REQUEST FOR PROPOSAL # 02-21

ROUTE NETWORK ANALYSIS & ALTERNATIVE SERVICE OPTIONS

Issued: March 5, 2021

Proposal Due: March 19, 2021. No deliveries accepted after 3:00 PM.
REQUEST FOR PROPOSAL (RFP) #02-21
ROUTE NETWORK ANALYSIS & ALTERNATIVE SERVICE OPTIONS

I. INTRODUCTION
The Island County Public Transportation Benefit Area (PTBA) dba Island Transit is a municipal corporation of the state of Washington and is governed by a Board of Directors composed of two Island County Commissioners, three appointed City Council members and an Amalgamated Transit Union representative. The agency has a staff of 115 employees including bus Operators and office staff, and an annual operating budget of $16 M.

Island Transit is seeking proposals from qualified firms to develop a route network and propose new service options that address the changing travel patterns in Island County following the COVID-19 pandemic. Island Transit is the public transit agency providing fixed route, paratransit, and vanpool services on Camano and Whidbey islands, with connections to Skagit and Snohomish County. Island Transit is a fare free system working to reduce its carbon footprint. Sales tax, often volatile, is the primary source of the agency’s funding.

As of the date of this document, ridership at Island Transit, like most comparably situated transit agencies, is about one-third of what it was prior to the pandemic. Many essential workers are relying on the transit agency for their travel needs while some choice riders have chosen other ways to commute or are working from their homes. The current span of service, including no service on Sundays, may present a challenge for many who would use transit if available when they needed it. Additionally, in many parts of this rural county, demand for service is low and traditional fixed route service is inefficient.

The goal of this project is to develop a route network and menu of services that will meet the new needs of Island County residents, paid for with existing revenue sources. The result should be operationally efficient, equitable, well utilized, and environmentally beneficial.

II. SCOPE OF SERVICES
The scope of work below is a general outline; specific deliverables will be determined during contract negotiation. Proposals should discuss specifics of how the consultant proposes to complete each task, including the timing to make sure that work will be relevant for the realities of the post-pandemic world.
Data: Collect and review existing data and gather additional data from origin and destination and household surveys, as needed. The Island Regional Transportation Planning Organization (IRTPO) is planning to obtain some of this data in 2021.

Review network: Review existing services and route network and determine opportunities for service improvements.

Develop proposals: Create a new route network indicating span and frequency for each route; design service for Sundays; review options to provide service for essential workers in the evening and early morning; develop proposals for seasonal tourist service, including possible shuttles and on-demand options; look for new, more efficient ways to provide service in low-ridership areas; provide options for on-demand or micro-transit service, particularly for first/last mile and ferry commuters; examine opportunities to leverage partner agencies’ transit service for intercountry trips.

Develop cost models: Provide the cost of these services, including options for addressing equity and possibly charging for premium services; recommend partners who might more efficiently provide these services or share in the their costs.

Provide ridership projections: For each option, provide ridership forecasts and develop metrics for measuring success.

Review vehicle and capital facility needs: Include in the recommendations the additional vehicles or facilities needed for that option to be implemented.

Complete an equity analysis: For each proposal, provide an equity analysis to avoid disproportionate impacts to disadvantaged population. Suggest ways to increase equity in the delivery of transit service.

Environmental review: Highlight opportunities to reduce the agency’s carbon footprint with each option.

Community engagement: Provide recommendations for engaging the community in the decision-making process. Island Transit is not expecting the consultant to lead or implement the engagement process.
III. PROJECT BUDGET
Island Transit has budgeted $75,000 for this project, with $50,000 of that total coming from a grant from the Washington State Department of Transportation (WSDOT) that must be expended by the end of the current biennium, June 30, 2021. Island Transit has budgeted additional funds for the community engagement work that it will do.

IV. PROPOSAL REQUIREMENTS
The proposal must provide a summary of the firm’s qualifications to perform the duties outlined in the scope of services section.

All proposals shall include the following:

- Cover letter
- General statement of the consultant team and experience
- Proposed methodology and timeline
- Proposed budget. Detail what can be accomplished for the identified budget
- Client References
- Task Area Descriptions
- Project Schedule and Work Plan
- Fee Structure
- Non-collusion Certification
- Acceptance of Terms and Conditions

Please provide three (3) paper copies of the entire packet and email one (1) complete packet as a pdf to: heppner@islandtransit.org

COVER LETTER
The cover letter must contain the following statements and information:

1. “Proposal may be released as public information in accordance with requirements of the laws covering same.“ (Any proprietary information must be clearly marked).
2. Proposal and cost schedule shall be valid and binding for one hundred and eighty (180) days following proposal due date and will become part of the contract that is negotiated with Island Transit.
3. Company name, address and telephone number of the firm submitting the proposal.
4. Name, title, email address and telephone number of the person or persons to contact who are authorized to represent the firm and to whom correspondence should be directed.
5. Proposals must state the proposer’s federal and state taxpayer identification numbers.

PROPOSAL SUMMARY
This summarizes your proposal and your firm’s qualifications. You may use this section to articulate why your firm is pursuing this work and how it is uniquely qualified to perform it.

