

**WESTERN CONTRA COSTA TRANSIT AUTHORITY
(WCCTA)**

REQUEST FOR PROPOSAL

FOR

ZEB Rollout Plan

RFP 2022-02

WESTERN CONTRA COSTA TRANSIT AUTHORITY

601 Walter Avenue

Pinole, CA 94564

(510) 724-3331

www.westcat.org

September 15, 2022

Responses due:

3:00 p.m., October 28, 2022

Contact Information

Rob Thompson

General Manager

(510) 724-3331

rob@westcat.org

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1.0 PROJECT SUMMARY AND DESCRIPTION

In response to the California Air Resources Board (CARB) Innovative Clean Transit (ICT) Regulation, which mandates the full conversion of bus fleets to zero-emission by 2040, the Western Contra Costa Transit Authority (WCCTA) is soliciting proposals from consulting firms with qualifications and experience necessary to conduct a system-wide analysis, and develop a complete Zero-Emission Bus Rollout Plan for WCCTA to comply with the regulation specific to small transit agencies.

The ICT regulation was adopted in December 2018 and requires all public transit agencies to gradually transition to a 100 percent zero-emission bus (ZEB) fleet. Beginning in 2029, 100% of new purchases by transit agencies must be ZEBs, with a goal for full transition by 2040. A ZEB Rollout Plan from each transit agency, approved by its Board, is required to show how it is planning to achieve a full transition to zero-emission technologies by 2040. Small transit agencies – including WCCTA – must submit their Rollout Plan by June 30, 2023.

The purpose of this project is to assist WCCTA in implementing the ICT regulation by performing fleet, facilities, and operational analysis and creating a detailed plan to assist WCCTA in reaching a zero-emission bus fleet. The overall goal of the project is to provide WCCTA with a board approved Zero Emission Bus Rollout Plan as required by CARB by June 30, 2023. The analysis and resulting transition plan shall meet the following requirements:

1. Full transition to ZEBs by 2040.
2. The type of ZEB technologies WCCTA plans to deploy.
3. A schedule for construction of facilities, infrastructure modifications or upgrades and timelines for construction.
4. A schedule for ZEB and conventional internal combustion engine bus purchases and/or lease options that includes bus types, fuel types, and number of buses.
5. A schedule for conversion of conventional internal combustion engine buses to ZEBs, if applicable. The schedule must identify number of buses, bus types, and the propulsion systems being removed and converted to.
6. A description of how WCCTA will deploy ZEBs in disadvantaged communities.
7. A training plan and schedule for ZEB operators, maintenance and repair staff, other operations staff, and local emergency responders.
8. Budget for total capital costs required, identification of funding sources available and projected, and a projection of unfunded balance or shortfall.
9. A written document (Rollout Plan) adopted by WCCTA's Board of Directors in April, 2023 and submitted to CARB's Executive Officer by June 30, 2023 or sooner.

2.0 ABOUT WESTERN CONTRA COSTA TRANSIT AUTHORITY

Overview

The Western Contra Costa Transit Authority (“WCCTA” or the “Authority”) is headquartered in Pinole, CA and was formed in 1977 under the provisions of the California Joint Exercise of Powers Act, Government Code Sections 6500 et. seq. It represents the cities of Pinole, Hercules, and the unincorporated communities of Montalvin Manor, Bayview, Tara Hills, Rodeo, Crockett and Port Costa. WCCTA is governed by a seven-member Board of Directors composed of two elected officials from each city’s City Council and three members appointed by the Contra Costa County Board of Supervisors. WCCTA is responsible for provision of public transit service within an approximately 20 square mile service area.

Location

The WCCTA service area is located on the Interstate 80 corridor approximately 20 miles northeast of San Francisco. It is primarily a suburban residential area with several shopping centers and limited commercial/industrial development. Current population of the area is approximately 67,000 people.

