PUTTING PEOPLE FIRST
The City of Birmingham

Birmingham Xpress BRT Project

REQUEST FOR QUALIFICATIONS
Solicitation #20-17
BRT Program Management Services

Key Dates
RFQ Issued: September 3, 2019
Deadline for Questions: September 20, 2019 (5:00 P.M. Central)
Qualifications Submittal Due Date: October 4, 2019 (5:00 P.M. Central)

City of Birmingham
Finance Department
Purchasing Division
Room P-100 City Hall
710 North 20th Street
Birmingham, AL 35203-2227
Telephone: (205) 254-2265
Fax: (205) 254-2484
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SECTION 1: NOTICE OF REQUEST FOR QUALIFICATIONS SUBMITTAL

1.1 Description of the Work to be Done

This Request for Qualifications (RFQ) outlines the scope of services requested for the City of Birmingham (COB) Bus Rapid Transit (BRT) Program as well as information that should be included in the response. It is the COB’s intent to award a contract to the responsible Consultant who provides the most responsive Qualifications Submittal conforming to this RFQ. The COB requests Qualifications from Program Management (PM) Services Consultant firms to provide the COB services connected to the construction of the Birmingham Bus Rapid Transit (BRT) Service as further detailed in the Scope of Services. These services shall cover engineering and program management disciplines and will include systems testing, field inspection, document control, change management, scheduling, traffic control, cost estimating and project management and control, among others.

Qualifications Submittal will remain in effect for one-hundred twenty (120) days from the COB’s designated date for receipt of the Qualifications Submittal, unless mutually extended. No pre-award costs will be reimbursed by the COB.

In general, the overall Program Management Services shall be comprised of but may not be limited to the following elements:

- Task 1 – Management / Coordination / Administration
- Task 2 – Construction Services- Office
- Task 3 – Construction Services - Field
- Task 4 – Qualifications Submittal/RFI Processing
- Task 5 – Change Management

The expected scope of services is described more fully later in this document.

1.2 Obtaining Qualifications Submittal Documents

Qualifications Submittal documents may be obtained from the City of Birmingham, Purchasing Division, Room P-100 City Hall, 710 North 20th Street, Birmingham, AL 35203 or by calling (205) 254-2265, fax (205) 254-2484 and requesting a copy to be mailed. Documents requested by mail will be packaged and sent postage paid. Electronic copies may also be downloaded from the City of Birmingham website:

https://www.birminghamal.gov/work/bidding-opportunities/

Any addenda will be available on the internet. Addenda will be mailed to only those vendors who were provided a copy in person or by mail. Interested Firms are responsible for checking the website for addenda until the Qualifications Submittal due date.

1.3 Qualifications Submittal Due Date and Qualifications Submittal Package Requirements

1. Qualifications Submittal must be received no later than 5:00 P.M. Central Time on the date specified in the section below and should be addressed as follows:

Carmen Jones, MAML
Purchasing Agent
City of Birmingham
710 North 20th Street – Suite P-100
Birmingham, Alabama 35203
2. Envelopes or boxes containing Qualifications Submittals shall be sealed and clearly labeled with the City’s Qualifications Submittal number and the solicitation title: Solicitation #20-17 BRT Program Management Services.

3. Interested Firms are requested to submit to the City one unbound hard copy marked “Original,” five (5) additional bound printed copies and one electronic PDF copy of the Qualifications Submittal on a portable jump drive. In case of any discrepancies, the hard copies will be considered by the City in evaluating the Qualifications Submittal, and the electronic version is provided for the City’s administrative convenience only. Qualifications Submittal is deemed to be late if it is received by the City after the deadline stated above. Qualifications Submittal received after the submission deadline will be rejected and kept on file unopened.

1.4 Validity of Qualifications Submittal

Qualifications Submittal and subsequent offers shall be valid for a period of one hundred twenty (120) days from the due date specified above.

1.5 Identification of Source of Funding

Financial support of this project is provided through financial assistance from the USDOT FY 2015 TIGER Discretionary Grant (FAIN No. 5822-2017-1) on a fifty percent (50%) matched basis. Additional sources of funds are provided by the City of Birmingham and/or Birmingham-Jefferson County Transit Authority (BJCTA).

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SECTION 2: INSTRUCTIONS TO INTERESTED FIRMS

2.1 Proposed Schedule for the Procurement

The following is the solicitation schedule for Interested Firms:

- **RFQ Issued**
  - September 3, 2019
- Pre-Qualifications Submittal Conference
  - September 18, 2019
- Questions Due
  - September 20, 2019, 5:00 P.M. Central Time
- Addendum Issued
  - September 25, 2019, 5:00 P.M. Central Time
- **Statement of Qualifications Due**
  - October 4, 2019, 5:00 P.M. Central Time
- Oral Presentations (if required)
  - October 17, 2019
- Recommendation to Award
  - October 18, 2019
- **Contract Execution**
  - November 8, 2019

Note: Dates are subject to change.

Pre-Qualifications Submittal Conference will be held at 2:00 PM on the date identified above in the Transportation Conference Room on the 9th Floor of Birmingham City Hall. The Conference will consist of a brief discussion of the project and the requirements. Requests for clarification will be informally answered at the Pre-Qualifications Submittal Conference. The conference is not mandatory.

2.2 Questions, Clarifications, and Omissions

Formal questions must be submitted via email to the City of Birmingham Purchasing Agent by the time specified above. Those questions properly submitted will then be formally answered via addendum to the RFQ. If a written addendum is issued, it will formally become a part of the Qualifications Submittal documents and binding on all eligible Interested Firms.

**Purchasing Agent’s Contact Information:**
Mrs. Carmen Jones
Purchasing Agent, City of Birmingham
carmen.jones@birminghamal.gov

Responses will be shared with all prospective Interested Firms on the websites listed above. Prospective Interested Firms are reminded that any changes to the RFQ will be by written addenda and posted to the website. A copy of any addenda will be mailed to only those vendors who were provided a copy in person or by mail.

All correspondence, communication and contact in regard to any aspect of this solicitation or offers shall be only with the Contracting Officer identified above. Unless otherwise instructed by the Contracting Officer, Interested Firms and their representatives shall not make any contact with or communicate with any member of the City, or its employees and consultants, other than the designated Contracting Officer, in regard to any aspect of this solicitation or offers.

At any time during this procurement up to the time specified in “Proposed Schedule for the Procurement,” Interested Firms may request, in writing, a clarification or interpretation of any aspect, a change to any requirement of the RFQ, or any addenda to the RFQ. Requests may include suggested substitutes for specified items and for any brand names, which whenever used in this solicitation shall mean the brand name or approved equal. Such written requests shall be made to the Contracting Officer. The Interested Firm making the request shall be responsible for its proper delivery to the City as identified on the form Request for Pre-Offer Change or Approved Equal. Any request for a change to any
requirement of the Contract documents must be fully supported with technical data, test results or other pertinent information showing evidence that the exception will result in a condition equal to or better than that required by the RFQ, without a substantial increase in cost or time requirements.

All responses to Request for Pre-Offer Change or Approved Equal shall be provided to all Interested Firms. Any response that is not confirmed by a written addendum shall not be official or binding on the City.

If it should appear to a prospective Interested Firm that the performance of the Work under the Contract, or any of the matters relating thereto, is not sufficiently described or explained in the RFQ or Contract documents, or that any conflict or discrepancy exists between different parts of the Contract or with any federal, state, local or City law, ordinance, rule, regulation or other standard or requirement, then the Interested Firm shall submit a written request for clarification to the City within the time period specified above.