GENERAL PROPOSER INFORMATION AND QUALIFICATIONS
Indicate the following:

1. Firm Identification
   Provide name of firm and the firm’s principal place of business, and the name, email address and telephone number of the contact person. Include the proposer’s federal and state taxpayer identification numbers.

2. Description of Qualifications
   Provide a brief history and description of your firm’s available services and qualifications. Include general information regarding organizational structure, size, capabilities, and areas of specialization. Include at a minimum the following information:
   a. Names of individuals who will perform required tasks as well as their certifications.
   b. Identify the person who will be primarily responsible for the services required by Island Transit and provide a description of the experience of the primary person with projects similar to those more specifically set forth in this proposal. Describe technical skills and qualifications for the project position. Include skills and experience with transit service planning which will obtain travel data, creating service goals, developing route and schedule alternatives and cost estimates, and conducting alternative analysis.
   c. Describe your ability to provide services in a timely fashion, including a description of your staffing and familiarity with services required by Island Transit.
   d. Describe experience with public entities and public transit agencies.

CUSTOMER REFERENCE
List private sector clients and all public sector clients for whom you have performed services relevant to this RFP. Provide the customer’s designated contact name, title, organization, email, and telephone number.
TASK AREA DESCRIPTIONS
Describe your overall approach to the scope of services listed in Section II. Proposals should discuss specifics of how you propose to complete each task, including the timing to make sure that work will be relevant for the realities of the post-pandemic world. Specific deliverables will be determined during contract negotiation.

PROJECT SCHEDULE AND WORKPLAN
Provide a detailed project implementation plan that includes:
1. Beginning and end dates of all tasks (the actual project start date will be determined during contract negotiations)
2. A table listing proposer staff assignments and proposed labor hours for all tasks
3. A brief description of each task and its work products
4. A description of projects deliverables

FEE SCHEDULE
The Proposal must contain a fee schedule that includes estimated hours, rates and overall price.

NON-COLLUSION CERTIFICATION
Proposer shall sign Non-Collusion Certification at time of signing the Agreement in substantially the same form as Attachment A.

V.  RFP OFFICIAL CONTACT
The RFP official contact is Meg Heppner, Assistant to the Executive Director, whose contact information is listed below. The proposer should rely only on written statements regarding the RFP issued by Meg Heppner or Executive Director Todd Morrow.

Address: Island Transit
19758 SR 20
Coupeville, WA 98239
Phone: 360-678-7771
Email: info@islandtransit.org

VI.  PROCUREMENT SCHEDULE
The procurement schedule for this project is as follows:

<table>
<thead>
<tr>
<th>MILESTONE</th>
<th>DATE</th>
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<tbody>
<tr>
<td>Request for Proposal Issued</td>
<td>March 5, 2021</td>
</tr>
<tr>
<td>Proposal Questions Deadline</td>
<td>March 10, 2021</td>
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</tbody>
</table>
Answers to RFP Questions Released | March 12, 2021
---|---
Proposal Submission Deadline | March 19, 2021
Finalists Selected | March 26, 2021
Proposer Interviews (reserve this date) | March 29, 2021
Proposer Selection | April 2, 2021

NOTE: Island Transit reserves the right to adjust this schedule as necessary.

VII. **SUBMISSION PROCEDURES**
Proposers must submit three (3) hard copies. It is necessary to also email a pdf submission document to heppner@islandtransit.org. It is the submitter’s responsibility to verify that Island Transit has received and is able to open the document.

**Proposals due Friday, March 19, 2021. No deliveries accepted after 3:00 pm.**

Late Proposals will not be considered. All proposals become the property of Island Transit.

Proposers should provide contact information to heppner@islandtransit.org in order for Island Transit to provide interested proposer with a list of any questions received and the agency’s answers to those questions.

VIII. **EVALUATION PROCEDURES**
The evaluators will consider how well the proposer’s solution meets the needs of Island Transit as described in the proposer’s response to each requirement and form. It is important that the responses be clear and complete so that the evaluators can adequately understand all aspects of the proposal. The evaluation process is not designed to simply award the contract to the lowest cost proposer. Rather, it is intended to help Island Transit select the proposer with the best combination of attributes, including price, based on the evaluation factors. Island Transit reserves the right to require that a subset of finalist proposers make a presentation to a selection team.

IX. **EVALUATION CRITERIA**

<table>
<thead>
<tr>
<th>CRITERIA</th>
<th>POINTS</th>
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</thead>
<tbody>
<tr>
<td>Route network analysis and service plan development experience</td>
<td>20</td>
</tr>
<tr>
<td>Cost</td>
<td>20</td>
</tr>
</tbody>
</table>
Experience with new forms of transit, including first and last mile/micro-transit, and related technology | 14
Sustainable practices and knowledge of carbon alternative transportation options | 14
Experience with data collection and analysis and ridership metrics | 8
Ability to perform equity analysis | 8
Cost-modeling experience | 8
Ability to assess the personnel, vehicle, and facility needs for proposed options | 8
Experience in rural areas | 8
Experience developing community engagement strategies | 6
Presentation and professionalism | 3
Experience working under federal contracting requirements | 3

X. APPEALS
Proposers who wish to appeal a disqualification of proposal or the award of contract may submit the appeal in writing to the Assistant to the Executive Director within ten (10) working days of the issue date on the Notice of Award or disqualification. Appeals should be sent to the following address:

Island Transit
ATTN: Meg Heppner, Assistant to the Executive Director
19758 SR 20,
Coupeville, WA 98239

The appeal must describe the specific citation of law, rule, regulation or common business practice upon which the protest is based. Neither the judgment used in the scoring by individual evaluators nor disagreement with the procurement process shall constitute grounds for appeal. Island Transit will not consider any protest based on items that could have been or should have been raised prior to the deadline for submitting questions or requesting addenda. The filing of a protest shall not prevent Island Transit from executing a contract with any other proposer.

