

**AMADOR COUNTY TRANSPORTATION COMMISSION
REQUEST FOR PROPOSALS
CONSTRUCTION MANAGEMENT SERVICES**

The Amador County Transportation Commission (ACTC) is soliciting qualified firms to submit proposals for Construction Management Services for the Sutter Hill Transit Center.

Interested firms should submit proposals that contain all information required herein to Charles Field, Executive Director, Amador County Transportation Commission, 11400 American Legion Dr., Jackson, CA 95642 prior to 2:00 p.m. on Friday, July 25, 2008.

BACKGROUND/PROJECT DESCRIPTION

Amador County is located approximately 30 miles southeast of Sacramento on the western slope of the Sierra Nevada. The County's population is 35,100 (2000 census).

The Sutter Hill Transit Center is 4.5 acre regional transit center located in the City of Sutter Creek. The facility is strategically located immediately off State Routes 49 and 104, and near State Route 88. Upon completion, the facility will include 100+ passenger vehicle parking spaces, a bus transfer facility with enclosed Transit Center, and the future offices of the Amador County Transportation Commission.

Modest landscaping, an information kiosk, bicycle lockers, and restrooms will be provided. The facility has the potential for further expansion in the future and may include a future state-of-the-art telecommute center. Lighting and security systems will be installed, as necessary, to ensure safe operation at all times of the day.

ACTC has a series of grants, consisting of local, State, and Federal funds to construct the Sutter Hill Transit Center – Phase 1. The Phase 1 facility is designed for 15+ passenger vehicles, and 6 full-size transit vehicles.

The purpose of this RFP is to solicit the full range of Construction Support Services for the Sutter Hill Transit Center - Phase 1 project, including, but not limited to, Construction Administration, Construction Staking, Inspection, and Materials Testing.

At this time, ACTC is finalizing two separate contract documents: one for the civil site work (henceforth “site work”), and another for the Transit Station building (henceforth “building”). ACTC currently intends to bid the site work and the building separately. This RFP is soliciting all necessary construction management services for both projects, although the scope of work for the building project is anticipated to be less.

Advertising the site work project to potential bidders is scheduled for approximately August 20, 2008, depending upon the date of Authorization to Proceed from Caltrans. Construction contract award is anticipated to occur in September 2008. Proposers should recognize, however, that ACTC may not bid the site work project until later in calendar year 2008.

Advertising and award of the building project is anticipated to lag the site work by approximately 3-6 months. A significant portion of the site work project must be complete prior to the building project commencing. Proposers should recognize, however, that ACTC reserves the option to not bid the building project until a later date, depending upon weather and other factors.

Plans and contract documents for both projects are being prepared by CTA Engineering and Surveying (CTA). The building plans are being prepared by David Keith Associates, Inc., a sub-consultant working for CTA.

It is anticipated that the CTA team will be available to the selected Construction Management Services consultant throughout the duration of construction to provide as-needed civil engineering support related to the plans and specifications, and for the preparation of contract change orders. CTA in its capacity as the Project Engineer for

the design will not directly provide any services called for in this Request for Proposals related to Construction Management Services.

The draft plans and specifications for the site work project, and also for the building project, are available for review during regular business hours at the ACTC offices. These plans are subject to modifications and should be used by potential proposers only to obtain a general understanding of the project scope.

Throughout the duration of the Construction Management Services contract the Resident Engineer will work under the general direction of the ACTC Project Manager.

PROPOSED TASK/METHODOLOGY

The consultant will be expected to provide all Construction Support Services typically needed for similar projects. The following are illustrative tasks that should be considered in preparing proposals. Consultant proposals are expected to include these and other services deemed to be necessary to achieve the objectives of this RFP.

- Ø Designate a Resident Engineer.
- Ø Attend the pre-bid conferences.
- Ø Review the Resident Engineer file and become familiar with all grant, environmental, permit, and other obligations that must be fulfilled by ACTC.
- Ø Plan, schedule and conduct the pre-construction conference.
- Ø Construction staking.
- Ø Observe implementation of the Contractor's plan for storm water, traffic control, safety, etc. Work with Contractor to resolve deviations.
- Ø Record management and document control. Record, file, catalog and access all correspondence, transmittals, and drawings.
- Ø Take and record daily photographs and or video recordings of job progression.
- Ø Record drawings - including "redline" markups of construction drawings as well as any notes pertaining to the "as-built" construction.
- Ø Enforce contract requirements. This includes adherence to all environmental mitigation measures, permit requirements, prevailing wage requirements, and other applicable requirements. Both projects are partially funded with Federal funds, so there are a number of important contract provisions that must be enforced, and documented, in accordance with Caltrans Local Assistance Procedures Manual, applicable State and Federal laws, and grant requirements.
- Ø Regularly review the construction schedules provided by the construction contractor for completeness.
- Ø Review each payment request received from the Contractors for accuracy, correctness and comparison with the actual work completed. Make appropriate payment recommendations to ACTC.
- Ø Evaluate, recommend and track contractor change orders in coordination with CTA in its role as Project Engineer.
- Ø Provide weekly progress reports to the ACTC Project Manager. These reports will be written reports unless otherwise directed by ACTC representative.
- Ø Keep the ACTC project manager apprised of time-sensitive matters more frequently, as needed, provide recommendations, as warranted, and implement direction.
- Ø If needed, present status reports to the ACTC Board of Directors.
- Ø Materials testing for compliance with specifications.
- Ø Provide support to ACTC administrative staff for the preparing of invoices to grant funding agencies.

- Ø Creation of punch-list and ensure resolution of all items.
- Ø Prepare Caltrans Local Assistance paperwork from (and including) Contract Award through (and including) Contract Closeout.

The selected consultant(s) will be expected to perform all services described in the contract Scope of Work. The consultant(s) will receive general direction from the Amador County Transportation Commission Project Manager assigned to this project.

Proposers should assume that the successful respondent will be responsible for preparation of all work needed to administer construction in accordance with all grant, environmental, permit, and other requirements that must be fulfilled by ACTC.

PROPOSED SCHEDULE

RFP Issue Date	June 26, 2008
Proposals Due	July 25, 2008 (2:00 p.m.)
Interviews (tentative date, and if necessary)	July 30, 2008
Contract Award	August 20, 2008
Notice to Proceed	August 20, 2008
Kick-Off Meeting	August 21, 2008
Construction Pre-Proposal Meeting – Site Work	To be determined
Construction Contract Notice to Proceed – Site Work	To be determined
Site Work Construction Project Closeout	June 30, 2009
Construction Pre-Proposal Meeting – Building	To be determined
Construction Contract Notice to Proceed – Building	To be determined
Building Construction Project Closeout	To be determined
Consultant Contract Close Out	December 31, 2009

AVAILABLE FUNDING

The approximate range of funds for this project is \$150,000 - \$175,000. If the prospective consultant determines that the work called for in this Request for Proposals cannot be carried out according to available funding or the schedule that is set forth herein, the consultant is nonetheless encouraged to submit a proposal specifying clearly the reasons why said funding level or schedule should be exceeded or which project task should be deleted in order to meet said funding limits as well as intended project purposes.

ORGANIZATION OF PROPOSALS/EVALUATION CRITERIA

The proposals shall be organized to generally conform to the following sections as these will constitute the basic areas for evaluation: (a) understanding of the Transportation Commission's needs, (b) previous experience of the firm in this and/or related work, (c) qualification of the firm and individuals who will be assigned to work on this project, (d) consultants' approach to providing required services and products including personnel, tools, methods, schedules, etc., and, (e) consultant stability and support capability.

The proposal shall include a copy of the Lobbying Certification (see Appendix B), signed by an authorized representative of the proposing firm.

CONSULTANTS COSTS

Proposers **shall submit a cost proposal in a separate sealed envelope along with the proposal.** Consultants cost to complete the project will be considered only after other components of the proposal are reviewed and ranked using the criteria above. Consultants' cost proposals must include total cost, cost per task, hourly rates for assigned personnel, and other anticipated charges. The Commission intends to enter into a time and materials

contract with a not-to-exceed cost based upon the consultant's estimate for completion of all tasks.

Proposers should assume that funding for Construction Management Services will include Federal funds. Some tasks included in the scope of services are subject to Federal prevailing wage requirements. Proposers must include appropriate rates for the personnel assigned to this project to account for this requirement.

CONSULTANT SELECTION

The project oversight committee will conduct a review of written proposals that are submitted by consultants pursuant to the RFP. The oversight committee may authorize the ACTC Executive Director to negotiate a draft contract with the top ranked consultant based on the proposals or the oversight committee may require that this be done after interviews are conducted with the top ranked proposers. The ACTC retains the right to reject any and all proposals which do not comply with the provisions of this request or for any other reasons deemed appropriate by the ACTC.

SUBJECT TO GRANT AGREEMENTS BETWEEN COMMISSION AND CALTRANS

The consultant must be aware of and shall be subject to the certifications and requirements that will be applicable to this contract. A copy of said certifications and conditions is attached as Appendix A and B.

INCURRING COST

Any costs incurred by proposers of this Request for Proposal in anticipation of receiving a contract award, will not be reimbursed by the Commission. Payments will be made pursuant to a negotiated contract between the Commission and the selected consultant for work performed after the official Notice to Proceed.

WORKERS COMPENSATION INSURANCE

In accordance with the provisions of Article 5, Chapter 1, Part 7, Division 2 (commencing with Section 1860) and Chapter 4, Part 1, Division 4 (commencing with Section 3700) of the Labor Code of the State of California, the consultant will be required to secure the payment of compensation to his employees and shall for that purpose obtain and keep in effect adequate Workmen's Compensation Insurance. The consultant will be aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation, or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the work of this contract.

INSURANCE

The consultant shall take out and maintain at all times during the performance of any services to be done under the terms of any contract awarded, a policy or policies of public liability and property damages insurance naming thereon the Amador County Local Transportation Commission, its officers, agents, and employees, as insured against any liability of any kind arising out of the work to be performed by, or on behalf of, the consultant.

Consultant shall provide the following coverages (and where noted meeting or exceeding the minimum amounts:

1. Worker's Compensation and Employers Liability Insurance.
2. General Liability Insurance covering all operations by or on behalf of CONSULTANT, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below. One of the following forms is required:
 - (A) Comprehensive General Liability;
 - (B) Commercial General Liability (Occurrence); or
 - (C) Commercial General Liability (Claims Made).

If CONSULTANT carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

- ONE MILLION DOLLARS (\$1,000,000) each occurrence
- TWO MILLION DOLLARS (\$2,000,000) aggregate

If CONSULTANT carries a Commercial General Liability (Occurrence) policy:

(A) The limits of liability shall not be less than:

- ONE MILLION DOLLARS (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
- ONE MILLION DOLLARS (\$1,000,000) Personal Injury Liability
- ONE MILLION DOLLARS (\$1,000,000) for Products-Completed Operations
- ONE MILLION DOLLARS (\$1,000,000) General Aggregate

(B) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be TWO MILLION DOLLARS (\$2,000,000).

CONSULTANT shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of ACTC, which consent, if given, shall be subject to the following conditions:

(A) The limits of liability shall not be less than:

- ONE MILLION DOLLARS (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
- TWO MILLION DOLLARS (\$2,000,000) aggregate for Products Completed Operations
- TWO MILLION DOLLARS (\$2,000,000) General Aggregate

(B) The insurance coverage provided by CONSULTANT shall contain language providing coverage up to six (6) months following the completion of the PSA in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims made policy.

3. Automobile Liability Insurance. CONSULTANT shall maintain automobile liability insurance covering bodily injury and property damage in an amount no less than ONE MILLION DOLLARS (\$1,000,000) combined single limit for each occurrence.

Covered vehicles should include owned, non-owned, and hired automobiles/trucks.

4. Professional Liability Insurance (Errors & Omissions)

CONSULTANT shall maintain Professional Liability Insurance for Errors and Omissions coverage in the amount of not less than ONE MILLION DOLLARS (\$1,000,000). If the policy does not have an endorsement providing that defense costs are excluded in the aggregate limits, then the required aggregate limits shall be THREE MILLION DOLLARS (\$3,000,000).

Said policy or policies shall be satisfactory to the counsel of the Amador County Transportation Commission.

ACCEPTANCE OF PROPOSAL CONTENT

At the option of the Amador County Transportation Commission, the proposal of the successful firm may be included as contractual obligations in applicable clauses of the contract to be awarded. Therefore, the proposer must be prepared to be bound by the proposal in the contract.

LOBBYING CERTIFICATION

The proposal shall include a copy of the Lobbying Certification (see Appendix B), signed by an authorized representative of the proposing firm.

CLOSING DATE

Proposals and seven copies must be submitted no later than 2:00 p.m. Friday, July 25, 2008, to Amador County Transportation Commission, ATTN: Charles Field, Executive Director, 11400 American Legion Dr., Jackson, CA 95642.

APPENDIX A - FEDERAL REQUIREMENTS

The following are requirements of the successful consultant that are conditions of the Federal grant funds available to this project. As noted in each section below, these requirements contain both certifications and requirements applicable to proposers that choose to respond to this Request for Proposals, as well as certifications and requirements of the successful proposer. All applicable provisions will be included in the professional services contract awarded as an outcome of this selection process.

A. Energy Conservation

The successful candidate will agree 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.

B. Clean Water

(1) The successful candidate will agree 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 successful candidate will agree to report each violation to ACTC and understands and agrees that ACTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The successful candidate also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

C. Lobbying

See Appendix B.

D. Access to Records and Reports

The following requirements apply to access to records:

1) Where ACTC is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the successful candidate will agree to provide ACTC, 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 successful candidate which are directly pertinent to the proposed contract for the purposes of making audits, examinations, excerpts and transcriptions. The successful candidate also will agree, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Consultant access to the successful candidate'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 ACTC 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 successful candidate will make available records related to the contract to ACTC, 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 successful will 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 successful candidate will agree to maintain all books, records, accounts and reports required under the proposed 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 the proposed contract, in which case the successful candidate will agree to maintain same until ACTC, 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.

E. Federal Changes

The successful candidate will 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 ACTC and FTA, as they may be amended or promulgated from time to time during the term of the proposed contract. The successful candidate's failure to so comply shall constitute a material breach of this contract.

F. Clean Air

1) The successful candidate will agree 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 successful candidate will agree to report each violation to ACTC and understands and will agree that ACTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2) The successful candidate will also agree to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

G. Recycled Products/Recovered Materials

The successful candidate will agree 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.

H. No Obligation by the Federal Government

1) ACTC and the successful candidate will 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 ACTC, successful candidate, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2) The successful candidate will agree 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 sub-consultant who will be subject to its provisions.

I. Program Fraud and False or Fraudulent Statements or Related Acts

1) The successful candidate will acknowledge 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 the proposed project. Upon execution of the underlying contract, the successful candidate will certify and affirm 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 successful candidate will further acknowledge 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 Consultant to the extent the Federal Government deems appropriate.

2) The successful candidate will also acknowledge 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 Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the successful candidate, to the extent the Federal Government deems appropriate.

3) The successful candidate will agree 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 sub-consultant who will be subject to the provisions.

J. Suspension and Debarment

This proposed contract is a covered transaction for purposes of 49 CFR Part 29. As such, the successful candidate will be required to verify that none of the consultant, 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 successful candidate 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 ACTC. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to ACTC, 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.

K. Privacy Act

1) The successful candidate will agree 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 successful candidate will agree to obtain the express consent of the Federal Government before the successful candidate or its employees operate a system of records on behalf of the Federal Government. The successful candidate will understand that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

2) The successful candidate will also agree 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.

L. Civil Rights

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 successful candidate will agree 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 Consultant 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 will apply to the proposed 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 Consultant 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 Consultant 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 Consultant 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 Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant 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 Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

3) The successful candidate will also agree to include the foregoing 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

M. Breaches and Dispute Resolution

Disputes – Disputes regarding the proposed contract will be handled as follows: Disputes arising in the performance of the proposed agreement which are not resolved by agreement of the parties shall be decided in writing by the ACTC Project Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Consultant mails or otherwise furnishes a written appeal to the ACTC Director. In connection with any such appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the ACTC Director shall be binding upon the Consultant and the Consultant shall abide by the decision.

Performance During Dispute - Unless otherwise directed by ACTC, the successful candidate will continue performance under the proposed agreement while matters in dispute are being resolved.

N. Disadvantaged Business Enterprises

This Agreement is subject to Title 49, Part 26 of the Code of Federal Regulations (49 CFR 260) entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." In order to ensure the California Department of Transportation (Caltrans) achieves its federally mandated statewide overall Disadvantaged Business Enterprise (DBE) goal, the Agency encourages the participation of DBE's, as defined in 49 CFR 26, in the performance of Agreements financed in whole or in part with federal funds. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

As required by federal law, Caltrans has established a statewide overall DBE goal. In order to ascertain whether that statewide overall DBE goal is being achieved, Caltrans is tracking DBE participation on all federally assisted contracts.

To assist Contractors in ascertaining DBE availability for specific item of work, the Agency advises that it has determined that DBE's could reasonably be expected to compete for subcontracting opportunities on this project and the likely DBE Availability Advisory Percentage is 2.93 percent. The Agency also advises that participation of DBE's in the specified percentage is not a condition of award.

The Contractor has agreed to carry out applicable requirements of Title 49 CFR 26, in the award and administration of federally assisted Agreements. The regulations in their entirety are incorporated herein and by reference.

The Contractor should notify the Contract Manager in writing, of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

DBE as defined in Title 49 CFR 26 and other small businesses are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out the applicable requirements of 49 CFR, Part 26 in the award and administration of U.S. Department of Transportation 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 recipient deems appropriate.

Any subcontract entered into as a result of the Agreement shall contain all the provisions of this section.

O. Incorporation of Federal Transit Administration Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the proposed contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E 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 the proposed agreement. The successful candidate shall not perform any act, fail to perform any act, or refuse to comply with any ACTC requests which would cause ACTC to be in violation of the FTA terms and conditions.

APPENDIX B — LOBBYING CERTIFICATION

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 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 shall 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 shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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 shall 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 Consultant, _____, certifies and affirms the truthfulness and accuracy of each statement herein. In addition, the Consultant 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 Consultant’s Authorized Official

_____ Name and Title of Consultant’s Authorized Official

_____ Date