2.3 Addenda to RFQ

The City reserves the right to amend the RFQ at any time in accordance with “Proposed Schedule for the Procurement.” Any amendments to the RFQ shall be described in written addenda. Notification of the addenda also will be distributed to all such prospective Interested Firms officially known to have received the RFQ. Failure of any prospective Interested Firm to receive the notification or addenda shall not relieve the Interested Firm from any obligation under the RFQ therein. All addenda issued shall become an integral part of the RFQ. Prospective Interested Firms shall acknowledge the receipt of each individual addendum in their Statement of Qualifications Submittal on the form Acknowledgement of Addenda. Failure to acknowledge in the Statement of Qualifications Submittal receipt of addenda may at the City’s sole option disqualify the Statement of Qualifications Submittal.

If the City determines that the addenda may require significant changes in the preparation of Qualifications Submittal, the deadline for submitting the Qualifications Submittal may be postponed no fewer than ten (10) days from the date of issuance of addenda or by the number of days that the City determines will allow Interested Firms sufficient time to revise their Qualifications Submittal. Any new Due Date shall be included in the addenda.

2.4 Conditions, Exceptions, Reservations, or Understandings

Interested Firms are cautioned to limit exceptions, conditions and limitations to the provisions of this RFQ, as they may be determined to be so fundamental as to cause rejection of the Qualifications Submittal for not sufficiently responding to the requirements of the RFQ.

Any and all Deviations must be explicitly, fully and separately stated in the Qualifications Submittal. Qualifications Submittal Deviations must be explicitly and fully stated in the Qualifications Submittal by completing the Form for Qualifications Submittal Deviation, setting forth at a minimum the specific reasons for each Deviation so that it can be fully considered and, if appropriate, evaluated by the City. In addition to the Form for Qualifications Submittal Deviation, deviations made in Section 6 Technical Specifications must be indicated on the Form for Technical Specification Conformance. All Deviations shall be evaluated in accordance with the appropriate evaluation criteria and procedures, and may result in the Interested Firm receiving a less favorable evaluation than without the Deviation.

The Form for Qualifications Submittal Deviation and Form for Technical Specification Conformance shall be included in the Technical package.

2.5 Protest Procedures

All protests must be in writing, stating the name and address of protestor, a contact person, Contract number and title. Protests shall specify in detail the grounds of the protest and the facts supporting the protest, and submitted to:
Nicole King
City Attorney
Office of the City Attorney
710 North 20th Street, Room 600
Birmingham, AL 35203

Protests not properly addressed to the address shown above may not be considered by the City.

Copies of the City’s protest procedures and the protest provisions of FTA Circular 4220.1F or its successor may be obtained from Nicole King, City Attorney Legal Department, 710 North 20th Street, Room 600, Birmingham, AL 35203. Qualifications Submittal will be opened and a Notice of Award will be issued by the City in accordance with the City’s protest procedures and the protest provisions of FTA Circular 4220.1F or its successor.

2.5.1 Pre-Qualifications Submittal Protests

Pre-Qualifications Submittal protests are protests based upon the content of the solicitation documents. Three copies of Pre-Qualifications Submittal protests must be received by the City’s Purchasing office no later than five (5) calendar days prior to the Due Date. Protests will be considered and either denied or sustained in part or in whole, in writing, in a manner that provides verification of receipt, prior to the Due Date for Qualifications Submittal. A written decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor prior to the Due Date for Qualifications Submittal in a manner that provides verification of receipt. A written decision specifying in detail the grounds of the protest and the facts supporting the protest must be received by the City at the appropriate address in “Address,” above, no later than five (5) calendar days after the date such notification is received. Prior to the issuing of the Notice of Award, a written decision stating the grounds for allowing or denying the protest will be transmitted to the protestor and the Interested Firm recommended for award in a manner that provides verification of receipt.

2.5.2 Protests on the Recommended Award

All Interested Firms will be notified of the recommended award. This notice will be transmitted to each Interested Firm at the address contained in its Qualifications Submittal form in a manner that provides verification of receipt. Any Interested Firm whose Qualifications Submittal has not lapsed may protest the recommended award on any ground not specified in “Pre-Qualifications Submittal Protests,” above. Three (3) copies of a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest must be received by the City at the appropriate address in “Address,” above, no later than five (5) calendar days after the date such notification is received. Prior to the issuing of the Notice of Award, a written decision stating the grounds for allowing or denying the protest will be transmitted to the protestor and the Interested Firm recommended for award in a manner that provides verification of receipt.

2.5.3 FTA Review

After such administrative remedies have been exhausted, an interested party may file a protest with the Federal Transit Administration of the U.S. Department of Transportation pursuant to the procedures provided in the FTA C 4220.1F or its successor. FTA review is limited to the alleged failure of the City to have written protest procedures, the alleged failure of the City to follow those procedures, the alleged failure of the City to review a protest or the alleged violation of federal law or regulation.
2.6 Preparation of Qualifications Submittal

2.6.1 Use of Qualifications Submittal Forms

Interested Firms are advised that any forms contained in this RFQ are required to be used for submission of the Qualifications Submittal.

2.6.2 Qualifications Submittal Format Requirements

Qualifications Submittal should directly, specifically and concisely address each of the elements described in the evaluation criteria set forth below, in Section Evaluation and Award. Statements of Qualifications Submittal are limited to 25 pages (excluding resumes) and should follow the format outlined below:

A. Cover Letter
Submit a letter of introduction and an executive summary of the Offer and Qualifications Submittal. The introductory letter must be signed by a person or persons authorized to obligate your firm (or firms in the case of a joint venture) to the commitments set forth in the Offer and Statement in accordance with RFQ requirements. Submission of the letter will constitute a representation by your firm or joint venture that it is willing and able to successfully fulfill Project requirements. The cover letter must also include the following statement: “As an authorized representative of [FIRM], I bind the firm to every condition included in the Offer and Statement of Qualifications Submittal as well as to all the commitments described in this RFQ. This Offer is a firm offer and is binding on [FIRM] for 120 days.”

B. Executive Summary
Submit an executive summary, which should briefly describe the Qualifications Submittal and organization of the Program Management Team and highlight the key points of the Offer and Statement of Qualifications Submittal, including a statement concerning the Contractor’s ability and commitment to meet Project requirements.

C. Consultant Qualifications Submittal

1) Provide the name, address, telephone number and Qualifications Submittal of the Consultant’s Program Management Team to be assigned to the Project. Resumes must first identify relevant experience, starting with the most recent, including titles/positions held, dates employed, names of organizations, names of supervisors/managers, with phone numbers and types and size (including dollar value) of projects worked on with specific roles/responsibilities. Resumes must also list education and training received (degrees earned and names and locations of schools). Resumes must also list any other pertinent credentials, including licenses (type, state registered, and date acquired). Individual resumes are limited to a maximum of three (3) pages.

2) Provide a brief description of your firm or joint venture.

3) Briefly describe the major and relevant projects that your firm or joint venture has managed an/or played key technical roles that involved construction management activities relevant to the BRT.

