

**PUBLIC NOTICE
REGIONAL TRANSIT AUTHORITY
CLIMATE ADAPTIVE TRANSIT SHELTER DESIGN
REQUEST FOR QUALIFICATIONS (RFQ) #2024-034**

Project Description: The Regional Transit Authority (RTA) is seeking a vendor to provide Climate Adaptive Transit Shelter Design per specifications in RFQ 2024-034 .

How to Obtain a copy of the RFQ: Scope of Work and further information concerning the RFQ may be obtained beginning October 29, 2024, from the RTA's Procurement website at <https://norta.procurement.com/home>. You will be required to first register on this website. The RFQ can also be obtained at Regional Transit Authority's website at <http://www.norta.com>

Responding to RFQ: Qualifications shall be submitted through RTA's Procurement website on or before 4:00 P.M., Thursday, December 12, 2024. Any questions or further information concerning this RFQ may be submitted through <https://norta.procurement.com/home> beginning on October 29, 2024. Only written questions submitted through <https://norta.procurement.com/home> shall be considered official. All answers to questions shall be by formal addenda posted to the website under RFQ #2024-034.

An **Optional Pre-Bid Conference** will be held on Tuesday, November 12, 2024, at 2 PM at 2817 Canal Street, New Orleans LA 70119 in the Boardroom.

RTA in accordance with 49 Code of Federal Regulations (CFR) Part 26 has an obligation to ensure nondiscrimination of Disadvantaged Business Enterprises (DBEs) and to comply with all federal, state and local regulations relative to utilization of DBEs on publicly funded projects. The RTA is committed to utilization of DBEs on all federally funded projects toward attainment of the agency's established overall goal of 32%. **A DBE goal of 18% has been established for this project.**

Notice to all offerors is hereby provided that in accordance with all applicable federal, state and local laws the RTA will ensure that DBEs are afforded full opportunity to submit offers and responses to this solicitation and to participate in any contract consummated pursuant to this advertisement. Additionally, no offeror will be discriminated against on the basis of age, sex, race, color, religion, national origin, ethnicity or disability.

The RTA reserves the right to accept or reject any and all submittals.

**Lona Hankins
Chief Executive Officer
Regional Transit Authority**

REQUEST FOR QAULIFICATIONS
FROM
REGIONAL TRANSIT AUTHORITY

SUBJECT: Climate Adaptive Transit Shelter Design

DATE: October 29, 2024

REQUEST FOR QAULIFICATIONS NO. 2024-034

QAULIFICATION RECEIPT DEADLINE: Thursday, December 12, 2024 - 4:00 PM

The Regional Transit Authority Request for Qualifications for the services set forth above in accordance with the scope of work enclosed herewith.

Qualifications **MUST** be received at the RTA's Offices by the date and time set as the Qualification Receipt Deadline.

Enclosures ("X" indicates item enclosed)

- X** Instructions to Proposers
- X** General Provisions
- X** Federal Requirements
- X** Evaluation
- X** Attachments

TABLE OF CONTENTS

I.	INSTRUCTIONS TO PROPOSERS	<u>PAGE NUMBER</u>
1.1	Qualifications Submittal	1
1.2	Submittal Submissions	1
1.3	Submittal Review Procedures	1
1.4	Contract Documentation	3
1.5	Cost of Qualifications	3
1.6	Qualification Postponement and Addenda	3
1.7	Cancellation of Request for Qualifications	4
1.8	Qualification Rejection	4
1.9	Single Qualification Response	4
1.10	Qualification Withdrawal	4
1.11	Acceptance of Qualifications	4
1.12	Evaluation of Qualifications	4
1.13	Award Procedure	5
1.14	Offers	5
1.15	Addenda	5
II.	GENERAL PROVISIONS	
2.1	Written Change Orders/Amendments	6
2.2	Change Order/Amendment Procedure	6
2.3	Omissions	6
2.4	Priority	6
2.5	Communications	6
2.6	Interests of Members of, or Delegates to Congress	7
2.7	Conflict of Interest	7
2.8	Equal Employment Opportunity	8
2.9	Privacy Requirements	8
2.10	Indemnification	8
2.11	Performance	9
2.12	Status of Contractor and Its Employees	9
2.13	Insurances and Licenses	9
2.14	Subcontractors	9
2.15	Assumption of Risk of Loss	9
2.16	Acceptance	10
2.17	Quality Inspection	10
2.18	Correction by Contractor	10
2.19	Unavoidable Delays	10
2.20	Notification of Delay	10
2.21	Request for Extension	11
2.22	Access Requirements for Individuals with Disabilities	11
2.23	Application of Federal, State and Local Laws and Regulations	12
2.24	Contract Period	12
2.25	No Obligation by the Federal Government	12
2.26	Federal Changes	13
2.27	Incorporation of Federal Transit Administration (FTA) Terms	13
2.28	Exclusionary or Discriminatory Specifications	13

2.29	Geographic Restrictions	13
2.30	Prompt Payment	13
2.31	Confidentiality	15
2.32	Disputes	15
2.33	Ownership of Documents	16
2.34	State and Local Law Disclaimer	16
2.35	Participant Information	16
2.36	Non-Collusion Affidavit	16
2.37	Regional Transit Authority General Provisions	16
2.38	Disadvantaged Business Enterprise (DBE)	16

III. FEDERAL REQUIREMENTS

3.1	Access to Records	17
3.2	Buy America Requirements	18
3.3	Pre-Award And Post-Delivery Audits	18
3.4	Cargo Preference Requirement	18
3.5	Clean Air Act And Federal Water Pollution Control Act	19
3.6	Civil Rights Laws And Regulations	20
3.7	Disadvantaged Business Enterprise (DBE)	21
3.8	Employee Protections	22
3.9	Energy Conservation	23
3.10	Fly America	23
3.11	Government-Wide Debarment And Suspension	23
3.12	Lobbying Restrictions	25
3.13	No Government Obligation To Third Parties	25
3.14	Patent Rights And Rights In Data	25
3.15	Program Fraud And False Or Fraudulent Statements & Related Acts	27
3.16	Recycled Products	28
3.17	Safe Operation Of Motor Vehicles	28
3.18	Substance Abuse Requirements	29
3.19	Termination	29
3.20	Contract Work Hours & Safety Standard Act	30

IV. EVALUATION

Method	31
Administrative Evaluation	31
Evaluation Criteria	32
Contract Award	33
Overhead Rates	33

ATTACHMENTS

Scope of Work
Supplier Checklist

INSTRUCTIONS TO QUALIFICATIONS

1.1 QUALIFICATIONS

Each submittal must include a Letter of Interest that addresses the suggested structure or organization of the proposed team (prime and sub-consultants), a detailed description of your team's approach and capability to handle project-specific issues, a schedule of the proposed work, and any other information that may assist the RTA in making a selection. Letters of Interest should be concise and limited to three (3) pages.

