

(Rev. 2/6/2018)

Consultant Services Solicitation

(Electronic Submission Required)

Transit & Railway Design



Project No. 8403XEE2496
Administrative Support for State Safety Oversight (SSO)

[Addendum 1](#)

~~November 4, 2019~~ [November 13, 2019](#)

**UTAH DEPARTMENT OF TRANSPORTATION
Solicitation**

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PART ONE

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Consultant Services Solicitation Overview

The Utah Department of Transportation is soliciting services identified in Part Three (Project Information and Evaluation Criteria) of this document. Consultant Services will follow guidelines outlined in the [Consultant Services Manual of Instruction](#) (MOI) and in this Solicitation.

Solicitation is defined as the document used by UDOT to obtain a Consultant's Proposal.

Proposal is defined as a Consultant's response to UDOT's Solicitation.

- 1. Communication:** Pursuant to Utah Code 63G-6a-1503(3), beginning the date that the solicitation is issued until the selection of a Consultant has been made, **Consultants may not contact or communicate with any member or potential member of a Selection Team except through the following official communication process:**

Consultants may contact the UDOT Contract Administrator to schedule one-on-one appointments for project or scope of work discussions with the UDOT Project Manager (PM) (and Local Government Project Manager) regarding this Solicitation. Consultants may only communicate through these official designated appointments for project-related questions. A date has been designated for appointments for these discussions in the Selection Schedule outlined in Part Three (Project Information and Evaluation Criteria). Consultants desiring to meet with the UDOT PM or any UDOT employee must contact the UDOT Contract Administrator via email to request an appointment PRIOR to the deadline identified in the Selection Schedule outlined in Part Three (Project Information and Evaluation Criteria).

UDOT desires to make the most efficient use of resources for all parties involved with the established communication process. The one-on-one meeting with UDOT should not be viewed as a marketing tool and is not part of the Consultant Selection process.

Consultants may contact the UDOT Contract Administrator or other Consultant Services staff with any format or process questions.

- 2. Subscription to the UDOT Consultant Services Update Service:** UDOT recommends Consultants interested in this project subscribe to the [UDOT Consultant Services Update Service](#) on the UDOT website.

If there are any changes affecting the Solicitation, notice will be sent out via an e-mail through the update service.

- 3. Review of the Solicitation documents:** Consultants are responsible for reviewing and understanding the content and requirements of the Solicitation. Read and review each section carefully to ensure proposals meet the outlined requirements. If the Consultant identifies any mistake, error, or ambiguity in the Solicitation during the procurement process, it is the duty of the Consultant to notify the Contract Administrator via email.

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4. **Conflict of Interest:** UDOT expects Consultants to act with integrity and professional ethics. When there is a potential conflict of interest, Consultants are required to either not submit for the project or disclose the potential conflict to the Consultant Services Manager prior to submitting a proposal. The Consultant Services Manager will coordinate with the UDOT Conflict of Interest Review Team for a determination by UDOT. For additional information, refer to the UDOT [Consultant Services Manual of Instruction](#) (MOI). Additional Conflict of Interest requirements may be identified in Part Three of this Solicitation.
5. **Applicable Federal and State Regulations:** The Consultant will conform to all applicable state and federal regulations.
6. **Conditions of Proposal:** All costs related to the preparation of the Proposal and any related activities such as interviews are the sole responsibility of the Consultant. UDOT assumes no liability for any costs incurred by Consultants during the selection and contract negotiation process.
7. **Financial Screening:** Consultants are required to be financially screened at the appropriate level for this Solicitation. For additional information on financial screening requirements, refer to the [Consultant Services Manual of Instruction](#) (MOI). If the selected Consultant is unable to complete the financial screening process within 2 weeks of selection, the Proposal will be determined non-responsive and UDOT may move on to negotiate with the new first-ranked responsive Consultant.
8. **Contract Terms and Conditions:** It is the Consultants' responsibility to review and understand UDOT's Standard Terms and Conditions contained in the UDOT [Contract Terms and Conditions](#). These terms and conditions will apply to any contract resulting from this Solicitation.
9. **Health Reform – Health Insurance Coverage in State Contracts Requirements:** As required by UCA 72-6-107.5, effective March 17, 2016, UDOT will not enter into a contract of \$2,000,000 or more with a prime Consultant or \$1,000,000 or more with a sub-Consultant without demonstration of compliance regarding the offering of "Qualified Health Insurance Coverage" to their employees. Prior to issuing a Notice to Proceed, the Consultant must demonstrate compliance with the provisions of Administrative Rule R-916-5. A Consultant's inability to adequately demonstrate compliance may be grounds for determining a Proposal non-responsive and UDOT moving on to negotiate with the new first-ranked responsive Consultant.
10. **Debarment Certification:** Federal regulations require certification by prospective participants (including contractors, subcontractors, and principals) as to current history regarding debarment, eligibility, indictments, convictions, or civil judgments. The selected Consultant will be required to certify in accordance with contract Standard Terms and Conditions.
11. **Right to Cancel or Reject:** UDOT reserves the right to cancel the Solicitation at any time when it is in UDOT's best interest. UDOT also reserves the right to accept or reject any or all Proposals submitted in response to the Solicitation.
12. **Required Personnel Qualification:** The Consultant will be responsible to ensure all personnel proposed are qualified through training, experience, and appropriate certification for the tasks assigned and will have a working knowledge of UDOT standard practices.

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13. **Proposed Project Staff:** The Consultant is expected to provide a Consultant Proposed Staffing Plan for the project, as outlined in Part Three (Project Information and Evaluation Criteria). The plan should state the certification and education levels of the individuals proposed for use on this contract including sub-Consultants' personnel. The plan must be included in the Proposal but will not count against the maximum allowed pages.

UDOT's requirement for listing current or former UDOT employees as personnel in a Proposal is as follows:

1. If a Consultant lists a former UDOT employee on the Proposal who officially left UDOT employment prior to the submission date of the Proposal, the Consultant will not be disqualified.
 2. If the Consultant lists someone who has not yet left UDOT employment, even if the employee plans to retire or quit soon, the Consultant will be disqualified.
 3. If a Consultant lists a former or current UDOT employee who was involved in the development of the Solicitation for this project, the Consultant will be disqualified.
 4. These requirements apply to prime and sub-Consultants.
14. **Key Personnel:** Key Personnel are those individuals specifically identified in the Proposal as being set forth to effectively manage all aspects of the work in a quality, timely and efficient manner. When Consultants list Key Personnel, the Consultant is agreeing to make the personnel available to complete work on the contract at whatever level the project requires.
15. **Audits:** Prior to final contract award, an audit may be conducted by UDOT of the selected Consultant. This audit will be for the purpose of ensuring the selected Consultant is financially capable of performing the contract, the cost information and prices quoted are reasonable, and the selected Consultant has adequate accounting practices to ensure accurate tracking of contract costs. UDOT reserves the right to inspect Consultant records associated with this project, including financial records, as deemed necessary during the term of the contract.
- Prior to final acceptance of the contract work, UDOT may conduct a closing audit of the Consultant. This closeout audit will be performed upon completion of the contract to verify the accuracy of all billings and compliance with the contract provisions.
- In the event that a proposing Consultant has failed to pay UDOT monies due to UDOT for over payment on past projects, UDOT has the right to reject and/or disqualify the Consultant's Proposal. Disqualification will be based on audit findings, determinations, and recommendations made by the UDOT Fiscal Audit Division.
16. **Work site Safety:** Utah Code 63G-6a-403 states UDOT may request the Consultant submitting a Proposal to provide information about the Consultant's work site safety program, including any requirement that the person imposes on sub consultants for a work site safety program and any other pertinent information.
17. **Disposition of Proposals:** Proposals and their content become the property of UDOT and are treated as non-public records until the Contract has been executed by all necessary officials of the Consultant and UDOT. The Proposal of the successful Consultant will be open to public inspection for a period of one year after the Contract has been executed.

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18. **Consultant Debriefing:** As part of the Proposal evaluation, UDOT may provide constructive criticism of the Proposals submitted for this project.

Debriefing information may consist of scores of the first-ranked Consultant's proposal/interview and the scores, strengths and weaknesses of the Consultant's own proposal/interview.

The proposal and strengths identified in the selected Consultant's proposal/interview will be available for review in-person at the Consultant Services division, for a period of one year after the Contract has been executed.

Consultants may contact the Contract Administrator for a formal debriefing.

19. **Notice to Proceed (NTP):** NTP will be issued by Consultant Services division after contract execution. Authorization to begin work from any other source is invalid and will result in non-payment for services provided prior to authorized notification to begin work.
20. **Change in Key Personnel During Negotiations or after Notice to Proceed (NTP):** If after entering negotiations with the first-ranked Consultant, the Consultant is unable to provide the Key Personnel (prime or sub-Consultant) identified in the Proposal at the levels determined necessary for the project by the PM, the Consultant will be required to notify the PM and the Consultant Services Contract Administrator. The Consultant will then be offered the opportunity to propose a revised Project Team. The UDOT Selection Team will review the revised Project Team to determine if it is equal to or better than the originally proposed team. If UDOT determines the revised Team is equal to or better than the originally proposed team, negotiations will continue. If UDOT determines the revised team is not equal to or better than the originally proposed team, negotiations will be discontinued and UDOT will move on to the second-ranked Consultant. If the change in Key Personnel is after NTP and UDOT does not approve the change, UDOT reserves the right to cancel the contract and/or reflect the change on the Consultant Project Evaluation.
21. **Protests:** All protests with respect to this Solicitation must be in writing, and will follow the requirements in Utah Code Sections §63G-6a-1602 et seq. Deliver a copy of any protest to:

Executive Director
Utah Department of Transportation
4501 South 2700 West, 1st Floor
P O Box 141245
Salt Lake City, UT 84114-1245

Any protest not set forth in writing within the time limits specified in §63G-6a-1602 is null and void and will not be considered.

22. **Insurance Certificates:** The Consultant is required to provide UDOT with Certificates of Insurance meeting the current guidelines. Current insurance requirements can be found within the [Consultant Services Manual of Instructions](#) (MOI).
23. **Required Completion and Acceptance Criteria:** Progress payments will be made for work in progress. Final invoice payment will be made after: all of the work has been completed; the final

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estimate, project records, and documentation have been received and accepted by UDOT as accurate and complete; and a Consultant Evaluation has been performed.

24. **Government Records Access and Management Act (GRAMA):** UDOT will maintain a nonpublic process for the duration of this Solicitation. Pursuant to Subsection §63G-2-305(6) of the GRAMA, all records related to this Solicitation, including, but not limited to Proposals, evaluation, and selection procedures, and any records created during the evaluation and selection process will remain nonpublic records until the Contract has been executed by all necessary officials of the Consultant and UDOT. The GRAMA, Utah Code Ann., §63G-2-101 et seq., provides in part that certain records are protected if properly classified.
25. **Federal Transit Administration – Professional Services / A & E Clauses:** The following FTA Terms and Conditions will be included as part of any contracts resulting from this selection. 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 FTA Terms and Conditions Section I - Debarment and Suspension Certification, Section II - Lobbying Certificate, Section III - Bid Conditions DBE, and Item 1 - Good Faith Efforts to Comply with DBE Requirements

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PART TWO

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Solicitation Method and Requirements Streamlined Solicitation

1. **Solicitation:** This Solicitation follows the Streamlined Solicitation processes and procedures outlined herein.

UDOT Consultant Services staff facilitates Selection Teams through the ranking and selection of Consultants to provide engineering services for transportation related projects. Consultant selection is a Qualification-Based Selection (QBS) process, where the primary factor in selection is the qualification-based criteria outlined by the Selection Team in Part Three (Project Information and Evaluation Criteria), rather than the cost of engineering services. Cost is a secondary factor after a Consultant is selected and the contract negotiation process begins.

2. **Proposal Deadline:** Submit one (1) electronic PDF file of the Proposal by email to the email address specified and prior to 11:00 AM on the submission date identified in the Selection Schedule in Part Three (Project Information and Evaluation Criteria). Proposals will not be accepted after the 11:00 AM deadline.
3. **Qualification Based Selection:** This is a Qualifications Based Selection (QBS) process based on United States Code (USC) Title 40, Chapter 11, Sections 1101 – 1104 (Selection of Architects and Engineers, otherwise known as The Brooks Act). Consultant fees are not a factor in the ranking of Consultants to provide the requested services.
4. **Consultant Fee Discussion:** Consultant fees are not a factor in the selection ranking of a Consultant to provide services. All price/cost related items which include, but are not limited to past, present or future fees associated with Consultant contracts, direct salaries / wage rates, indirect cost rates, and other direct costs are prohibited from being used in Proposals. Consultant fee discussions are not allowed. Do not include any reference to Consultant fees (past, present, or future) in the Proposal.
5. **Financial Screening:** UDOT requires Consultants to be financially screened at the appropriate level for this Solicitation. The time it takes a Consultant to complete the Financial Screening process varies and therefore UDOT encourages Consultants to submit their [Financial Screening Application and Questionnaire](#) as soon as possible.