D. Project Understanding
This section of the Offeror’s response should demonstrate a clear understanding of the Project’s current issues, partners, and financial constraints. The Offeror must demonstrate that their team is multi-disciplined and willing to provide personnel capable of performing multiple functions through past experience and understanding as it relates to the BRT Construction Program. Though it is important to understand all facets of the project including project outreach, political concerns, etc., this section should demonstrate a keen understanding of managing a large construction contract with minimal funds to support design changes and costly change orders and how it will manage RFIs. Following are additional items the Offeror should address in its Qualifications Submittal under this section.
1) Understanding and Approach: Demonstrate your understanding of the Project, Scope, and how you would best organize and manage your team to assist COB to complete this project on schedule and within budget.

2) Staffing of a Multi-Disciplinary Team: Describe how the Firm will staff the team to support the COB through an organizational chart and a narrative that includes the importance of demonstrating the multi-discipline nature of its team and how it meets those functions identified in the scope and the Qualifications Submittal of staff identified in the RFQ. Please provide names for each of the team members identified.

3) Schedule: Please provide a schedule of perceived critical milestones of the project. In this section please provide an understanding of what your team believes could jeopardize the project schedule and what would be your plan to mitigate such.

4) Design Reviews and Design Discrepancies: Understanding that this project has been partially designed, please explain your approach to address potential RFIs the contractor has about the plans and specifications, potential design discrepancies, errors or omissions the CMAR has found in the plans and specifications or other findings of errors and/or omissions should they occur, and especially those that could result in a change order(s). Describe how you would minimize the generation of Extra work bills and RFIs. Describe how you would counter or challenge a contractor who aggressively pursues and demands change orders from the COB at every opportunity.

5) Deliverables and Reporting: To demonstrate your understanding of reporting and communications, please provide a list of the reporting the team will provide to ensure the COB staff, Transit Authority, FTA, utilities, and other involved parties are fully aware of progress, issues to be resolved, etc. This should include those reports, schedules, update to PM Plans and Documents, FTA Quarterly, reports to agency partners, reports required to be reviewed by regulatory agencies and stakeholders.
   a) Daily Work Reports
   b) Weekly Work Reports
   c) Monthly
   d) Quarterly
   e) Annual

6) Buy America: Demonstrate your understanding of managing the Buy America certification program as it applies to this construction project and your team’s role in executing it to the FTA’s satisfaction.

Qualifications Submittal shall be submitted in a sealed package. The package shall be marked as specified herein and shall contain all the Qualifications Submittal documents required. These same requirements shall apply to any best and final offers (BAFOs) that may be requested.

Interested Firms shall submit one unbound original (marked clearly as such), five (5) bound hard copies, and one electronic version in Adobe PDF format on a portable jump drive to the City. In case of any discrepancies, the original will be considered by the City in evaluating the Qualifications Submittal, and the electronic version is provided for the City’s administrative convenience only.

The hard-copy Qualifications Submittal shall be prepared double-sided on 8½ in. × 11 in. paper in at least 11-point font. The hard copies shall be contained in three-ring binders, the contents of which are identified on the outside. Use of 11 in. × 17 in. foldout sheets for large tables, charts or diagrams is permissible but should be limited. Elaborate
formatting is not necessary. Do not provide promotional or advertising information, unless this information is requested and/or is necessary to support the technical Qualifications Submittal.

2.6.3 Proprietary/Confidential Information

The Interested Firm is directed to collect and submit any information it deems to be proprietary or confidential in nature in a separate marked and sealed package. If there is no confidential information, then the Interested Firm should include a statement to that effect. Subject package shall be submitted in accordance with the terms and conditions governing the Qualifications Submittal of Interested Firm’s Qualifications Submittal to this RFQ. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not ensure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such.

The Interested Firm is advised that the City is public and as such may be subject to certain state and/or local Public Records Act provisions regarding the release of information concerning this RFQ. If a request is received by the City for the release of Interested Firm’s proprietary/confidential information, then subject request will be referred to the Interested Firm for review and consideration. If Interested Firm chooses to declare the information proprietary/confidential and withhold it from release, then it shall defend and hold harmless the City from any legal action arising from such a declaration.

2.6.4 Period of Performance

The COB intends to enter into agreement for a term of 12 months, with the option to extend the contract for up two (2) one (1) year periods. At the sole discretion of the COB, the contract may be extended up to twenty-four (24) months using two 1-year option periods. If unilaterally exercised, the COB shall notify the Consultant in writing of its intent to exercise each option at least thirty (30) days prior to the end of contract expiration.

2.6.5 City Treatment of Proprietary/Confidential Information

Access to government records is governed by the Code of Alabama 1975, Section 36-12-40. Except as otherwise required to be disclosed by applicable Code of Alabama 1975, Section 36-12-40, the City will exempt from disclosure proprietary information identified in Package 4.

Upon a request for records from a third party regarding this Qualifications Submittal, the City will notify the Interested Firm in writing. The Interested Firm must respond within seven (7) business days with the identification of any and all “proprietary, trade secret or confidential commercial or financial” information. Failure to respond within the allowed period shall be deemed an approval to release. The Interested Firm shall indemnify the City’s defense costs associated with its refusal to produce such identified information; otherwise, the requested information may be released.

The City shall employ sound business practices no less diligent than those used for the City’s own confidential information to protect the confidence of all licensed technology, software, documentation, drawings, schematics, manuals, data and other information and material provided by Interested Firms and the Contractor pursuant to the Contract that contain confidential commercial or financial information, trade secrets or proprietary information as defined in or pursuant to the Code of Alabama 1975, Section 36-12-40 against disclosure of such information and material to third parties, except as permitted by the Contract. The Contractor shall be responsible for ensuring that confidential commercial or financial information, trade secrets or proprietary information—with such determinations to be made by the City at its sole discretion—bears appropriate notices relating to its confidential character.
2.6.6 Signing of Qualifications Submittal Forms

Qualifications Submittal shall include firm name (and, in the event that the Interested Firm is a joint venture, the names of the individual firms comprising the joint venture); business address; and the name, title, business address, telephone number, facsimile (fax) number and email address of the responsible individual(s) who may be contacted during the Qualifications Submittal evaluation period for scheduling oral presentations and for receiving notices from the City. The Interested Firm shall submit with its Qualifications Submittal a copy of the joint venture agreement.

Qualifications Submittal shall be signed by those individual(s) authorized to bind the Interested Firm. The Interested Firm shall submit evidence of the official’s authority to act for and bind the Interested Firm in all matters relating to the Qualifications Submittal. (In the event that the Interested Firm is a joint venture or consortium, a representative of each of the members of the joint venture or consortium shall execute the Qualifications Submittal. Each joint venture or consortium member is jointly and severally liable for the joint venture or consortium.)

2.6.7 Modification or Withdrawal of Qualifications Submittal

A modification of Qualifications Submittal already received will be accepted by the City only if the modification is received prior to the Qualifications Submittal Due Date, is specifically requested by the City, or is made with a requested BAFO. All modifications shall be made in writing and executed and submitted in the same form and manner as the original Qualifications Submittal.

A Interested Firm may withdraw Qualifications Submittal already received prior to the Qualifications Submittal Due Date by submitting to the City, in the same manner as the original Qualifications Submittal, a written request for withdrawal executed by the Interested Firm’s authorized representative. After the Qualifications Submittal Due Date, Qualifications Submittal may be withdrawn only if the City fails to award the Contract within the Qualifications Submittal validity period prescribed in “Duration of the Validity of Qualifications Submittal,” or any agreed-upon extension thereof. The withdrawal of Qualifications Submittal does not prejudice the right of a Interested Firm to submit another Qualifications Submittal within the time set for receipt of Qualifications Submittal.