Qualifications shall provide a straight forward, concise delineation of the proposer's capability to satisfy the requirements of the Request for Qualifications. Each Qualification shall be submitted in the requested format, and provide all pertinent information including but not limited to information relevant to personnel assignments, specifications/scope of work, work completion, schedules, etc., as provided in this Request for Qualifications. Each Qualifications shall be signed in ink by a duly authorized officer of the company.

1.2 QUALIFICATIONS SUBMISSIONS

Qualifications can be sent electronically through RTA's ProcureWare system and uploaded through our electronic system <https://norta.procureware.com/home> until 4:00 P.M., on the date established as the submittal receipt deadline or upon request a hardcopy may be mailed to: Regional Transit Authority, Attn: Procurement Department, 2817 Canal Street, New Orleans, LA 70119. Qualifications received after the specified date shall be considered late and, therefore, shall not be considered for award. Each Qualifications shall be in the form specified in this Request for Qualifications, and shall be in a sealed envelope with the name of the Proposer, the date scheduled as the Qualifications receipt deadline, and the title of the Request for Qualifications marked on the outside.

1.3 PROPOSER REVIEW PROCEDURE

For the purposes of this paragraph, all submissions must be received by the RTA no later than 4:00 p.m. (Central time) on the date specified as the deadline for the submission.

A. Request for Modification or Clarification

This section establishes procedures for proposers to seek review of this Request for Qualifications and any addenda. A proposer may discuss this Request for Qualifications and any addenda with the RTA. Such discussions do not, however, relieve proposers from the responsibility of submitting written, documented requests.

Proposers may submit to the RTA requests for interpretations, clarifications or modifications concerning any term, condition and/or specification included in this Request

for Qualifications and/or in any addendum hereto. Any such request must be received by the RTA, in writing, not less than **SEVEN (7) calendar days** before the date of scheduled Qualifications receipt deadline. All requests must be accompanied by all relevant information supporting the request for modification, interpretation, clarification or addendum of this solicitation.

RTA will issue a written determination relative to each request made pursuant to this procedure. The written determination must be mailed or otherwise furnished to all proposers at least **THREE (3) calendar days** before the date scheduled as the Qualifications receipt deadline.

b. Protest Procedures

The following is an explanation of the RTA protest procedures which must be followed completely before all administrative remedies are exhausted.

Any person who is aggrieved in connection with the solicitation or award of a contract may protest to the Director of Procurement/RTA. Protests shall be submitted in writing specifically identifying the area of protest and containing any support data, test results, or other pertinent information substantiating the appeal. A protest with respect to a solicitation must be submitted in writing to the RTA at least seven (7) calendar days prior to Qualifications receipt deadline. A protest with regard to the award of a contract shall be submitted, in writing, within seven (7) calendar days after award of the contract.

Prior to any action in court, the Director of Procurement/RTA shall have the authority to settle or resolve a protest from an aggrieved person concerning the solicitation or award of a contract.

If the protest is not resolved by mutual agreement, the Director of Procurement/RTA or his designee shall within thirty (30) calendar days of protest issue a decision in writing. The decision shall:

1. State the reasons for the action taken; and
2. Inform the protestor of his/her right to administrative and judicial review.

A copy of this decision shall be mailed or otherwise furnished immediately to the protestant and any other party intervening. This decision shall be final and conclusive unless:

1. The decision is fraudulent; or
2. The person adversely affected by the decision has submitted a timely administrative appeal to the CEO/RTA.

In the event of a timely protest under these regulations, the RTA shall not proceed further with the solicitation or with the award of the contract unless the Director

of Procurement/RTA makes a written determination that the award of the contract is necessary without delay to protect the substantial interests of the RTA.

The CEO/RTA shall have the authority to review and determine any appeal by an aggrieved person from a determination by the Director of Procurement/RTA or his designee.

The aggrieved person must file an appeal within five (5) calendar days of receipt of a decision from the Director of Procurement/RTA.

On any appeal of the decision of the Director of Procurement/RTA, the CEO/RTA shall decide within thirty (30) calendar days whether the solicitation or award was made in accordance with the constitution, statutes, regulations, and the terms and conditions of the solicitation. Any prior determination by the Director of Procurement/RTA or his designee shall not be final or conclusive.

A copy of the CEO's/RTA decision shall be mailed or otherwise furnished immediately to the protestant or any other party intervening.

The decision of the CEO/RTA shall be final and conclusive unless:

1. The decision is fraudulent; or
2. The person adversely affected by the decision has timely appealed to FTA after having exhausted the local protest procedures stated above.

The RTA reserves the right to designate any person(s) other than the CEO/RTA or the Director of Procurement/RTA to perform the duties provided for in this Paragraph.

Any appeal to FTA under these protest procedures will be made pursuant to Circular 4220.1F, as amended.

1.4 CONTRACT DOCUMENTATION

Any contract resulting from this solicitation shall contain the terms and conditions included in this Request for Qualifications and any addenda issued pursuant hereto.

1.5 COST OF QUALIFICATION

Any costs incurred by proposers responding to this Request for Qualifications in anticipation of receiving a contract award will not be reimbursed by the RTA. Payments will only be made pursuant to a contract between the RTA and the successful proposer.

1.6 QUALIFICATION POSTPONEMENT AND ADDENDA

The RTA reserves the right to amend the instructions, general conditions, special conditions, plans, scope of work, and specifications of this solicitation up to the deadline date for Qualifications receipt. Copies of such addenda shall be furnished to all prospective proposers. Where such addenda require changes in the services or prices quoted, the final date set for Qualifications receipt may be postponed by such number of days as in the opinion of the RTA shall enable prospective proposers to revise Qualifications.

1.7 CANCELLATION OF REQUEST FOR QUALIFICATIONS

The RTA reserves the right to cancel this Request for Qualifications in whole or in part upon written determination by the Director of Procurement/RTA that such cancellation is in the best interest of the RTA.

1.8 QUALIFICATION REJECTION

The RTA reserves the right to accept or reject any and all Qualifications submitted.