Service Operations

WCCTA operates local and express fixed route bus service (WestCAT), Transbay bus service (Lynx), and paratransit service (Dial-A-Ride) for seniors and persons with disabilities. The Dial-A-Ride is currently offered beyond ADA required service levels to include anyone 65 years of age or older, regardless of ADA eligibility status. WCCTA also operates Transbay bus service (the Lynx) between Hercules and San Francisco. All operations, maintenance and associated training and management is contracted out under an Operations and Maintenance contract

Fleet

	Qty.
Fixed Route/Commuter Buses	50
Paratransit Vehicles	12
Supervisor Vehicles	4
Service Vehicle/Truck	1

3.0 TIMELINE

Event:	Date
Request for Proposals issued by WCCTA	Sept 15, 2022
Pre-Proposal Conference (Optional)	Sept. 30, 2022
Deadline for receipt of written questions and requests for addenda	Oct.7, 2022
WCCTA responses and/or addenda issued	Oct 14, 2022
Proposals due - 3:00 p.m. PST	Oct 28, 2022

WCCTA reviews proposals	Nov 10, 2022
WCCTA holds interviews if needed	Nov 14-16, 2022
Letters to respondents	Nov. 21, 2022
Appeals process deadline	Nov 28, 2022
Approval of contract by WCCTA Board	Dec 8, 2022
Kickoff meeting/project begins	Dec 14, 2022
Project Completion	April 15, 2023

4.0 GENERAL INFORMATION

4.1. Pre-Proposal Conference

This project shall include the furnishing of all labor and services outlined in the Scope of Work section of the Request for Proposal (RFP). A Pre-Proposal Conference will be held via Zoom, on September 30, 2022, at 10:00 AM PST. Prospective Proposers are highly encouraged to attend this meeting, but attendance is not required.

4.2. Submission of Proposals

One electronic submission file of the proposal in the form specified in this RFP must be received by WCCTA at the following email address: rob@westcat.org by 3:00 PM PST, on October 28, 2022. Proposals in response to this RFP shall be considered received at the time actually received. Proposals received after the specified date and time shall be considered late and shall not be considered for evaluation. Late proposals shall be returned to the sender via email. Proposers should note that WCCTA's normal business hours are from 8:00 AM to 5:00 PM, Monday through Friday.

All proposals and other communications must be addressed, as follows:

Rob Thompson – General Manager
Western Contra Costa Transit Authority
601 Walter Avenue
Pinole, CA 94564
P: (510) 724-3331
F: (510) 724-5551
rob@westcat.org

4.3. Inquiries and Due Date

A proposer may submit to WCCTA a written request for an interpretation or clarification of, or any addenda to, this RFP. Any such request must be received by WCCTA no later than October 7, 2022. The request must be submitted in writing (including by facsimile (510) 724-5551) to the WCCTA contact or by email at rob@westcat.org. WCCTA's responses to questions will be mailed to interested proposers and posted to www.westcat.org by October 14, 2022. WCCTA is not bound by any oral interpretations,

clarifications, or changes made to this RFP by any WCCTA representative. Any clarification or change to the RFP must be provided in writing pursuant to this Section.

4.4. Addendum

WCCTA reserves the right to make modifications or addenda to this RFP. If WCCTA determines it is appropriate to revise any portion of this RFP, either at the request of a proposer or upon WCCTA's own initiative, WCCTA will issue, and make available to all prospective proposers who have identified themselves to WCCTA, a written addendum setting forth this revision. Addenda will also be available on WCCTA's website. It is the responsibility of the proposer to ensure that they have received all addenda. Proposers shall acknowledge receipt of addenda by written notice accompanying their proposal submission. Where addenda require changes in the work to be performed under the Contract, the date set for receipt of proposals may be postponed by such number of days as WCCTA determines are appropriate in order to enable prospective proposers to revise proposals.

4.5. Protest Procedures

WCCTA Bid Protest Procedures are available on request and have been developed to provide the sole remedy for supplier protests that cannot be informally resolved.

The procedures and time limits set forth in these procedures are mandatory and are the interested party's sole and exclusive remedy in the event of a protest. The interested party's failure to comply with these procedures shall constitute a waiver of any right to further pursue the protest, including, but not limited to, filing a Government Code Claim or legal proceedings. An interested party may not rely on a protest submitted by another interested party, but must timely pursue its own protest.

4.6. Restrictions on Lobbying and Contacts

Restrictions on Lobbying and Contacts with WCCTA's Board of Directors

During the period beginning on the date of the issuance of this RFP and ending on the date of the award of the contract, no person (or entity) submitting a proposal in response to this RFP, nor any officer, employee, representative, agent, or contractor representing such a person (or entity) shall contact through any means or engage in any discussion regarding this RFP, the evaluation or selection process, or the award of the contract with any member of the WCCTA Board of Directors or his or her staff. Any such contact shall be grounds for the disqualification of the proposer.