2.6.8 Ownership and Cost of Qualifications Submittal Development

All Qualifications Submittals will become the property of the City.

This RFQ does not commit the City to enter into a Contract, to pay any costs incurred in the preparation or presentation of Qualifications Submittal, nor to procure or contract for the equipment.

2.6.9 Confidentiality of Qualifications Submittal

Qualifications Submittal will not be publicly opened. All Qualifications Submittal and evaluations will be kept strictly confidential throughout the evaluation, negotiation and selection process, except as otherwise required by applicable law. Only the members of the Selection Committee and Evaluation Team and other City officials, employees and agents having a legitimate interest will be provided access to the Qualifications Submittal and evaluation results during this period.

2.6.10 Duration of the Validity of Qualifications Submittal

Qualifications Submittal and subsequent offers shall be valid for the period stated in “Section 1.4: Notice of Request for Qualifications Submittal.” The City may request Interested Firms to extend the period of time specified herein by written agreement between the City and the Interested Firm(s) concerned.
2.6.11 Evaluation Committee

An Evaluation Committee, which will include City staff, BJCTA staff, and one or more outside experts, will be established. The Evaluation Committee will carry out the detailed evaluations of Qualifications Submittal, including scoring and establishing final scores for a rank order of Qualifications Submittal representation value to the City from “best” to “lowest”, establishing the Competitive Range, and making the recommendation for selection of the Interested Firm, if any that may be awarded the Contract.

The Evaluation Committee will report its recommendations and findings to the appropriate City individual or body responsible for further negotiations and potentially awarding the Contract.

2.6.12 Review of Qualifications Submittal for Responsiveness and Interested Firms for Responsibility

Each Qualifications Submittal will be reviewed to determine if the Qualifications Submittal is responsive to the submission requirements outlined in this RFQ and if the Interested Firm is responsible.

A responsive Qualifications Submittal is one that follows the requirements of this RFQ, includes all documentation, is submitted in the format outlined in this RFQ, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in the Qualifications Submittal being deemed nonresponsive.

A responsible Interested Firm is one that demonstrates the capability to satisfy the commercial and technical requirements set forth in the Solicitation. A Interested Firm’s failure to demonstrate that it is responsible may result in the Qualifications Submittal being rejected.

Any Qualifications Submittal found to be nonresponsive or Interested Firm found to be non-responsible will not be considered further for award. Qualifications Submittal that do not comply with the RFQ instructions and requirements or do not include the required information may be rejected as insufficient and may not be further considered. The City reserves the right to request a Interested Firm to provide additional information and/or to clarify information. The City’s determination regarding the responsiveness of Qualifications Submittal and the responsibility of a Interested Firm shall be final.

2.6.13 Qualifications Submittal Selection Process

The following describes the process by which Qualifications Submittal will be evaluated and a selection made for a potential award. Any such selection of Qualifications Submittal shall be made by consideration of only the criteria set forth below.

“Qualification Requirements” specifies the requirements for determining responsible Interested Firms, all of which must be met by a Interested Firm to be found qualified. Final determination of a Interested Firm’s qualification will be made based upon all information received during the evaluation process and as a condition for award.

“Qualifications Submittal Evaluation Criteria” contains all the evaluation criteria, and their relative order of importance, by which Qualifications Submittal from a qualified Interested Firm will be considered for selection. An award, if made, will be to a responsible Interested Firm for Qualifications Submittal that is found to be in the City’s best interests or best value, based on price and other evaluation criteria considered. The procedures to be followed for these evaluations are provided in “Evaluation Procedures,” below.
Using the Evaluation Criteria set forth below, the COB will conduct a preliminary evaluation and scoring of the written offers. High scoring offers from the preliminary evaluation may be invited to give an oral presentation. Oral presentations, if given, will be for clarification purposes only.

### 2.7 Qualification Requirements

The following are the requirements for qualifying responsible Interested Firms. All of these requirements should be met; therefore, they are not listed in any particular order of importance. Any Qualifications Submittal that the Evaluation Committee finds does not meet these requirements, and cannot be made to meet these requirements, may be determined by the Evaluation Committee not to be responsible and the Qualifications Submittal rejected. The requirements are as follows:

1. Sufficient financial strength, resources and capability to finance the Work to be performed and to complete the Contract in a satisfactory manner, as measured by the following:
   - Interested Firm’s financial statements prepared in accordance with generally accepted accounting principles of the jurisdiction in which the Interested Firm is located, and audited by an independent certified public accountant; oral statement from the Interested Firm regarding how financial information may be reviewed by the City.
   - Interested Firm’s ability to secure financial guarantees, if required, as evidenced by a letter of commitment from an underwriter, surety or other guarantor confirming that the Interested Firm can provide the required guarantee.
   - Interested Firm’s ability to obtain required insurance with coverage values that meet minimum requirements, evidenced by a letter from an underwriter confirming that the Interested Firm can be insured for the required amount.

2. Evidence that the human and physical resources are sufficient to perform the Contract as specified and to ensure delivery of all equipment within the time specified in the Contract, to include the following:
   - Engineering, management, and service organizations with sufficient personnel and requisite disciplines, licenses, skills, experience and equipment to complete the Contract as required and to satisfy any engineering or service problems that may arise during the warranty period.
   - Adequate manufacturing facilities sufficient to produce and factory-test equipment on schedule.
   - A spare parts procurement and distribution system sufficient to support equipment maintenance without delays and a service organization with skills, experience and equipment sufficient to perform all warranty and on-site Work.

3. Evidence of satisfactory performance and integrity on contracts in making deliveries on time, meeting specifications and warranty provisions, parts availability and steps Interested Firm took to resolve any judgments, liens, Fleet Defects history, or warranty claims. Evidence shall be by client references.

### 2.7.1 Qualifications Submittal Evaluation Criteria

The following are the criteria (not in any order) by which the Qualifications Submittals from responsible Interested Firms will be evaluated and ranked for the purposes of determining any Competitive Range and to make any selection of a Qualifications Submittal for a potential award. If applicable, any exceptions, conditions, reservations or understandings explicitly, fully and separately stated, which do not cause the City to consider a Qualifications Submittal to be outside the Competitive Range, will be evaluated according to the respective evaluation criteria and sub-criteria that they affect.

The City will initially review the Qualifications Submittals for responsiveness. Those Qualifications Submittals that meet the responsiveness requirement will then be scored according to the following criteria.
a. Document Quality
   - Completeness
   - Presentation

b. Project Team Qualifications – Interested Firms are encouraged to pay particular attention to the following characteristics:
   - FTA Experience – Experience working on FTA-funded projects. Experience assisting with FTA reporting, management, testing, start-up, closeout and other processes.
   - Construction Management Experience – Experience with construction scheduling, estimating, QA/QC, technical coordination, and management of contractors and vendors.

Project teams can be made up of multiple entities in order to best provide a strong combination of experience and services.

c. Project Experience/History – Interested Firms are encouraged to highlight FTA-funded projects and projects where construction management services were provided.

d. References – Provide three to five references that can attest to the quality of the services provided on previous relatively similar projects. Projects which involved FTA funding and processes are preferred.

2.7.3 Firm Selection

The City will enter into negotiations to contract with the highest-ranked Interested Firm. Should the terms offered not be desirable to the City, negotiations with successive highly-ranked Interested Firms will follow until a Contract is finalized.

The City reserves the right to negotiate with one or all Interested Firms. The City reserves the right to issue separate Contracts if deemed in the best interest of the City.