1.9 SINGLE QUALIFICATION RESPONSE

If only one Qualifications is received in response to this Request for Qualifications, a detailed cost Qualifications may be requested of the single proposer. A cost/price analysis and evaluation and/or audit may be performed in order to determine if the offer is fair and reasonable. Award of a contract to the proposer submitting the only Qualifications received in response to this Request for Qualifications may be subject to approval by the FTA.

1.10 QUALIFICATION WITHDRAWAL

Prior to the date and time set for the Qualifications Receipt Deadline, Qualifications may be modified or withdrawn by the proposer's authorized representative in person, or by written, facsimile or electronic notice. If Qualifications are modified or withdrawn in person, the authorized representative shall make his identity known and shall sign a receipt for the Qualifications. Written, facsimile or electronic notices shall be received in the RTA Canal St. offices no later than the date scheduled as the Qualifications receipt deadline. After the Qualifications Deadline, Qualifications may not be withdrawn for sixty (60) calendar days.

1.11 ACCEPTANCE OF QUALIFICATIONS

Each Qualifications shall be submitted with the understanding that it is subject to negotiation at the option of RTA. Upon acceptance in writing by RTA of the final offer to furnish any and all of the services described herein, the parties shall promptly execute the final contract documents. The written contract shall bind the Proposer to furnish and deliver all services as specified herein in accordance with conditions of said accepted Qualifications and this Request for Qualifications, as negotiated.

1.12 EVALUATION OF QUALIFICATIONS

The evaluation criteria are provided in this Request for Qualifications. The proposer receiving the highest point total during the evaluation phase of the selection process may be called in for negotiations. The contract will be awarded based on the Best Value to the RTA. RTA shall have the right to conduct any reviews it deems necessary and audit the business records of any and all proposers to determine the fairness and reasonableness of the offer. RTA reserves the right to award this contract without conducting negotiations.

1.13 AWARD PROCEDURE

Within a reasonable time after the Qualifications receipt deadline, the RTA will transmit the contract documents to the Contractor. The contract documents will, at a minimum, consist of this Request for Qualifications and any addenda thereto, the Contractor's Qualifications, RTA's standard contract provisions and provisions required by FTA.

1.14 OFFERS

Each Qualifications submitted shall include all labor, materials, tools, equipment, and other costs necessary to fully complete the scope of services pursuant to the specifications provided herein. Any omissions derived from such specifications which are clearly necessary for the completion of the work specified herein shall be considered a portion of this Request for Qualifications.

1.15 ADDENDA

Proposers shall acknowledge receipt of all addenda to this Request for Qualifications. Acknowledged receipt of each addendum shall be clearly established and included with each Qualifications. The undersigned acknowledges receipt of the following addenda.

Addendum No. _____, dated _____

Addendum No. _____, dated _____

Addendum No. _____, dated _____

Company Name

Company Representative

RFQ 2024-034

II. GENERAL PROVISIONS

2.1 WRITTEN CHANGE ORDERS/AMENDMENTS

This contract may be changed/ amended in any particular allowed by law upon the written mutual agreement of both parties.

2.2 CHANGE ORDER/AMENDMENT PROCEDURE

Within ten (10) calendar days after receipt of the written change order to modify the contract, the Contractor shall submit to the RTA a detailed price and schedule Qualifications for the work to be performed. This Qualifications shall be accepted or modified by negotiations between the Contractor and the RTA. At that time, a detailed modification shall be executed in writing by both parties. In the event that federal funds are used in this procurement, the FTA may reserve the right to concur in any change order or any dispute arising under such change order. Disagreements that cannot be resolved by negotiation shall be resolved in accordance with the contract disputes clauses. Regardless of any disputes, the Contractor shall proceed with the work ordered, if the RTA has obtained the concurrence of FTA, should such concurrence be required. Regardless of any other requirement herein, RTA shall negotiate profit as a separate element of cost for any change order or amendment to any contract awarded pursuant to this solicitation.

2.3 OMISSIONS

Notwithstanding the provision of drawings, technical specifications or other data by the RTA, the Contractor shall supply all resources and details required to make the supplies complete and ready for utilization even though such details may not be specifically mentioned in the drawings and specifications.

2.4 PRIORITY

In the event of any conflicts between the description of the supplies and/or services in the Technical Specifications and drawings and other parts of this Request For Qualifications, the Technical Specifications and drawings shall govern.

2.5 COMMUNICATIONS

All official communications in connection with this contract shall be in writing. Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and award, any employee or officer of RTA or the Regional Transit Authority, including the Board of Commissioners, concerning any aspect of this

solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

2.6 INTEREST OF MEMBERS OF, OR DELEGATES TO CONGRESS

In accordance with 18 U.S.C. Subsection 431, no member of, or delegates to, the Congress of the United States shall be admitted to a share or part of this contract or to any benefit arising there from.

2.7 CONFLICT OF INTEREST

No Board Member, employee, officer or agent, or employee of such agent of the RTA shall participate in the selection or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- a. The Board Member, employee, officer or agent, or employee of such agent;
- b. Any member of his immediate family;
- c. His or her partner; or
- d. An organization that employs, or is about to employ any of the above, has a direct or indirect, present or future financial or other interest in the firm selected for award.

The RTA's Board Members, officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties of sub agreements.

Each entity that enters into a contract with the RTA is required, prior to entering into such contract, to inform the RTA of any real or apparent organizational conflicts of interest. An organizational conflict of interest exists when the contractor is unable or potentially unable to provide objective assistance or advice to the RTA due to other activities, relationships, contracts, or circumstances; when the contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract; and during the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents, in accordance with Chapter VI, 2.a.(4)(h) of FTA C 4220.1F.

2.8 EQUAL EMPLOYMENT OPPORTUNITY

The Contractor shall comply with Executive Order No. 11246 as amended, entitled "Equal Employment Opportunity" as supplemented in Department of Labor Regulations

(41 C.F.R. Paragraph 60). In connection with the execution of this Agreement, the Contractor shall not discriminate against any employees or applicant for employment because of race, religion, color, sex, age, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, sex, age, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

2.9 PRIVACY REQUIREMENTS

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

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understand 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.

2.10 INDEMNIFICATION

The Contractor covenants and agrees to fully defend, protect, indemnify and hold harmless the RTA, and RTA, their directors, officers, employees, agents, and assigns from and against all liability, including strict liability, claims, demands, and causes of action brought by others against RTA, and/or RTA, and expenses, including but not limited to reasonable attorney's fees; and expense incurred in defense of RTA, and/or RTA arising out of, or in any way incidental to, or in connection with the work hereunder, and other activities by contractor; provided, however, that such indemnification shall apply only to the extent permitted by applicable law, and except and to the extent such liability, claim, demand or cause of action results from RTA's negligence.

