including all exhibits attached thereto including and all duly executed and issued addenda (attached hereto as **Exhibit A**), the Hourly Rates Schedule (as defined below and attached as **Exhibit B**), any and all Task Order Schedule(s) (as defined below and attached as composite **Exhibit C**), Contractor's Response (attached hereto as **Exhibit D**), and, for all task orders using federal funds, the Federal Transit Administration (FTA) Contract Clauses (attached hereto as **Exhibit E**). All of the foregoing are incorporated herein by reference and are made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities or conflicts between this Agreement and the Exhibits, this Agreement takes precedence over the Exhibits and any inconsistency between exhibits will be resolved in the following order:

Exhibit A	RFQ
Exhibit B	Hourly Rates Schedule
Composite Exhibit C	Task Order Schedule(s)
Exhibit D	Contractor's Response

Notwithstanding the foregoing, for all task orders in which federal funds are used, the Parties acknowledge and agree that the FTA Contract Clauses shall control and take precedence over any conflicts.





- 3. SCOPE OF SERVICES.** Contractor, at the direction of TBARTA, shall furnish the general consultant services described and in accordance with the specifications, tasks, and scope of work set forth in the RFQ (the "Services"). It is the sole responsibility of Contractor to read the specifications and understand them.
- 4. EFFECTIVE DATE AND TERM OF AGREEMENT.** This Agreement shall become effective and commence on the date of award by TBARTA's Board of Director's ("Effective Date") and shall remain in effect for three (3) years, and may be renewed upon mutual written agreement of the Parties for up to two (2) additional one (1) year terms (each a "Renewal Term").
- 5. TERMS OF PERFORMANCE.**
- 5.01 *Task Order Based Contract.* TBARTA will issue written orders for the tasks that it needs completed ("Task Order(s)"). Upon issuance, Contractor shall respond in writing with specifications for the Task Order, including the key personnel that will be assigned, an estimate of the hours required and total cost to complete the Task Order and all deliverables, a schedule of all tasks, deliverables, and proposed completion date, and any other information required by the RFP or which may be requested by TBARTA in order for TBARTA to monitor the Task Order ("Task Order Schedule"). Contractor shall not begin work on any Task Order until TBARTA has reviewed and approved the Contractor's Task Order Schedule, incorporating any changes or modifications it deems necessary, in its sole discretion. Once approved, the Task Order Schedule shall be appended to this agreement and incorporated as an exhibit and all work and deliverables shall be completed by the date set forth in the Task Order Schedule, unless modified in writing by the Parties. In the event the Task Order Schedule approved during the term of this Agreement or any Renewal Term and has a completion date beyond the term of this Agreement set forth in Paragraph 4 above, the terms and conditions of this Agreement shall be automatically extended through the completion of the Task Order.
- 5.02 *Representatives.* Prior to the start of any work under this Agreement, Contractor shall designate a primary and alternate representative, who will have management responsibility for the Services and who have authority to act on technical matters and resolve problems with the Services and the Contract Documents, to TBARTA in writing. Such designation shall include the contact information (including phone numbers) of Contractor's representative. TBARTA will advise Contractor in writing of the personnel who will represent TBARTA in the administration of the Contract Documents. Such writing from TBARTA will include the specific duties of each individual and each representative's limits of authority.
- 5.03 *Non-exclusive Contract.* TBARTA specifically reserves the right to contract with other entities for the services described in the Contract Documents or for similar services if it deems, in its sole discretion, such action to be in TBARTA's best interest.
- 5.04 *Status Reports:* Contractor shall submit monthly written status reports to TBARTA outlining the status of the each Task Order issued by TBARTA throughout the term of this Agreement. Each status report shall be a concise narrative description of activities to date and planned activities until the next status report. A final report, one (1) original and two copies, shall be submitted by Contractor along with all deliverables upon completion of each Task Order. If a monthly schedule submitted by the Consultant includes changes affecting the achievement of deliverables based



on circumstances the Consultant believes to be a delay caused by TBARTA, the Consultant should clearly identify those changes.

5.05 *Reviews*: Throughout this Agreement, Contractor shall allow representatives of TBARTA to visit the offices and other places of Contractor's work periodically without prior notice to monitor Contractor's work completed or progress on Task Orders. The Parties agree that if either party deems it advisable to hold either a conference or any inspection of work in progress, all parties will be notified and may participate.

5.06 *Contractor Responsibility*: Contractor shall provide services of first quality, and the workmanship must be in accordance with customary standards of the various trades and industries involved in the Services. The Services and the work associated therewith shall be high-quality in all respects. No advantage will be taken by Contractor in the omission of any part or detail of the Services or Task Order. Contractor hereby assumes responsibility for all materials, equipment, and processes used in the Services, whether the same is manufactured by Contractor or purchased readymade from a source outside Contractor's company.

6. **COMPENSATION**. In consideration of Contractor's faithful performance of the Contract Documents, TBARTA agrees to pay Contractor at the hourly rates negotiated pursuant Section 287.055, Florida Statutes, the "Consultants' Competitive Negotiation Act" (CCNA) and attached hereto as Exhibit B (the "Hourly Rates Schedule") for each Task Order issued and corresponding Task Order Schedule approved by TBARTA. The Hourly Rates Schedule may provide for an annual increase equal to the CPI or 1%, whichever is greater. However, all payments to Contractor individually and in the aggregate shall not exceed the maximum price set forth in each Task Order Schedule, nor the Total Contract Price. Payment shall be made only for work which is actually performed and approved by TBARTA. Contractor shall submit invoices to TBARTA no later than the fifteenth (15) day of the month immediately following the month in which the work or services on each respective Task Order is completed. TBARTA will make payment within forty-five days (30) days after approval of Contractor's invoice.