ADDITIONAL ITEMS

RFP AMENDMENTS
Island Transit reserves the right to change the schedule or issue amendments to the RFP at any time. Island Transit also reserves the right to cancel or reissue the RFP.
PROPOSER’S COST TO DEVELOP PROPOSAL
Costs for developing proposals in response to the RFP are entirely the obligation of the proposer and shall not be chargeable in any manner to Island Transit.

WITHDRAWAL OF PROPOSALS
Proposals may be withdrawn at any time prior to the submission time specified in this RFP, provided notification is received in writing. Proposals cannot be changed or withdrawn after the time designated for receipt.

REJECTION OF PROPOSALS – WAIVER OF INFORMALITIES OR IRREGULARITIES
Island Transit reserves the right to reject any or all proposals, to waive any minor informalities or irregularities contained in any proposal, and to accept any proposal deemed to be in the best interest of Island Transit.

PROPOSAL VALIDITY PERIOD
Submission of the proposal will signify the proposer’s agreement that its proposal and the content thereof are valid for one hundred and eighty (180) days following the submission deadline and will become part of the contract that is negotiated between Island Transit and the successful proposer.

PUBLIC RECORDS
RCW 42.56.070(1) requires Island Transit to make available for inspection and copying nonexempt “public records” in accordance with published rules. The act defines “public records” to include any “writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained” by Island Transit regardless of physical form or characteristics. A "public record" can be any writing "regardless of physical form or characteristics." RCW 42.56.010 (3). "Writing" is defined very broadly as: "... handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated." RCW 42.56.010(4). An email, text, social media posting and database are therefore also "writings."

Under Washington state law, the documents submitted in response to this Request for Proposals (the “documents”) become a public record upon submission to Island Transit, subject
to mandatory disclosure upon request by any person, unless the documents are exempted from public disclosure by a specific provision of law. If Island Transit receives a request for inspection or copying of any such documents provided by a proposer in response to this RFP, it will promptly notify the proposer at the address given in response to this RFP that it has received such a request. Such notice will inform the proposer of the date Island Transit intends to disclose the documents requested and affording the proposer a reasonable opportunity to obtain a court order prohibiting or conditioning the release of the documents. Island Transit assumes no contractual obligation to enforce any exemption.

**CONTRACT AWARD AND EXECUTION**

Island Transit reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be initially submitted on the most favorable terms the proposers can offer. It is understood that the proposal will become a part of the official file on this matter without obligation to Island Transit.

The general conditions and specifications of the RFP and as proposed by Island Transit and the successful proposer’s response, as amended by agreements between Island Transit and the proposer, will become part of the contract documents. Additionally, Island Transit will verify proposer representations that appear in the proposal. Failure of the proposer’s products to meet the mandatory specifications may result in elimination of the proposer from competition or in contract cancellation or termination.

The proposer selected as the apparently successful proposer will be expected to enter into an agreement with Island Transit. A Proposed Agreement is provided with this REQUEST FOR PROPOSAL, as Attachment B.

If the selected proposer fails to sign the contract within five (5) business days of delivery of the final contract; Island Transit may elect to cancel the award and award the contract to the next-highest-ranked proposer.

No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.
ACCEPTANCE OF TERMS AND CONDITIONS

Indicate exceptions that your firm takes to any terms and conditions listed in this RFP, including the Attachments and proposed Agreement. Proposals which take exception to the specifications, terms or conditions of this RFP or the Proposed Agreement or offer substitutions shall explicitly state the exceptions(s), reason(s) therefore, and language substitute(s) (if any) in this section of the proposal response. Failure to take exception(s) shall mean that the proposer accepts the conditions, terms and specifications of the RFP and the Proposed Agreement.

If your firm takes no exception to the specifications, terms and conditions of this RFP and the Proposed Agreement, please indicate so.

Signed By: _______________________________________

Title: _______________________________________

Date: _______________________________________

For: _______________________________________

RFP 01-21, Route Network Analysis & Alternative Service Options
ATTACHMENT A

NON-COLLUSION CERTIFICATION

The undersigned, being duly sworn, deposes and says that the person, firm, association, copartnership or corporation herein named, has not either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in the preparation and submission of a proposal to Island Transit for consideration in the award of a contract on the improvement described as follows:

RFP #02-21 Route Network Analysis & Alternative Service Options

By:

___________________________
(Please print)

__________________________________
(Authorized Signature)

__________________________________
Title

__________________________________
Firm

__________________________________
Date
ATTACHMENT B

PROPOSED AGREEMENT
PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is made between Island County Public Transportation Benefit Area, a municipal corporation, hereinafter referred to as ISLAND TRANSIT, and ________________, hereinafter referred to as the CONTRACTOR.