2.11 PERFORMANCE

Contractor shall perform all work diligently, carefully and in a good and workmanlike manner and shall furnish all labor, supervision, machinery, equipment, material and supplies necessary therefore. Contractor shall obtain and maintain all permits and licenses required by public authorities in connection with performance of the work, and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors. Contractor shall conduct all operations in Contractor's own name and as an independent contractor, and not in the name of, or agent for RTA.

2.12 STATUS OF CONTRACTOR AND ITS EMPLOYEES

For all purposes specified under the terms of this Agreement the Contractor shall be considered an independent contractor as defined in R.S. 23:1021 (5), and as such, the RTA shall not be liable to the Contractor for benefits or coverage provided by the Workers' Compensation Law of the State of Louisiana (R.S. 23:1021 et seq.), and further, under the provisions of R.S. 23:1034, no person employed by the Contractor shall be considered an employee of the RTA for the purpose of Workers' Compensation coverage.

2.13 INSURANCES

The contractor shall, upon request by the RTA, submit a copy of their standard insurance certificates for this project. During the term of this Agreement, the Contractor shall obtain and maintain the following types and amounts of insurance naming the Regional Transit Authority as an additional insured. The Contractor shall furnish to the RTA certificates showing types, amounts, class of operations covered, effective dates and dates of expiration of policies:

- A) Worker's Compensation Insurance as required by Louisiana Law;
- B) Vehicle Liability Insurance in the amount of \$1,000,000.00; and
- C) General Liability Insurance in the amount of \$1,000,000.

2.14 SUBCONTRACTORS

No portion of this contract may be, reassigned, transferred, or sublet without the written approval of the RTA. If allowed to subcontract, no subcontractor may be replaced without the written approval of the RTA.

2.15 ASSUMPTION OF RISK OF LOSS

Prior to acceptance, Contractor shall bear the risk of loss of the supplies, except that upon delivery, as defined in this Request For Qualifications, the RTA will bear the risk of loss due to the negligence of the RTA.

2.16 ACCEPTANCE

Within 7 days after delivery, the RTA, its agents or assigns will conduct acceptance inspection. Acceptance shall be conditioned upon satisfactory results of such inspection, promptly communicated in writing to the Contractor, subject however, to revocation upon discovery of defects.

2.17 QUALITY INSPECTION

All goods and services installed and supplied shall be good quality and free from any defects, and shall at all times be subject to RTA's inspection; but neither RTA's inspection nor failure to inspect shall relieve Contractor of any obligation hereunder. If, in RTA's opinion, any goods or service (or component thereof) fails to conform to specifications or is otherwise defective, Contractor shall promptly replace or correct same at Contractor's sole expense. No acceptance or payment by RTA shall constitute a waiver of the foregoing, and nothing herein shall exclude or limit any warranties implied by law.

2.18 CORRECTION BY CONTRACTOR

After non-acceptance of the work, the Contractor shall begin implementing correction procedures within five (5) calendar days after receiving notification from the RTA. The RTA will make the site timely with Contractor's correction schedule. The Contractor shall bear all expense incurred to complete correction of the work after non-acceptance, and Contractor shall diligently implement correction procedures.

2.19 UNAVOIDABLE DELAYS

If completion of the work furnished under this contract should be unavoidably delayed, the RTA may extend the time for satisfaction of the Contractor's obligations pursuant thereto for a number of days determined by RTA to be excusable due to unavoidability. A delay is unavoidable only if the delay was not reasonably expected to occur in connection with or during the Contractor's performance, and was not caused directly or substantially by acts, omissions, negligence or mistakes of the Contractor, the Contractor's suppliers or their agents and was substantial and in fact caused the Contractor to miss completion dates and could not adequately have been guarded against by contractual or legal means.

2.20 NOTIFICATION OF DELAY

The Contractor shall notify the RTA as soon as the Contractor has, or should have, knowledge that an event has occurred or will occur which will delay progress or

completion. Within five (5) days there from, the Contractor shall confirm such notice in writing furnishing as much detailed information as is available.

2.21 REQUESTS FOR EXTENSION

The Contractor agrees to supply, as soon as such data are available, any/all reasonable proof required by the RTA to make a decision relative to any request for extension. The RTA shall examine the request and any documents supplied by the Contractor, and RTA shall determine if the Contractor is entitled to an extension and the duration of such extension. The RTA shall notify the Contractor of this decision in writing. It is expressly understood and agreed that the Contractor shall not be entitled to damages or compensation, and shall not be reimbursed for losses on account of delays resulting from any cause under this provision.

2.22 ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

During the performance of this contract, the contractor, for itself, its assignees and successors in interest agree to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. sections 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794; section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. section 1612; and the following regulations and any amendments thereto:

- (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (c) U.S. DOT regulations, "American With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
- (d) Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (e) DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (f) General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

- (g) Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provision of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (h) Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (i) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. Part 609.

2.23 APPLICATION OF FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS

(a) Federal Laws and Regulations

The Federal requirements (laws, regulations policies, and related administratively) contained in this contract may change (from time to time) after the date the contract has been executed. Any changes in federal requirements shall apply to this contract and be incorporated therein.

(b) State or Territorial Law and Local Law

This contract shall be entered into in the State of Louisiana and shall be governed and/or construed in accordance with the laws and jurisprudence of the State of Louisiana, except to the extent that a Federal Statute or regulation preempts State or territorial law.

2.24 CONTRACT PERIOD

THE TERM OF THIS CONTRACT SHALL BE SET FORTH IN THE CONTRACT AGREEMENT.

2.25 NO OBLIGATION BY THE FEDERAL GOVERNMENT

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

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

2.26 FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between RTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

2.27 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, 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 RTA requests which would cause RTA to be in violation of the FTA terms and conditions":<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>

2.28 EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

Apart from inconsistent requirements imposed by federal statute or regulations, the RTA will comply with the requirements of 49 U.S.C. § 5323(h) (2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

2.29 GEOGRAPHIC RESTRICTIONS

Except as expressly mandated, encouraged or permitted by FTA or Federal statute, RTA will refrain from using state or local geographic preferences.