6.01 *Invoices*. All invoices shall be submitted in accordance with the Florida Prompt Payment Act with all details prescribed by TBARTA, and delivered to the following address:

Tampa Bay Area Regional Transit Authority  
Attention: Susan Ebner  
4300 West Cypress Street, Suite 700  
Tampa, FL. 33607

6.02 *Disputed Invoices*. In the event of a disputed invoice, only that portion so contested will be withheld from payment and the undisputed portion will be paid.

6.03 *Subcontractor Payments*. In accordance with 49 CFR Part 26.29, Contractor shall pay each subcontractor or subcontractor for satisfactory performance of its contract with the subcontractor or subcontractor no later than thirty (30) days from the receipt of each payment Contractor receives from TBARTA. Contractor shall further return retainage payments to each subcontractor or subcontractor within thirty (30) days after the subcontractor's or subcontractor's work is satisfactorily completed. Contractor shall include as part of its contract or agreement with each subcontractor or subcontractor for work and material a "Prompt Payment Clause". The Prompt



Payment Clause shall require payment to all subcontractors and subcontractors, not only DBEs, for all labor and material for work completed within thirty (30) days of receipt of progress payments from TBARTA for said work. The Prompt Payment Clause shall further stipulate the return of retainage within 30 days after the subcontractor or subcontractor achieves the specified work as verified by payment from TBARTA.

- 6.04 *Disputes with Subcontractor Payments.* Any disputes that arise regarding the satisfactory completion of work by a subcontractor or subcontractor may be brought to the attention of TBARTA, who will make a determination. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval from TBARTA. This clause applies to both DBE and non-DBE subcontractors.
- 6.05 *Failure to Abide by DBE Requirements.* Failure by Contractor to carry out the requirements of TBARTA's DBE Program and the requirements of 49 CFR Part 26, and/or timely return of retainage, without just cause, is a material breach of this Agreement, which may result in TBARTA withholding payment from Contractor until all delinquent payments have been made (no interest will be paid for the period that payment was withheld), termination of this Agreement, or other such remedy as TBARTA deems appropriate.

## **7. WARRANTIES AND COVENANTS.**

- 7.01 *Patent, Trademark, Copyright, and Trade Secret.* Contractor warrants that the Services, and all goods and work associated therewith do not infringe on any patent, trademark, copyright or trade secret of any third parties and agrees to defend, indemnify and hold TBARTA, its officers, agents, employees, trustees and its successors and assigns, harmless from and against any and all liabilities, loss, damage or expense, including, without limitation, court costs and reasonable attorneys' fees, arising out of any infringement or claims of infringement of any patent, trade name, trademark, copyright or trade secret by reason of the sale or use of any goods or services purchased under this Agreement. TBARTA shall promptly notify Contractor of any such claim. TBARTA makes no warranty that the production, sale or use of goods or services under this Agreement will not give rise to any such claim and TBARTA shall not be liable to Contractor for any such claim brought against Contractor. If any invention, improvement, or discovery of the Contractor is conceived or first actually reduced to practice in the course of providing the Services under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Contractor agrees to notify the TBARTA immediately and provide a detailed report. The rights and responsibilities of the Contractor and TBARTA with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.
- 7.02 *Covenants against Gratuities.* Contractor warrants that he or she has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any official or employee of TBARTA with a view toward securing favorable treatment in the awarding, amending, or evaluating performance of contract.
- 7.03 *E-Verify.* Contractor shall utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of: (a) all persons employed by Contractor throughout the term of this Agreement; and (b) all persons, including subcontractors, retained or hired by Contractor,



regardless of compensation, to perform work on the services provided pursuant to the Contract Documents.

## **8. DELAY IN PERFORMANCE/FORCE MAJEURE.**

8.01 *Time of the Essence.* The timely receipt of services and deliveries to TBARTA is essential. If all deliverables under each Task Order are not received on time, TBARTA may cancel the unfilled portion of this Agreement for cause, purchase substitute requirements elsewhere, and recover from Contractor any increased costs and damages thereby incurred by TBARTA.

8.02 *Unavoidable Delay.* If completion of any Task Order, and all deliverables thereunder, is unavoidably delayed, TBARTA may, in its sole and absolute discretion, extend the time for completion for a determined number of days of excusable delay. A delay is unavoidable only if the delay was not reasonably expected to occur in connection with or during Contractor's performance; was not caused directly or substantially by negligent errors, omissions, or mistakes of Contractor, its subcontractors, or its suppliers or their agents; was substantial; and, in fact, caused Contractor to miss delivery dates and could not adequately have been guarded against by contractual or legal means.

8.03 *No Damages for Delay.* Contractor shall not be entitled to any claim for damages on account of hindrances or delays in the work from any cause whatsoever, including any delays or hindrances caused by TBARTA. This paragraph shall include, but not be limited to, any actions which result in delays in scheduling, substantial changes in scope of the Project or substantial increases in the costs of performing the work under the Contract Documents.

8.04 *Notification.* Contractor will notify TBARTA as soon as Contractor has, or should have, knowledge that an event has occurred which will delay completion of a Task Order. Within five (5) working days, Contractor will confirm such notice in writing, furnishing as much detail as is available and including any request for extension of time. Contractor shall supply, as soon as such data is available, any reasonable proofs that are required by TBARTA to make a decision on any request for extension. TBARTA will examine the request and any documents supplied by Contractor and will determine if Contractor is entitled to an extension and the duration of such extension. TBARTA will notify Contractor of its decision in writing. It is expressly understood and agreed that Contractor will not be entitled to any extension and the granting of such extension is in the sole discretion of TBARTA. It is further expressly understood that Contractor shall not be entitled to any damages or compensation, and will not be reimbursed for any losses, on account of delays resulting from any cause.