IN CONSIDERATION of the mutual benefits herein contained, the parties hereby agree as follows:

SECTION I - SCOPE OF PROJECT

The CONTRACTOR shall undertake and complete the Project(s) described and detailed in Request for Proposal # 01-21 - Scope of Work, which is by this reference fully incorporated herein as if fully set out in this AGREEMENT.

SECTION 2 - TERM OF AGREEMENT

The CONTRACTOR shall commence, perform, and complete the work identified under this AGREEMENT within the time defined in Section VI. Procurement Schedule, but no later than June 30, 2021.

SECTION 3 - GENERAL STATE AND FEDERAL COMPLIANCE ASSURANCE

This contract is supported, in part, by a grant from the Washington State Department of Transportation (WSDOT). It is also supported, in part, by federal funding from the Federal Transit Administration (FTA). The CONTRACTOR agrees to comply with all applicable requirements in WSDOT’s Consolidated Grants Program Guidebook, as well as FTA requirement identified in the FTA Master Agreement, and any amendments thereof, which by this reference is incorporated here.

The CONTRACTOR agrees that WSDOT and FTA, and/or any authorized WSDOT and FTA representative, shall have not only the right to monitor the compliance of the CONTRACTOR with respect to the provisions of this AGREEMENT.

SECTION 4 - REIMBURSEMENT AND PAYMENT

Payment will be made by ISLAND TRANSIT on a reimbursable basis for actual costs and expenditures incurred, while performing eligible direct and related indirect Project work during the life of the Project. Payment is subject to the submission to and approval by ISLAND TRANSIT
of properly prepared invoices that substantiate the costs and expenses submitted by CONTRACTOR for reimbursement. Failure to send in progress reports and financial information as required in Section 8 - Reports may delay payment. The CONTRACTOR shall submit an invoice detailing and supporting the costs incurred. Such invoices may be submitted no more than once per month and no less than once per year, during the course of this AGREEMENT. If approved by ISLAND TRANSIT, properly prepared invoices shall be paid by ISLAND TRANSIT within thirty (30) days of receipt of the invoice. Total payments under this AGREEMENT shall not exceed $_________ without written authorization or amendment to this AGREEMENT by ISLAND TRANSIT.

SECTION 5 - ASSIGNMENTS AND SUBCONTRACTS

A. Unless otherwise authorized in advance and in writing by ISLAND TRANSIT, the CONTRACTOR shall not assign any portion of the Project or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this AGREEMENT.

B. The CONTRACTOR agrees to include certain language, attached as Attachment 1 and by this reference is incorporated here, of this AGREEMENT in each subcontract and in all contracts it enters into for the employment of any individuals, procurement of any incidental goods or supplies, or the performance of any work to be accomplished under this AGREEMENT. It is further agreed that those clauses shall not be modified in any such subcontract, except to identify the subcontractor or other person or entity that will be subject to its provisions. In addition, the following provision shall be included in any advertisement or invitation to bid for any procurement by the CONTRACTOR under this AGREEMENT:

Statement of Financial Assistance:
"This AGREEMENT is subject to the appropriations of the State of Washington."

SECTION 6 - NO OBLIGATION BY THE STATE OR FEDERAL GOVERNMENT

No contract between the CONTRACTOR and its subcontractors shall create any obligation or liability for ISLAND TRANSIT, WSDOT, OR FTA with regard to this AGREEMENT without specific written consent, notwithstanding its concurrence in, or approval of, the award of any contract or subcontract or the solicitations thereof.

SECTION 7 - PERSONAL LIABILITY OF PUBLIC OFFICERS

No officer or employee of ISLAND TRANSIT shall be personally liable for any acts or failure to act in connection with this AGREEMENT, it being understood that in such matters they are acting solely as agents of ISLAND TRANSIT.
SECTION 8 – ETHICS

A. Relationships with Employees and Officers of ISLAND TRANSIT. The CONTRACTOR shall not extend any loan, gratuity or gift of money in any form whatsoever to any employee or officer of ISLAND TRANSIT, nor shall CONTRACTOR rent or purchase any equipment and materials from any employee or officer of ISLAND TRANSIT.

B. Employment of Former ISLAND TRANSIT Employees. The CONTRACTOR hereby warrants that it shall not engage on a full-time, part-time, or other basis during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of ISLAND TRANSIT without written consent of ISLAND TRANSIT.

SECTION 9 - COMPLIANCE WITH LAWS AND REGULATIONS

The CONTRACTOR agrees to abide by all applicable state and federal laws and regulations including but not limited to, those concerning employment, equal opportunity employment, nondiscrimination assurances, project record keeping necessary to evidence compliance with such federal and state laws and regulations, and retention of all such records. The CONTRACTOR will adhere to all of the nondiscrimination provisions in chapter 49.60 RCW. Except when a federal statute or regulation preempts state or local law, no provision of the AGREEMENT shall require the CONTRACTOR to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of state or local law. If any provision or compliance with any provision of this AGREEMENT violate state or local law, or would require the CONTRACTOR to violate state or local law, the CONTRACTOR agrees to notify ISLAND TRANSIT immediately in writing. Should this occur, ISLAND TRANSIT and the CONTRACTOR agree to make appropriate arrangements to proceed with or, if necessary, expeditiously, terminate the Project.