2.30 PROMPT PAYMENT

Payment shall be made 30 days from date of approved and accepted invoice unless changed in the contract agreement. The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than five (5) days from the receipt of each payment the prime contractor receives from the RTA. The prime contractor further agrees to return retainage payment to each subcontractor within five (5) days after the subcontractor's work is satisfactorily completed and accepted by RTA, and all lien delay's under applicable laws have expired. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the RTA. This clause applies to both DBE and non-DBE subcontractors.

Identification of subcontractors: All prime contractors submitting offers in response to this Request For Qualifications must provide the following information for All subcontractors whether the firm is identified as a Disadvantaged Business Enterprise or not. The required information is:

- (1) Firm Name
- (2) Firm Address
- (3) Firm's status as a DBE or non DBE
- (4) The age of the firm
- (5) The annual gross receipts of the firm

Additionally, each contract RTA enters into with a contractor (and each subcontract) the prime contractor signs with a subcontractor shall include the following assurance:

The contractor, sub recipient 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 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 RTA deems appropriate.

Further, each contract RTA enters into with a contractor (and each subcontract the prime contractor signs with a subcontractor shall include the following assurance:

The contractor, sub recipient or subcontractor shall make prompt payments for all satisfactory work performed under this agreement. The contractor shall within thirty (30) days of receipt of payment from RTA make all payments due subcontractors and suppliers. This requirement shall flow down to all levels including subcontractors making payments to sub subcontractors and suppliers, etc. Additionally, upon release of retainage(s) by RTA, Contractor shall in turn within thirty (30) days release retainage(s) it holds. The requirement for release of retainage(s) within thirty (30) days shall flow down to all subcontractors, etc.

performing under this contract. Contractor or any of its subcontractors, etc. may not delay or postpone payments or release of retainage without prior RTA written approval. RTA may delay, or withhold up to twenty-five percent of Contractor's payments, retainage, etc. if there is evidence that Contractor is not complying with any provision hereunder. RTA may withhold monies due Contractor until such time as Contractor by its actions or assurances has, to RTA satisfaction, proven that it will or has complied with all the requirements hereunder.

2.31 CONFIDENTIALITY

Contractor agrees that any and all information, in oral or written form, whether obtained from RTA, its agents or assigns, or other sources, or generated by Contractor pursuant to this contract shall not be used for any purpose other than fulfilling the requirements of this contract. Contractor further agrees to keep in absolute confidence all data relative to the business of RTA and RTA, their agents or assigns. No news release, including but not limited to photographs and film, public announcement, denial or confirmation of any part of the subject matter of any phase of any program hereunder shall be made by Contractor without written approval of RTA.

2.32 DISPUTES

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the Director of Procurement. The decision of the Director of Procurement shall be final and conclusive unless within [seven (7)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Vice President-RTA. In connection with any such appeal, the Contractor may be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Vice President-RTA shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute. Unless otherwise directed by RTA, 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 such other party within a reasonable time after the first observance of such injury or damage.

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

Rights and Remedies. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the RTA, (its agents or assigns) 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.

2.33 OWNERSHIP OF DOCUMENTS

Any documents, drawings, specifications, reports or data generated by the Contractor in connection with this project shall become the sole property of the RTA, subject to any rights asserted by FTA of the U.S. Department of Transportation. The Contractor may retain copies of such items for its files. The Contractor shall not release any documents, reports or data from this project without prior written permission from the RTA.

2.34 STATE AND LOCAL LAW DISCLAIMER

The use of many of the Clauses herein are not governed by federal law, many of the clauses contained herein contain FTA suggested language in certain instances these clauses may be affected by State Law.

2.35 PARTICIPANT INFORMATION FORM

All participants and their subcontractors are required to submit a completely executed, Participant Information Form available on <http://www.norta.com>.

2.36 NON-COLLUSION AFFIDAVIT

The Non-Collusion Affidavit is a required submittal. The necessary form is available on <http://www.norta.com>.

2.37 REGIONAL TRANSIT AUTHORITY GENERAL PROVISIONS

The Regional Transit Authority's General Provisions shall apply to this solicitation and resulting contract.

2.38 DISADVANTAGED BUSINESS ENTERPRISE (DBE)

It is the intent of the Regional Transit Authority (RTA) of New Orleans to create a level playing field on which Disadvantaged Business Enterprises (DBEs) can compete

fairly for opportunities. Accordingly, the RTA participates in the State-Local DBE Program of the City of New Orleans for all solicitations that are not funded by the US Department of Transportation.

DBE firms are firms which have 51% ownership and control by socially and/or economically disadvantaged individuals. For this solicitation, RTA will accept certification of DBE firms the following government agencies:

- Regional Transit Authority – SBE Certification Program
- Louisiana Department of Transportation and Development – Louisiana Unified Certification Program (LAUCP) - <http://www.laucp.org/ucp/>
- City of New Orleans Office of Supplier Diversity -- SLDBE Certification Program – www.nola.gov

In compliance with the RTA's DBE Policy to be eligible for award of a contract, the contractor/prime bidder MUST either:

1. Meet the DBE goal as advertised with meaningful DBE participation through subcontracts, joint ventures, or suppliers; OR
2. Demonstrate Good Faith Efforts to meet the DBE goal.

All firms participating on RTA projects, including SBE, SLDBE, DBE and non-DBE firms MUST be documented on the Contract Participation and DBE Commitment Form 1 – Schedule A. This form must be submitted by the prime/bidder, must include all information requested and must be signed by an authorized signatory.

For each participating SBE, SLDBE and DBE firm, a DBE Participation Questionnaire Form 2 – Schedule B MUST be included and signed by an authorized signatory of the firm. The purpose of this form is to confirm that the SBE, SLDBE or DBE firm has committed to participating on the project and that both parties agree to the scope of work and price as designated on the Contract Participation and S/DBE Commitment Form 1.

The SBE, SLDBE and DBE firms proposed on this form are binding. Any substitutions or removals of SBE, SLDBE or DBE firms listed on these forms after submission of the bid must be requested through the formal process of contract amendment and be approved by the DBE Liaison Officer. The Contractor shall, no later than three (3) days from the award of a contract, execute formal contracts, agreements and/or purchase orders with the SBE and DBE firms included on the Contract Participation and S/DBE Commitment Form 1.

If the Prime Bidder has not attained the DBE goal established for the project, Documentation of Good Faith Efforts Form 3 – Schedule C MUST be submitted. The completed form along with all required supporting documentation must be furnished. Should a bidder fail to comply with the submission of complete and accurate DBE Compliance Forms demonstrating attainment of the DBE Goal or Good Faith Efforts to attain the DBE goal, the bid shall be deemed non-responsive.