## **9. DISPUTES, BREACHES, DEFAULTS, OR OTHER LITIGATION.**

9.01 *Claims for Damages:* Should Contractor 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 therefore shall be made in writing to TBARTA within five (5) days of when Contractor knew or should have known of such injury or damage.

9.02 *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 TBARTA or Contractor shall constitute a waiver of any right or duty afforded any of them under this Agreement, 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.

9.03 *Attorneys' Fees.* In the event of legal action or other proceeding arising under this Agreement, TBARTA shall be entitled to recover from Contractor all its reasonable attorneys' fees and cost incurred by TBARTA in the prosecution or defense of such action, or in any post-judgment or collection proceedings and whether incurred before suit, at the trial level or at the appellate level. This shall include any bankruptcy proceedings filed by or against Contractor. TBARTA also shall be entitled to recover any reasonable attorneys' fees and costs incurred in litigating the entitlement to attorneys' fees and costs, as well as in determining the amount of attorneys' fees and costs due to TBARTA. The reasonable costs to which TBARTA will be entitled include costs that are taxable under any applicable statute, rule, or guideline, as well as costs of investigation, copying costs, electronic discovery costs, mailing and delivery charges, costs of conducting legal research, consultant and expert witness fees, travel expenses, court reporter fees and mediator fees, regardless of whether such costs are taxable under any applicable statute, rule or guideline.





## 10. INDEMNIFICATION.

- 10.01 *Indemnification for Architectural or Engineering Firms.* The following applies to all Task Orders for Architectural or Engineering Firms. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless TBARTA and its elected officials, officers and employees, from any and all liabilities, any and all claims, including claims for equitable or injunctive relief, damages, losses and costs, including but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Contractor, its employees, agents, officers, subcontractors and other persons employed or utilized by Contractor in the performance of this agreement. It is the specific intent of the parties hereto that the foregoing indemnification provision comply with Section 725.08, Florida Statutes. It is further the specific intent and agreement of the parties that all the contract documents of any project for which Contractor provided services be hereby amended to include the foregoing indemnification. Contractor expressly agrees that it will not claim, and waives any claim, that this article violates Section 725.08 Florida Statutes, or is unenforceable pursuant to Section 725.08, Florida Statutes. This indemnification obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section, including but not limited to any immunity from or limitation of liability to which TBARTA is entitled to pursuant to the doctrine of sovereign immunity or Section 768.28, Florida Statutes. This indemnification provision shall include claims made by an employee of Contractor against TBARTA and Contractor waives any entitlement to immunity under Section 440.11, Florida Statutes. This indemnification provision shall survive the termination of this agreement however terminated.
- 10.02 *Indemnification.* The following applies to all other Task Orders not covered by Section 10.01. The parties recognize that Contractor is an independent contractor. Contractor agrees to assume liability for and indemnify, hold harmless, and defend TBARTA, its board members, officers, employees, agents and attorneys of, from, and against all liability and expense, including reasonable attorneys' fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, arising out of the execution, performance, nonperformance, or enforcement of this Agreement, whether or not due to or caused by the negligence of TBARTA, its board members, officers, employees, agents, and/or attorneys excluding only the sole negligence of TBARTA, its officers, employees, agents, and attorneys. This includes claims made by the employees of Contractor against TBARTA, and Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. Contractor's liability hereunder shall include all attorneys' fees and costs incurred by TBARTA in the enforcement of this indemnification provision. Notwithstanding anything contained herein to the contrary, this indemnification provision shall not be construed as a waiver of any immunity from or limitation of liability to which TBARTA is entitled to pursuant to the doctrine of sovereign immunity or Section 768.28, Florida Statutes. The obligations contained in this provision shall survive termination of this Agreement, however terminated, and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement.



10.03 *Control of Defense.* Subject to the limitations set forth in this provision, Contractor shall assume control of the defense of any claim asserted by a third party against TBARTA arising from or in any way related to this Agreement and, in connection with such defenses, shall appoint lead counsel, in each case at Contractor's expense. Contractor shall have the right, at its option, to participate in the defense of any third party claim, without relieving Contractor of any of its obligations hereunder. If Contractor assumes control of the defense of any third party claim in accordance with this paragraph, Contractor shall obtain the prior written consent of TBARTA before entering into any settlement of such claim. Notwithstanding anything to the contrary in this provision, Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by TBARTA and all expenses including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of TBARTA, be detrimental in any material respect of TBARTA's reputation; (ii) the third party claim seeks an injunction or equitable relief against TBARTA; or (iii) Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

**11. FEDERAL PROVISIONS. FEDERAL PROVISIONS.** As required by the FTA, for all Task Orders using federal funds, the FTA Contract Terms attached as **Exhibit E** to this Agreement are hereby incorporated by reference as if set forth fully herein and apply to each Task Order which is funded by a grant from the United States of America.

**12. MISCELLANEOUS PROVISIONS.**

12.01 *Entire Agreement.* The Contract Documents, including all exhibits, constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous written or oral negotiations, agreements, proposals and/or understandings. There are no representations or warranties unless set forth in the Contract Documents.