Consultants may obtain the Financial Screening Application and Questionnaire from the UDOT website. For questions, contact the Consultant Services Financial Screener at (801)965-4138. A Consultant's Financial Screening status is effective for the period of one year from the time the Consultant is approved.

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6. **Guidelines for Preparing Streamlined Proposals:** These guidelines were developed to standardize the preparation of a Proposal by Consultants for engineering services on a UDOT project. Submitting a Proposal is the beginning of the selection process and is used as the basis for selecting or for short-listing Consultants. The purposes of the guidelines are to ensure consistency in format and content in the Proposals prepared by Consultants and submitted to UDOT. It is highly recommended that Proposals are written and presented to UDOT in a clear and concise format which will not distract from the content of the material presented.

The following table outlines the Proposal instructions and guidelines. Any penalty or disqualification actions are clearly identified in the table. Violations that do not result in a penalty or a disqualification action may still affect the Consultant’s overall Proposal score as part of the evaluation process.

Proposal Instructions and Guidelines		
Instruction	Description of Requirement	Violation Penalty or Disqualification
Page Limits	Provide only the allowable number of pages as identified in Part Three (Project Information and Evaluation Criteria)	Additional pages will be removed
Page Sizes	Provide only the allowable page sizes identified in Part Three (Project Information and Evaluation Criteria)	Pages violating size requirement will be removed
Consultant Proposed Staffing Plan	Provide a copy of the Consultant Proposed Staffing Plan with no additional information beyond that which is required, as identified on the sample form	If additional information is provided, the Staffing Plan will be removed
Margins	Provide one-inch (1”) margins throughout the Proposal; Consultant Name/Logo and Page Headers/Footers may be within the margins	Guideline
Font and Line Spacing	Use a 10-point [or greater] Arial or Times New Roman font	Guideline
E-mail	Do NOT send Proposals directly or indirectly to any known or presumed Solicitation Selection Team members or other UDOT personnel outside of the prescribed UDOT email address	Guideline
PDF Submission	Send Proposals via e-mail in PDF format	Guideline
Proposal Deadline	Send Proposals to udotcssoq@utah.gov prior to the 11:00 AM deadline on the date identified in Part Three (Project Information and Evaluation Criteria)	Disqualification
Interviews	If interviews are required, attend the date and time instructed by Consultant Services	Disqualification

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Fee Discussion	Submit a Proposal without any reference to Consultant fees on this project or any past, present or future project	Disqualification
Cover Page	Provide a complete Cover page, including a signed, verbatim Acknowledgement as identified in Part Three (Project Information and Evaluation Criteria)	Disqualification
UDOT Staff	Provide a team that does not include any current UDOT employees or former UDOT employees who were involved in the development of this Solicitation	Disqualification
Financial Screening	Complete the UDOT financial screening process at the appropriate level, identified in Part Two (Solicitation Method and Requirements)	Disqualification

1. **UDOT Right:** UDOT reserves the right to disqualify a Proposal when the intent of the Solicitation process is violated. UDOT Consultant Services staff may utilize the provision of Utah Procurement Code 63G-6a-114 to determine an error is immaterial.

2. **Selection Team:** The Selection Team members will receive copies of each responsive Proposal submitted. They will review and score the Proposals individually based on the evaluation criteria identified in Part Three (Project Information and Evaluation Criteria) and submit their scores and comments to the Contract Administrator. The Contract Administrator will tally and compile the scores and comments.

The Selection Team will then meet to discuss the Proposals and comments from individual Selection Team members and determine whether interviews are necessary or whether the selection may be made based on the averaged scores from the Proposals. Final Proposal score results are the average of voting Selection Team members' scores.

Most Streamlined Solicitation selections will be based on the Proposal scores. However, if the Selection Team determines it is necessary to conduct interviews in order to make a selection, the Selection Team will develop the format of the interviews and provide instructions on the interview format to each Consultant invited to participate.

3. **Selection Interviews:** The Streamlined Solicitation is intended to reduce the level of effort required to compete for and administrate the selection process. Interviews will take place in the event the first-place ranking is a tied score for two or more Consultants, or other extenuating circumstances.

If the Selection Team determines interviews are necessary, project-specific topics will be provided to each team that is invited to participate in the interview process. Proposal scores will be carried over and will be weighted at 30% of the final score. The remaining 70% of the final score will be based on the interview.

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4. **Selecting By Consent (SBC):** The SBC process will be used to score the interview. SBC is a scoring process that aids the Selection Team in developing final ranking through a collaborative process. In this process each segment and question of the interview is weighted in advance during the Selection Team Meeting. After the interviews are conducted, the Selection Team scores each segment and question by “consent”. Consent is defined as the willingness of all Selection Team members to accept a decision reached by a collaborative process.

5. **Qualitative Assessment Guidelines:** Throughout the scoring process (for Proposals and interviews) the Selection Team will use the following Qualitative Assessment Guidelines when scoring. These guidelines are used to help ensure consistency in scoring.

Qualitative Assessment Guidelines	
9 – 10	The Proposal demonstrates a complete understanding of the subject and qualifications that significantly exceed expectations and the stated requirements. Proposal contains many strengths and minor weaknesses, if any.
6 – 8	The Proposal demonstrates a strong understanding of the subject and qualifications that exceed expectations and the stated requirements. Weaknesses, if any, are minor. Proposal contains strengths that outweigh the weaknesses.
3 – 5	The Proposal demonstrates an adequate understanding of the subject and qualifications that meet expectations and the stated requirements. Proposal contains strengths that are offset by the weaknesses.
1 – 2	The Proposal demonstrates a vague understanding of the subject and qualifications that fall below expectations and the stated requirements. Proposal contains weaknesses that outweigh the strengths.
0	The Proposal is unacceptable. The Proposal fails to meet expectations and the stated requirements. Proposal contains many weaknesses and only minor strengths, if any.

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PART THREE

Rev. 11/15/16

**Project Information & Evaluation Criteria
Streamlined Solicitation**

Project Information	
Project Number	8403XEE2496
Project Name	Administrative Support for State Safety Oversight (SSO)
PIN Number	PIN 18093
Requested Services	Transit & Railway Design
Source of Funding	Federal
Contact Information	
UDOT Contract Administrator	Carlie Torres UDOT Consultant Services Box 148490 4501 South 2700 West Salt Lake City, Utah 84129-5998 catorres@utah.gov (801) 965-4387
UDOT Project Management	Jim Golden Project Manager Utah Department of Transportation Central

Consultant Selection Schedule

Date	Action
Monday, November 04, 2019	Posting of Solicitation on UDOT Consultant Services Project Advertisement website
Monday, November 11, 2019	Deadline to request a one-on-one discussion meeting
Wednesday, November 13, 2019	Appointments to discuss the project
Monday, November 25, 2019	Proposals are due electronically by 11:00 AM.
Tuesday, December 10, 2019	Selection Team Meeting
Tuesday, January 07, 2020	Consultant Selection Interviews (if necessary)
Tuesday, January 07, 2020	Consultant Selection
Thursday, January 09, 2020	Pre-Negotiation Meeting with Selected Consultant

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Contract Goals:

Provide administrative assistance to the Utah Department of Transportation (the Department) in the State Safety Oversight (SSO) responsibility required by the Federal Transit Administration (FTA) under 49 CFR Part 674. In Utah, the only rail fixed guideway system that requires SSO is UTA TRAX.

Scope of Work:

Administrative support to the Department State Safety Oversight (SSO) Program Manager. The selected consultant will be required to, at a minimum:

- Become familiar with the Utah SSO Programs, Operations, Standards and Procedures.
- Develop, revise, update and distribute SSO Program information and Data as needed.
- Track UTA's audits, along with schedules, procedures and checklists used to conduct internal and external safety audits.
- Maintain a record of and track all findings and recommendations to closure, of all UDOT and FTA audits.
- Track, file and monitor all reports that UTA is required to provide the Department in accordance with the Department's SSO Standards and Procedures.
- Develop and maintain a Corrective Action Plan (CAP) Log. Follow up on all CAP's until they are closed.
- Maintain files of all reportable UTA light rail safety events. Develop and maintain a checklist of all information required by FTA or UDOT. Complete the checklist for each event. Track and file all report and data provided for said events.
- Prepare for, coordinate, attend and participate in UTA and the Department's meetings as required. Maintain files of meeting agendas and minutes. Develop agendas and keep minutes of all meetings initiated by the SSO.
- Develop and submit the Annual Report to the FTA by designated due date each year, summarizing oversight activities for the preceding twelve months
- Track update & maintain implementation plans and procedures for any 49 CRF Part 674 Requirements
- Attend weekly SSO staff and other administrative meetings.
- Assist with SSO grant Management and reporting activities.
- Maintain a presence in or near the light rail service area to be readily accessible for attendance at short notice meetings (within 24-hours) or help gather and record data on emergency events.
- Proposed staff will be required to have functional experience with Microsoft Office Suite, Google products.
- Understanding of FTA regulations/requirements.

Work will be performed under the direction of the SSO Program Manager. This is not an exclusive selection for all work. No minimum amount of work is guaranteed by this selection. Work will be determined based on available funding, consultant performance and the needs of the Department. It is anticipated that multiple people may be needed on a part-time as-needed basis. Team members need to have a diversity of skills in order to be successful. Contracts may be written against this solicitation for a period up to 5 years from NTP.

The Department shall have the option to consider the contract, or any task or subtask, completed before all of said task or tasks have been performed, when in the judgment of the SSO Program Manager the goals have been successfully achieved, or can be successfully achieved, through a reduced scope of work. In such an event the State may reduce the scope of work by written notice to the consultant.

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~~The selected consultant may be precluded from other~~ Consultants who perform work with for UTA or FTA may be precluded from performing work under this contract. Potential conflicts will need to be addressed with the Department SSO Program Manager and the Department's Conflict of Interest Team.

UDOT considers it a conflict of interest if a firm investigates an accident where the firm's design may be involved. If your firm or any subconsultants on your Project Team do work or have done work in the past with UTA, please discuss in the proposal the potential conflict of interest and how you as a team would mitigate the conflict. Note: Internal firewalls would not prevent a conflict of interest. A fundamental premise is UDOT cannot have a firm representing both sides of an issue.

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1. **Contract Completion:** Approximately **60** months from Notice to Proceed, if all years are executed.
2. **Required Percentage of Work for Prime Consultant:** The Consultant must perform work valued at not less than **50%** of the total contract amount with its own staff.
1. **Conflict of Interest for Consultants acting on behalf of UDOT:** The selected consultant project team members and principle-in-charge will be required to sign and comply with the [Consultants Acting as a UDOT Project Manager, Consultant Services Support, and/or Program Manager Support Conflict-of-Interest and Confidentiality Certification](#) .

2. **Proposal Organization:**

Technical PDF

- Cover Page
- Project Team
- Capability of the Firm(s)
- Approach to the Project
- Consultant Proposed Staffing Plan
- Form BC (Business Confidentiality), if applicable

3. **Proposal Section Requirements:**

Cover Page: The Cover Page is one page. It may be on the Prime Consultant's letterhead and will consist of the following with no additional information:

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Cover Page	
Date	
PIN No., Project Name and Description	
Prime Consultant	
Prime Consultant's Federal ID#	
Sub-Consultants (if any)	
Primary Contact	
Primary Contact Name (Prime)	
Address	
City, State, Zip	
Email	
Office Phone	
Cell Phone	
Secondary Contact	
Secondary Contact Name (Prime)	
Address	
City, State, Zip	
Email	
Office Phone	
Cell Phone	
Acknowledgement	
<p><i>I understand the acceptance and completion criteria, submittal, financial screening requirements, contract selection types and contract caps. My firm will comply with all state and federal contracting requirements applicable to the project. I understand UDOT policies, procedures and processes may change during the duration of the project and will comply with any changes required by UDOT. I have fully and accurately disclosed any debarment, license issues, and/or investigations being performed by any governmental entity. Employees listed on the staffing plan are current bona fide employees of the Consultant. As authorized to sign for my organization, I certify the content of this proposal to be true, accurate and all matters fully disclosed as requested in the Solicitation. I understand any misrepresentations or failure to disclose matters in the proposal is immediate grounds for disqualification.</i></p>	
Signature	
Name	
Title	

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The information is not required to be in this exact format, as long as each item of requested information is presented, with no additional information. Proposals will be considered non-responsive and will be disqualified if the Cover Page is not attached to the Proposal; if the Acknowledgement is not included on the Cover Page; and/or if there is additional information included on the Cover Page.