SECTION 10 - ACCOUNTING RECORDS

A. Project Accounts. The CONTRACTOR agrees to establish and maintain for the Project(s) either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project(s). The CONTRACTOR agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project(s) shall be clearly identified, readily accessible and available to ISLAND TRANSIT upon request, and, to the extent feasible, kept separate from documents not pertaining to the Project(s).

B. Documentation of Project Costs and Program Income. The CONTRACTOR agrees to support all allowable costs charged to the Project(s), including any approved services
contributed by the CONTRACTOR or others, with properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The CONTRACTOR also agrees to maintain accurate records of all program income derived from implementing the Project(s).

SECTION 11 - AUDITS, INSPECTION, AND RETENTION OF RECORDS

A. Submission of Proceedings, Contracts, Agreements, and Other Documents. During the performance period of the Project(s) and for six (6) years thereafter, the CONTRACTOR agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project(s) as ISLAND TRANSIT, FTA and WSDOT may require. Project closeout does not alter these recording and record-keeping requirements. Should an audit, enforcement, or litigation process be commenced, but not completed, during the aforementioned six-year period then the CONTRACTOR's obligations hereunder shall be extended until the conclusion of that pending audit, enforcement, or litigation process.

B. General Audit Requirements. The CONTRACTOR agrees to obtain any other audits required by ISLAND TRANSIT at CONTRACTOR's expense. Project closeout will not alter the CONTRACTOR's audit responsibilities.

C. Inspection. The CONTRACTOR agrees to permit ISLAND TRANSIT, WSDOT and/or the State Auditor, or their authorized representatives, to inspect all Project work materials, payrolls, and other data, and to audit the books, records, and accounts of the CONTRACTOR and its subcontractors pertaining to the Project. The CONTRACTOR agrees to require each third party to permit WSDOT, and the State Auditor or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that third party contract, and to audit the books, records, and accounts involving that third party contract as it affects the Project(s).

SECTION 12 - LABOR PROVISIONS AND OVERTIME REQUIREMENTS

No CONTRACTOR or subcontractor contracting for any part of the Project(s) 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 times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek. CONTRACTOR will comply with Title 49 RCW, Labor Regulations.
SECTION 13 - CHANGED CONDITIONS AFFECTING PERFORMANCE
The CONTRACTOR hereby agrees to immediately notify ISLAND TRANSIT of any change in conditions or law, or of any other event, which may affect its ability to perform the Project(s) in accordance with the provisions of this AGREEMENT.

SECTION 14 - DISPUTES

A. Disputes. Disputes, arising in the performance of this AGREEMENT, which are not resolved by agreement of the PARTIES, shall be decided in writing by the Executive Director of ISLAND TRANSIT. This decision shall be final and conclusive unless within ten (10) days from the date of CONTRACTOR's receipt of ISLAND TRANSIT’s written decision, the CONTRACTOR mails or otherwise furnishes a written appeal to the Executive Director of ISLAND TRANSIT. The CONTRACTOR's appeal shall be decided in writing by the Executive Director of ISLAND TRANSIT within thirty (30) days of receipt of the appeal by the Executive Director of ISLAND TRANSIT or the Director's designee. The decision shall be binding upon the CONTRACTOR and the CONTRACTOR shall abide by the decision.

B. Performance during Dispute. Unless otherwise directed by ISLAND TRANSIT, CONTRACTOR shall continue performance under this AGREEMENT while matters in dispute are being resolved.

C. Claims for Damages. Should either PARTY to this AGREEMENT suffer injury or damage to person, property, or right because of any act or omission of the other PARTY or any of that PARTY’s employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other PARTY within thirty (30) days after the first observance of such injury or damage.

D. Rights and Remedies. All remedies provided in this AGREEMENT are distinct and cumulative to any other right or remedy under this document or afforded by law or equity, and may be exercised independently, concurrently, or successively and shall not be construed to be a limitation of any duties, obligations, rights and remedies of the PARTIES hereto. No action or failure to act by the ISLAND TRANSIT or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under this AGREEMENT, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
SECTION 15 - TERMINATION

A. **Termination for Convenience.** ISLAND TRANSIT and/or the CONTRACTOR may suspend or terminate this AGREEMENT, in whole or in part, and all or any part of the financial assistance provided herein, at any time by written notice to the other PARTY. ISLAND TRANSIT and the CONTRACTOR shall agree upon the AGREEMENT termination provisions including but not limited to the settlement terms, conditions, and in the case of partial termination the portion to be terminated. Written notification must set forth the reasons for such termination, the effective date, and in case of a partial termination the portion to be terminated. However, if, in the case of partial termination, ISLAND TRANSIT determines that the remaining portion of the award will not accomplish the purposes for which the award was made, ISLAND TRANSIT may terminate the award in its entirety. The PARTIES may terminate this AGREEMENT for convenience for reasons including, but not limited to, the following:

1. The requisite funding becomes unavailable through failure of appropriation or otherwise;
2. ISLAND TRANSIT determines, in its sole discretion, that the continuation of the Project(s) would not produce beneficial results commensurate with the further expenditure of funds;
3. The CONTRACTOR is prevented from proceeding with the Project(s) as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense; or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources;
4. The CONTRACTOR is prevented from proceeding with the Project(s) by reason of a temporary preliminary, special, or permanent restraining order or injunction of a court of competent jurisdiction where the issuance of such order or injunction is primarily caused by the acts or omissions of persons or agencies other than the CONTRACTOR; or
5. The State Government determines that the purposes of the statute authorizing the Project(s) would not be adequately served by the continuation of financial assistance for the Project(s);
6. In the case of termination for convenience under subsections A.1-5 above, ISLAND TRANSIT shall reimburse the CONTRACTOR for all costs payable under this AGREEMENT that the CONTRACTOR properly incurred prior to termination. The CONTRACTOR shall promptly submit its claim for reimbursement to ISLAND TRANSIT. If the CONTRACTOR has any property in its possession belonging to ISLAND TRANSIT, the CONTRACTOR will account for the same, and dispose of it in the manner ISLAND TRANSIT directs.
B. **Termination for Default.** ISLAND TRANSIT may suspend or terminate this AGREEMENT for default, in whole or in part, and all or any part of the financial assistance provided herein, at any time by written notice to the CONTRACTOR, if the CONTRACTOR materially breaches or fails to perform any of the requirements of this AGREEMENT, including:

1. Takes any action pertaining to this AGREEMENT without the approval of ISLAND TRANSIT, which under the procedures of this AGREEMENT would have required the approval of ISLAND TRANSIT;
2. Jeopardizes its ability to perform pursuant to this AGREEMENT, United States of America laws, Washington state laws, or local governmental laws under which the CONTRACTOR operates;
3. Fails to make reasonable progress on the Project(s) or other violation of this AGREEMENT that endangers substantial performance of the Project(s); or
4. Fails to perform in the manner called for in this AGREEMENT or fails, to comply with, or is in violation of, any provision of this AGREEMENT. WSDOT shall serve a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default hereunder. If it is later determined by ISLAND TRANSIT that the CONTRACTOR had an excusable reason for not performing, such as events which are not the fault of or are beyond the control of the CONTRACTOR, such as a strike, fire or flood, ISLAND TRANSIT may: (a) allow the CONTRACTOR to continue work after setting up a new delivery of performance schedule, or (b) treat the termination as a termination for convenience.

C. ISLAND TRANSIT, in its sole discretion may, in the case of a termination for breach or default, allow the CONTRACTOR ten (10) business days, or such longer period as determined by ISLAND TRANSIT, 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 the CONTRACTOR fails to remedy to ISLAND TRANSIT's satisfaction the breach or default within the timeframe and under the conditions set forth in the notice of termination, ISLAND TRANSIT shall have the right to terminate this AGREEMENT without any further obligation to CONTRACTOR. Any such termination for default shall not in any way operate to preclude ISLAND TRANSIT from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.

D. In the event that ISLAND TRANSIT elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this AGREEMENT, such waiver by ISLAND TRANSIT shall not limit ISLAND TRANSIT's remedies for any succeeding breach of that or of any other term, covenant, or condition of this AGREEMENT.
E. If this AGREEMENT is terminated, whether for convenience or for default, before the specified end date set forth in the caption header, "Term of Agreement", ISLAND TRANSIT and the CONTRACTOR shall execute an amendment to this AGREEMENT identifying the termination date and the reason for termination.

SECTION 16 - FORBEARANCE BY ISLAND TRANSIT NOT A WAIVER

Any forbearance by ISLAND TRANSIT in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

SECTION 17 - LACK OF WAIVER

In no event shall any ISLAND TRANSIT payment of funds to the CONTRACTOR constitute or be construed as a waiver by ISLAND TRANSIT of any CONTRACTOR breach, or default. Such payment shall in no way impair or prejudice any right or remedy available to ISLAND TRANSIT with respect to any breach or default.

SECTION 18 - LIMITATION OF LIABILITY

A. The CONTRACTOR shall indemnify and hold harmless ISLAND TRANSIT, its agents, employees, and officers and process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs (hereinafter referred to collectively as "claims"), of whatsoever kind or nature brought against ISLAND TRANSIT arising out of, in connection with or incident to the execution of this AGREEMENT and/or the CONTRACTOR's performance or failure to perform any aspect of this AGREEMENT. This indemnity provision applies to all claims against ISLAND TRANSIT, its agents, employees and officers arising out of, in connection with or incident to the negligent acts or omissions of the CONTRACTOR, its agents, employees, officers and subcontractors. Provided, however, that nothing herein shall require the CONTRACTOR to indemnify and hold harmless or defend ISLAND TRANSIT, its agents, employees or officers to the extent that claims are caused by the sole negligent acts or omissions of ISLAND TRANSIT, its agents, employees or officers; and provided further that if such claims result from the concurrent negligence of (a) the CONTRACTOR its employees, agents, officers or contractors and (b) ISLAND TRANSIT, its employees or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of the PARTY, its employees, officers, authorized agents, and/or contractors. The indemnification and hold harmless provision shall survive termination of this AGREEMENT.
B. The CONTRACTOR shall be deemed an independent contractor for all purposes, and the employees of the CONTRACTOR or its subcontractors and the employees thereof, shall not in any manner be deemed to be the employees of ISLAND TRANSIT.