Contracting With Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

a) Any party to this Contract, when expending any Federal funds received under this Agreement, must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. These steps are required for the hiring of any subcontractors under this Contract.

b) Affirmative steps must include:

- 1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- 2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- 3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- 4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- 5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

The RTA shall have the authority to investigate allegations of discriminatory practices of bidder(s) who contract or seek to contract with the RTA.

Please direct all questions related to DBE compliance prior to submission of the solicitation to the RTA Disadvantaged Business Enterprise Liaison Officer.

III. FEDERAL PROVISIONS AND REQUIREMENTS

3.1 ACCESS TO RECORDS

The following access to records requirements apply to this Contract:

- (1) RTA is a grantee of the FTA and as such in accordance with 49 C.F.R. 18.36(I), the Contractor agrees to provide the RTA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- (2) Where the Purchaser is a State and is the RTA or a subgrantee of RTA in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including PMP Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
- (3) Where the RTA enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, an hospital or other non-profit organization and is the FTA grantee or a subgrantee of the RTA in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the RTA, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with 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 RTA or a subgrantee of the RTA in accordance with 49 U.S. C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S. C. 5302(a) 1) through other than competitive bidding, the Contractor shall make available records related to the contract to the RTA, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

- (5) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (6) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the RTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions thereto. Reference 49 CFR 18.39(i) (11).

3.2 BUY AMERICA

This Contract is subject to the Federal Transit Administration Buy America Requirements in 49 CFR 660. The bidder is required to submit a signed Buy America certification with the Qualifications. If the bidder takes exception to the Buy America requirements a certificate of non-compliance must be signed and submitted with the Qualifications as it applies to the RFP request. The necessary forms are available on <http://www.norta.com>. A waiver from the Buy America Provision may be sought by the RTA if grounds for the waiver exist. Section 165(a) of the Surface Transportation Act of 1982 permits FTA participation on this contract only if steel, and manufactured products used in the contract are produced in the United States.

3.3 PRE-AWARD AND POST-DELIVERY AUDITS

Federal funds may not be obligated unless steel, iron, and manufactured products used in the projects are produced in the United States, unless FTA has granted a waiver, or the product is subject to a general waiver. 49 U.S.C. Section (5323(j))/FAST Section 3011 domestic content percentage requirement for rolling stock for fiscal years 2018-2019 must have sixty-five percent domestic content and final assembly must take place in the United States. The Buy America Requirements, CFR Part 661.11(r), define final assembly as “the creation of the end product from individual elements brought together for that purpose through application of manufacturing processes.”

3.4 CARGO PREFERENCE

The Contractor Agrees:

- a. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels;

- b. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590 and to the RTA (through the prime contractor in the case of subcontractor's bills-of-lading).
- c. To include these requirements in all subcontracts issued pursuant to this contract when the contract may involve the transportation of equipment, material or commodities by ocean vessel.

3.5 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the RTA and understands and agrees that the RTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
- (3) The Contractor agrees to comply with applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the RTA and understands and agrees that the RTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (4) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
- (5) **14 CFR § 1274.926 Clean Air-Water Pollution Control Acts.**
If this contract or supplement thereto is in excess of \$100,000, the Recipient agrees to notify the Agreement Officer promptly of the receipt, whether prior or subsequent to the Recipient's acceptance of this agreement, of any communication from the Director, Office of Federal Activities, Environmental Protection Agency (EPA), indicating that a

facility to be utilized under or in the performance of this agreement or any subcontract thereunder is under consideration to be listed on the EPA “List of Violating Facilities” published pursuant to 40 CFR 15.20. By acceptance of agreement in excess of \$100,000, the Recipient

(a) Stipulates that any facility to be utilized thereunder is not listed on the EPA “List of Violating Facilities” as of the date of acceptance;

(b) Agrees to comply with all requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857et seq. as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251et seq. as amended by Public Law 92-500) relating to inspection, monitoring, entry, reports and information, and all other requirements specified in the aforementioned sections, as well as all regulations and guidelines issued thereunder after award of and applicable to the contract; and

(c) Agrees to include the criteria and requirements of this clause in every subcontract hereunder in excess of \$100,000, and to take such action as the Contracting or Grant Officer may direct to enforce such criteria and requirements.

3.6 CIVIL RIGHTS ACT

The following requirements apply to the underlying contract:

(1) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity: The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U. S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive

Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S. C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, disability or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

(3) The Contractor also agrees to include these requirements in each Subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

3.7 DISADVANTAGED BUSINESS ENTERPRISE

It is the policy of the RTA to ensure that DBE’s as defined in Part 26, have an equal opportunity to participate to receive and participate in DOT-assisted contracts. It is, also, our policy –

- (i) To ensure nondiscrimination in the award and administration of DOT assisted contracts;
- (ii) To create level playing field in which DBE’s can compete fairly for DOT assisted contracts;
- (iii) To ensure that the DBE Program is narrowly tailored in accordance with applicable law;

- (iv) To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBE's;
- (v) To help remove barriers to the participation of DBE's in DOT assisted contracts;
- (vi) To assist the development of firms that can compete successfully in the market place outside the DBE program.

CONTRACTOR ASSURANCE. The contractor, sub recipient, 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 DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

The **NORTA Small and Disadvantaged Business Enterprise Contract Compliance System** is powered by [B2Gnow](#) Software

Reporting requirements under the SBE and DBE programs are now simplified for vendors working on RTA projects with RTA's new Small and Disadvantaged Business Enterprise Contract Compliance System. Our new web-based software system is accessible to government compliance administrators, SBE's, DBE's, contractors and the public; and includes the following key features:

- Self-managed vendor accounts with unlimited users
- Communication with contractors via email, regarding compliance issues
- Online submission of contractor and supplier monthly Program Activity Reports, with automated tracking of DBE and SBE goals
- DBE and SBE firm online verification of payments
- Flexible reporting capabilities

*All RTA contract awarded vendors are required to register contract information including their subcontractor information into the B2GNOW database.

<https://norta.dbesystem.com>

3.8 EMPLOYEE PROTECTION

Construction Activities. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, and other participant at any tier of the Project, with the following Federal laws and regulations providing protections for construction employees: (1) Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 et seq., pursuant to FTA enabling legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; (2) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., specifically, the

wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. Part 1926; and (3) Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874 and 40 U.S.C. § 3145, and implementing U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. Part 3. b. Activities Not Involving Construction. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, and other participant at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., in FTA Master Agreement MA(17), 10-1-2010 58 particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5. c. Activities Involving Commerce. The Recipient agrees to comply with the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., to the extent that it applies to employees performing Project work involving commerce. d. Public Transportation Employee Protective Arrangements. If the Contract Agreement for the Project indicates that public transportation employee protective arrangements required by U.S. DOL apply to public transportation operations performed in connection with the Project, the Recipient agrees to comply with the following requirements:

(1) Standard Public Transportation Employee Protective Arrangements. To the extent that the Project involves public transportation operations and to the extent required by Federal law, the Recipient agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333(b), in accordance with U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 C.F.R. Part 215, and any amendments thereto.