12.02 *Notices.* All notices required or made pursuant to this Agreement shall be made in writing and sent by certified U.S. mail, return receipt requested, addressed to the following:

**To TBARTA:**  
 Pinellas Suncoast Transit Authority  
 Attn: Brad Miller, CEO  
 3201 Scherer Drive  
 St. Petersburg, FL 33716

**To Contractor:**  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

***With required copy to:***

Alan S. Zimmet, Esq.  
 Bryant Miller Olive  
 One Tampa City Center  
 Suite 2700  
 Tampa, FL. 33602



Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section 16.02.

12.03 *Waiver of Remedies for any Breach.* In the event that TBARTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by TBARTA shall only be valid if set forth in writing and shall not limit TBARTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

12.04 *Modification.* The Contract Documents may not be amended or altered without prior written approval by TBARTA. Contractor shall be liable for all costs resulting from and/or for satisfactorily correcting any specification change not properly ordered by written modification to the Contract Documents and signed by TBARTA.

12.05 *Headings and Section References.* The headings and section references in this Agreement are inserted only for the purpose of convenience and shall not be construed to expand or limit the provisions contained in such sections.

12.06 *Authorization.* Both parties to this Agreement represent and warrant that they are authorized to enter into this Agreement without the consent and joinder of any other party and that the parties executing this Agreement have full power and authority to bind their respective parties to the terms hereof.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed on the date first above written.

CONTRACTOR:

TBARTA:

By: \_\_\_\_\_  
Duly Authorized Designee

By: \_\_\_\_\_  
David Green, Executive Director

WITNESS:

Approved as to form:

By: \_\_\_\_\_

By: \_\_\_\_\_  
Alan S. Zimmet, General Counsel



**Exhibit K Attachment 1 - FTA Terms and Conditions**

THIRD PARTY CONTRACT PROVISIONS MATRIX OF APPLICABILITY ..... 2

A.1 ACCESS TO RECORDS AND REPORTS..... 4

A.2 BONDING REQUIREMENTS..... 4

A.3 BUS TESTING ..... 9

A.4 BUY AMERICA REQUIREMENTS ..... 9

A.5 CARGO PREFERENCE REQUIREMENTS ..... 11

A.6 CHARTER SERVICE..... 11

A.7 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT..... 12

A.8 CIVIL RIGHTS LAWS AND REGULATIONS..... 13

A.9 DISADVANTAGED BUSINESS ENTERPRISE (DBE)..... 14

A.10 EMPLOYEE PROTECTIONS..... 19

A.11 ENERGY CONSERVATION..... 21

A.12 FLY AMERICA..... 21

A.13 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION ..... 23

A.14 LOBBYING RESTRICTIONS ..... 24

A.15 NO GOVERNMENT OBLIGATION TO THIRD PARTIES ..... 25

A.16 PATENT RIGHTS AND RIGHTS IN DATA ..... 25

A.17 PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES ..... 26

A.18 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS ..... 27

A.19 PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS..... 28

A.20 RECYCLED PRODUCTS ..... 28

A.21 SAFE OPERATION OF MOTOR VEHICLES ..... 29

A.22 SCHOOL BUS OPERATIONS ..... 29

A.23 SEISMIC SAFETY..... 30

A.24 SUBSTANCE ABUSE REQUIREMENTS ..... 31

A.25 TERMINATION..... 32

A.26 VIOLATION AND BREACH OF CONTRACT ..... 34

A.27 CHANGES TO FEDERAL REQUIREMENTS ..... 36

A.28 CONFORMANCE WITH ITS ARCHITECTURE..... 36

A.29 ADA ACCESS..... 37

**THIRD PARTY CONTRACT PROVISIONS MATRIX OF APPLICABILITY**

<b>PROVISION</b>	<b>COMMENTS</b>	<b>REFERENCE</b>
<b>All FTA Assisted Third Party Contracts and Subcontracts</b>		
No Federal Government Obligations to Third Parties (Use of Disclaimer)		§ 2.f
False or Fraudulent Statements or Claims – Civil and Criminal Fraud		§ 3.f
Access to Third Party Contract Records		§ 15.t
Changes to Federal Requirements		§ 2.c(1)
Civil Rights (Title VI, ADA, EEO (except special DOL construction clause))		§ 12
Disadvantaged Business Enterprises (DBEs)		§ 12.d
Safe Operation of Motor Vehicles		23 U.S. C. Part 402
Incorporation of FTA Terms	Per FTA C 4220.1F.	§ 15.a
<b>Awards Exceeding \$10,000</b>		
Terminations	If 49 CFR Part 18 applies.	§ 11 and § 15.a, which incorporate 49 CFR Part 18
<b>Awards Exceeding \$25,000</b>		
Debarment and Suspension		§ 3.b
<b>Awards Exceeding the Simplified Acquisition Threshold (\$150,000)</b>		
Buy America	When tangible property or construction will be acquired.	§ 14.a
Resolution of Disputes, Breaches, or Other Litigation		§ 56
Clean Air and Water		25.b, 25.c
<b>Awards Exceeding \$100,000 by Statute</b>		
Lobbying		§ 3.d
<b>Transport of Property or Persons</b>		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel.	§ 14.b
Fly America	When property or persons are transported by air between U.S. and foreign destinations, or between foreign locations.	§ 14.c
<b>Construction Activities</b>		
Construction Employee Protections – Davis-Bacon Act	For contracts exceeding \$2,000.	§ 24.a(1)
Construction Employee Protections – Contract Work Hours &	For contracts exceeding \$100,000. OMB Office of Federal Financial	§ 24.a(2)