C. The CONTRACTOR specifically assumes potential liability for actions brought by CONTRACTOR's employees and/or subcontractors and solely for the purposes of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the State Industrial Insurance Law, Title 51 Revised Code of Washington.

D. In the event either the CONTRACTOR or ISLAND TRANSIT incurs attorney's fees, costs or other legal expenses to enforce the provisions of this section of this AGREEMENT against the other PARTY, all such fees, costs and expenses shall be recoverable by the prevailing PARTY.

SECTION 19 - AGREEMENT MODIFICATIONS

Either PARTY may request changes to this AGREEMENT. Any changes to the terms of this AGREEMENT must be mutually agreed upon and incorporated by written amendment to this AGREEMENT. Such written amendment to this AGREEMENT shall not be binding or valid unless signed by the persons authorized to bind from each of the PARTIES.

SECTION 20 - ISLAND TRANSIT ADVICE

The CONTRACTOR bears complete responsibility for the administration and success of the Project(s) as defined by this AGREEMENT and any amendments thereto. If the CONTRACTOR solicits advice from ISLAND TRANSIT on problems that may arise, the offering of ISLAND TRANSIT advice shall not shift the responsibility of the CONTRACTOR for the correct administration and success of the Project(s), and ISLAND TRANSIT shall not be held liable for offering advice to the CONTRACTOR.

SECTION 21 - VENUE AND PROCESS

In the event that either PARTY deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the PARTIES hereto agree that any such action shall be initiated in the Superior Court of the State of Washington situated in Island County. The PARTIES agree that the laws of the State of Washington shall apply.
SECTION 22 - SUBROGATION

A. Prior to Subrogation. ISLAND TRANSIT may require the CONTRACTOR to take such action as may be necessary or appropriate to preserve the CONTRACTOR's right to recover damages from any person or organization alleged to be legally responsible for injury to any equipment, property, or transportation program in which ISLAND TRANSIT has a financial interest.

B. Subrogation. ISLAND TRANSIT may require the CONTRACTOR to assign to ISLAND TRANSIT all right of recovery against any person or organization for loss, to the extent of ISLAND TRANSIT's loss. Upon assignment, the CONTRACTOR shall execute, deliver, and do whatever else necessary to secure ISLAND TRANSIT's rights. The CONTRACTOR shall do nothing after any loss to prejudice the rights of ISLAND TRANSIT.

C. Duties of the CONTRACTOR. If ISLAND TRANSIT has exercised its right of subrogation, the CONTRACTOR shall cooperate with ISLAND TRANSIT and, upon ISLAND TRANSIT's request, assist in the prosecution of suits and enforce any right against any person or organization who may be liable to ISLAND TRANSIT. The CONTRACTOR shall attend hearings and trials as requested by ISLAND TRANSIT, assist in securing and giving evidence as requested by ISLAND TRANSIT, and obtain the attendance of witnesses as requested by ISLAND TRANSIT.

SECTION 23 - COMPLETE AGREEMENT

This document contains all covenants, stipulations, and provisions agreed upon by ISLAND TRANSIT. No agent or representative of ISLAND TRANSIT has authority to make, and ISLAND TRANSIT shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein or made by written amendment hereto.

SECTION 24 - SEVERABILITY

If any covenant or provision of this AGREEMENT shall be adjudged void, such adjudication shall not affect the validity or obligation of performance of any other covenant or provision, or any part thereof, which in itself is valid if such remainder conforms to the terms and requirements of applicable law and the intent of this AGREEMENT. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision except as herein allowed.
SECTION 25 - ORDER OF PRECEDENCE

Any conflict or inconsistency in this AGREEMENT and its attachments will be resolved by giving documents precedence in the following order:

1. Federal law
2. This AGREEMENT and any amendments thereto
3. Exhibit A, Federal Provisions, if applicable
4. State law
5. The terms and conditions set forth in the Request for Proposals (RFP)
6. CONTRACTOR’S proposal

SECTION 26 - EXECUTION

This AGREEMENT is executed by the Executive Director of ISLAND TRANSIT or their designee, not as an individual incurring personal obligation and liability, but solely by, for and on behalf of ISLAND TRANSIT, in the capacity as ISLAND TRANSIT’S Executive Director, or designee.

SECTION 27 - INSURANCE

The CONTRACTOR shall procure and maintain for the duration of the AGREEMENT, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the CONTRACTOR, their agents, representative, employees or subcontractors. CONTRACTOR’s maintenance of insurance as required by the AGREEMENT shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit ISLAND TRANSIT’s recourse to any remedy available at law or in equity. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

The CONTRACTOR shall provide a Certificate of Insurance and additional insured endorsement page(s) evidencing:

A. Automobile Liability insurance with limits no less than $1,000,000 combined single limit per accident for bodily injury and property damage on all owned, non-owned, hired and leased vehicles. If necessary, the policy shall be endorsed to provide contractual liability coverage.

B. Commercial General Liability insurance written on an ISO occurrence basis form CG 00 01 and shall cover liability arising from premises, operations, property damage, independent contractors and personal injury and advertising injury, with
limits no less than $1,000,000 combined single limit per occurrence and $2,000,000 aggregate.

C. Worker’s Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

D. Professional Liability insurance, including “errors and omissions” with limits no less than $1,000,000 on a claims-made annual aggregate basis (if applicable to project – required for engineering, architects and some professional consultants – otherwise this coverage stipulation does not apply).

Any payment of deductible or self-insured retention shall be the sole responsibility of the CONTRACTOR.

ISLAND TRANSIT, its officers, volunteers and agents shall be named as an additional insured on the insurance policy, as respects work performed by or on behalf of the CONTRACTOR and a copy of the endorsement naming ISLAND TRANSIT as additional insured shall be attached to the Certificate of Insurance and provided to ISLAND TRANSIT before the contract is finalized. A copy of the certificate and endorsement shall be provided to ISLAND TRANSIT prior to commencement of the work. ISLAND TRANSIT reserves the right to request certified copies of any required insurance policies.

The CONTRACTOR’S insurance shall contain a clause stating that coverage shall separately apply to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer’s liability. The CONTRACTOR’S insurance shall be primary insurance with respect to ISLAND TRANSIT and ISLAND TRANSIT shall be given thirty (30) days prior written notice of any cancellation, suspension or material change in coverage.

SECTION 28 - OWNERSHIP OF DOCUMENTS

Any reports, studies, conclusions and summaries prepared by the Proposer shall become the property of ISLAND TRANSIT.

SECTION 29 - CONFIDENTIALITY OF INFORMATION

All information and data furnished to the Proposer by ISLAND TRANSIT, and all other documents to which the Proposer’s employees have access during the term of the contract, shall be treated as confidential to ISLAND TRANSIT. Any oral or written disclosure to unauthorized individuals is prohibited.
SECTION 30 - BINDING AGREEMENT

This AGREEMENT, along with any attachments or addendums, represents the entire agreement between the parties. Therefore, this AGREEMENT supersedes any prior agreements, promises, conditions, or understandings between ISLAND TRANSIT and CONTRACTOR. This AGREEMENT may be modified or amended if the amendment is made in writing and is signed by both parties.

The undersigned acknowledge that they are authorized to execute this AGREEMENT and bind their respective agency(ies) and or entity(ies) to the obligations set forth herein.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT the day and year signed last below.

By:

________________________________________
(Please print)

________________________________________
(Authorized Signature)

Title

________________________________________
Firm

________________________________________
Date

AND

By:

________________________________________
(Please print)

________________________________________
(Authorized Signature)

Title

________________________________________
Firm

________________________________________
Date
Not every provision of every (federal clause) will apply to every contract award. If a provision does not apply to the (project), (it) will not be enforced by Island Transit.
ACCESS TO RECORDS AND REPORTS

a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-Contracts, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.

b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

CIVIL RIGHTS LAWS AND REGULATIONS

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

1 Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to:

a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.


4 Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Civil Rights and Equal Opportunity

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.


implementing requirements FTA may issue.
CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

DEBARMENT AND SUSPENSION

a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least $25,000

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency and subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

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

Prime contractors are required to pay subcontracts for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency’s written consent; and that, unless the Agency’s consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

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

DHS SEAL, LOGO, AND FLAGS

The contractor shall not use the Search Results
Web results

Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FTA pre-approval.

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.

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

FEDERAL CHANGES

49 CFR Part 18 Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

FLY AMERICA

a) Definitions. As used in this clause—
1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) "United States" means the 50 States, the District of Columbia, and outlying areas. 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencys, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

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

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

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

Incorporation of Federal Transit Administration (FTA) Terms - The provisions within include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the current FTA Circular 4220 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.
NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The Agency 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 Agency, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PATENT RIGHTS AND RIGHTS IN DATA

Intellectual Property Rights
This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described below. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
   a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
   b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract is permitted to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”

PROMPT PAYMENT

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor’s work related to this contract is satisfactorily completed.

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

SAFE OPERATION OF MOTOR VEHICLES

Seat Belt Use
The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency.
Distracted Driving
The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

(1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
(2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
(3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

TERMINATION

Termination for Convenience (General Provision)
The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

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

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

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

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

Termination for Default (Supplies and Service)
If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Transportation Services)
If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

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

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

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

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if: 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

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

If the termination is for the convenience of the Agency, the Agency’s Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency.

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

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

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.
Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

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

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

a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
   1. Debarred,
   2. Suspended,
   3. Proposed for debarment,
   4. Declared ineligible,
   5. Voluntarily excluded, or
   6. Disqualified,

b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
   1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
   2. Violation of any Federal or State antitrust statute, or,
   3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,

c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,

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

e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,

f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
   1. Equals or exceeds $25,000.,
   2. Is for audit services, or,
   3. Requires the consent of a Federal official, and

g. It will require that each covered lower tier contractor and subcontractor:
   1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
   2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
      a. Debarred from participation in its federally funded Project,
      b. Suspended from participation in its federally funded Project,
      c. Proposed for debarment from participation in its federally funded Project,
      d. Declared ineligible to participate in its federally funded Project,
      e. Voluntarily excluded from participation in its federally funded Project, or
      f. Disqualified from participation in its federally funded Project, and

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

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

Certification

Contractor:________________________________________________________

Signature of Authorized Official:____________________________________  Date _____/_____/_______

Name and Title of Contractor’s Authorized Official:______________________________