No evaluation points are assigned to this section and the Cover Page will not count as one of the allowed pages.

Project Team: The Selection Team will evaluate how well the qualifications and experience of the proposed project team members relate to the specific project. The Selection Team will score Proposals based upon the following criteria:	
% of Section Total	Project Team Section Criteria
20	Project Team organizational charts including sub-Consultants (see sample Project Team Organizational Chart available on the UDOT website). Identify Consultants and individuals that will be providing key services on the project (including all technical expertise necessary to perform the outlined Scope of Work).
50	Describe the qualifications, experience, and availability of Key Personnel on your proposed project team. Correlate the qualifications and past experience with the Contract Goals and the outlined Scope of Work.
30	Provide a table of projects currently in progress and/or completed by team members during the last five years. The table headings should include the following items. (See sample Project Related Experience Chart available on the UDOT website). Columns may be combined in order to consolidate information. <ul style="list-style-type: none"> - Name of Project Manager / Team member(s) - Year - Type of Project - Project Name - Project Location - Project Description - Services Performed / Specific Project Role - Client - Reference Contact and Telephone Number
40	Maximum points available for this section of the Proposal (out of 100).

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Capability of the Firm(s): The Selection Team will evaluate the Firm(s) capability to perform the work. The Selection Team will score Proposals based upon the following criteria:

% of Section Total	Capability of the Firm(s) Section Criteria
80	Describe your project team firms' capability, experience and unique qualifications to perform the specific type of work identified in the Scope of Work.
20	Choose a similar project identified in the Project Team section and discuss in detail what your project team firms did to make that project a success.
20	Maximum points available for this section of the Proposal (out of 100).

Approach to the Project: The Selection Team will evaluate how well you have planned a basic course of action, what alternatives and/or preliminary approaches are proposed, and what provisions are identified for dealing with potential impacts. The Selection Team will score Proposals based upon the following criteria:

% of Section Total	Approach to the Project Section Criteria
40	Describe the course of action and logistics proposed to meet the Contract Goals and Scope of Work. Be realistic, clear and concise. Include how you will address fluctuating workloads as described in the Scope of Work.
40	Discuss your project team firms' collaboration efforts and how you plan to work together and with UDOT for a successful project.
20	Identify risks, challenges, conflicts and potential mitigation.
40	Maximum points available for this section of the Proposal (out of 100).

A maximum total of 100 points is available for the Technical Proposal.

- 4. Consultant Proposed Staffing Plan:** The Consultant is expected to provide a [Consultant Proposed Staffing Plan](#). Consultants are not required to use this example form, as long as all necessary information is included. The Staffing Plan must identify the certification and education levels of the individuals proposed for use on the contract, including sub-Consultants' personnel. When Consultants list personnel on the Proposed Staffing Plan, the Consultant is agreeing to make the personnel available to complete the services in the contract at whatever level the project requires.

The Consultant Proposed Staffing Plan must be included in the Proposal, but will not count as one of the allowed pages. No other information is allowed on these pages. If additional information is provided, the Staffing Plan will be removed. No evaluation points are assigned to this section.

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5. **Claim of Business Confidentiality:** The GRAMA, Utah Code Ann., §63G-2-101 et seq., provides in part that certain records are protected if properly classified. Consultants are responsible for determining which information, if any, they wish to be protected under a Claim of Business Confidentiality, and are responsible for taking appropriate action to do so. An entire Proposal may not be protected under a Claim of Business Confidentiality. To protect information under a Claim of Business Confidentiality, the Consultant must, at the time the information is provided to UDOT, include a [Form BC - Claim of Business Confidentiality](#). It is the responsibility of the Consultant to complete Form BC in accordance with Subsection §63G-2-309 and submit to UDOT as an attachment to the Proposal. If nothing in the Proposal is being protected under a Claim of Business Confidentiality, a Form BC is not required.
6. **Four (4) Page Maximum:** Pages exceeding the maximum limit will be removed from the Proposal prior to distribution to the Selection Team. The Cover Page, Consultant Proposed Staffing Plan and Form BC (if applicable) do not count towards the page maximum.

A page is defined as a single-sided 8.5" x 11" sized page that contains text, pictures, tables, graphs, charts, plan sheets, or any other graphics.

Do not include a reference or link to additional information. If Proposals contain references or links, UDOT Consultant Services will remove them from the Proposal.

7. **UDOT Reference Items:**

- UDOT Consultant Services Manual of Instruction is available online at the UDOT website www.udot.utah.gov/go/CSManuals.
- Other UDOT manuals are available online from the UDOT website at www.udot.utah.gov/go/Manuals.
- UDOT 2019 Strategic Direction & Performance Measures are available online from the UDOT website at www.udot.utah.gov/go/StrategicDirection.
- UDOT Traffic and Safety Highway Sign Policies and Manuals are available online from the UDOT website at www.udot.utah.gov/go/HighwaySignPolicy.
- State of Utah Web Standards and Guidelines are available online from the website at <http://www.utahta.wikispaces.net/Application+Architecture>.

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PART FOUR

FEDERAL TRANSIT ADMINISTRATION

Professional Services / A & E Clauses

FTA Contract Terms and Conditions: The following FTA Terms and Conditions will be included as part of any contracts resulting from this selection.

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 FTA Terms and Conditions

Section I - Debarment and Suspension Certification

Section II - Lobbying Certificate

Section III - Bid Conditions DBE

Item 1 - Good Faith Efforts to Comply with DBE Requirements

- 1. Contractor's Capacity:** The Contractor agrees to maintain or acquire sufficient legal, financial, technical and managerial capacity to (1) plan, manage, and complete the Project; (2) plan and carry out safety and security aspects of the project and (3) comply with the terms of the Approved Project Budget, the Project Schedules, and all applicable Federal laws, executive orders, regulations, directives, and published policies governing this Project. The most current FTA Master Agreement is hereby incorporated by reference and made part of this Agreement. The Contractor is an independent contractor with the Department. This Agreement does not create any type of agency relationship, joint venture, or partnership between the Contractor and the Department. Any periodic plan and specification review, construction inspection, or compliance oversight performed by the Department arising out of the performance of this agreement does not relieve the Contractor of its duty in the performance of this agreement or ensure compliance with acceptable standards.
- 2. Cost of Project:** The cost of the Project shall be in the amount indicated in the attached Project description and budget(s) and shall be borne in the manner described herein. The Contractor agrees that it will provide funds in the amount sufficient, together with the Grant, to assure payment of the actual Project cost. The Contractor shall initiate and prosecute to completion all actions necessary to enable the Contractor to provide its share of the Project costs at or prior to the time that such funds are needed to meet Project costs. The Contractor further agrees that no refund or reduction of the amount so provided will be made at the same time, unless there is at the same time a refund to the State of a proportional amount of the Grant. The Contractor agrees that "Project Costs" eligible for federal participation must comply with the standards of OMB Circular A-87, Revised, "Cost Principles for State and Local Governments," or OMB Circular A-122 Revised, "Cost Principles for Non-Profit Organizations," whichever is appropriate. Submit contractor's budget and source and amounts of local share as indicated in Exhibit B. If the contractor plans to request reimbursement for indirect costs, a cost allocation plan must be submitted to the Department prior to incurring any costs. Prior to submission, the cost allocation plan must be approved by the cognizant Federal agency and updated annually for it to be acceptable. If no plan is submitted which meets these requirements, indirect costs are not allowed.

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3. **Procurement:** The Contactor agrees to comply with applicable third-party procurement requirements of 49 U.S.C. chapter 53 and Federal laws in effect now or subsequently enacted; with applicable U.S. DOT third party procurement regulations at 49 C.F.R. § 18 or 49 C.F.R. § 19, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Contractor also agrees to follow the provisions of the most recent edition and revisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," except to the extent FTA determines otherwise in writing, and UDOT's PTT Procurement Guide. The Contractor agrees that it may not use FTA assistance to support its third-party procurements unless its compliance with Federal laws and regulations is satisfactory.

4. **Use of Project Property:** Use of project property must be in compliance with the Utah Department of Transportation State Management Plan. The Contractor agrees that the project equipment and other property shall be used for the provision of planning service described in attached Exhibit A for the duration of its useful life. If, during such period, any project property is not used in this manner or is withdrawn from planning service, the Contractor shall immediately notify the Department and shall dispose of such project property in accordance with procedures as referenced in the current FTA Master Agreement and the Utah Department of Transportation State Management Plan.

The Contractor shall keep satisfactory records with regard to the use of property and submit to the Department, upon request, such information as is required in order to assure compliance with this Section and shall immediately notify the Department in all cases where project property is used in a manner substantially different from that described in the Project Scope. The Contractor shall maintain in amount and form satisfactory to the Department such insurance or self- insurance as will be adequate to protect project property throughout the period of required use.

During the period of contract performance, the Contractor shall maintain the project property at a high level of cleanliness, safety and mechanical soundness. The Utah Department of Transportation State Management Plan requires the Contractor to have and implement a written project property maintenance plan. The Department and FTA shall have the right to conduct periodic inspections for the purpose of confirming proper maintenance pursuant to the Section.

The Department reserves the right to require the Contractor to restore project property or pay for damage to project property as a result of abuse or misuse of such property with the Contractor's knowledge and consent.

5. **Contracts Under This Agreement:** Unless otherwise authorized in writing by the Department, the Contractor shall not assign any portion of the work to be performed under this Agreement, 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 without the prior written concurrence of the Department. All contracts must include all the same terms and conditions and provisions included in this Agreement. However, the Contractor is responsible for ensuring that all work performed by subcontractor is insured under their insurance policy, or they require that the subcontractors meet the insurance provisions required under this Agreement.

6. **Contract Changes:** Any proposed change in this contract shall be submitted to the Department for its prior approval.

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7. **Interest of Members of or Delegates to Congress:** No member or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising there from.
8. **Prohibited Interest:** No member, officer, or employee of the Contractor during their tenure or one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.
9. **State Lien:** In order to protect the State's interest and establish its right to claim property in the event of a bankruptcy or other creditor action against the Contractor, a security interest lien on all equipment, vehicles, project property, etc., purchased under this contract shall be obtained and properly recorded, showing the Department as the secured party. In the event of inadvertent receipt of property title, the Contractor shall voluntarily return said title to the Department for proper lien processing.
10. **Written Transactions:** The Contractor agrees to refrain from executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, grant anticipation note, alienation, or other obligation that in any way would affect the Federal interest in any project real property or equipment.
11. **Indemnity:** The Contractor agrees to hold harmless and indemnify the Department, its officers, employees and agents ("Indemnitees") from and against all claims, suits, and costs including attorneys' fees for injury or damages of any kind, arising out of Company's negligent acts, errors or omissions in the performance of this contract, and from and against all claims, suits and costs including attorney's fees for injury or damage of any kind, arising out of Indemnities failure to inspect, discover, correct or otherwise address any defect, dangerous condition or other condition created by or resulting from the contractor's negligent acts, errors or omissions in the performance by the contractor or their subs at any tier within the scope of responsibilities of the contractor under this contract.
12. **Federal, State, And Local Law Disclaimer:** The provisions of this contract shall be governed by the laws of the State of Utah. Venue for any legal proceeding regarding this contract shall be in Salt Lake County, State of Utah. The Contractor and those engaged by the Contractor shall comply with all Federal, State, and local laws, regulations and other legally binding requirements that pertain to services provided under this contract.
13. **Sub-Contractors:** The Contractor shall include in all third party contracts and subcontracts entered into pursuant to this Agreement all of the above-required clauses and clauses required by Exhibit C. In addition, the following provision shall be included in any advertisement or invitation to bid for any procurement under this Agreement:

Statement of Financial Assistance This contract is subject to a financial assistance contract between the State and the U.S. Department of Transportation.

14. **Legal Notification:** The Contractor shall attach the following statement to the deed/title of the property purchased or constructed under this contract to constitute legal notification:

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This vehicle/property was purchased in part with Federal funds from the Federal Transit Administration.

15. **Project Changes:** Occasionally; during the course of this Project, it may become necessary to effect certain changes and/or modifications in the original application statements. All such changes in budget, time, personnel, objective and scope shall be justified by the Contractor and forwarded to the Department for approval.

Any extension in the scope of services required or increases in cost will require a fully executed supplemental agreement. The supplemental agreement will establish the extent of changes, extensions, and modifications and the compensation therefore.