Safety Standards Act	Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	
Construction. Employee Protections – Sec. 1 Copeland Anti-Kickback Act – Sec. 2 Copeland Anti-Kickback Act	All contracts All construction contracts exceeding \$2,000.	§ 24.a(3)
Bonding for Construction Activities Exceeding \$100,000	5% bid guarantee bond. 100% performance bond. Payment bond equal to: – 50% for contracts < \$1M. – 40% for contracts >\$1M – < \$5M. – \$2.5M for contracts > \$5M.	§ 15.o(1)
Seismic Safety	Construction contracts for new buildings or for existing buildings.	§ 23.e
<b>Non-Construction Activities</b>		
Non-construction Employee Protection – Contract Work Hours & Safety Standards Act	For all turnkey, rolling stock, and operational contracts (except transportation services contracts and open market contracts) exceeding \$100,000.	§ 24.b
<b>Transit Operations</b>		
Transit Employee Protective Arrangements		§ 24.d
Charter Bus Operations		§ 28
School Bus Operations		§ 29
Drug Use and Testing	Safety sensitive functions.	§ 32.b
Alcohol Misuse and Testing	Safety sensitive functions.	§ 32.b
<b>Planning, Research, Development, and Demonstration Projects</b>		
Patent Rights		§ 17
Rights in Data and Copyrights		§ 18
<b>Miscellaneous Special Requirements</b>		
Energy Conservation		§ 26
Recycled Products	Contracts when procuring \$10,000 or more per year of items designated by EPA.	§ 15.k
Conformance with National ITS Architecture	Contracts and solicitations for ITS projects.	§ 15.m
ADA Access	Contracts for rolling stock or facilities construction / renovation.	§ 12.g
Assignability Clause	Procurements through assignments.	§ 15.a, which incorporates 49 CFR Part 18 and 49CFR Part 19
Bus Testing	Contracts for Rolling Stock	49 CFR Part 665

Pre-Award and Post Delivery Audit

Contracts for Rolling Stock

49 CFR Part 663

## A.1 ACCESS TO RECORDS AND REPORTS

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

### Applicability to Contracts

The record keeping and access requirements apply to all contracts funded in whole or in part with FTA funds. Under 49 U.S.C. § 5325(g), FTA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

### Flow Down

The record keeping and access requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### Access to Records and Reports

- 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.

## A.2 BONDING REQUIREMENTS

2 C.F.R. § 200.325  
 31 C.F.R. part 223

### Applicability to Contracts

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold.

- a. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.
- c. A payment bond on the part of the contractor for a tiered amount of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### **Flow Down**

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed the simplified acquisition threshold.

### **Bond Requirements**

#### **Bid Guarantee**

Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer’s or cashier’s check issued by a responsible bank or trust company, made payable to the TBARTA.

In submitting this bid, it is understood and agreed by bidder that TBARTA reserves the right to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of 120 days subsequent to the opening of bids, without the written consent of TBARTA.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within 120 days after the bid opening without the written consent of TBARTA, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent TBARTA’s damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense TBARTA for the damages occasioned by default, then the undersigned bidder agrees to indemnify TBARTA and pay over to TBARTA the difference between the bid guarantee and TBARTA’s total damages so as to make TBARTA whole.

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

#### **Performance Guarantee**

A Performance Guarantee in the amount of 100% of the Contract value is required by the TBARTA to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Agreement. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to TBARTA within ten (10) business days from Contract execution. TBARTA requires all Performance Bonds to be provided by a fully qualified surety company acceptable to TBARTA and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. TBARTA may require additional performance bond protection when the contract price is increased. The increase in

protection shall generally equal 100 percent of the increase in contract price. TBARTA may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by TBARTA if:

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

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

### **Payment Bonds**

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

FTA has determined that payment bonds in the following amounts are adequate to protect FTA's interest and will accept a local bonding policy that meets the following minimums:

- Less Than \$1 Million. Fifty percent (50%) of the contract price if the contract price is not more than \$1 million;
- More Than \$1 Million but Less Than \$5 Million. Forty percent (40%) of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- More Than \$5 Million. Two and one half million dollars (\$2,500,000) if the contract price is more than \$5 million.

### **Sample Bond Certifications**

#### **Performance Guarantee Certification**

The undersigned hereby certifies that the Bidder shall provide a Performance Guarantee in accordance with the Specifications.

Designate below which form of Performance Guarantee shall be provided:

Performance Bond

Irrevocable Stand-By-Letter of Credit

BIDDER'S NAME: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**Performance Bond**

KNOW ALL MEN BY THESE PRESENTS: that \_\_\_\_\_

(Insert full name and address and legal title of Contractor) as Principal, hereinafter called Contractor, and

\_\_\_\_\_

(Insert full name and address or legal title of Surety) as Surety, hereinafter called Surety, are held and firmly bound unto TBARTA as Obligee, hereinafter called Authority, in the amount of Dollars (\$) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated, \_\_\_\_\_ 20\_\_\_\_, entered into a contract with TBARTA for Contract No. \_\_\_\_\_, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by TBARTA.

Whenever Contractor shall be, and is declared by TBARTA to be in default under the Contract, TBARTA having performed TBARTA's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

1. Complete the Contract in accordance with it terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if TBARTA elects, upon determination by TBARTA and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the Authority, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by TBARTA to Contractor under the Contract and any amendments thereto, less the amount properly paid by TBARTA to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than TBARTA or the heirs, executors, administrators or successors of PST.

Signed and sealed this day of \_\_\_\_\_ 20\_\_\_\_.