2.8 Response to Qualifications Submittal

2.8.1 Single Qualifications Submittal Response

If only one Qualifications Submittal is received in response to this RFQ and it is found by the City to be acceptable, then a qualifications analysis, possibly including an audit, may be performed by or for the City. The Interested Firm has agreed to such analysis by submitting Qualifications Submittal in response to this RFQ.

2.8.2 Availability of Funds

This procurement is subject to the availability of funding. Financial support of this project is provided through financial assistance from the USDOT FY 2015 TIGER Discretionary Grant (FAIN No. 5822-2017-1) on a fifty percent (50%) matched basis. Additional sources of funds are provided by the City of Birmingham and/or Birmingham-Jefferson County Transit Authority (BJCTA).

2.8.3 City Rights

The City reserves the right to cancel the procurement in whole or in part, at its sole discretion, at any time before the Contract is fully executed and approved on behalf of the City.
The City reserves the right to reject any or all Qualifications Submittal, to undertake discussions with one or more Interested Firms, and to accept that Qualifications Submittal or modified Qualifications Submittal which, in its judgment, will be most advantageous to the City, considering price and other evaluation criteria. The City reserves the right to determine any specific Qualifications Submittal that is conditional or not prepared in accordance with the instructions and requirements of this RFQ to be nonresponsive. The City reserves the right to waive any Defects, or minor informalities or irregularities in any Qualifications Submittal that do not materially affect the Qualifications Submittal or prejudice other Interested Firms.

If there is any evidence indicating that two or more Interested Firms are in collusion to restrict competition or are otherwise engaged in anti-competitive practices, the Qualifications Submittal of all such Interested Firms shall be rejected, and such evidence may be a cause for disqualification of the participants in any future solicitations undertaken by the City.

The City may reject Qualifications Submittal that includes unacceptable Deviations as provided in the Form for Qualifications Submittal Deviation.

2.8.4 Execution of Contract

The acceptance of Qualifications Submittal for award, if made, shall be evidenced in writing by a notice of award of Contract delivered to the Interested Firm whose Qualifications Submittal is accepted. Upon notice of award of the Contract to a Interested Firm, the Interested Firm shall commence performance under the Contract by furnishing any required bonds, and by furnishing copies of the certificates of insurance required to be procured by the Contractor pursuant to the Contract documents within seven (7) calendar days after the date of receipt of the notice of award. Failure to fulfill these requirements within the specified time is cause for termination of the Contract under “Termination for Default” in Section 3.

2.9 Conflicts of Interests and Gratuities

Interested Firms are prohibited from engaging in any practice that may be considered a conflict of interest under existing City policies and/or state law, and to refrain from participating in any gifts, favors or other forms of compensation that may be viewed as a gratuity in accordance with existing policies and laws.
SECTION 3: SCOPE OF SERVICES

3.1 Task 1: Management / Coordination / Administration

Provide overall project management services, coordination with the City, monthly progress reports, and invoicing. This effort will include the following elements:

- Organize and layout work for the project staff.
- Prepare schedule updates monthly for COB Presentation.
- Prepare monthly expenditures and PM Consultant scope activities.
- Prepare invoices along with progress reports describing PM services provided each month per COB requirements.
- Provide pre-monthly invoicing estimates for the PM team in coordination with the Project Director prior to the initiation of services the following month.
- Provide weekly progress reports for all PM team members.
- Other duties associated with leading the PM team effort.
- Provide pre-monthly invoice estimates to COB.

3.2 Task 2: Construction Services - Office

- Document Control: All documents shall be uploaded, logged and tracked in a formal internet based document control system (IBDCS) to be selected in conjunction with the COB and the PM. The IBDCS shall be administered and maintained by the PM. Original copies shall be housed at the field office and later transferred to the COB.
- Project Coordination: Liaison with the COB, construction manager at risk (CMAR), design engineer, utilities and other stakeholders on a regular basis to provide status updates and discuss project issues.
- Project Partnering Program: The COB will implement a project partnering program and will require PM representatives to participate in partnering program.
- Project Controls: Prepare, monitor and provide updates to the COB regularly in collaboration with the COB’s Project Controls designee. Detailed progress reports including but not limited to schedule progressions, cost status, and DBE/SBE utilization monitoring will be furnished to the COB via electronic and hard copy format at a monthly interval.
- Program Plans: Provide assistance, development, reviewing, revising and obtaining FTA approvals of the following program plans at key milestones of the program,
  a) Program Management Plan (PMP)
  b) Quality Assurance Plan (QAP)
  c) Construction Management Plan (CMP)
  d) Resident Engineer Manual (REM)
  e) Safety and Security Certification Program (SSCP)
  f) Safety and Security Management Plan (SSMP)
  g) Safety and Security Certification Plan (SSCP)
  h) *Operations and Maintenance Plan (O&M)
i) *Bus Fleet Management Plan (BFMP)

j) *BRT Activation Plan

* PM effort is simply to review if necessary and process. COB will lead these three efforts. The PM team will be required to support, in particular, the Activation Plan which will identify all tasks of COB and its Contractors.

- Plan Interpretation: Provide Technical interpretations of the drawings, specifications, and contract documents, and evaluate requested deviations from the approved design or specifications. Coordinate with the City of Birmingham’s BRT team for resolutions of issues involving scope, schedule, and/or budget changes. Coordinate with EOR for necessary design modifications and plan revisions, as needed. Identify errors or omissions if deemed necessary by COB.

- Weekly Meetings: Lead and chair weekly meetings, including preparation of agenda, meeting minutes, and distribution of minutes to attendees. Outstanding issues to be tracked on weekly basis or more frequent, as necessary. Provide meeting minutes for weekly and all other pertinent meetings requiring such.

- Utility Coordination: The PM team will support utility coordination provided by the Designer to ensure the project team is successful in making all arrangements for timely and cost-effective relocation of existing facilities. This will include preparing independent cost estimates for relocating/protecting in place utilities.

- Permits: The PM team will ensure that the CMAR has secured all construction and environmental permits and that permits are kept current throughout the duration of the project.

- Right of Way and Real Estate Support: The PM, as needed, will be prepared to address additional ROW and Real Estate efforts should they arise including ROW acquisition, title reviews, etc.

- Design Management: The PM shall provide oversight during design to ensure that all approved design changes are recognized and clearly communicated to all impacted parties. PM will also be required to identify errors and omissions and estimate their costs should the designs be found deficient. The PM shall support the COB in any effort required to obtain financial recovery (should this be necessary) due to resolving error and omissions.

- Schedule Reviews: Update the Program Integrated Master Schedule monthly to report overall program progress during construction. Maintain current information regarding critical and near-critical activities, milestones, progress and outstanding issues affecting the schedule. Perform detailed schedule review of the CMAR for conformance with the contract documents and field observed progress. Perform schedule analysis on CMAR provided updates and review schedule for delays and impacts. Coordinate with the CMAR in the development of recovery schedules, as needed, to address delays caused by either events or issues within the CMAR’s control or other events or issues beyond the CMAR’s control. Prepare Weekly Statement of Contract Days (WSCD).

- Lump Sum Breakdown: Evaluate CMAR’s Schedules of Values for lump sum items. Review the Contract Price allocations and verify that such allocations are made in accordance with the requirements of the Contract documents.