3.9 ENERGY CONSERVATION

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

3.10 FLY AMERICA

Contractor and all subcontractors at every tier shall comply with the requirements of 49 U.S.C. 40118 and 4 CFR Part 52. Specifically, whenever work under this agreement may involve international transportation of goods, equipment or personnel by air, only U.S. flag air carriers shall be utilized, to the extent service by these carriers is available.

Additionally, Contractor and any subcontractors at every tier shall include this requirement in all subcontracts. Further, in every instance where Contractor or any subcontractor(s) cannot comply with the requirements herein, a certification, in proper form, stating the reasons for non-compliance shall accompany the request for reimbursement or payment.

3.11 GOVERNMENT WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Certification Regarding Debarment, Suspension, and other Responsibility Matters
- Lower Tier Covered Transactions (Third Party Contracts over \$100,000)

The following language and Debarment certificates (<http://www.norta.com>) must be completed and submitted as a prerequisite for consideration for award. This language and certification must also be included for all sub-contracts issued pursuant to any contract awarded hereunder.

Instructions for Certification

1. By signing and submitting this bid or Qualifications, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, RTA may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to RTA if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction”, “debarred”, “suspended”, “ineligible”, “lower tier covered transaction”, “participant”, “persons”, “lower tier covered transaction”, “principal”, “Qualifications”, and “voluntarily excluded”, as used in this clause, have meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29].
5. The prospective lower tier participant agrees by submitting this Qualifications that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by RTA.

6. The prospective lower tier participant further agrees by submitting this Qualifications that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction”, without modification, in all lower tier covered transactions and in all solicitation for lower tier covered transaction.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, RTA may pursue available remedies including suspension and/or Debarment.

3.12 RESTRICTIONS ON LOBBYING

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 parts 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 to tier up to the RTA. The necessary form is available on <http://www.norta.com>.

3.13 NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The federal government shall not be subject to any obligations or liabilities to any third-party Contractor, or any other person not a party to the Grant Agreement or Cooperative Agreement in connection with the performance of this contract. Notwithstanding any concurrence provided by the federal government in or approval of any solicitation, subagreement, or third-party contract, the federal government continues to have no obligations or liabilities to any party, including the third-party Contractor.

3.14 PATENT AND RIGHTS IN DATA

These following requirements apply to each contract involving experimental, developmental or research work: 1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration. 2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added: a. Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution. b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party. (1). Any subject data developed under that contract, whether or not a copyright has been obtained; and (2). Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part provided by FTA. c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has

not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects. d. Unless prohibited by state law, upon request by the Federal Government, the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government. e. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent. f. Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Contractor identifies that data in writing at the time of delivery of the contract work. g. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA. 3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), Contractor agrees to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in 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. 4. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

3.15 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS UPPER AND LOWER TIER TRANSACTIONS

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801 et. seq. and U.S. DOT regulations, "Program Fraud Civil Remedies", 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made,

pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S. C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3.16 RECYCLED PRODUCTS

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

3.17 SAFE OPERATION OF MOTOR VEHICLE

The Recipient agrees as follows: a. Seat Belt Use. In accordance with the provisions of Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, the Recipient is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally operated vehicles, and to include this provision in any subagreements, leases, third party contracts, or other similar documents in connection with the Project. b. Distracted Driving, Including Text Messaging While Driving. In accordance with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, and DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, the Recipient is encouraged to comply with the terms of the following Special Provision: (1) Definitions. As used in this Special Provision: (a) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does FTA Master Agreement MA(17), 10-1-2010 67 not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain

stationary. (b) “Text Messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law. (2) Safety. The Recipient is encouraged to: (a) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving— (b) Recipient-owned or Recipient-rented vehicles or Government-owned, leased or rented vehicles; (c) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or (d) Any vehicle, on or off duty, and using an employer supplied electronic device. (3) Recipient Size. The Recipient is encouraged to conduct workplace safety initiatives in a manner commensurate with the Recipient’s size, such as: (a) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and (b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving. (4) Extension of Provision. The Recipient is encouraged to include this Special Provision in its subagreements with its subrecipients, its leases, and its third party contracts, and also encourage its subrecipients, lessees, and third party contractors to comply with the terms of this Special Provision, and include this Special Condition in each subagreement, lease, and third party contract at each tier financed with Federal assistance provided by the Federal Government.

3.18 SUBSTANCE ABUSE REQUIREMENTS

To the extent applicable, the Recipient agrees to comply with the following Federal regulations and guidance: a. Drug-Free Workplace. U.S. OMB guidance, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 2 C.F.R. Part 182, and U.S. DOT regulations, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. §§ 702 et seq., including any amendments to these U.S. DOT regulations when they are promulgated. b. Alcohol Misuse and Prohibited Drug Use. FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.

3.19 TERMINATION

a. Termination for Convenience (General Provision) The RTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the RTA’s and/or the Government’s best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to RTA to be paid the Contractor. If the Contractor has any property in its possession belonging to the RTA, the Contractor will account for the same, and dispose of it in the manner the RTA directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the RTA may terminate this contract for default. Termination shall be affected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the RTA that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the RTA, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The RTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to RTA'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 of written notice from RTA setting forth the nature of said breach or default, (RTA) 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 (RTA) 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 RTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by RTA shall not limit RTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

3.20 CONTRACT WORK HOURS AND SAFETY STANDARD ACT

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from ... the [Federal] Government." 40 USC 3701(b) (1) (B) (iii) and (b) (2), 29 CFR 5.2(h), 49 CFR 18.36(i) (6). The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ "laborers or mechanics on a public work" with a value greater than \$100,000. These nonconstruction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed "commercial items." 40 USC 3707, 41 USC 403 (12) Flow down Requirements: Applies to third party contractors and sub-contractors. (1) Overtime requirements - No contractor or sub-contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half

(1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek. (2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any sub-contractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and sub-contractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section. (3) Withholding for unpaid wages and liquidated damages - NCTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or sub-contractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section. (4) Subcontracts - The Contractor or sub-contractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any sub-contractor or lower tier sub-contractor with the clauses set forth in paragraphs (1) through (4) of this section.