16. **Severability:** If any provision or part of a provision of this Agreement is held to be unconstitutional, invalid, illegal, or unenforceable by a court of competent jurisdiction or as a result of any legislative action, such holding or action shall be strictly construed. Furthermore, provided the parties are still able to retain all of the material benefits of their bargain hereunder, such provision shall be construed, limited, or if necessary, severed, but only to the extent necessary to eliminate such invalidity or unenforceability, and the other provisions of this Agreement shall remain unaffected and this Agreement shall be construed and enforced as if such provision in its original form and content had never comprised a part thereof.
17. **Status Verification System:** State law mandates that any Contractor physically performing services provided under this Agreement must register and participate in the Status Verification System to verify the work eligibility status of the contractor's new employees.
18. **No Third-Party Beneficiaries:** The parties enter in to this contract for the sole benefit of the parties, in exclusion of any third party, and no third-party beneficiary is intended or created by the execution of this contract. The Department and the Contractor each represent that the execution of the contract and the performance required under the contract are within their respective duly authorized powers.
19. **Changes in Project Performance:** The Contractor agrees to notify the Department immediately, in writing, of any change in local law, conditions (including its legal, financial, or technical capacity), or any other event that may adversely affect the Contractor's ability to perform the Project in accordance with the terms of the Agreement for the Project and the most current FTA Master Agreement. The Contractor also agrees to notify the Department immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect the Department's or the Federal Government's interests in the Project.
20. **Trafficking in Persons:** *To the extent applicable, the Contractor agrees to comply with, and assures the compliance of each third-party contractor and subcontractor with, the requirements of the subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and the provisions of Subsection 3.g of the FTA Master Agreement consistent with U.S. OMB guidance, "Trafficking in Persons: Grants and Cooperative Agreements," 2 C.F.R. Part 175.*

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21. **Geographic Information and Related Spatial Data:** The Contractor agrees to implement the Project in accordance with of U.S. OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities," August 19, 2002, so that any Project activities involving spatial data or geographic information systems activities financed directly or indirectly, in whole or in part, with Federal assistance, are or will be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Planning and Private Enterprise

1. **General:** The Contractor agrees to implement the Project in accordance with the following Federal planning and private enterprise provisions:
 - a. U.S.C. §§ 5303, 5304, 5306, and 5323(a)(1);
 - b. Joint FHWA/FTA regulations, "Statewide Transportation Planning; Metropolitan Transportation Planning," 23 C.F.R. Part 450 and 49 C.F.R. Part 613 and any amendments thereto.
2. **Governmental and Private Nonprofit Providers of Nonemergency Transportation:** In addition to providing opportunities to participate in planning described in Subsection 26.1 of this Agreement, to the extent feasible, the Contractor agrees to comply with 49 U.S.C. § 5323(k), which affords governmental agencies and nonprofit organizations that receive Federal assistance for nonemergency transportation from Federal Government sources (other than U.S. DOT) an opportunity to be included in the design, coordination, and planning of transportation services.
3. **Infrastructure Investment:** During the implementation of the Project, the Contractor agrees to take into consideration the recommendations of Executive Order No. 12803, "Infrastructure Privatization," 31 U.S.C. § 501 note, and Executive Order No. 12893, "Principles for Federal Infrastructure Investments," 31 U.S.C. § 501 note.
4. **Audit and Inspection:** The Contractor will permit the Department, the Comptroller General of the United States, and the Secretary of the United States Department of Transportation or their authorized representatives, to inspect all vehicles, facilities and equipment purchased by the Contractor as part of the Project, all transportation planning services rendered by the Contractor by the use of such vehicles and equipment, and all relevant Project data and records. All payments made by the Contractor to the subcontractor for services required by this contract shall be subject to audit by the Department. The Contractor shall also permit the above-named persons to audit the books, records and accounts of the Contractor pertaining to the Project. If the Contractor receives over \$500,000 in Federal funds from all sources, the Contractor shall submit an audit to the Department annually, following the procedures in the Single Audit Act of 1996, Circular A-133.

Access to Records and Reports

1. **Establishment and Maintenance of Accounting Records:** The Contractor shall establish and maintain, in accordance with requirements established by the Department, separate accounts for the Project, either independently or within its existing accounting system, to be known as the Project Account.

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2. **Documentation of Project Costs:** All charges to the Project Account shall be supported by properly executed invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges, in accordance with the rules and regulations of the Department.
3. **Method of Payment:** The Department, using FTA Grant Program 5304 appropriations, shall reimburse the Contractor for the Federal portions, as they are made available to the Department, of eligible expenses incurred in completing the Project. Reimbursement is contingent upon the availability of FTA appropriations to the State. In no event shall the total amount reimbursed by the Department hereunder exceed eligible available Federal funds for the Project. Payment will be made by the Department on a reimbursable basis for actual costs incurred. The Contractor shall submit an original invoice detailing and supporting the costs incurred. Payment is subject to the submission to and approval by the Department of appropriate invoices, reports, and financial summaries. Any financial summaries submitted to the Department must include a record of the actual costs. Once the invoice has been approved by the Department, the Department shall submit the invoice for reimbursement from the FTA. Once the funds have been received from FTA and deposited with the State, the Department shall provide payment to the Contractor.
4. **Reports:** The Contractor shall advise the Department regarding the progress of the Project at such times and in such manner as the Department may require including, but not limited to, meetings and interim reports. The minimum requirement for project reporting is detailed in Exhibit A.

The Contractor shall submit to the Department, at such time as may be required, such financial statements, data, records, contracts and other documents related to the Project as may be deemed necessary by the Department.

5. **Articles of Incorporation:** The Contractor agrees to maintain private non-profit eligibility (where applicable), as described in application for capital assistance, by retaining valid Articles of Incorporation and adhering to all State and Federal regulations concerning this issue and will continue to do so for the Contract duration.
6. **Other Requirements:**
 - a. Where the Contractor is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
 - b. Where the Contractor enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient

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in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, 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.

- c. Where any Contractor which is the FTA Recipient or a subgrantee of the FTA Recipient 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 Purchaser, 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.
 - d. 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.
 - e. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
 - f. Proof of Contractor's compliance with licensing requirements shall be furnished to the Department upon request.
7. **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 Certifications and Assurances and the Master Agreement between the Department 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.
8. **Termination:** According to 49 CFR § 18 and 19
- a. **Termination for Convenience:** The State may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. If this contract is terminated, the State shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
 - b. **Termination for Default:** The State 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 the State 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

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paid for from funds received from the State, or property supplied to the Contractor by the State.

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 Recipient.

- c. **Opportunity to Cure:** The State in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other conditions.

If Contractor fails to remedy to State's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from State setting forth the nature of said breach or default, State 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 State from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- d. **Waiver of Remedies for any Breach:** No waiver by the Department or Contractor of any default shall constitute a waiver of the same default at a later time or of a different default. In the event that State elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by State shall not limit State's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

Civil Rights Act of 1964 - The following requirements apply to this contract:

1. **Nondiscrimination Notice:** In accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and the Title 49, Code of Federal Regulations. All of the text except the final section, entitled "Incorporation of Provisions," should be included in any contracts entered into by any contractor.

During the performance of this contract, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- a. **COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS**
- a. **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as regulations), which are herein incorporated by reference and made a part of this contract.
- b. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, age, disability, income status, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

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- c. Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, age, disability, income status, or national origin.
- d. Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the DEPARTMENT or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the DEPARTMENT or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the DEPARTMENT shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
 - b. Cancellation, termination or suspension of the contract, in whole or in part.
- f. Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor procurement as the DEPARTMENT or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the contractor may request the DEPARTMENT to enter into such litigation to protect the interests of the DEPARTMENT and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- 2. **Equal Employment Opportunity:** The following equal employment opportunity requirements apply to this 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",

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41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity, as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity", 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or 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. § 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.

4. **Disadvantaged Business Enterprise:**

- a. This contract is subject to the requirements of Title 49, CFR § 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 0.36%. **See Attachment C for DBE Special Provisions and Assurance, Commitments, and Certifications.**
- b. **Access to Services for Persons with Limited English Proficiency:** The Contractor agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

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Other Non-Discrimination Statutes: The Contractor agrees to comply with any other non-discrimination statute(s) that may apply to the Project.

Breaches and Disputes Resolution: Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Department's Director of Transit Plans and Programs. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Director of Transit Plans and Programs. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Transit Plans and Programs shall be binding upon the Contractor and the Contractor shall abide by the decision. The Contractor agrees to establish a written process whereby any protests, disputes, or conflicts arising out of the Section 5304 program will be properly heard and settled with proper notification given to the Department.

Energy Conservation Requirements: Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Department 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.

Clean Water: The Contractor agrees to comply with all 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 Department and understands and agrees that the Department will in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

Clean Air: 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 Department and understands and agrees that the Department will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

No Obligation by the Federal Government to Third Parties: The Department and the Contractor acknowledge and agree that notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Department, 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 clauses 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.

Program Fraud and False or Fraudulent Statements or Related Acts

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 CFR 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

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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. § 5707 (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.

Lobbying: Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995, who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the State. See Attachment B for certification.

Incorporation of FTA Terms: The preceding provisions include, in part, certain Standard Terms and Conditions required by Department of Transportation (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 Department requests, which would cause the Department to be in violation of the FTA terms and conditions.

Government-Wide Debarment and Suspension: This contract is a covered transaction for purposes of 2 CFR Part 180. As such the Contractor is required to verify that none of the Contractor, its principals, as defined at 2 CFR 180, or affiliates, as defined at 2 CFR 180, are excluded or disqualified as defined at 2 CFR 180. At a minimum, the Contractor must review the Excluded Parties Listing System to ensure that excluded parties do not participate in covered transactions.

The Contractor is required to comply with 2 CFR 180 and must include the requirement to comply with 2 CFR 180 in any lower tier covered transaction it enters into.

Sub-recipient will submit debarment and suspension certification.

Contract Work Hours and Safety Standards:

1. **Overtime requirements:** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a

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rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty 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 subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor 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 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** - The Department shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. **Subcontracts:** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Recycled Products: 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.

ADA Access: The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Assistance," 49 C.F.R. Part 27;

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3. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
4. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
5. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
6. U.S. GSA regulations, "Accommodations for the Physically Handicapped" 41 C.F.R. Subpart 101-19; 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;
7. U.S. 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;
8. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609;
9. And any implementing requirements FTA may issue.

Cargo Preference - Use of United States-Flag Vessels: The Contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

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

National ITS Architecture: To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5307 (c) of SAFETEA-

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LU, 23 U.S.C. Part 512 note, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq.; January 8, 2001, and later published policies or implementing directives FTA may issue, except to the extent FTA determines otherwise in writing.

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:
 - 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.
 - i. Any subject data developed under that contract, whether or not a copyright has been obtained; and
 - ii. 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 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,

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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 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 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.
 - 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 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 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.), the 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.

Patent Rights: The following requirements apply to each contract involving experimental, developmental, or research work:

1. **General:** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Contractor agrees to take

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actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the 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.
3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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ATTACHMENT A

To be completed by Contractor, third party contractors, and lower tier subcontractors.

**DEBARMENT AND SUSPENSION CERTIFICATION
(LOWER TIER COVERED TRANSACTION)**

(To be submitted with a bid or Offer exceeding the small purchase threshold for Federal assistance programs.)

The prospective lower tier participant (Bidder/Proposer) certifies by submission of this Offer, that neither it nor its principals, as defined at 2 CFR § 180, or affiliates, as defined at 2 CFR 180, are excluded or disqualified as defined at 2 CFR § 180.

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

The certification in this clause is a material representation of fact relied upon by _____. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to _____, 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 CFR § 180 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.

_____ **Signature of Bidder or Proposer's
Authorized Official**

_____ **Name and Title of Bidder or Proposer's
Authorized Official**

_____ **Date**

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ATTACHMENT B

To be completed by Contractor, third party contractors, and lower tier subcontractors should this award be over \$100,000.

LOBBYING CERTIFICATE

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

Statement for Loan Guarantees and Loan Insurance

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

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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THE CONTRACTOR CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE CONTRACTOR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31. U.S.C A 3801 et seq., APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

Signature of Contractor's Authorized Official _____

Name and Title of Contractor's Authorized Official _____

Date _____

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ATTACHMENT C

To be completed by Contractor or third-party contractor, whichever party is responsible for meeting DBE goal.

Bid Conditions
DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The Utah Department of Transportation (UDOT) is hereinafter referred to as “Department”.

The agency receiving funds, or the subrecipient, is hereinafter referred to as “Contractor”.