- Monthly Progress Payment: Review progress reports with the CMAR and prepare recommendation/request for the COB’s approval.
• Cost Projections: Develop Independent Cost Estimates (ICE) for construction contract change orders. Prepare monthly program cost forecast by analyzing the budgets, tracking actual expenditures, encumbrances, commitments, contingency levels and variances. Forecasts to be based on the current amount paid to date, pending change orders, bid item over/under run projections, contingency levels and other necessary information. A memo to file at substantial completion will be written outlining all of the bid items over/under-runs.

• Record Drawings: Review monthly record drawings prepared by the CMAR and utilities and prepare a conformed set of project record drawings based on contractors provided information and from inspection notes. Record drawings to be verified on a monthly basis, as part of the progress payment to the contractor. Upon project completion, CMAR provided mark ups will be verified for completeness and supplemented with inspections information.

• Contract Data Requirements List (CDRL) Management: Review and monitor all CDRLs and be responsible for administrating all CDRLs and, in addition, be responsible for review/acceptance and/or approval of all those assigned in the attached CDRL to the RFQ.

• Quality Assurance: Review CMAR’s QC Plan for approval. Additionally, the PM shall first review/accept/adopt COB’s QAP and subsequently enforce it to ensure the Contractor is complying with its own QC plan. The PM shall include as a part of the quarterly quality auditing process a review of Quality issues and means to correct deficiencies of the CMAR’s quality control efforts.

• Project Closeout: Obtain all necessary close-out documents such as agency sign-offs, punch-lists, warranties, training manuals, liens etc. Transfer all project documents to the COB for permanent storage.

• Buy America: Ensure CMAR provides all buy America certifications in a timely manner, reviews for accuracy and compliance and recommends to the COB whether to accept or reject.

• Asset Inventory: Gather new asset serial data of equipment manufacture make, model, supplier, purchase year, purchase cost, warranty provisions, replacement cost, expected useful life, unit value, and quantities for the COB’s Enterprise Asset Management System.

### 3.3 Task 3: Construction Services - Field

• The consultant shall provide the services of full time Program Management staff during the construction phase. Construction Phase team staff shall oversee the following items of work, on the project site, and will observe the progress of the construction, including providing day-to-day contact with the CMAR, community outreach team, designated local agency resident engineers and the COB project management team:

  a) Monitor the construction contractor activities to ascertain whether or not they are performing the work in accordance with contract documents and the PM’s approved Resident Engineer Manual.
  b) Provide necessary and qualified on-site inspection to verify compliance with contract documents and mitigation monitoring plan.
  c) Prepare daily inspection reports and digital photographs to be uploaded to the IBDCS by the following morning.
  d) Document all materials delivered to the job sites. All material and equipment delivered shall be tracked for Buy America per FTA requirements.
e) Observe material, workmanship, and construction areas for compliance with the contract documents and applicable codes and notify CMAR and EOR of noncompliance. Advise the City of Birmingham of any non-conforming work observed, and corrective measures/actions taken during site visits.
f) Take periodic digital photographs during the course of construction, and/or coordinate this task to be accomplished by the CMAR. Oversee this activity and ensure photos are uploaded to the IBDCS for documentation.
g) Coordinate with all permitting agencies for all necessary permits needed for the project.
h) Coordinate necessary inspections with the local agencies and utility companies assigned inspectors.
i) Coordinate with all Utilities.
j) Interpret contract documents in coordination with the City of Birmingham project management team and Procurement Department.
k) Monitor SWPPP compliance.
l) Monitor and inspect Traffic Control Plan compliance.
m) Monitor Environmental Mitigation Compliance.
n) Observe and document the days/hours that the contractor’s personnel are on-site.
o) Upon substantial completion of work, coordinate with the EOR and affected agencies to prepare a punch list of items to be completed or corrected. Coordinate final inspection with the EOR and those agencies.
p) Coordinate with the utility agencies contractors performing utility relocation for the BRT project.

- Material Testing: Document and evaluate results of testing and address deficiencies. If needed, coordinate the work of testing laboratories (as part of Other Direct Costs) in observation and testing of materials used in construction to verify contractor’s tests results.

- System Testing and Pre-Revenue Operations: The PM will review, oversee, witness and prepare reports on the following BRT systems installed, configured, and tested by the CMAR.
  a) Carrier Transmission System (CTS)
  b) SCADA System
  c) CCTV System, including head-end servers
  d) Public Address equipment, including head-end servers
  e) Fare Collection System (FCS)
  f) CTS network switches
  g) Dynamic Message Sign (DMS) System
  h) Clipper System
  i) Transit Signal Priority System
  j) Hardware and Software, including head-end equipment at the OCC
  k) Traffic Signal System

During the system testing and pre-revenue phase, the Systems Testing Engineer shall develop ROW access plans/procedures coordinating/supporting/scheduling the installation and testing of all traffic appliances, and system elements identified above. This effort will also include developing procedures for ROW access for all activities requiring such. This will include ROW access for construction, testing, and pre-revenue operations.

- Substantial Completion: Upon substantial completion of work, coordinate with the COB’s project management team, EOR and Right-of-Way owners to perform a project inspection and develop a comprehensive list of deficiencies or punch list of items to be completed by the contractor. A punch list and Certification of Substantial Completion shall be prepared in conjunction with the EOR.
3.4 Task 4: Qualifications Submittal / Task 4: RFI Processing

- Qualifications Submittals: Coordinate and perform design and administrative reviews of drawings, samples, traffic control plans, test reports, and other Qualifications Submittals from the CMAR for compliance with the contract documents. All Qualifications Submittals shall be logged and tracked in an IBDCS.

- Request for Information (RFI): Review and respond to RFI’s. Coordinate RFI reviews and responses from design engineer and other stakeholders, as needed. All RFI’s shall be logged and tracked in the IBDCS.

- Record of Material (ROM): Maintain the ROM according to the COB and FTA requirements. The ROM shall track all of the material delivered to the site including manufacturers/supplier for Buy America requirements, material compliance documentation and other required documentations.

- As Built Documentation: The PM team shall ensure all project record plans or as-built drawings are field and transferred to the COB at project closeout.

- Operations and Maintenance (O&M) Manuals and Training: The PM team shall ensure all project related documents related to O&M manuals and training are secured from the CMAR and transferred to the COB.

3.5 Task 5: Change Management

- The CM team shall log and track all change orders in an IBDCS.

- Change Orders: Develop change orders per the COB’s guidelines. Provide technical assistance to negotiate change orders and assist in resolution of disputes which may occur during the course of the project. Prepare independent cost estimate, time impact analysis, change order request form and all back up documentations necessary in addition to CMAR’s pricing for each of the change orders.
SECTION 4: DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOALS

As a matter of public policy, the City of Birmingham agrees to make opportunities available to the maximum extent possible, to actively include Historically Underutilized Business Enterprises (HUBE’s) such as architectural firms, engineering firms, investment banking firms, other professional consultant services providers, and construction contractors as part of business, economic and community revitalization programs.

Interested firms should also see the Federal language regarding DBE’s in a later section of this document.
SECTION 5: REQUIRED CONTRACT CLAUSES

The City will supply a prototype contract that it will present to the selected firm/team. In addition, the City will ensure that the following clauses must be placed in every U.S. DOT assisted contract and subcontract:

Contract Assurances:

The contractor 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 CFR Part 26 in the award and administration of U.S. DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the City of Birmingham deems appropriate.