IV. EVALUATION CRITERIA

4.1 ADMINISTRATIVE EVALUATION

Prior to the distribution of submittals to the Technical Evaluation Committee, the RTA shall perform an administrative evaluation of each submittal to determine completeness and responsiveness to this RFP.

4.2 EVALUATION CRITERIA

The following evaluation criteria will be used by the Technical Evaluation Committee. The criteria and the weighted values (in parentheses) to be used by the Technical Evaluation Committee in evaluating responses for the selection of a firm(s) to perform this service(s) are listed below:

CAPABILITIES AND EXPERIENCE (25 POINTS)

- Technical experience in performing work of a similar nature, including any transit projects
 - Firm's experience with community-informed design for infrastructure projects
 - Firm's experience with the designing structures that balance function and form, including minimizing long-term maintenance costs and maximizing aesthetic value
 - Firm's knowledge of the guidelines and requirements in the City of New Orleans and State of Louisiana in the public right-of-way, including historic preservation.
- References (provide up to 3)

PROJECT MANAGEMENT AND CONTROLS (10 POINTS)

- Demonstrated capability to perform the work on schedule and within budget, including methods used to control costs, prevent delays, and cost overruns.
- Past performance on similar projects including control of costs, quality of work, and ability to meet schedules.

EXPERIENCE OF KEY PERSONNEL (25 POINTS)

- Qualifications of project management, lead designer(s), lead engineer(s), and specialized staff in performing related work who will be assigned to this project and quality of relevant experience.
- Knowledge of designing public structures in historic cities and public right-of-

way

PROJECT APPROACH AND METHODOLOGY (20 POINTS)

- Demonstrated understanding of the scope requirements and potential problem areas.
- Completeness of Qualifications and technical content.
- Quality of approach to the management of the program including the administration of the budget; the management of the schedule; the administration of the programming and design phases, and the reporting protocol to the RTA.

TEAM COMPOSITION AND PARTNERSHIP STRENGTH (20 POINTS)

- Participation of DBE firm(s) including overall goal as well as specific role and proposed work for each DBE firm.
- Organization and composition of the full project team, including prime, subcontractors, or joint venture partners, if applicable.
- Processes used to ensure project coordination among multiple firms, if applicable and among disciplines.
- Internship and/or apprenticeship opportunities, particularly for high-school and higher education students in the New Orleans region.
- Any exceptional or value-added features or capabilities included in the proposed price for the work; may include ideas that are not specifically addressed in the scope of work.

4.3 CONTRACT AWARD

(1) The RTA intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose Qualifications (s) represents the best value after evaluation in accordance with the factors and sub-factors in the solicitation.

(2) The RTA may reject any or all Qualifications if such action is in the RTA's interest.

(3) The RTA may waive informalities and minor irregularities in Qualifications received.

(4) The RTA intends to evaluate Qualifications and award contracts without discussions with offerors. Therefore, the offeror's initial Qualifications should contain the offeror's best terms from a cost or price and technical standpoint. The RTA reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of Qualifications that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of

Qualifications in the competitive range to the greatest number that will permit an efficient competition among the most highly rated Qualifications.

(5) The RTA reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the Qualifications.

(6) The RTA reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the RTA's best interest to do so.

(7) Exchanges with offerors after receipt of a Qualifications do not constitute a rejection or counteroffer by the RTA.

(8) The RTA may determine that a Qualifications is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A Qualifications may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the RTA.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of Qualifications mailed or otherwise furnished to the successful offeror within the time specified in the Qualifications shall result in a binding contract without further action by either party.

(11) If a post-award debriefing is given to requesting offerors, the RTA shall disclose the following information, if applicable:

(i) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(iii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(iv) A summary of the rationale for award.

(v) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(vi) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

RTA shall score and rank all Qualifications based upon the evaluation criteria contained herein. An interview and/or presentation may be required. Award of this contract shall be to a properly licensed, responsible offeror deemed the most qualified, for which fair and reasonable compensation can be determined.

Proposers are reminded that price/cost shall not be used as an evaluation factor during the initial evaluation. However, price Qualifications will be evaluated and proposers are required to submit cost data separately with their Qualifications. Qualifications which do not contain cost/price information may be considered non-responsive to the administrative requirements of the RFP.

QUALIFICATION PRICING RESTRICTIONS

Any proposed overhead rate which exceeds 75% of approved categories (e.g., “labor”) shall be substantiated by a current audit performed by an independent Certified Public Accounting Firm. Any proposed overhead rate which exceeds 100% of the approved categories shall be substantiated by a current audit conducted by a federal or state agency. Labor rates for all individuals who may perform any work associated with this project shall be identified in the Qualifications. The individuals will be identified by name and job category. This requirement extends to all individuals whether classified as professional or non-professional. Any changes in labor rates and/or additions or changes to personnel providing work on this project must be pre-approved by RTA in writing.

4.4 OVERHEAD RATES

Contractor will be required to submit an audited overhead rate.

4.5 PLACE OF PERFORMANCE

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation, ____ **intends**, ____ **does not intend** [**check applicable block**] to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this Qualifications or response to request for information.

(b) If the offeror or respondent checks “intends” in paragraph (a) of this provision, it shall insert in the following spaces the required information:

Place of Performance (Street
Address, City, State, County, ZIP
Code)

Name and Address of Owner and Operator of the
Plant or Facility if Other than Offeror or
Respondent

ATTACHMENT I
SUPPLIER SUBMISSION CHECKLIST

The following items must be submitted as noted in order to be considered responsive.

Letter of Interest*

Consultant Questionnaire Form*

Non-Collusion Affidavit*

Certificate on Primary Debarment *

Certificate Regarding Debarment– Lower Tier *

Certification of Restrictions on Lobbying *

Participant Information Form*

DBE Form 1 – Contract Participation and DBE Commitment

DBE Form 2 – DBE Participation Questionnaire

DBE Form 3 – Documentation of Good Faith Efforts (if applicable)

DBE Form 4 – DBE Participation Plan (For RFPs and RFQs)

To be determined responsive all forms are due on the Qualifications submittal date.

INSTRUCTIONS FOR OBTAINING FORMS

Go to RTA's official web site at:

[New Orleans Regional Transit Authority - Procurements and Contracts \(norta.com\)](http://norta.com)

Click on "Vendor Form Library"