Note these bid conditions do not apply to Transit Vehicle Manufacturers who have submitted required DBE information to FTA and have been certified by FTA.

POLICY

“Policy Statement”

It is the policy of the DEPARTMENT to take all necessary and reasonable actions to ensure that DBEs as defined herein shall have equal opportunity to participate in the performance of contracts financed in whole or in part with US Department of Transportation (DOT) funds under this agreement as modified herein.

“Objectives”

The objectives of this policy are to:

1. Ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet *49 CFR 26* eligibility standards are permitted to participate as DBEs;
5. Remove barriers to the participation of DBEs in Federal aid contracts;
6. Assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
7. Provide appropriate flexibility in establishing and providing opportunities for DBEs.

“Responsibilities”

Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the DEPARTMENT in financial assistance agreements with DOT.

1. The Civil Rights Manager shall be the DBE liaison officer, who shall have direct, independent access to the Executive Director concerning DBE program matters. The Contractor is responsible for implementing all aspects of the DBE program and for supervising DBE participation. The Contractor must assign adequate staff to administer the DBE program.

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2. The DEPARTMENT is responsible for oversight of the DBE program implementation and DBE participation covered by the Contract.

DBE BID AND PERFORMANCE CONDITIONS

“Obligations”

The contractor, subcontractor, service provider, or supplier at any lower tier 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 DEPARTMENT deems appropriate.

“Assurances”

Each contract between the DEPARTMENT and the Contractor and each subcontract at any lower tier must 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 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 DEPARTMENT deems appropriate.

A. CONTRACT GOAL

1. The DEPARTMENT has determined that one or more can reasonably be expected to compete for the work contained in the proposal for this project. It is, therefore, the goal of the DEPARTMENT that DBE firms shall have an affirmative action opportunity to contract for the following percentage of work under this contract:
 - a. If the indicated DBE percent of the *CONTRACT DBE GOAL* is greater than 0.0 percent, complete Part A of the DBE BID ASSURANCE AND COMMITMENT. Refer to Bidding Requirements, Section D, Subsection 1, a, of this Special Provision. (The commitment dollar amounts up to the amount of the assigned goal is Race Conscious DBE participation. Any commitment dollar amount in excess of the assigned goal is Race Neutral Participation.)
 - b. If the indicated DBE percent of the *CONTRACT DBE GOAL* is 0.0 percent complete Part B of the DBE BID ASSURANCE AND COMMITMENT. Refer to Bidding Requirements, Section D, Subsection 1, b, of this Special Provision. (Any commitment to a DBE is Race Neutral Participation.)

CONTRACT DBE GOAL: 0 Percent

2. GOALS
 - a. GOAL FOR BID EVALUATION: The above entered DBE percentage is a goal for bid evaluation to determine responsiveness of the proposal as it relates to this specification. Percentages for bidding purposes shall be calculated using dollar values and quantities as shown in proposals received for this project. Bidders shall compute the percentage of their DBE commitment by dividing the dollar amount of subcontract work that is being committed to certified DBE firms by the total dollar amount of the proposal. This will be the percentage of their DBE commitment.
 - b. RACE CONSCIOUS GOAL: DBE participation on projects that are assigned a Goal for Bid Evaluation that is greater than 0.0 percent is *race conscious* and the DBE commitment becomes a

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contract specification upon award. The Bidder must submit with its Bid Proposal a *DBE Commitment*, included in Part A, that indicates:

- (1) Name of DBE firm
- (2) Work items to be performed
- (3) Total dollar amount of commitment

If the DBE commitment does not meet or exceed the assigned goal, the Bidder must submit with the Bid Proposal documentation of good faith efforts.

- c. **RACE NEUTRAL GOAL:** DBE participation on projects that are assigned 0.0 percent Goal for Bid Evaluation is *race neutral* and does not become a contract specification upon award. The Bidder must take equal opportunity action to allow DBEs to compete for and perform on subcontracts. Only work classifications that the Bidder will subcontract need to be considered in evaluating equal opportunity action in the bid preparation. Contacts that have been made with DBE firms regarding potential work to be subcontracted and the results of such contacts are to be submitted with the prepared Bid Proposal and contain:
- (1) The work classifications that will be subcontracted.
 - (2) DBE firms contacted.
 - (3) Result of contact
 - (4) Name of anticipated DBE subcontractor(s)
 - (5) Anticipated work items to be performed by DBEs.
 - (6) Anticipated dollar amount of subcontract(s).

The *Race Neutral DBE Documentation* is required to document equal opportunity action and to assist the DEPARTMENT with DBE reporting and DBE goal setting.

- d. **GOAL FOR CONTRACT PERFORMANCE:** The Bidder's *DBE Commitment* becomes an attachment to the Bid Proposal and is a condition of award, and thereby becomes a contract specification. Upon award, this Race Conscious DBE Commitment also becomes the minimum goal for contract performance.

Commitments to DBEs that exceed the Goal for Bid Evaluation will be considered as both race conscious and race neutral. The dollar amount of the Goal for Bid Evaluation will be considered to be race conscious participation. Any dollar amounts in excess of the Goal for Bid Evaluation will be considered as race neutral participation.

It is the intent of this Special Provision that the DBE Firm(s) listed for *race conscious* participation, as a minimum level of participation, will perform to the extent indicated in the Bidder's DBE Commitment. The minimum level of DBE participation includes:

- (1) Indicated DBE firm(s),
- (2) Indicated work item(s) (bid items),
- (3) Indicated total dollar amounts.

Listed bid items shall be considered to be committed in their entirety unless Bidders designate otherwise in their DBE Commitment. If the DBE will perform only a part of the bid item, i.e., haul only, the Bidder must indicate what part the DBE will perform (Partial Performance). If the DBE will perform only a part of the quantity of the bid item, the Bidder must indicate the estimated quantity of the work to be performed by the DBE (Partial Quantity).

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Substitutions of DBE subcontractor(s), work item(s), or decreases of total dollar amount(s) as indicated in the Bidder's DBE Commitment will not be allowed without prior submission of written justification to the DEPARTMENT and approval of the DEPARTMENT Civil Rights Manager.

After award of a contract, substitutions will not be allowed without prior submission of a written "hold harmless" statement from the DBE.

Any change by the Contractor in the DBE Commitment requires that the change is approved and documented by the DEPARTMENT Civil Rights Manager.

Substitution of race neutral participation in excess of the Goal for Bid Evaluation requires equal opportunity efforts to substitute with other DBE participation.

DEPARTMENT or Contractor generated decreases due to quantity changes in individual bid items do not require prior approval of the DEPARTMENT Civil Rights Manager—but must be fully justified by the Contractor at the conclusion of the project. The Contractor's justification shall show the total estimated quantity, the final pay quantity as shown on the final estimate invoice, the quantity of the under-run, and the percent of under-run of the individual item. The explanation for the under-run shall include the reasons for the under-run and shall include as much detail as possible.

5. GOAL FOR FINAL COMPLIANCE: Percentages for final compliance shall be based on actual payments to DBEs. Over-runs and under-runs in individual contract items may require adjustments in the predetermined DBE percentage for a project if those items were not related to DBE performance. "The predetermined percentage for a project" refers to the percentage of the Contractor's DBE Commitment that becomes a contract specification upon award.

B. DEFINITIONS

For the purpose of this Special Provision, the following terms are defined:

1. **Contract:** Means a legally binding relationship obligating a seller to furnish supplies or services (including but not limited to, construction and professional services) and the buyer to pay for them.
2. **Contractor** means one who participates, through a contract or subcontract (at any tier).
3. **Disadvantaged Business Enterprise or DBE** means a for profit small business concern.
 - a. That has been certified to DBE status by the UUCP.
 - b. That is at least 51 per cent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 per cent of the stock of which is owned by one or more such individuals; and
 - c. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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- d. Whose size is limited to average annual gross receipts of \$17,425,000 over the previous three fiscal years. The Secretary of Transportation may adjust this amount from time to time for inflation.

OR

Whose size is limited to the current SBA Business size standard(s) found in 23 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

- 4. **DBE Goals mean:**
 - a. The DEPARTMENT'S annual overall goal on DOT-assisted projects for Federal fiscal year
- 5. **DBE Joint Venture** means an association of a DBE firm and one or more other firms to carry out a single, for profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture to a degree commensurate with its ownership interest.

The DEPARTMENT'S Civil Rights Office prior to bid opening must approve a DBE joint venture in order to be utilized for the satisfaction of contract DBE goals. A DBE Joint Venture application must be submitted allowing ample lead-time for the Civil Rights Office to review, evaluate, and verify information provided for in the application. An interview of the applicant may be necessary at the discretion of the DEPARTMENT prior to approval of the application. If an interview is deemed necessary it will be scheduled at the convenience of all parties.

- 6. **Equal Opportunity Action** requires individuals to be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

If a bidder requests or accepts bids for subcontract work, the bidder will request and accept bids from DBEs in the work classifications that potentially will be subcontracted.

- 7. **Good Faith Efforts** means efforts to achieve a DBE goal or other requirements of this part that by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirements.
- 8. **Lack of Financial Fitness** is a performance-based definition based solely on failure to pay promptly. There is no reference to financial status or financial capability.
- 9. **Prompt Payment** means payment made no later than thirty (30) calendar days after receipt of payment by the Contractor or Subcontractor, Service Provider or Supplier at any lower tier.
- 10. **Race Conscious** measure or program is focused specifically on assisting only DBEs, including women-owned DBEs. The DEPARTMENT must establish contract goals to meet any portion of its overall DBE goal that it does not project being able to meet using race neutral means. To ensure that the DBE program continues to be narrowly tailored to overcome the effects of discrimination, the DEPARTMENT must adjust the use of contract goals as follows:
 - a. If during the course of any year it is determined that the overall goal will be exceeded, the DEPARTMENT will reduce or eliminate the use contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal.

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- b. If it is determined that the DEPARTMENT will fall short of its overall goal, then appropriate modifications in the use of race neutral and/or race conscious measures will be made to allow the DEPARTMENT to meet the overall goal.

11. **Race Neutral** measure or program is one that is, or can be, used to assist all small businesses. The DEPARTMENT must meet the maximum feasible portion of its overall DBE goal by using race-neutral means of facilitating DBE participation. Race neutral DBE participation includes:

- a. Any time a DBE wins a prime contract through customary competitive procurement procedures,
- b. Is awarded a subcontract on a prime contract that does not carry a DBE goal,
- c. Is awarded a subcontract from a prime contractor that did not consider its DBE status in making the award even if there is a DBE goal.
For the purposes of this part, race-neutral includes gender-neutrality.

12. **Regular Employee** is a person who:

- a. Would be working for the DBE firm on any other subcontract with any other contractor.
- b. Is a permanent employee of the DBE firm

Or

Has been recruited through the traditional recruitment and/or employment centers

- c. Has not recently been employed by the prime contractor on the present project, another subcontractor on the present project, or the renter-lessor of equipment being used on the present project.
- d. Is not a member of a construction crew that regularly works for a non-DBE.
- e. Is not a licensed contractor who is at the time “unemployed” or “between jobs.”

13. **Regular Equipment** is owned or leased and operated on a long-term agreement and not on an *ad hoc* or contract by contract agreement.

- a. The equipment would be used by the DBE firm on any other subcontract with any other contractor.
- b. The equipment would be owned by the DBE firm.

Or

The equipment would be leased/rented from traditional equipment lease/rental sources.

- c. The DBE firm would have a rental/lease agreement for any rented or leased equipment.
- d. The equipment cannot belong to:
 - (1.) Prime Contractor
 - (2.) Another subcontractor on the present project.
 - (3.) Supplier of materials being installed by the DBE firm.

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- e. The equipment cannot come from another contractor fully operated.

14. Reasonable Bid: This is a bid the DEPARTMENT would accept if it were the only bid submitted.

15. Responsible Bidder: A responsible bidder has the apparent ability and capacity to perform the contract requirements.

In addition to normal prequalification, a responsible bidder is defined as one who has signed (manually or electronically) and submitted with the bid the DBE Bid Conditions Assurance and Commitment of good faith effort certifying the intention to meet the DBE goal of a proposed contract or to continue good faith effort to do so. These goals may be met by subcontracting or leasing contracts with a DBE or purchasing material from a DBE insofar as the work or material becomes a part of a proposed contract.