WITNESS \_\_\_\_\_ PRINCIPAL \_\_\_\_\_

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (Title)

WITNESS \_\_\_\_\_ SURETY \_\_\_\_\_

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (Title)

**Attach hereto proof of authority of officers or agents to sign bond.**

**Irrevocable Stand-By Letter Of Credit Certificate**

The undersigned states that he/she is \_\_\_\_\_ of the  
(Title)

\_\_\_\_\_ (The "Beneficiary") and hereby  
(Name of Beneficiary)

Certifies on behalf of the Beneficiary to \_\_\_\_\_ (the "Bank"), with  
(Name of Issuing Bank)

Reference to Irrevocable Standby Letter of Credit No. \_\_\_\_\_ Issued by the  
Bank (the "Letter of Credit"), that:

- 1. The undersigned is duly authorized to execute and deliver this certificate on behalf of the Beneficiary.
- 2. The Beneficiary is making a drawing under the Letter of Credit.
- 3. An Event of Default has occurred under Contract No. .
- 4. The amount of the draft presented with this certificate does not exceed the total maximum amount drawable today under the Letter of Credit as provided therein.

IN WITNESS WHEREOF, this certificate is executed this day of \_\_\_\_\_, 20\_\_\_\_.

(NAME OF BENEFICIARY)

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Bank Draft**

**FOR VALUE RECEIVED**

Pay on presentment to \_\_\_\_\_ the sum of \_\_\_\_\_ Dollars (\$)  
(Name of Beneficiary)



Charge the Account of \_\_\_\_\_ Irrevocably Standby Letter of  
(Name of Issuing Bank)

Credit No. \_\_\_\_\_ Dated: \_\_\_\_\_ 20\_\_ .

To \_\_\_\_\_  
(Name of Issuing Bank)

**NAME OF BENEFICIARY**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**A.3 BUS TESTING**

49 U.S.C. § 5318(e)  
49 C.F.R. part 665

**Applicability to Contracts**

The Bus Testing requirements pertain only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA. Recipients are responsible for determining whether a vehicle to be acquired requires full or partial testing or has already satisfied the bus testing requirements by achieving a passing test score in accordance with 49 C.F.R. part 665. Recipients must certify compliance with FTA's bus testing requirements in all grant applications for FTA funding for bus procurements.

**Flow Down**

There is no flow down requirement for Bus Testing.

**Bus Testing**

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

**A.4 BUY AMERICA REQUIREMENTS**

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

**Applicability to Contracts**

FTA's Buy America law and regulations apply to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project. FTA cautions that its Buy America regulations are complex. Additional detailed information on FTA's Buy America regulation at FTA's website.

**Flow Down**

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

**Buy America**

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

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

***In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron or manufactured products, use the certifications below.***

*Certificate of Compliance with Buy America Requirements*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Company: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Certificate of Non-Compliance with Buy America Requirements*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Company: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

***In accordance with 49 C.F.R. § 661.12, for the procurement of rolling stock (including train control, communication, and traction power equipment) use the following certifications:***

*Certificate of Compliance with Buy America Rolling Stock Requirements*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations of 49 C.F.R. § 661.11.

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_

Company: \_\_\_\_\_

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

Title: \_\_\_\_\_

*Certificate of Non-Compliance with Buy America Rolling Stock Requirements*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2)(C), and the applicable regulations in 49 C.F.R. § 661.7.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

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

Title: \_\_\_\_\_

**A.5 CARGO PREFERENCE REQUIREMENTS**

46 U.S.C. § 55305  
46 C.F.R. part 381

**Applicability to Contracts**

The Cargo Preference Act of 1954 requirements applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.

**Flow Down**

The Cargo Preference requirements apply to all contracts 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 loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**A.6 CHARTER SERVICE**

49 U.S.C. 5323(d) and (r)  
Page 11 of 37  
Exhibit K Attachment 1

## 49 C.F.R. part 604

**Applicability to Contracts**

The Charter Bus requirements apply to contracts for operating public transportation service.

**Flow Down**

The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

**Charter Service**

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(d);
2. FTA regulations, "Charter Service," 49 C.F.R. part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

**A.7 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

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

**Applicability to Contracts**

The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$150,000. Each contract and subcontract must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**Flow Down**

The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

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).

## **A.8 CIVIL RIGHTS LAWS AND REGULATIONS**

### **Applicability to Contracts**

The following Federal Civil Rights laws and regulations apply to all contracts.

1. Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to:
  - a. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
  - b. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
2. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
4. Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### **Flow Down**

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

### **Civil Rights and Equal Opportunity**

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

## **A.9 DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

49 C.F.R. part 26

### **Background and Applicability**

The Disadvantaged Business Enterprise (DBE) program applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year. All FTA recipients above this threshold must submit a DBE program and overall triennial goal for DBE participation. The overall goal reflects the anticipated amount of DBE participation on DOT-assisted contracts. As part of its DBE program, FTA recipients must require that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, certify that it has complied with the requirements of 49 C.F.R. § 26.49. Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation, are eligible to bid.

## Flow Down

The DBE contracting requirements flow down to all third party contractors and their contracts at every tier. It is the recipient's and prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subrecipients/contractors/subcontractors. Should a subcontractor fail to comply with the DBE regulations, FTA would look to the recipient to make sure it intervenes to monitor compliance. The onus for compliance is on the recipient.

## Clause Language

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 TBARTA 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).

## Overview

It is the policy of TBARTA 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 TBARTA 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. TBARTA shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, TBARTA 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 TBARTA.

### **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 TBARTA deems appropriate.

### **DBE Participation**

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

1. Certified, at the time of bid opening or proposal evaluation, by the Florida Department of Transportation 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 TBARTA.