Prompt Payment:

The prime contractor agrees to pay each subcontractor under his prime agreements for satisfactory performance of its contract no later than 7 days from the receipt of each payment the contractor receives from the City of Birmingham. The prime contractor agrees to further return retainage payments to each subcontractor within 7 days after the subcontractor’s work is successfully completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following the written approval of the City of Birmingham. This clause applies to both DBE and non-DBE subcontractors.

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SECTION 6: ATTACHMENTS

6.1 City of Birmingham Transparency in City Government Disclosure Form

APPLICABLE TO ALL CITY CONTRACTS AND APPOINTMENTS
NOT GOVERNED BY STATE COMPETITIVE BID LAWS

INSTRUCTIONS:

This form must be fully completed by each individual, firm, group, agency, non-profit and other entity (hereinafter referred to as “you” or “Applicant”) seeking to do business with the City, provide services to the City, enter into a contract or appointment with the City, or apply for City funding.

Submit completed forms to the Mayor’s Office, Third Floor City Hall – Attention: Internal Audit and Contract Compliance Division. Answer all questions applicable to you. Respond “Not applicable” or “NA” if a question does not apply to you. Attach additional pages if needed. Completed forms will be submitted to the Birmingham City Council along with the Applicant’s proposed contract, appointment and/or funding request.

1. Name of Applicant:

2. Physical Street Address of Applicant:

3. Mailing Address of Applicant (if different from street address):

4. Phone Number of Applicant:

5. Key Contact Person for Applicant:

6. Identify all officers, directors, owners, substantial investors in (5% or more of Applicant’s stock) and partners of the Applicant:

7. Are any of these persons City employees?

8. Are any of these persons related by blood or by marriage to City officials or employees? If yes, list all pertinent relationships.
9. Identify all key employees or personnel of the Applicant:

10. Are any of these persons City employees?

11. Are any of these persons related by blood or by marriage to City officials or employees? If yes, list all pertinent relationships.

12. Has the Applicant ever received City funding, entered into a contract or appointment with the City, or provided services to the City?

13. If you answered “Yes” to Question No. 12:
   a) State the amount of funds received or amount of the contract or appointment.

   b) Describe in detail the work performed, scope of appointment, or purpose for which the funds were used, and attach supporting documentation such as receipts and invoices.

   c) Attach a copy of the contract or appointment.

14. Attach resumes of Applicant’s key personnel.

15. Attach Applicant’s articles of incorporation if applicable.

16. Attach Applicant’s 501(c)(3) letter from Internal Revenue Service if applicable.
17. Attach Applicant’s City of Birmingham business license, if applicable.

18. Describe in detail the work Applicant seeks to perform for the City.

19. Identify all sources and amounts of public funding (federal, state and local) the Applicant has received within the past three (3) years.
20. Has the Applicant ever been suspended or barred from participating in federal contracts or other federal assistance? If yes, explain.

21. Has any individual associated with the Applicant ever been suspended or barred from participating in federal contracts or other federal assistance? If yes, explain.

22. During the past three (3) years, has Applicant retained, hired or paid any lobbyist, political consultant or attorney to assist Applicant in its bid to perform work for the City or obtain a City contract, appointment or funding? If yes, identify by individual name, firm name, address and telephone number any such lobbyist, political consultant or attorney.

23. Identify any business or firm in which:
   a) The Applicant or its key personnel owns 5% or more of the stock;
   b) The Applicant or its key personnel serves as an officer or director;
   c) The Applicant or its key personnel is a partner.
Applicant’s failure to file a Transparency in City Government Disclosure Form is punishable by state or local law to the maximum allowed by law and subject to any federal penalties required by the U.S. Code Annotated.

I declare under penalty of perjury that the Applicant’s answers to each and every question on the City of Birmingham Transparency in City Government Disclosure Form are true and correct:

_______________________________
Signature

_______________________________
Print Name

_______________________________
Date

_______________________________
Title/Position with Applicant
6.2 Federal Clauses & Certifications

Fly America Requirements

Applicability - all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US 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. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US 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. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

Energy Conservation

All Contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water

All Contracts and Subcontracts over $100,000 Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding $100,000 financed in whole or in part with FTA assistance.

Lobbying

Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract Operational Service Contract/Turnkey contracts over $100,000 Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, “New Restrictions on Lobbying.” Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with Non-
Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier up to the recipient.

Access to Records and Reports
Applicability - As shown below. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000)
The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO Contract, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000.

3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of
litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

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

**Federal Changes**

All Contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000) 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 purchaser 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.

**Clean Air**

1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

2) Contractor shall include these requirements in each subcontract exceeding $100,000 financed in whole or in part with FTA assistance.

**No Government Obligation To Third Parties**

Applicability - All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

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

Applicability - All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, 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 under-
lying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties
that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious,
or fraudulent claim, statement, Qualifications Submittal, or certification, the US Government reserves the right to
impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Govern-
ment deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, Qualifications
Submittal, or certification to the US Government under a contract connected with a project that is financed in
whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to
impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government
deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA
assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the
provisions.

Termination
Applicability - All Contracts over $10,000, except contracts with nonprofit organizations and institutions of higher
learning, where the threshold is $100,000

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part,
at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its
costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor
shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's
property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance
with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner
called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may
terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor
setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies
delivered and accepted, or for services performed in accordance with the manner of performance set forth in the
contract.

If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a setting
up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a
termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for
breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case,
the notice of termination shall state the time period in which cure is permitted and other appropriate conditions
If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or
conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient 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 the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall 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 contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If 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 contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall 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 contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause.

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

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination
specifying the nature of default. In this event, the recipient 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. Contractor and its sureties shall be liable for any damage to the recipient resulting from proceeding with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

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

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight and embargoes.

2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contact or otherwise and contractor shall be liable for any additional cost incurred by the recipient. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice or termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly
submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

**Government Wide Debarment & Suspension (Non-Procurement)**

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. 0MB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," https://www.sam.gov, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at https://www.sam.gov, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel.

**Contracts Involving Federal Privacy Act Requirements**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000).

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

**Civil Rights Requirements**

Applicability - All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000).

The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): National origin, (e) Sex, (f) Disability, or (g) Age, and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination - Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued.

§ 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1. Race, 2. Color, 3. Religion, 4. Sex, 5. Disability, 6. Age, or 7. National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer”. (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note.

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as “Disadvantaged Business Enterprises” (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. part 26, and (c)§ 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding $250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation.


j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

**Breaches and Dispute Resolution**

All contracts over $100,000

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, 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 his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to the other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and 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 residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies
available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient 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.

**Patent and Rights in Data**

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK ($3,000 or less, except for construction contracts over $2,000).

**Patent Rights**

A. General. The Recipient agrees that:

(1) Depending on the nature of the Project, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable: (a) Invention, (b) Improvement, or (c) Discovery. (2) The Federal Government's rights arise when the patent or patentable information is: (a) Conceived under the Project, or (b)Reduced to practice under the Project, and (3) When a patent is issued or patented information becomes available as described in Patent Rights section A(2), the Recipient agrees to: (a) Notify FTA immediately, and (b) Provide a detailed report satisfactory to FTA.

B. Federal Rights. The Recipient agrees that:

(1) Its rights and responsibilities, and the rights and responsibilities of each Third Party Participant, in that federally funded invention, improvement, or discovery will be determined as provided by applicable Federal laws, regulations, and guidance, including any waiver thereof, and (2) Unless the Federal Government determines otherwise in writing, irrespective of the Recipient's status or the status of any Third Party Participant as a large business, a small business, a State government, a State instrumentality, a local government, an Indian tribe, a nonprofit organization, an institution of higher education, or an individual, the Recipient agrees to transmit the Federal Government's patent rights to FTA as specified in: (a) 35 U.S.C. § 200 et seq., and (b) U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. part 401.

C. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:

(1) License fees and royalties for patents, patent applications, and inventions derived from the Project are program income, and (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing.

**Rights in Data and Copyrights**

A. Definition of "Subject Data." means recorded information: (1) Copyright. Whether or not copyrighted, and (2) Delivery. That is delivered or specified to be delivered under the Underlying Agreement.
B. Examples of "Subject Data." Examples of "subject data": (1) Include, but are not limited to:  
(a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but  
(2) Do not include: (a) Financial reports,  
(b) Cost analyses, or (c) Other similar information used for Project administration.

C. General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Recipient's Project supported by the Underlying Agreement: (1) Prohibitions. The Recipient may not: (a) Publish or reproduce any subject data in whole or in part, or in any manner or form, or (b) Permit others to do so, but (2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to: (a) Publications or reproductions for the Recipient's own internal use, (b) An institution of higher learning, (c) The portion of subject data that the Federal Government has previously released or approved for release to the public, or (d) The portion of data that has the Federal Government's prior written consent for release.

D. Federal Rights in Data and Copyrights. The Recipient agrees that: (1) License Rights. The Recipient must provide a license to its "subject data" to the Federal Government, which license is: (a) Royalty-free, (b) Non-exclusive, and (c) Irrevocable, (2) Uses. The Federal Government's license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data.

E. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development, demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its Third Party Participants, therefore, the Recipient agrees that: (1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet, (2) Other Reports. It must provide other reports pertaining to the Project that FTA may request, (3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its Third Party Participants at any tier of the Project, either FTA's copyright license to the subject data or a copy of the subject data, except as the Federal Government determines otherwise in writing, (4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA, (5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes "subject data" and must be delivered as the Federal Government may direct, but (6) Exception. Rights in Data and Copyrights Section E does not apply to an adaptation of automatic data processing equipment or program that is both: (a) For the Recipient's use, and (b) Acquired with FTA capital program funding.

F. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19: (1) License fees and royalties for copyrighted material or trademarks derived from Project are program income, and  
(2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing.
G. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that: (1) Violation by Recipient. 
(a) If it willfully or intentionally violates any: 1 Proprietary rights, 2 Copyrights, or 3 Right of privacy, and 
(b) Its violation occurs from any of the following uses of Project data: 1 Publication, 2 Translation, 3 Reproduction, 
4 Delivery, 5 Use, or 6 Disposition, then (c) It will indemnify, save, and hold harmless against any liability, including 
costs and expenses of: 1 The Federal Government's officers acting within the scope of their official duties, 
2 The Federal Government's employees acting within the scope of their official duties, and 3 Federal Government's 
agents acting within the scope of their official duties, but (2) Exceptions. The Recipient will not be required to 
indemnify the Federal Government for any liability described in Rights in Data and Copyrights section G(1) if: (a) 
Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal em-
ployees or agents, or (b) State law. If indemnification is prohibited or limited by applicable State law.

H. Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights 
in data either: (1) Implies a license to the Federal Government under any patent, or (2) May be construed to affect 
the scope of any license or other right otherwise granted to the Federal Government under any patent.

I. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that in certain cir-
cumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless: 
(1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed 
without Federal funding, even though that data may have been used in connection with the Project, and (2) Identifi-
cation of Information. The Recipient understands and agrees that the Federal Government will not be able to 
protect data developed without Federal funding from unauthorized disclosure unless that data is clearly marked 
"Proprietary" or "Confidential,"

J. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be 
required to release Project data and information the Recipient submits to the Federal Government as required by: 
(1) The Freedom of Information Act, 5 U.S.C. § 552, 
(2) Another applicable Federal law requiring access to Project records, (3) U.S. DOT regulations, "Uniform 
Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and 
Other Non-Profit Organizations," specifically 49 C.F.R. § 19.36(d), or 
(4) Other applicable Federal regulations and guidance pertaining to access to Project records.

**Disadvantaged Business Enterprise**
Contracts over $3,000 awarded on the basis of a bid or Qualifications Submittal offering to use DBEs.

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by 
Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national 
goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE 
participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this 
procurement, it is listed elsewhere.

b. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance
of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. 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 municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.

f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of The City of Birmingham.

**Prompt payment**

Applicability - All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 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 the Recipient. This clause applies to both DBE and non-DBE subcontractors.

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

All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated 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 Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

Other Federal Requirements
The following requirements are not federal clauses.

Full and Open Competition
In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications
Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

Conformance with ITS National Architecture

Notification of Federal Participation
To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of $500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

Interest of Members or Delegates to Congress
No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

Ineligible Contractors and Subcontractors
Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

Other Contract Requirements
To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those provisions attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from
Compliance with Federal Regulations
Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as 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.

Real Property
Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by MAP-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Access to Services for Persons with Limited English Proficiency

Environmental Justice

Environmental Protections
requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with
Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

**Geographic Information and Related Spatial Data**

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

**Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only**

Non Federal entities that expend $500,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, Audits of States, Local Governments, and Non Profit Organizations. Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than $500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in '3052.21S(a), but records must be available for review or audit by appropriate officials of the Federal and State agencies.

**Catalog of Federal Domestic Assistance (CFDA) Identification Number**

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

**CFDA number for the Federal Transportation Administration**

A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.
Federal Certifications
CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, ________________________________, hereby certify

(Name and title of official)

On behalf of _______________________________, that:

(Name of Bidder/Company Name)

► 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, and 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.

► If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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.

► 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 sub-recipients 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 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 and not more than $100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name ________________________________

Type or print name ________________________________

Signature of authorized representative ___________________________ Date ______/____/____

Signature of notary and SEAL ________________________________

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GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Instructions for Certification: By signing and submitting this bid or Qualifications Submittal, the prospective lower tier participant is providing the signed certification set out below.

(1) It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. 0MB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,

(2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:

a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:

   (1) Debarred,
   (2) Suspended,
   (3) Proposed for debarment,
   (4) Declared ineligible,
   (5) Voluntarily excluded, or
   (6) Disqualified,

b. Its management has not within a three-year period preceding its latest application or Qualifications Submittal been convicted of or had a civil judgment rendered against any of them for:

   (1) 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,
   (2) Violation of any Federal or State antitrust statute, or
   (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,

c. It is 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 listed in the preceding subsection 2.b of this Certification,

d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,

e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a - 2.d above, it will promptly provide that information to FTA,
GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:

(1) Equals or exceeds $25,000,
(2) Is for audit services, or
(3) Requires the consent of a Federal official, and

g. It will require that each covered lower tier contractor and subcontractor:

(1) Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and

(2) Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:

  a. Debarred from participation in its federally funded Project,
  b. Suspended from participation in its federally funded Project,
  c. Proposed for debarment from participation in its federally funded Project,
  d. Declared ineligible to participate in its federally funded Project,
  e. Voluntarily excluded from participation in its federally funded Project, or
  f. Disqualified from participation in its federally funded Project, and

(3) It will provide a written explanation as indicated on a page attached in FTA's TEAM-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor __________________________________________________________

Signature of Authorized Official ___________________________Date _/__/_  

Name and Title of Contractor’s Authorized Official ___________________