Restrictions on Lobbying and Contacts with WCCTA Staff

During the period beginning on the date of the issuance of this RFP and ending on the date of the award of the contract, each person or entity described in the subsection above shall limit his or her communication with WCCTA staff to the written clarification and amendment process described. During such period, any such person or entity is precluded from having any communications regarding this RFP, the evaluation or selection process, or the award of the contract with a member of the WCCTA Evaluation Committee, other than communications initiated by such member during interviews or discussions. Any such unauthorized communication shall be grounds for the disqualification of the proposer.

4.7. Ownership of Proposals

The proposals received become the exclusive property of WCCTA. At such time as a contract award is approved by the WCCTA Board of Directors, all proposals submitted in response to this RFP shall become a matter of public record and shall be regarded as public records, with the exception of those elements of each proposal which are trade secrets as that term is defined in California Government Code 6254.7 and which are so marked as "TRADE SECRET," "CONFIDENTIAL" or "PROPRIETARY." WCCTA shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, without limitation, those so marked if disclosure is deemed required by law or by an order of a court. Proposals that indiscriminately identify all or most of the proposal as exempt from disclosure without justification may be found technically unacceptable.

4.8. Procurement Guidelines

Costs Incurred by Proposer

Any costs incurred by proposers in responding to this Request for Proposals shall be the proposer's sole expense and will not be reimbursed by WCCTA.

Cancellation of Procurement

WCCTA reserves the right in its discretion to cancel this Request for Proposals in whole or in part.

Proposal Rejection

WCCTA reserves the right in its discretion to accept or reject any and all proposals submitted in response to the RFP, or refuse to enter into any contract resulting from any proposal submitted, without expense to WCCTA.

Proposal Withdrawal

The proposer's authorized representative may, prior to the date and time set as the deadline for receipt of proposals, modify or withdraw a proposal in person, in writing, or by facsimile (510) 724-5551 to the WCCTA contact person listed in Section 6.2. Submission of Proposals. If proposals are modified or withdrawn in person, the authorized representative shall make his or her identity known and shall sign a receipt for the proposal. Written or facsimile notices shall be received in WCCTA's offices, 601 Walter Avenue, Pinole, CA 94564, no later than the date scheduled as the proposal receipt deadline. After the proposal receipt deadline, proposals may not be withdrawn for one hundred twenty (120) calendar days.

Acceptance of Proposals

- (a) Each proposal shall be submitted with the understanding that it is subject to the evaluation procedure set forth in Section 10.0 Method of Evaluation and Criteria for Selection, and to negotiation at the option of WCCTA
- (b) WCCTA reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals or proposal procedures
- (c) WCCTA reserves the right to withdraw or cancel this RFP at any time without prior notice and the Authority makes no representations that any contract will be awarded to any Proposer responding to this RFP

- (d) WCCTA reserves the right to modify the solicitation schedule and to postpone proposal openings for its own convenience
- (e) WCCTA reserves the right to request additional information to clarify any proposals
- (f) Upon acceptance in writing by WCCTA of the final offer to furnish any and all of the services described herein, the parties shall promptly execute the final contract documents
- (g) The written contract shall bind the proposer to furnish and deliver the services specified at the price proposed and in accordance with the conditions of said accepted proposal and this Request for Proposals, as negotiated

Notice of Informal Solicitation

Notwithstanding any other provision of this RFP, all proposers are hereby specifically advised that this RFP is an informal solicitation for proposals only, and is not intended and is not to be construed as an offer to enter into an agreement or engage in any formal competitive bidding or negotiation pursuant to any statute, ordinance, rule or regulation.

Method of Response

Responses to the RFP shall be made according to the specifications and instructions contained herein. Failure to adhere to instructions may be cause for rejection of any proposal.

Acceptance of Terms and Conditions

Proposers understand and agree that submission of a proposal will constitute acknowledgment and acceptance of, and a willingness to comply with, all the terms, conditions, and criteria contained in this RFP, except as otherwise specified in the proposal. Any and all parts of the submitted proposal may become part of any subsequent contract between the selected Contractor and WCCTA.

False, Incomplete, or Unresponsive Statements

False, incomplete, or unresponsive statements in connection with a proposal may be sufficient cause for rejection of the proposal. The evaluation and determination of the fulfillment of the above requirement will be WCCTA's responsibility and its judgment shall be final.

Clear and Concise Proposal

Proposals shall provide a straightforward, concise delineation of the proposer's capability to satisfy the requirements of this Request for Proposals (RFP). Each proposal shall be submitted in the requested format and provide all pertinent information, including but not limited to information relating to capability, experience, financial resources, management structure, key personnel, and other information as specified in Section 5.0 Proposal Requirements and otherwise required in this RFP. A duly authorized officer of the company shall sign each proposal in ink.

Equal Employment Opportunity

"Contractor will be required to comply with all applicable Equal Employment Opportunity laws and regulations."

Disadvantaged Business Enterprises (DBE)

WCCTA hereby notifies all bidders that it will affirmatively ensure that in regard to any contract entered into pursuant to its advertisement, Disadvantaged Business Enterprises (DBE) will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, gender, color, or national origin in consideration for an award.

Ineligible Bidders

All bidders will be required to certify that they are not on the Comptroller General's List of Ineligible Contractors. WCCTA reserves the right to reject any proposal if the contractor fails to comply.

5.0 PROPOSAL REQUIREMENTS

Proposers shall provide a written proposal that includes the required elements set forth in this Section. Each section of the Proposal as described herein shall be segregated to identify the item being addressed in the Proposal. A Proposal may be rejected and not reviewed by WCCTA if it modifies or fails to conform to each of the requirements set forth in this Section.

Cover Letter

Each proposer shall submit a maximum two-page letter providing pertinent information on the firm and its qualifications (size, experience, organization, philosophy) This letter should include the name and address of the organization submitting the proposal; whether the organization is an individual, partnership, corporation or joint venture; and the name, address and telephone number of the contact person who will be authorized to make representations for the organization, and acknowledgment of addenda.

Section 1: Project Understanding

Proposers shall describe their understanding of WCCTA and the California Air Resources Board (CARB) Innovative Clean Transit (ICT) Regulation to be provided by the proposer in response to this RFP.

Section 2: Proposer Experience

References

Proposers shall submit a minimum of three references with contact information, description of work performed, and dates of service. Services provided to references should be similar in scope to those in this RFP. WCCTA reserves the right to contact any or all of the listed references regarding the services performed by the proposer.

Public Transit Experience

Proposers are required to have public transit experience along with experience dealing with federal, state, and local governments. Resumes of the staff members to be assigned to the WCCTA ZEB Rollout Plan project must include the following: position in the firm; years of experience; experience developing ZEB Rollout Plans for the transit industry; educational background.

Section 3: Fee Proposal

Proposers will provide WCCTA with one complete/total project cost encompassing all labor, time, materials, etc. needed to complete the project as defined by the Scope of Work/Services. The consultant may, however, propose a variation of the provided scope of work/services or recommend alternative approaches based on expertise and experience. Final proposed project cost will reflect any variations.

6.0 SCOPE OF WORK/SERVICES

WCCTA seeks to conduct a system-wide analysis comparing the Agency's current fleet of buses to zero-emission buses (ZEBs) in response to the California Air Resources Board (CARB) Innovative Clean Transit (ICT) Regulation, which mandates the full conversion of bus fleets to zero-emission by 2040. The study will develop and provide a Zero Emission Bus Rollout Plan for fixed-route revenue fleet conversion by 2040 (with associated infrastructure and operating plan), as mandated by CARB. This Plan is required to be adopted by the transit agency Board of Directors and submitted to CARB by June 30, 2023.

The study findings will support this plan by identifying a comprehensive and sustainable plan for WCCTA that complies with the regulation. The analysis will consider the operational and financial impacts of a full fleet conversion; examine the difference in the capital and operating costs of new battery electric bus technology, and/or hydrogen fuel cell versus diesel powered buses, the capital cost of the associated ZEB infrastructure, and the overall operating cost impacts. Operating cost impacts should consider an exhaustive list of affected items including contracted labor, employee training, fuel and maintenance costs, and the impacts on revenue streams and fare box recovery ratio. Of special significance is the need for a rigorous analysis of fleet scheduling/operations with the various range limitations of ZEB buses. Additionally, the financial analysis will consider lifetime/lifecycle costs, payback periods, net present values (NPV), and time sensitivity.

It is expected the consultant will provide more detail and unique approach to the following tasks. The consultant may propose a variation of the following scope of work or recommend alternative approaches based on expertise and experience. If an alternative scope of work or approach to tasks are proposed, please explain how it will more effectively or efficiently achieve the desired outcome and product.

Task 1. Project Initiation, Steering Committee Meetings, and Coordination

The Consultant's proposal will include a task for project management and coordination. This task will include a Kick-off meeting to be held with WCCTA staff and selected Consultant team to identify any critical issues as background to the project. The Consultant Team will further refine project goals and objectives, timeline for the project, and study components.

This task should also include project management meetings to be held frequently throughout the project. As determined by the project management team and consultant, meetings and other communications during the project may utilize teleconferencing and webinar formats. The Consultant will be expected to work closely with the local project management team, who will help to guide the project. WCCTA will be primarily responsible for contract administration.

A Steering Committee might include representatives from other agencies or businesses that will be key in implementation of the rollout plan. This may include representatives from Pacific Gas and Electric, Chevron and/or other potential partners. Partners may include the Metropolitan Transportation Commission (MTC), and representatives from nearby AC Transit. WCCTA management has an established working relationship with AC Transit who have invested considerably in zero-emission technology including maintenance of ZEB's and the production and possible sales of hydrogen fuel. Potential exists for WCCTA to collaborate with AC Transit on both maintenance and fueling of hydrogen-powered vehicles. The consultant should budget for multiple Steering Committee meetings to be held at key points in the process.

MTC are currently working on an initial study to understand the development and implementation of Roll Out Plans for the 20 transit agencies, including looking at collaboration and partnerships between agencies to fund and develop infrastructure both at Maintenance facilities and Regional Transportation hubs. One major focus of this work is set to be based around compatibility of technology and infrastructure

The Consultant will identify existing operational conditions and probable future needs a ZEB fleet will be required to meet, including:

- A high-level review of alternative current zero emission bus technology, i.e. hydrogen fuel cell vs. battery electric
- An Inventory and evaluation of basic details of existing fleet, including number of buses, current routes and schedules of operations.
- An analysis of current costs of fleet operations, including maintenance costs, fuel costs, bus replacement frequency, and other factors.
- Identification of any existing plans for future changes in fleet service

Task 1 Deliverables:

- *Meeting agendas, minutes, and other meeting materials*
- Existing conditions report

Task 2. Financial Analysis

Consultant will develop a detailed capital and operating financial analysis comparing the purchase of zero-emission buses to the purchase of existing diesel buses from several perspectives. From a capital perspective, the primary categories of costs are the initial purchase price, lifetime (through 2040) and operational costs, and replacement of the electric and/or hydrogen fleet vehicle. The initial purchase price of the zero-emission vehicle will be all-inclusive, including recharging infrastructure, manuals, vehicle logic units, security cameras, automatic passenger counters, fare collection equipment, CAD/AVL systems, and any training that is required. The lifetime cost will include vehicle replacement parts, battery lifecycle, and replacement needs. The operational costs include the cost of fuel (electricity/hydrogen versus diesel/gasoline) and vehicle maintenance, which is currently contracted out under an Operations and Maintenance contract.

An operational cost analysis will be performed that will compare the current operating costs of the existing service offering against the projected operating costs for ZEB of the same service offering. An exhaustive list of costs will be considered including operating staff differences and impacts to route schedules from the use of zero-emission vehicles. Using identified current and historic price trends for electricity/hydrogen and zero-emission bus costs, Consultant will provide a transition scenario that adopts varying approaches in

cost assumptions associated with estimated projections. The scenario will include cost projections/differentials for current costs, costs factoring conservative inflation, and costs factoring aggressive inflation. Funding sources and methods must be included as well to ensure WCCTA has the ability to implement the various scenarios.

Task 2 Deliverables:

- *Meeting agendas, minutes, and other meeting materials*
- *Operational cost analysis comparing existing service with ZEB fleet*

Task 3. ZEB Plan Development

With consideration of CARB incentive schedule, Consultant will provide an analysis on implementation requirements for complete fleet conversion to zero-emission, including identification of infrastructure improvement needs, confirmation of feasibility of infrastructure improvements and placement, and development of a phasing plan for infrastructure improvements, vehicle procurement, and purchasing of ZEBs to meet ZEB regulation deadlines. Phasing plans will include costs associated with capital and operations as well as potential funding sources. ZEB potential will be analyzed on a route-by-route basis, determining the number of busses, fuel type, bus size, and battery size need for operational requirements of each route. In addition, an assessment of potential infrastructure locations and charging plans will be prepared including:

- Number, size and type of chargers/fueling stations required to meet ZEB fleet demand
- Estimate number of charging/fueling stations required at the operational facility and optimal configuration for minimizing costs and maximizing efficiency
- Charger/fueling location optimization (operational facility vs. en-route; take into consideration multi-modal opportunities, available public lands, route schedules and times, travel distance requirements, etc.)
- Input from PG&E regarding available electrical infrastructure, potential electrical infrastructure requirements and support, potential grid impacts, and potential costs to WCCTA for grid improvements

Consultant will prepare a draft report to document the assumptions, methodologies, modeling results, analyses, designs, cost estimates, findings, and conclusions of the ZEB transition. Critical to this report is showing a clear rationale for selecting a recommended ZEB mode, a summary of associated operating and capital costs for transitioning to this ZEB mode, funding sources and methods to adequately finance the transition, and a timeline of key activities to be completed to meet the CARB ZEB regulation by 2040.

Consultant will prepare a final technical report that incorporates revisions to the draft in response to WCCTA staff comments. Consultant will also provide WCCTA with a presentation of the ZEB Plan and present this to the WCCTA Board of Directors for their approval.

Task 3 Deliverables:

- *Meeting agendas, minutes, and other meeting materials*
- *ZEB conversion analysis*
- *Draft report*
- *Final ZEB Rollout Plan*

7.0 METHOD OF EVALUATION AND CRITERIA FOR SELECTION

WCCTA reserves the sole right to evaluate and select the successful proposer. An Evaluation Committee will evaluate all proposals in accordance with the criteria set below. Top-ranked proposer(s) may be invited for an oral interview. WCCTA may select a proposal for award without any oral interviews.

A contract will be negotiated with the proposer judged to most successfully meet the overall objectives of the RFP while providing the best value to WCCTA. The following criteria will be considered in the selection of the firm (relative weights as shown):

Firm's Qualifications and Experience		50
• Public transit experience of staff assigned to the project	10	
• Firm's experience with public transit ZEB Rollout Plans	10	
• Firm's understanding of the transit industry ZEB requirement	15	
• Firm's understanding of zero emission alternative fuel types	15	
Overall Cost		50
Total		100

8.0 STANDARD AND SPECIAL CONTRACT TERMS

Contractor must conform to all special terms and conditions listed for Compliance with FTA Third Party Contract Requirements 4220.1F (and successor requirements) and other applicable State and Federal regulations.

Energy Conservation

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

Clean Water

(1) 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 Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Clean Air

(1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

No Obligation by the Federal Government

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

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

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

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

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

Civil Rights

The following requirements apply to the underlying contract:

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

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

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1 F 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 (name of grantee) requests that would cause (name of grantee) to be in violation of the FTA terms and conditions.

Lobbying

Please submit 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING, signed by the Contractor's authorized official (Appendix B).

Federal Changes

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

Contracts Involving Federal Privacy Act Requirements

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

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Access to Records

The following access to records requirements applies to this Contract:

(1) Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub grantee 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.

(2) Where any Purchaser which is the FTA Recipient or a sub grantee 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.

(3) 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.

(4) 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).

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

Termination

(1) Termination for Convenience - WCCTA by 30-day written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, WCCTA shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

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

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

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

(3) Opportunity to Cure - WCCTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 15 days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to WCCTA'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 WCCTA setting forth the nature of said breach or default, WCCTA 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 WCCTA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Breaches and Dispute Resolution

(1) Disputes - Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of WCCTA's General Manager. 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 General Manager. 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 General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

(2) Performance During Dispute - Unless otherwise directed by WCCTA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

(3) Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents, or others for whose acts he is legally liable, a claim for damages, therefore, shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

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

(5) Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by WCCTA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Disadvantaged Business Enterprises

(1) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. A separate contract goal has not been established for this RFP.

(2) The contractor 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 this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of

this contract, which may result in the termination of this contract or such other remedy as WCCTA deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

(3) The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

(4) The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the WCCTA. In addition, the contractor may not hold retainage from its subcontractors.

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

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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 WCCTA. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to WCCTA, 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 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

APPENDIX A
49 CFR PART 20 - CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] 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 making lobbying contacts to 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 will complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]
- (3) The undersigned will 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 will certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. [Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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 _____