### **DBE Participation Goal**

The DBE participation goal for this Contract is set at \_\_\_\_\_%. 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 TBARTA.
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), TBARTA will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that TBARTA will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:



1. Documented communication with TBARTA's DBE Liaison (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, TBARTA 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, TBARTA 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, TBARTA may view this as evidence of the Bidder having made good faith efforts.

### **Administrative Reconsideration**

Within five (5) business days of being informed by TBARTA 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 TBARTA's DBE Liaison. The DBE Liaison 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. TBARTA 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 TBARTA's prior written consent. TBARTA 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 TBARTA 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**

TBARTA 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 TBARTA 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 Liaison with copies provided to the Director of Procurement. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- TBARTA to have access to necessary records to examine information as TBARTA 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 TBARTA, 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 this solicitation.

### **Sanctions for Violations**

If at any time TBARTA 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, TBARTA 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 \_\_\_\_\_% 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 DBE 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

**A.10 EMPLOYEE PROTECTIONS**

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

**Applicability to Contracts**

Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:

1. Prevailing Wage Requirements
  - a. Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act");
  - b. The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and
  - c. U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
  
2. "Anti-Kickback" Prohibitions
  - a. Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;
  - b. Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145; and

c. U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. part 3.

3. Contract Work Hours and Safety Standards

- a. Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and
- b. U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.

**Flow Down**

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. The Davis-Bacon Act and the Copeland "Anti-Kickback" Act apply to all prime construction, alteration or repair contracts in excess of \$2,000. The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.

**Prevailing Wage and Anti-Kickback**

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

**Contract Work Hours and Safety Standards**

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

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

The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime

Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

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

### **Contract Work Hours and Safety Standards for Awards Not Involving Construction**

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

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

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

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

## **A.11 ENERGY CONSERVATION**

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

### **Applicability to Contracts**

The Energy Policy and Conservation requirements are applicable to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.

### **Flow Down**

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### **Energy Conservation**

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

## **A.12 FLY AMERICA**

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

Page 21 of 37

Exhibit K Attachment 1

## 48 C.F.R. part 47.4

**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 U.S. DOT has determined meets the requirements of the Fly America Act.

**Flow Down Requirements**

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

**Fly America Requirements**

- a. Definitions. As used in this clause--

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

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

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

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

**Statement of Unavailability of U.S.-Flag Air Carriers**

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

\_\_\_\_\_ (End of statement)

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

## A.13 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 Order 12549  
 Executive Order 12689

### Background and Applicability

A contract award (of any tier) in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.

### Flow Down

Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

### Debarment, Suspension, Ineligibility and Voluntary Exclusion

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 Government wide 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 any federally assisted Award.

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

The certification in this clause is a material representation of fact relied upon by TBARTA. If it is later determined by the TBARTA that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the TBARTA, 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.

**A.14 LOBBYING RESTRICTIONS**

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

**Applicability to Contracts**

The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. 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 agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**Flow Down**

The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5).

**Lobbying Restrictions**

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



## **A.15 NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

### **Applicability to Contracts**

The No Obligation clause applies to all third party contracts that are federally funded.

### **Flow Down**

The No Obligation clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### **No Federal Government Obligation to Third Parties.**

TBARTA 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.

## **A.16 PATENT RIGHTS AND RIGHTS IN DATA**

2 C.F.R. part 200, Appendix II (F)  
37 C.F.R. part 401

### **Applicability to Contracts**

If the recipient or subrecipient wishes to enter into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award, the recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. Except in the case of an "other agreement" in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent the invention for Federal Government purposes. The FTA has the right to:

1. Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and
2. Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

### **Flow Down**

The Patent Rights and Rights in Data requirements flow down to all third party contractors and their contracts at every tier that meet the definition of a research-type project under 37 U.S.C. § 401.2.

### **Intellectual Property Rights**

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant TBARTA intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,"

and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
  - a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
  - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

## **A.17 PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES**

49 U.S.C. 5323(m)  
49 C.F.R. part 663

**Applicability to Contracts**

Recipients purchasing revenue service rolling stock with FTA funds must comply with the pre-award and post-delivery audit requirements set forth in 49 U.S.C. 5323(m) and supplemented by 49 C.F.R. part 663. For more information about pre-award and post-delivery audit requirements, go to FTA's Buy America website.

**Flow Down**

There is no flow down requirement for Pre-Award and Post-Delivery Audits of Rolling Stock.

**Pre-Award and Post-Delivery Audit Requirements**

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

**A.18 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

**Applicability to Contracts**

The Program Fraud clause applies to all third party contracts that are federally funded.

**Flow Down**

The Program Fraud clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

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

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

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 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.

## A.19 PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

49 U.S.C. § 5333(b) (“13(c)”)  
29 C.F.R. part 215

### Applicability to Contracts

The Public Transportation Employee Protective Arrangements apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.

### Flow Down

The employee protective arrangements clause flows down to all third party contractors and their contracts at every tier.

### Public Transportation Employee Protective Arrangements

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. **U.S. DOL Certification.** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
2. **Special Warranty.** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
3. **Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

## A.20 RECYCLED PRODUCTS

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

### Applicability to Contracts

The Resource Conservation and Recovery Act, as amended, (42 U.S.C. § 6962 et seq.), requires States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

### Flow Down

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

### **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.

## **A.21 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

### **Applicability to Contracts**

The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third party agreements supported with Federal assistance.

### **Flow Down**

The Safe Operation of Motor Vehicles requirements flow down to all third party contractors at every tier.