16. Responsive Bidder

- a. A responsive bidder is a bidder who unequivocally offers to provide services or supplies in conformity with the material terms of the solicitation. In addition to normal prequalification and other bidding requirements, a responsive bidder in relationship to this Special Provision is defined as one who submits evidence of proposed subcontract performance with certified DBE firms to achieve the required dollar amount necessary to achieve the percentage goal.
- b. Bidders may be considered as presumptively responsive if they have failed to satisfy the advertised DBE goal set for the proposed contract but have certified in their bid that good faith efforts have been expended to meet the goal and that they will continue during the performance of the contract to locate, solicit, and involve DBE firms in contract performance. Documentation of the bidder's good faith efforts must be included with the bid package of the DEPARTMENT's review and assessment. Failure to do so shall render the bid non-responsive. The DEPARTMENT will reject the bid.

17. Satisfactory Completion of a subcontract occurs when:

- a. The subcontractor has satisfactorily completed in all respects the work under the Contract.
- b. The Contractor and the subcontractor have notified the DEPARTMENT in writing that the work of the subcontractor has been completed.
- c. The DEPARTMENT will be given a reasonable length of time to check quantities if necessary. Checking quantities does not guarantee the absolute correctness of quantities.
- d. The Contractor and the subcontractor have satisfactorily executed and delivered to the DEPARTMENT all documents, certificates and proofs of compliance required by the Contract. The satisfactory execution and delivery of these documents, certificates and proofs of compliance to the DEPARTMENT is a material requirement of the contract.
- e. The DEPARTMENT accepts in writing the work of the subcontract.

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- f. Satisfactory Completion refers only to payment of retainage and accrued interest. A determination of Satisfactory Completion and payment in full for work performed does not relieve the contractor nor the subcontractor from any contractual obligation.
18. **Satisfactory Performance** means work performed and materials furnished in conformity with the plans and specifications.
19. **Service Provider** means a broker or a middle man. A business person who buys, sells or performs a service for another in exchange for a markup or commission.
20. **Socially and Economically Disadvantaged Individuals** means any individual who is a citizen (or lawful admitted permanent resident) of the United States and who is:
- a. Any individual who the DEPARTMENT finds to be a socially and economically disadvantaged individual on a case-by-case basis.
 - b. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (1) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;
 - (2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;
 - (3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (4) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S.Trust Territories of the Pacific Islands, (Republic of Palau), the Commonwealth of the Northern Mariana Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (5) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.
 - (6) Women.
 - (7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
21. **Subcontractor:** A subcontracting arrangement is generally considered to exist when a person or firm assumes an obligation to perform a part of the contract work and the following conditions are present.

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- a. The person or firm performing the work is particularly experienced and equipped for such work.
- b. Compensation is related to the amount of work accomplished rather than being on an hourly basis.
- c. Choice of work methods, except as restricted by the specifications, and the furnishing and controlling of labor and equipment are exercised by the subcontractor with only general supervision being executed by the prime contractor.
- d. Personnel involved in the operation are under the direct supervision of the subcontractor and are included on the subcontractor's payroll.

All conditions involved shall be considered and no one condition alone will normally determine whether a subcontract actually exists. In all cases, a DBE subcontractor must be an independent organization, and the ownership and control by the socially and economically disadvantaged individual(s) must be real and continuing. The prime contractor, a subcontractor, or a supplier shall not be responsible for the various operating and management activities of a DBE firm.

22. **Supplier:** Provides or furnishes materials, goods or services that may be incorporated into the project. The supply transaction is to be documented by an appropriate purchase agreement that includes the required provisions for Federal-aid construction projects.
23. **UUCP:** The Utah Unified Certification Program (UUCP) provides “one-stop shopping” to applicants for DBE certification, such that an applicant is required to apply only once for a DBE certification that is honored by all recipients of Federal-aid Funds in the State of Utah.

C. DETERMINATION OF DBE CONTRACTOR’S ELIGIBILITY BY UUCP

1. Any Contractor may apply to the UUCP for status as a DBE. Applications shall be made on forms provided by the UUCP entitled “UNIFORM CERTIFICATION APPLICATION” or “Information for Determining DBE Joint Venture Eligibility,” Form No. R-817. Application need not be made in connection with a particular bid. Only work contracted to certified DBE prime contractors or subcontractor to firms that have applied for and have been granted status as a DBE by the UUCP shall be considered toward contract goals as established in Subsection A.
2. It shall be the Contractor’s responsibility to submit a DBE application so that the UUCP has time to review it. The UUCP will review applications in a timely manner but is not committed to approve DBE status within any given period of time. The UUCP must have ample lead time to review, evaluate, and verify information provided with a application.
3. The DEPARTMENT shall maintain a UUCP Unified DBE Directory of DBE Contractors, vendors, service providers and suppliers that is updated as changes occur for the purpose of providing a reference source to assist any bidder in meeting the requirements of this bid condition. Bidders must use the most current DBE information available on the web site when submitting bids. A current UUCP DBE directory representing certified DBE Contractors is available through the UDOT Civil Rights Office, and also on the Internet at (click on this link):

<http://www.udot.utah.gov/main/f?p=100:pg:::V,T:,198>

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4. In meeting the requirements of this bid condition, bidders are in no way limited to the DBE Directory referred to in 3 above in seeking out and negotiating with the DBE Contractors and determining which items of work shall be subcontracted to DBE Contractors. Bidders shall exercise their own judgments in selecting any subcontractor to perform any portion of the work.

The UUCP prior to bid opening must grant DBE status to any DBE Contractor or DBE Joint Ventures. DBE credit will not be allowed toward *race conscious* goals for a firm or joint venture that has not been DBE certified by the UUCP.

D. BIDDING REQUIREMENTS

All bidders must satisfy the bidding requirements of this part. A DBE prime contractor's performance does not count toward fulfilling the DBE goal. A prime bidder who is a DBE contractor shall meet the DBE goal by using DBE subcontractors or by using good faith efforts.
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1. DBE Bid Assurance:

- a. **Race Conscious Goal:** For a bid with a DBE goal greater than 0.0 percent to be considered responsive, *Part A* of the DBE Bid Assurance and Commitment must be completed and included in the BID PROPOSAL, certifying that they will meet or exceed the Goal for Bid Evaluation established in Subsection A, or that they fail to meet the goal but have and will put forth good faith effort to meet or exceed the goal of the DBE program. In either event, the Contractor shall continue efforts to consider and utilize DBE firms during the performance of the contract.
- b. **Race Neutral Goal:** For a bid with a DBE goal of 0.0 percent to be considered responsive, *Part B* of the DBE Bid Assurance must be included in the BID PROPOSAL certifying that the Bidder has utilized equal opportunity action to allow DBE's to compete for and perform on subcontracts. *Part B* of the DBE Bid Assurance will be completed based upon the following information:

- (1) Bids with no subcontracting opportunities

Bidders who intend to do all the work with their own organization will indicate this in Part B of the DBE Assurance and Commitment.

After the award of the bid, in the event that a Contractor indicates that he does not intend to sublet any work and subsequently determines to sublet a portion of the work, the Contractor:

- (a) must justify why subcontract quotes were not a part of the Bid Proposal,
- (b) must utilize equal opportunity action to allow DBEs to compete for and perform on the work to be sublet,
- (c) must submit the required Race Neutral Documentation with the proposed subcontract.

NOTE: The Contractor may use the 'DBE Contact Log' and 'Quote Comparison' forms to develop the above requirements for documentation.

- (2) Bids with subcontracting opportunities

Race Neutral measure or program is one that is, or can be, used to assist all small businesses. The DEPARTMENT must meet the maximum feasible

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portion if its overall DBE goal by using race -neutral means of facilitating DBE participation.

Bidders who solicit non-DBE subcontract quotes will utilize equal opportunity action to allow DBEs to compete for and perform on subcontracts. Bidders who intend to sublet work must indicate this in Part B of the DBE Assurance and Commitment.

The results of the equal opportunity actions will be included with the prepared Bid Proposal as *Race Neutral Documentation*. Part B of the Bid Assurance and Commitment Form will indicate the existence of any of the following types of Race Neutral Documentation that the Bidder has included:

- (a) DBE Commitment
- (b) DBE Contact Log
- (c) Quote Comparison

In either event, the Contractor shall continue efforts to consider and utilize DBE firms during the performance of the contract.

2. **DBE Commitment:** For a bid to be considered responsive, Bidders shall submit the following information regarding DBE compliance with the prepared Bid Proposal:

Submit a DBE Commitment of work that will be subcontracted to certified DBE firm(s) as listed in the UUCP's Directory or DBE firms that have been approved by the UUCP prior to bid opening.

- a. The names of DBE firms that will participate in the contract;
- b. A specific description of the work each named DBE firm will perform (list specific bid items). Listed bid items shall be considered to be committed in their entirety unless Bidders designate otherwise in their DBE Commitment.
 - (1.) If mobilization is a bid item that is partially committed to a DBE, indicate the dollar amount of the DBE mobilization.
 - (2.) If a partial quantity is committed to a DBE, indicate the quantity committed to the DBE.
 - (3.) If a partial performance of an item is committed to a DBE, explain what part of the item the DBE will perform;
- c. The dollar amount of participation by each named DBE firm;
- d. If the contract goal is not met, evidence of good faith efforts.

The DBE Commitment is to be included in the bid prepared within, and said information will be kept confidential and will not be reviewed unless the Contractor is otherwise determined

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to be the low Bidder or the DEPARTMENT elects to review said information in making its determination as to award of the contract.

3. **Race Neutral Commitment:** For a bid to be considered responsive, Bidders shall submit the following information regarding equal opportunity compliance with their prepared Bid Proposal:

Submit a Race Neutral DBE Commitment of work that will be subcontracted to certified DBE firm(s) as listed in UUCP DBE_Directory or DBE firms that have been approved by the DEPARTMENT prior to bid opening. The DBE Commitment will include:

- a. The bid item(s) or work classification(s) that will be subcontracted;
- b. The DBE firms that have been contacted. A reasonable number of DBEs available to perform the anticipated subcontract work must be contacted. The DBE firms must be given a reasonable amount of time to develop subcontract quotes.
- c. The results of the contacts with the DBE firms
- d. Name(s) of anticipated DBE subcontractor(s)
- e. Anticipated work items to be performed by DBE(s)
- f. Anticipated dollar amount of subcontract(s).

A specific description of the work each named DBE firm will perform (list specific bid items). Listed bid items shall be considered to be committed in their entirety unless Contractors designate otherwise in their DBE commitment.

- (1.) If mobilization is a bid item that is partially committed to a DBE, indicate the dollar amount of the DBE mobilization.
- (2.) If a partial quantity is committed to a DBE, indicate the quantity committed to the DBE.
- (3.) If a partial performance of an item is committed to a DBE, explain what part of the item the DBE will perform;

The *Race Neutral Documentation* submitted in the prepared bid will be kept confidential and not reviewed unless the Contractor is otherwise determined to be the low Bidder or the DEPARTMENT elects to review said information in making their determination as to award of the contract.

4. **DBE Written Confirmation:** Low Bidder shall submit to the DEPARTMENT Civil Rights Manager within three (3) work days after the bid opening written confirmation from each DBE that it is participating in the contract as provided in the Prime Contractor's DBE Commitment or Race Neutral Documentation. The written confirmation shall include the following information:

- a. A description of the work that will be performed (list specific bid items). Listed bid items shall be considered to be committed in their entirety unless Contractors designate otherwise in their DBE commitment.
 - (1) If mobilization is a bid item that is partially committed, please confirm the dollar amount of the mobilization to be performed.

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- (2) If a partial quantity is committed, confirm the quantity to be performed.
 - (3) If a partial performance of an item is committed, confirm what part of the item will be performed.
 - (4) Unit bid prices for each bid item that is committed to a DBE.
 - (5) Total dollar amounts (mathematical extensions) for each bid item that is committed to a DBE
- b. The dollar amount of participation by each named DBE firm.
5. **Good Faith Efforts:** Bidders who fail to meet the DBE goal for bid evaluation must demonstrate with documentary evidence that they made good faith efforts to do so. Bidders are required to include the Good Faith Efforts Documentation with the prepared Bid Proposal. The said information will be kept confidential and not reviewed unless the Bidder is otherwise determined to be the low Bidder or the DEPARTMENT and authorized representatives elect to review said information in making their determination as to award of the contract. For the bid to be considered responsive, Bidders shall include with the BID PROPOSAL specific documentary evidence that good faith efforts have been made to meet the goal.
- Attached hereto and marked Exhibit 1, and by this reference made a part hereof, is a list of actions that may be used to prove the kinds of efforts prospective Bidders should consider in their attempts to demonstrate good faith efforts. The list of actions, as contained in Exhibit 1, is not intended to be an exclusive list of efforts that a prospective Bidder may wish to consider in demonstrating good faith efforts to satisfy DBE participation requirements. The determination of good faith efforts shall be based upon the information and documentation of the actions supplied by the Bidder with the bid proposal. The DEPARTMENT reserves the right to investigate and verify such information or to request the low dollar Bidder to clarify information submitted at the time of bid.
6. **Award of the Contract:** The award of the contract, if awarded, will be made to the apparent successful responsive, responsible Bidder who submitted a reasonable bid for the contract and has complied with this Subsection D.
7. **Administrative Reconsideration:** Good faith efforts as used herein shall be determined on a case by case basis. If it is determined that the apparent low Bidder has failed to meet the requirements of Exhibit 1, the bidder will be provided an opportunity for administrative reconsideration.
- a. Official(s) who did not take part in the original determination will perform the administrative reconsideration.
 - b. The Bidder will have the opportunity to provide to written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

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- c. The Bidder will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
- d. The Bidder will be notified in writing of the decision and the basis for the decision.
- e. The reconsideration decision is administratively final and is not appealable to FTA nor to the DOT.

E. COUNTING DBE PARTICIPATION TOWARD GOALS FOR BID EVALUATION

- 1. The DEPARTMENT will recognize and grant DBE credit toward the goal for bid evaluation (*race conscious* goals) for work committed to DBE subcontractors ONLY in the types of work for which DBE certification has been granted by the UUCP prior to bid opening. It is necessary that all bidders refer to the UUCP DBE Directory for direction and guidance. A current copy of the DBE directory is available through the Civil Rights Office and on the Internet at (click on this link):
<http://www.udot.utah.gov/main/f?p=100:pg:::::V,T:,198>
- 2. The DEPARTMENT will grant DBE credit toward *race neutral* goals for work performed by firms who are not DBE certified prior to bid opening or who bid types of work for which DBE certification has not been granted by the DEPARTMENT prior to bid opening but subsequently are granted DBE certification.
- 3. Commitments to DBEs that exceed the Goal for Bid Evaluation will be considered as both race conscious and race neutral. The dollar amount of the Goal for Bid Evaluation will be considered to be race conscious participation. Any dollar amounts in excess of the Goal for Bid Evaluation will be considered as race neutral participation.

F. COUNTING DBE PARTICIPATION TOWARD GOALS FOR PERFORMANCE

Subcontracts to DBEs that exceed the *Goal For Bid Evaluation* will be considered in part as race conscious participation and in part as race neutral participation. Any dollar amounts in excess of the *Goal For Bid Evaluation* will be considered as race neutral participation.

It is intended that the Contractor shall utilize the subcontractors designated in the DBE Commitment in the performance of the contract. Any changes in the Contractor's DBE Commitment, such as substitution of a DBE subcontractor, substitution of contract items, or decrease in total dollar amount must be approved by the DEPARTMENT and must be documented. Unauthorized substitutions or eliminations may result in the imposition of sanctions. Failure to meet the Goal for Performance, that is established at the time of award by the Contractor's DBE Commitment, without adequate justification, including concurrence of the DEPARTMENT Civil Rights Manager, shall result in the imposition of sanctions as provided in Part I of this Special Provision.

- 1. Only the value of the work actually performed by the DBE will count toward DBE goals.
- 2. Contractors may count toward their contract goals a portion of the total dollar value of a contract with a joint venture eligible under the standards of this bid condition equal to the percentage of the ownership and controls of the DBE partner in the joint venture.
- 3. The DEPARTMENT will recognize and grant DBE credit for work subcontracted and performed by DBE subcontractors ONLY in the types of work for which DBE certification has been granted by the UUCP prior to bid opening. It is necessary that all Bidders refer to the UUCP'DBE Directory

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for direction and guidance. A current copy of the UUCP DBE directory is available through the Civil Rights Office and on the Internet at (click on this link):

<http://www.udot.utah.gov/main/f?p=100:pg:::::V,T:,198>

4. Contractors may count toward their goals only the value of the work actually performed by the DBE toward the DBE goals.
 - a. Work performed by the DBE's own forces using "regular employees" and "regular equipment."
 - b. The cost of supplies and materials obtained and purchased by the DBE and equipment leased for the work of the contract.
 - c. Work that a DBE subcontracts to a lower tier DBE firm.

5. Contractors may not count toward the DBE goals:
 - a. Supplies and material purchased and equipment leased by the DBE from the prime Contractor or its affiliates or another subcontractor on the project.
 - b. Work that a DBE subcontracts to a lower tier non-DBE firm.

6. Contractors may count toward their goals only expenditures to a DBE that performs a commercially useful function in the work of the contract.
 - a. A DBE performs a "commercially useful function" when it is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
 - b. The DEPARTMENT shall evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
 - c. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the DEPARTMENT must examine similar transactions, particularly those in which DBEs do not participate.
 - d. A DBE does not perform a commercially useful function if it does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.

7. The DEPARTMENT shall use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
 - a. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - b. The DBE must be responsible for the management and supervision of the entire trucking arrangement for the purpose of meeting DBE goals.
 - c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks its owns, insures, and operates using drivers it employs.

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- d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- e. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit *for the total value of the transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.*

Example: *Leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.*

- f. For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
8. Contractors may count expenditures with DBEs for materials or supplies as provided in the following:
- a. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies counts toward DBE goals.

For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

- b. If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies counts toward DBE goals.

For purposes of this paragraph, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

- (1) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- (2) A firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of regular

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dealers' own distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis.

- (3) Packagers, brokers, manufacturers' representatives, or other persons or firms who arrange, or expedite, transactions are not regular dealers.
 - (4) A DBE trucking company that picks up a product from a manufacturer or regular dealer and delivers the product to the Contractor performs a delivery service. Credit will not be given based on a percentage of the cost of the product; credit will be allowed only for the cost of the transportation service.
9. If the materials or supplies are purchased from a service provider, the fees or commission charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies, count toward the DBE goals.

A Service Provider is a business that is neither a manufacturer nor a regular dealer but simply transfers title of a product from manufacturer to ultimate purchaser or a firm that puts a product into a container for delivery. A service provider charges a fee or a commission for assistance in the procurement of the materials and supplies, or fees or transportation for the delivery of materials or supplies required on a job site.

- a. Only the fees, commissions, or transportation performed by the DBE service provider count toward the DBE goals. The DEPARTMENT must determine that the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.
 - b. No portion of the cost of the materials and supplies count toward the DBE goals. Documentary evidence of the supply agreements, i.e., sales contract, purchase order, etc., shall be submitted to the DEPARTMENT prior to credit. The agreement shall set forth the estimated quantities, unit prices, total dollar amounts, material guarantees, delivery, and payment requirements including the requirements listed part E, 4, e, of this DBE Special Provision.
10. Prompt payment for the work accomplished is an integral part of the concept of commercially useful function.

See Section F, Subsection 6, a for a definition of "commercially useful function."

G. CONTRACTOR'S RESPONSIBILITY

- 1. It is the Contractor's responsibility to determine the level of professional competence and financial responsibility of any proposed DBE subcontractor. The Contractor shall ascertain that the proposed DBE subcontractor is particularly experienced and equipped for the work of the subcontract.
- 2. It is the Contractor's responsibilities to monitor and assure that DBE's listed to fulfill DBE goals perform a commercially useful function.

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H. DBE SUBCONTRACTOR'S FAILURE TO PERFORM SUCCESSFULLY

If, during the performance of the contract, the Prime Contractor determines that a DBE subcontractor is unable to perform successfully, the Contractor shall make good faith efforts to replace the DBE subcontractor with another DBE to fulfill the Goal for Bid Evaluation. For Race Conscious DBE participation, the Contractor shall consider the uncompleted DBE committed work items as well as other work items as a part of the good faith efforts. All substitutions of DBE subcontractors shall receive prior approval by the DEPARTMENT.

The Contractor shall not substitute DBE subcontractor(s), work item(s), nor decrease dollar amount(s) as indicated in the Contractor's DBE Commitment without prior submission of written justification to the DEPARTMENT and without prior approval of the DEPARTMENT Civil Rights Manager.

The Contractor shall not substitute DBE subcontractor(s), work item(s), nor decrease dollar amount(s) as indicated in the Contractor's DBE Commitment Substitutions without prior submission of a written statement from the DBE consenting to the substitution or decrease and holding the DEPARTMENT harmless for approving the substitution.

Unauthorized substitutions of the DBE(s), underruns of work item(s), or decreases in dollar amount(s) may result in the imposition of sanctions as allowed under Section I.

The DEPARTMENT reserves the right to authorize completion of the work that was subcontracted to a DBE who is unable to perform successfully by either of the following methods:

1. Approve, at no additional cost to the DEPARTMENT, a replacement DBE subcontractor and, when appropriate, modify the contract to provide for reasonable extra time necessary to obtain a DBE replacement at no additional cost to the DEPARTMENT.
2. Direct the Contractor to perform at unit bid prices. In the event this option is selected, the percentage DBE goal will be adjusted as may be appropriate.

I. SANCTIONS

1. The Contractor's DBE Commitment becomes a 3-part commitment comprised of the DBE Contractor(s), work item(s) and dollar amount(s). The Commitment becomes a contract specification upon award of the contract and becomes the minimum goal for contract performance.

If the Contractor fails to achieve the minimum goal, established in the contract at the time of the award of the contract or later modified, the contract payments shall be reduced as a liquidated damage and not as a penalty by an amount equal to the dollar amount of work not performed by the DBE. The dollar amount of any sanction will be computed using the unit prices indicated in the DBE subcontract

Exceptions:

- a. Any authorized adjustment in the DBE Commitment that has been approved by the DEPARTMENT Civil Rights Manager.
- b. Race neutral participation.

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J. RECORD KEEPING

1. The DEPARTMENT must create and maintain a Bidders list consisting of all firms bidding on prime contracts and bidding or quoting subcontractors on DOT-assisted projects. For every firm, the following information must be submitted annually:
 - a. Firm name
 - b. Firm address
 - c. Firm's status as a DBE or non-DBE
 - d. Age of firm
 - e. Annual gross receipts of the firm.

Every firm bidding or quoting as a prime or subcontractor at any level on DOT-assisted projects must register annually with the DEPARTMENT.

2. With the bid or no later than 10 work days after bid opening date, each and every prime bidder must submit to The DEPARTMENT a list of all firms bidding and/or quoting as subcontractors, service providers or suppliers. * The Prime Bidder must also submit for each and every firm sub-quoting the following information:
 - a. Firm Name
 - b. Firm address
 - c. Work classification(s) bid by subcontractor, service provider or supplier:
 - (1) Building
 - (2) Concrete: Curb & gutter, Flatwork, Inlet Boxes, etc.
 - (3) Concrete: Structural
 - (4) Consulting firms
 - (5) Demolition
 - (6) Electrical: Hwy lighting, signals & fiber optics
 - (7) Equipment rentals and sales
 - (8) Excavation
 - (9) Fencing
 - (10) Grading
 - (11) Guardrail
 - (12) Landscaping & erosion control
 - (13) Miscellaneous
 - (14) Painting: Highway structures
 - (15) Painting: Highway striping & painted messages
 - (16) Paving: Asphalt highway & runway, etc.
 - (17) Paving: Concrete
 - (18) Paving: Miscellaneous
 - (19) Pipe Culverts, drainage, sewer & water
 - (20) Reconstruction: Manholes, etc.
 - (21) Rotomilling
 - (22) Sawing & sealing
 - (23) Signs permanent

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- (24) Steel reinforcing
- (25) Steel structural
- (26) Surveying
- (27) Traffic Control: Flagging
- (28) Traffic Control: Temp. Signs and Devices
- (29) Trucking
- (30) Supplier: Manufacturer
- (31) Supplier: Regular Dealer
- (32) Supplier: Service Provider

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Exhibit 1

Suggested Actions and Required Documentation to Demonstrate

Good Faith Efforts to Comply With DBE Requirements

A Bidder must show that it took necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness, can reasonably be expected to fulfill the program requirement. The efforts employed should be those that would be taken if a Bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract. Goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements.

Documentary evidence of each action taken must be submitted with the Bid Proposal.

The following is taken, with some modification, from CFR 49 Part 26, Appendix A. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive.

GUIDANCE CONCERNING GOOD FAITH EFFORTS

- I. When the DEPARTMENT establishes a contract goal on a Federal aid contract, a Bidder must, in order to be responsive, make good faith efforts to meet the goal. The Bidder can meet this requirement in either of two ways:
 - A. The Bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose.
 - B. If it doesn't meet the goal, the Bidder can document adequate good faith efforts. This means that the Bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- II. In any situation in which the DEPARTMENT has established a contract goal, CFR 49, Part 26 requires the DEPARTMENT to use the good faith efforts mechanism of this part. It is up to the DEPARTMENT to make a fair and reasonable judgment whether a Bidder that did not meet the goal made adequate good faith efforts. It is important for the DEPARTMENT to consider the quality, quantity, and intensity of the different kinds of efforts that the Bidder has made. The efforts employed by the Bidder should be those that one could reasonably expect a Bidder to take if the Bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. The DEPARTMENT emphasizes, however, that its determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.
- III. The U. S. Department of Transportation also strongly cautions the DEPARTMENT against requiring that a Bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the Bidder makes an adequate good faith efforts showing. This rule specifically prohibits the DEPARTMENT from ignoring bona fide good faith efforts.

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- IV. The following is a list of types of actions that the DEPARTMENT should consider as part of the Bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
- A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The Bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
 - B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime Contractor might otherwise prefer to perform these work items with its own forces.
 - C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - D. Negotiating in good faith with interested DBEs.
 - (1) It is the Bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - (2) A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.
 - (a) The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable.
 - (b) No specific price differential has been established by 49 CFR 26. This approach allows flexibility.
 - (c) Along with the reasonableness of the cost necessarily comes the fact that prime Contractors are not expected to bear unreasonable costs.
 - (d) Any burden that a non-DBE subcontractor might face is also limited by the reasonableness of competing bids.
 - (3) The ability or desire of a prime Contractor to perform the work of a contract with its own organization does not relieve the Bidder of the responsibility to make good faith efforts. Prime Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

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(4) The ability or desire of a prime Contractor to bundle the work of a subcontractor who wishes to perform all the work of the subcontract with its own organization does not relieve the Bidder of the responsibility to require a subcontractor to make good faith efforts. Subcontractors are not required to accept higher quotes from lower tier DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women Contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

NOTE: The DBE 'Contact Log' can be used to document the following efforts:

IV. A.

IV. C.

IV. D. (1)

The 'Quote Comparison' can be used to document the following efforts:

IV. B.

IV. D. (3)

V. In determining whether a Bidder has made good faith efforts, the DEPARTMENT may take into account the performance of other Bidders in meeting the contract. For example, when the apparent successful Bidder fails to meet the contract goal, but others meet it, the DEPARTMENT may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful Bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful Bidder having made good faith efforts.

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Submit with the Bid Proposal documentary evidence to prove that good faith efforts were accomplished:

1. Submit copies of all solicitations: correspondence, faxes, advertisements, telephone logs with dates, times, names of persons contacted, nature of conversation, DBEs' responses, and etc.
2. If DBEs submitted quotes that were not used because the range of additional costs was determined to be excessive or unreasonable, submit the range that has been determined by the Bidder to be a reasonable range of additional costs and explain how that range was determined.
3. As a part of demonstrating a reasonable range of additional costs, submit copies of all subcontractor quotes, copies of spread sheet(s) which compare all DBE quotes with non-DBE quotes and which include bid item(s) quoted, work classifications, quantities, prices, and dollar amounts.
4. Submit a narrative of specific names and types of information, assistance, considerations given, and efforts to assist DBEs under Item IV, subparts C through F.

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**DBE BID ASSURANCE AND COMMITMENT
COMPLETE ONLY PART A. OR PART B.**

PART A. RACE CONSCIOUS DBE PARTICIPATION

SPECIFIC ASSIGNED CONTRACT DBE GOAL FOR BID EVALUATION _____ PERCENT

If the DBE goal which is indicated in Section A, CONTRACT GOAL, BID CONDITIONS, DISADVANTAGED BUSINESS ENTERPRISE (DBE) is greater than 0.0 percent, complete only Part A, and submit *DBE Commitment*, and if applicable, *Documentation of Good Faith Efforts*.

By signing the BID REPORT (either manually or electronically), it is understood that those individuals who sign as owners or authorized representatives of the Bidder, have read and are familiar with SPECIAL PROVISION, BID CONDITIONS, DISADVANTAGED BUSINESS ENTERPRISE and hereby certify that good faith efforts have been utilized to meet or exceed the goal of the DBE Program as established by the DBE Special Provision.

Indicate intended DBE commitment.

_____ We intend to meet or exceed the contract goals as per the DBE Commitment which is submitted with the Bid Proposal.

RACE CONSCIOUS AND RACE NEUTRAL COMMITMENT _____ PERCENT

_____ We fail to meet the advertised goal. This firm commits to DBE participation as per the DBE Commitment that is submitted with the Bid Proposal and to continue Good Faith Efforts throughout the performance of the project. Documentation of Good Faith Efforts is submitted with the Bid Proposal, including:

1. DBE Contact Log Report
2. Quote Comparison Report

PART B. RACE NEUTRAL DBE PARTICIPATION

ASSIGNED CONTRACT DBE GOAL FOR BID EVALUATION _____ PERCENT

If the DBE goal, which is indicated in Section A, CONTRACT GOAL, BID CONDITIONS, DISADVANTAGED BUSINESS ENTERPRISE (DBE) is 0.0 percent, complete only Part B and submit *Race Neutral DBE Information*.

By signing the BID REPORT (either manually or electronically), it is understood that those individuals who sign as owners or authorized representatives of the Bidder, have read and are familiar with SPECIAL PROVISION, BID CONDITIONS, DISADVANTAGED BUSINESS ENTERPRISE and hereby certify that equal opportunity action has been utilized to allow DBEs to compete for and perform on subcontracts.

_____ We do not intend to sublet a portion of the contract work.

_____ We intend to sublet a portion of the contract work. Our firm has taken equal opportunity action to allow DBEs to compete for and perform on subcontracts. Documentation of Race Neutral efforts is submitted with the Bid Proposal, including:

_____ 1. RACE NEUTRAL DBE COMMITMENT _____ PERCENT

_____ 2. DBE Contact Log Report

_____ 3. Quote Comparison Report

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DBE BID ASSURANCE AND COMMITMENT

Please complete the following form detailing DBE participation with this Bid Proposal. Please complete one form for each DBE subcontractor.

Name and address of DBE firm:

Specific description of work to be performed, including quantities. Include bid items, if applicable. Note whether partial or complete performance is included. If partial performance is included, list specific work items the DBE firm is to perform:

Dollar amount of the work the DBE is to perform:

Bidder's Commitment

Bidder's Name & Title:

Signature:

Date:

Participating DBE Commitment Confirmation

DBE's Name & Title:

Signature:

Date:

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Federal Transit Administration

CONTRACT CLAUSE MATRIX

		TYPE OF PROCUREMENT***				
Clause		Professional Services / A&E	Operations / Management	Rolling Stock Purchase	Construction	Materials & Supplies
Access to Records and Reports	Applicability	All	All	All	All	All
	Flow Down*	Recipients and subrecipient				
	Language**	Not mandated				
Federal Changes	Applicability	All	All	All	All	All
	Flow Down*	All				
	Language**	Not mandated				
Termination	Applicability	>\$10,000 if 49 CFR 18 applies	>\$10,000 if 49 CFR 18 applies	>\$10,000 if 49 CFR 18 applies	>\$10,000 if 49 CFR 18 applies	>\$10,000 if 49 CFR 18 applies
	Flow Down*	All exceeding \$10,000 except contracts with non-profit orgs and institutions of higher learning				
	Language**	Not mandated				
Civil Rights	Applicability	All	All	>\$10,000	All	All
	Flow Down*	All				
	Language**	Any deviation to proposed model language should be closely coordinated with counsel				
Disadvantaged Business Enterprise (DBE)	Applicability	All	All	All	All	All
	Flow Down*	A formal clause flows down to all contracts and subcontracts above the micro-purchase level				
	Language**	Not mandated				
Breaches and	Applicability	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000

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Dispute Resolution	Flow Down*	All				
	Language**	Not mandated; language depends on contract type and counsel should be consulted				
Energy Conservation	Applicability	All	All	All	All	All
	Flow Down*	All				
	Language**	Not mandated; state dependent				
Clean Water	Applicability	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
	Flow Down*	All				
	Language**	Not mandated but must include minimum mandatory requirements				
Clean Air	Applicability	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
	Flow Down*	All exceeding \$100,000				
	Language**	Not mandated				
No Government Obligations to Third Parties	Applicability	All	All	All	All	All
	Flow Down*	Not required to flow down, but is recommended to clarify that the Federal Government is not a party to the contract				
	Language**	Not mandated				
Program Fraud and False or Fraudulent Statements and Related Acts	Applicability	All	All	All	All	All
	Flow Down*	All who will make, present, or submit covered claims and statements				
	Language**	Not mandated				
Lobbying	Applicability	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
	Flow Down*	All				
	Language**	Mandated by 49 CFR 20				
Incorporation of FTA Terms	Applicability	All	All	All	All	All
	Flow Down*	All				
	Language**	Not mandated				
Government-Wide	Applicability	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000

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Debarment and Suspension	Flow Down*	All exceeding \$25,000 or any contract or subcontract for Federally required auditing services				
	Language**	Not mandated				
Bus Testing	Applicability			Rolling stock/turnkey		
	Flow Down*	Turnkey contractor				
	Language**	Not mandated				
Buy America	Applicability			>\$100,000	>\$100,000	>\$100,000
	Flow Down*	Recipients, subrecipients, and 1 st tier contractors				
	Language**	Not mandated				
TYPE OF PROCUREMENT***						
Clause		Professional Services / A&E	Operations / Management	Rolling Stock Purchase	Construction	Materials & Supplies
Contract Work Hours and Safety Standards Act	Applicability		>\$100,000 (trans services excepted)	>\$100,000	>\$100,000 (also ferries)	
	Flow Down*	All				
	Language**	Any deviation to proposed model language should be closely coordinated with counsel				
Recycled Products	Applicability		EPA-selected items \$10,000 or more annually		EPA-selected items \$10,000 or more annually	EPA-selected items \$10,000 or more annually
	Flow Down*	All				
	Language**	Not mandated				
ADA Access	Applicability	A & E	All	All	All	All
	Flow Down*	All				

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	Language**	Not mandated				
Cargo Preference	Applicability			Transported by ocean vessel	Transported by ocean vessel	Transported by ocean vessel
	Flow Down*	All when contract or subcontract may be involved with transport by ocean vessel				
	Language**	Not mandated				
Fly America	Applicability	Foreign air transp. / travel	Foreign air transp. / travel	Foreign air transp. / travel	Foreign air transp. / travel	Foreign air transp. / travel
	Flow Down*	Recipients, subrecipients, and 1 st tier contractors				
	Language**	Not mandated				
National ITS Architecture	Applicability	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
	Flow Down*	All				
	Language**	Not mandated				
Privacy Act	Applicability	When drug and alcohol files maintained	When drug and alcohol files maintained	When drug and alcohol files maintained	When drug and alcohol files maintained	When drug and alcohol files maintained
	Flow Down*	All				
	Language**	Not mandated				
Transit Employee Protective Agreements	Applicability		Transit Operations			
	Flow Down*	All				
	Language**	Not mandated				
Drug and Alcohol Testing	Applicability		Transit Operations			
	Flow Down*	All performing safety-sensitive functions with few exceptions				
	Language**	Not mandated				

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Charter Bus and School Bus	Applicability		All			
	Flow Down*	Recipients, subrecipients, and 1 st tier service contractors				
	Language**	Not mandated				
Davis-Bacon & Copeland Anti-Kickback Acts	Applicability				All >\$2,000 (also ferries)	
	Flow Down*	All				
	Language**	Any deviation to proposed model language should be closely coordinated with counsel				
Seismic Safety	Applicability	A & E for new buildings & additions			New buildings & additions	
	Flow Down*	Recipients, subrecipients, and 1 st tier contractors				
	Language**	Not mandated				
Bonding	Applicability				>\$100,000	
	Flow Down*	Recipients, subrecipients, and 1 st tier contractors				
	Language**	Not mandated; percentages are minimum requirements				
Patent and Rights in Data	Applicability	R & D				
	Flow Down*	All				
	Language**	Not mandated				

- (1) *Flow down – Federally required clauses and requirements, as a general rule, are required to be in each third-party contract at every tier and in each subrecipient agreement at every tier. When clauses are required to flow down, the clauses and requirements flow down to all levels of the Federal funding change beginning with the grantee. The matrix indicates to what level clauses must flow down.
- (2) **Language – This row will indicate whether language is mandatory or suggested. FTA’s Best Practices Procurement Manual and UDOT PTT Procurement Guide contain suggested language. FTA Master Agreement and the CFR provide additional language requirements and language.
- (3) ***This exhibit is provided as a guide and is not considered exhaustive. Contractors should refer to FTA Circular 4220.1F, the FTA Master Agreement, FTA’s Best Practices Procurement Manual, and the UDOT PTT Procurement Guide for additional information on required Federal contract clauses and applicability.