### **Safe Operation of Motor Vehicles**

#### **Seat Belt Use**

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

#### **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.

## **A.22 SCHOOL BUS OPERATIONS**

49 U.S.C. 5323(f)  
49 C.F.R. part 605

### **Applicability to Contracts**

The School Bus requirements apply to contracts for operating public transportation service.

**Flow Down**

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

**School Bus Operations**

The Contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

**A.23 SEISMIC SAFETY**

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

**Applicability to Contracts**

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

**Flow Down**

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

**Seismic Safety**

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in

compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

## **A.24 SUBSTANCE ABUSE REQUIREMENTS**

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

### **Applicability to Contracts**

Third party contractors who perform safety-sensitive functions must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

1. Operating a revenue service vehicle, including when not in revenue service;
2. Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
3. Controlling dispatch or movement of a revenue service vehicle;
4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;
5. Carrying a firearm for security purposes.

Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

### **Flow Down**

The Substance Abuse requirements flow down to all third party contractors at every tier who perform a safety-sensitive function for the recipient or subrecipient.

## **SUBSTANCE ABUSE TESTING**

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Florida, or TBARTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before January 15th and to submit the Management Information System (MIS) reports before February 15th to TBARTA. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to submit for review and approval before contract execution a copy of its Policy Statement developed to implement its drug and alcohol testing program.

## A.25 TERMINATION

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

### Applicability to Contracts

All contracts in excess of \$10,000 must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.

### Flow Down

For all contracts in excess of \$10,000, the Termination clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

#### Termination for Convenience (General Provision)

TBARTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in TBARTA'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 TBARTA to be paid the Contractor. If the Contractor has any property in its possession belonging to TBARTA, the Contractor will account for the same, and dispose of it in the manner TBARTA 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, TBARTA 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 TBARTA 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, TBARTA, 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)

TBARTA, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days 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 TBARTA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from TBARTA setting forth the nature of said breach or default, TBARTA 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 TBARTA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

#### Waiver of Remedies for any Breach

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



TBARTA, by written notice, may terminate this contract, in whole or in part, when it is in the TBARTA's interest. If this contract is terminated, TBARTA 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, TBARTA may terminate this contract for default. TBARTA 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 TBARTA.

#### **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, TBARTA may terminate this contract for default. TBARTA 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 TBARTA goods, the Contractor shall, upon direction of TBARTA, protect and preserve the goods until surrendered to the TBARTA or its agent. The Contractor and TBARTA 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 TBARTA.

#### **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, TBARTA may terminate this contract for default. TBARTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, TBARTA 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 TBARTA 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 TBARTA 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 TBARTA, acts of another contractor in the performance of a contract with TBARTA, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within 10 days from the beginning of any delay, notifies TBARTA in writing of the causes of delay. If, in the judgment of TBARTA, the delay is excusable, the time for completing the work shall be extended. The

judgment of TBARTA 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 TBARTA.

#### **Termination for Convenience or Default (Architect and Engineering)**

TBARTA may terminate this contract in whole or in part, for TBARTA's convenience or because of the failure of the Contractor to fulfill the contract obligations. TBARTA 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 TBARTA all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. TBARTA 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 TBARTA, TBARTA 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, TBARTA may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by TBARTA.

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 TBARTA.

#### **Termination for Convenience or Default (Cost-Type Contracts)**

TBARTA 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 TBARTA 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 TBARTA, or property supplied to the Contractor by TBARTA. If the termination is for default, TBARTA 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 TBARTA and the parties shall negotiate the termination settlement to be paid the Contractor.

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

### **A.26 VIOLATION AND BREACH OF CONTRACT**

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

#### **Applicability to Contracts**

All contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**Flow Down**

The Violations and Breach of Contracts clause flow down to all third party contractors and their contracts at every tier.

**Rights and Remedies of TBARTA**

TBARTA shall have the following rights in the event that TBARTA deems the Contractor guilty of a breach of any term under the Contract.

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.

**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 TBARTA, the Contractor expressly agrees that no default, act or omission of TBARTA shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless TBARTA 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, TBARTA 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 TBARTA takes action contemplated herein, TBARTA will provide the Contractor with sixty (60) days written notice that TBARTA 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**

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 TBARTA's Executive Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance during Dispute**

Unless otherwise directed by TBARTA, 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 TBARTA 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 TBARTA 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 TBARTA 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.

## **A.27 CHANGES TO FEDERAL REQUIREMENTS**

### **Applicability to Contracts**

Requirement applies to all contracts funded in whole or in part with FTA funds.

### **Flow Down**

Requirement extends to all third party contractors and their contracts.

### **Changes to Federal Requirements**

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

## **A.28 CONFORMANCE WITH ITS ARCHITECTURE**

### **Applicability to Contracts**

Requirement applies to all applicable new technology contracts that are federally funded.

### **Flow Down**

Requirement extends to all third party contractors and their contracts.

### **ITS Architecture**

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture in compliance with Sec. 5206(e) of TEA-21, 23 USC 502, and FHWA/FTA's "Transportation Equity Act for the 21st Century; Interim Guidance on Conformity with the National Intelligent Transportation Systems (ITS) Architecture and Standards" 63 Federal Register 70443 et seq. Dec. 21, 1998, and other subsequent Federal directives that may be issued.

## **A.29 ADA ACCESS**

### **Applicability to Contracts**

Requirement applies to all contracts for rolling stock or facilities construction / renovation.

### **Flow Down**

Requirement extends to all third party contractors and their contracts.

### **ADA Access**

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto