

Los Angeles County
Metropolitan Transportation Authority

Archived Data Management System for Regional Integration of ITS (RIITS) Network

RFP No. PS4340-2301

ISSUED: 12.22.08



Metro

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* All Articles, Subarticles, or portions of the Contract noted by an asterisk (*) shall be included in (flow-down to) all Subcontracts of any tier.

SECTION 1 – LETTER OF INVITATION

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Metro

Metropolitan Transportation Authority

One Gateway Plaza
Los Angeles, CA 90012-2952

213.922.2000 Tel
metro.net

December 22, 2008

ATTENTION: Prospective Proposer

SUBJECT: REQUEST FOR PROPOSALS (RFP) FOR RFP No. PS4340-2301,
Archived Data Management System for Regional Integration of ITS (RIITS)
Network

Los Angeles County Metropolitan Transportation Authority (MTA or Metro) has established a contracting opportunity to develop and implement an Archived Data Management System for the Regional Integration of ITS (RIITS) Network as outlined in the Statement of Work. The resultant Contract, if awarded, will be state/locally funded, and is subject to fiscal year funding.

You are requested to submit a proposal to furnish all of the labor, materials, and other related items required for the performance of a contract resulting from RFP No. PS4340-2301 on a Firm Fixed Price basis. This Contract will be for a term of three (3) years with. Funding is contingent on fiscal year availability.

The Los Angeles County Metropolitan Transportation Authority (METRO) will receive proposals for the above-identified contract (Contract). An original and eight (8) copies of all proposals must be submitted in sealed envelopes, by mail or hand delivered to the address below, by COB on Thursday, February 5, 2009, which is 4:00 p.m.

Los Angeles County
Metropolitan Transportation Authority (METRO)
One Gateway Plaza
Los Angeles, CA 90012-2952
12th Floor Receptionist
RFP No. PS4340-2301

The RFP documents, except for any drawings, are also available for review on the Internet at "www.metro.net". The complete RFP documents are available for examination Monday through Friday (except holidays) between the hours of 9:00 a.m. and 4:00 p.m. at the address above.

All communications in connection with this RFP shall be provided as follows:

By U.S. Mail, FedEx,
UPS, or courier

Los Angeles County
Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012-2952
Attention: Calvin S. Rascoe, Sr. Contract Administrator
RFP No. PS4340-2301

- By Phone to (213) 922 - 7326 Los Angeles County
Metropolitan Transportation Authority
- By FAX to (213) 922 3883 Attention: Calvin S. Rascoe, Sr. Contract Administrator
RFP No. PS4340-2301
- By e-mail to:
rascoec@metro.net Diversity & Equal Opportunity, Bud Boyd, 213-922-7393
Ethics or Lobbyist Registration Information, (213) 922-2900
Pre-Qualification Department, (213) 922-4130

A Pre-Proposal Conference will be held on Tuesday, January 6, 2009, at 9:30 a.m., in the Windsor Conference Room on the 15th Floor of the METRO Gateway Plaza Building. **(Note that the METRO does not pay for parking or validate tickets.)**

The Contract award will be made to the Proposer whose proposal meets the requirements of the RFP and is most advantageous to the METRO based upon the proposal evaluation criteria. The METRO reserves the right to reject any or all proposals, to waive informalities or irregularities to the extent permitted by law in any proposal received, and to be the sole judge of the merits of the respective proposal received.

Issued by:

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

Mark T. Penn
Manager, Contract Administration

LETTER OF INVITATION SUPPLEMENT (SBE - STATE & LOCAL FUNDING)

Bidders/Proposers are hereby notified that:

Please Note: As of 6/01/02, there have been significant changes to the required Small Business Enterprise (SBE) submittal forms.

- ☒ A. METRO HAS ESTABLISHED A GOAL FOR THE PARTICIPATION OF SMALL BUSINESS ENTERPRISE (SBE) FIRMS FOR THIS PROJECT IN THE PERCENTAGE OF:

Five Percentage (5 %) of the Total Contract Price.

Note, Bidders/Proposers **must** also refer to the METRO's website (http://www.metro.net/EBB/contract_template_summary.htm) to obtain document 069, SBE Supplemental Instructions to Bidders/Proposers, which contains Forms 1, 2, 3, 4, 5, 6, 7 and 7a, that **must be** completed and submitted with the Bid/Proposal.

Also note, a List of METRO Certified Firms is included below for your convenience, and may be used to assist you in your effort to achieve the goal for this solicitation.

- ☐ B. A SBE PARTICIPATION GOAL WAS NOT RECOMMENDED FOR THIS PROJECT

However, pursuant to the SBE Program, if the Bidder/Proposer identify subcontracting opportunities in the solicitation process or during the performance of the contract, METRO expects the Bidder/Proposer to afford maximum opportunities available to SBE firms. Upon METRO's request, the Bidder/Proposer shall submit documentation to satisfy METRO that good faith efforts were made to utilize SBEs throughout the life of the contract.

C. METRO EQUAL OPPORTUNITY POLICY

It is the policy of the METRO to ensure that SBE firms have an equal opportunity to receive and participate on state and/or locally-assisted contracts. METRO shall not discriminate on the basis of race, color, national origin, or sex, in the award and performance any state and/or locally-assisted contract or in the administration of its SBE Program.

D. GOALS IN SOLICITATIONS vs. COMMITMENTS IN BIDS & PROPOSALS

There is a difference between the goal established by METRO in this RFP or IFB and the commitment made by a Bidder/Proposer in the bid or proposal. The goal for SBE participation directs the Bidder/Proposer to respond with "Good Faith Efforts" to meet or exceed the established goal for the project. However, the level of SBE participation of which the Bidder/Proposer commits to in its bid or proposal becomes the Contractor's SBE commitment. The contractor's SBE commitment is stated in the Special Provision section of the contract and shall be enforced by the METRO.

LIST OF CERTIFIED FIRMS (DISCLAIMER)
(SBE Supplemental Instructions to Bidders/Proposers Form 069 – Attachment I)

FIRM NAME	CONTACT NAME	ADDRESS	CITY, STATE ZIP	PHONE
518210 - Data Processing, Hosting, and Related Services		: Total -	4	
INTERNATIONAL WORD PROCESSING SERVICES, INC.	Mary Anna Jones	P. O. Box 5053	DOWNEY, CA , 90241	562-869-5781
PIXEL BY PIXEL, LLC	Pankaj Sanghai	1742 S. Bentley Ave., # 310	Los Angeles, CA , 90025	310-487-6912
V A A U	Sachin Nayyar	20280 S. Vermont Ave. #105	TORRANCE, CA , 90502	310-538-1560
SELECT DIRECT, INC.	Tony Melara	1537 E. McFadden Ave. Suite F	SANTA ANA, CA , 92705	714-835-4579

Grand Total Counts : : 4

DISCLAIMER

Bidders are hereby given notice and advised that the list of certified firms contained herein is made available as a resource for bidder's CONVENIENCE ONLY. The MTA explicitly expresses that the listing shall not be deemed to be an endorsement of these firms nor shall there be any implied warranty regarding the suitability of these firms to perform work on MTA projects. The certification process does not qualify a firm's capability to perform. The businesses listed herein have been certified according to the Eligibility Criteria in accordance with size standards as defined by the Small Business Administration (SBA), 13 CFR Parts 121 and 124 and whose owners possess a Personal Net Worth (PNW) not exceeding \$250,000. The certification status of a firm may change or be withdrawn at any time. Therefore, bidders/proposers should not rely on this list exclusively in verifying the status of a firm. It is the responsibility of the bidder/proposer to ensure current certification status of subcontractors. Prospective bidders/proposers must verify the current certification status of each firm identified as a subcontractor, supplier, manufacturer, regular dealer or broker. To verify current certification status, at least 72 hours prior to bid/proposal due date or for additional information regarding SBE eligibility requirements, please contact the Certification Hotline at (213) 922-2600, facsimile (213) 922-7660. This document may not include accurate area codes due to changes in the codes made after the print date of the source, the MTA DBE/SBE Directory. Bidder/Proposers are encouraged to validate area codes when using this information. However, the MTA does not assume any liability for the accuracy, completeness, or

SECTION 2 – CONTRACT DOCUMENTS

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LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

CONTRACT NO. RFP NO. PS4340-2301

**ARCHIVED DATA MANAGEMENT SYSTEM FOR REGIONAL INTEGRATION OF ITS (RIITS)
NETWORK**

FIRM FIXED PRICE CONTRACT

BETWEEN

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

AND

(NAME OF CONTRACTOR TO BE FILLED IN AT TIME OF AWARD)

TO BE FILLED IN AT TIME OF AWARD

EFFECTIVE DATE

**LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
FIRM FIXED PRICE CONTRACT**

CONTRACT NO: RFP NO. PS4340-2301

Between

**LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY
ONE GATEWAY PLAZA
LOS ANGELES, CA 90012-2952**

and

(NAME OF CONTRACTOR TO BE FILLED IN AT TIME OF AWARD)

**ARCHIVED DATA MANAGEMENT SYSTEM FOR REGIONAL INTEGRATION OF ITS (RIITS)
NETWORK**

This Contract is entered into by and between the Los Angeles County Metropolitan Transportation Authority (Metro), and [REDACTED] (Contractor).

In consideration of the mutual covenants of the parties as set forth below, the parties hereby agree as follows:

ARTICLE I: CONTRACT DOCUMENTS ORDER OF PRECEDENCE

- A. This Contract includes this Form of Contract and the other following Contract Documents and Attachments, which are incorporated herein and made a part of this Contract.
- B. Except as otherwise specified herein, in the event of any conflict, the precedence of the Contract Documents shall be as follows:
 - 1. Form of Contract
 - 2. Regulatory Requirements, (Pro Form 039, Dated 10/18/07)
 - 3. Special Provisions, (Pro Form 089, Dated 10/1/08)
 - 4. General Conditions, (Pro Form 038, Dated 11/1/07)
 - 5. Compensation and Payment Provisions, Firm Fixed Price, (Pro Form 040, Dated 10/4/06)
 - 6. Statement of Work (SOW. Exhibit 2) (Dated 10/28/08)
- C. An Amendment or Change to this Contract shall take its precedence from the term it amends. All other documents and terms and conditions shall remain unchanged.

ARTICLE II: DEFINITIONS

Capitalized terms, abbreviations and symbols used in this Contract are defined in the Article in the General Conditions entitled GLOSSARY OF TERMS. Additional terms may be defined in the Special Provisions or the Statement of Work.

ARTICLE III: WORK TO BE PERFORMED

Contractor shall perform the Work as is more fully described in the Statement of Work, to **[summary description and location of the Work]** (see Exhibit 2).

ARTICLE IV: COMPENSATION

A. Contract Price

In consideration of the Contractor's full performance of the Work, and in accordance with the terms of the Contract, Metro will pay the Contractor the Contract Price of \$ **[REDACTED]** as provided in this Article and in the Contract Document entitled Compensation and Payment Provisions.

B. Payment Schedule

Except as otherwise expressly provided, the Contract Price shall be paid to the Contractor based upon the Payment Schedule attached hereto as Exhibit (TBD).

C. Applications for Progress Payments [i.e., billing milestones/monthly progress payments, this is a negotiated term]

All Applications for Progress Payments shall be submitted in writing in accordance with the Contract Documents entitled COMPENSATION AND PAYMENT AND THE SPECIAL PROVISIONS, as applicable, and delivered or mailed to Metro as follows:

Los Angeles County Metropolitan Transportation Authority
Accounts Payable
P.O. Box 512296
Los Angeles, CA 90051-0296
Contract No. **RFP No. PS4340-2301**

D. Final Payment

The Application for Final Payment shall be marked **FINAL** and a copy sent to Metro's Authorized Representative. Metro shall remit payment to the Contractor at the following address:

[Fill in address at time of award]

ARTICLE V: CONTRACT TERM AND PERIOD OF PERFORMANCE

The Effective Date of this Contract is **(insert date)**. The Period of Performance of this Contract shall begin on **[insert either the Effective Date or the date set forth in the Notice to Proceed]** (hereinafter "Commencement Date").

Contractor shall complete all Work under the Contract within _____ calendar days after the Commencement Date, unless this Contract is terminated earlier or extended by Metro, in writing, as provided in the Contract.

ARTICLE VI: LIMITATION OF FUNDS

Funding for this Contract is based upon the availability of funds determined by Metro's fiscal budget, which runs from July 1 through June 30 of each fiscal year. If funding is not approved for any subsequent fiscal year during which this Contract is in effect, Metro will issue a stop work notice.

Intentionally Left Blank

ARTICLE VII: ENTIRE AGREEMENT

This Contract includes this Form of Contract, all other Contract Documents incorporated pursuant to Article I herein, and all Attachments and other documents incorporated herein by inclusion or by reference, and constitutes the complete and entire agreement between Metro and Contractor and supersedes any prior representations, understandings, communications, agreements or proposals, oral or written.

CONTRACTOR NAME

**LOS ANGELES COUNTY
METROPOLITAN
TRANSPORTATION AUTHORITY**

ROGER SNOBLE
CHIEF EXECUTIVE OFFICER

BY: _____

SIGNATURE OF AUTHORIZED OFFICIAL

BY: _____
(PRINT OR TYPE NAME)

TITLE

DATE

TAX ID NO.: _____

DATE

APPROVED AS TO FORM
RAYMOND G. FORTNER, JR
COUNTY COUNSEL

BY: _____
DEPUTY

EXHIBIT 2 - STATEMENT OF WORK

The Los Angeles County Metropolitan Transportation Authority (Metro) seeks proposals to provide research/development support to the Metro's Countywide Planning and Development Department in developing, designing and implementing data archive and data mining system, namely an Archived Data Management System (ADMS) to capture the multi-modal transportation data in near-real time that passes through the Metro's Regional Integration of ITS (RIITS) Network for regional transportation planning, development, research and policy analysis purposes.

INTRODUCTION

Metro has funded hundreds of millions of dollars in transportation infrastructure improvements and advanced technology investments to reduce traffic congestions in the Los Angeles County and the Southern California Association of Governments (SCAG) Region. It leads the nation in Intelligent Transportation Systems (ITS) deployment. However, most of the transportation improvements and ITS deployments constructed to date are independently managed and operated by individual agencies. Multi-jurisdictional coordination and co-operation remains a regional goal at large which is primarily attributed to the complex political landscape and institutional autonomy existed in the Los Angeles Metropolitan region.

Federal ITS Policy and Legislation adopted into law in 2002 requires all ITS projects funded under Highway Trust Fund must be guided by a Regional ITS Architecture. The Metro Board of Directors subsequently adopted the Los Angeles Countywide ITS Policy in 2005 which incorporates Federal ITS rules, extends those requirements to all projects funded by the State of California and local funding sources programmed and administered by Metro. The intent of the Federal and Metro ITS Policies is to promote and implement multi-modal coordination and multi-jurisdictional cooperation in managing the regional transportation networks and systems. The RIITS Network was developed to enable such multi-modal coordination among multiple transportation agencies in data sharing and exchange in the Los Angeles Metropolitan region.

BACKGROUND

Metro, in partnership with Caltrans District 7, the City of Los Angeles Department of Transportation, and the California Highway Patrol, has developed the Regional Integrated ITS (RIITS) System Architecture and Network. The RIITS Network has been operational since November 2004. RIITS shares real time traffic operation and incident data of freeway, arterial and transit.

The RIITS partnership has developed the Los Angeles Regional ITS Architecture, RIITS Network and an Agency Website. The RIITS Network has successfully integrated Caltrans District 7's freeway operations (over 500 miles), LADOT's traffic signal controls (over 3,500 signals), Metro's Transit Operation (2400 Metro buses and Metro Rail Lines), Long Beach Transit's Transit Management System (over 200 buses), and California Highway Patrol (CHP) incident reporting systems. This real time multi-modal transportation information, gathered from the above agencies, is available on the RIITS Agency Website (www.riits.net) and Metro's Website (www.metro.net) under Real Time Traffic.

The RIITS Agency Website is a private and privileged internet site established for public agencies access only. The purpose is to share and exchange real time traffic congestion,

operation and incident information among transportation agencies, transit operators and emergency services to coordinate the operation and management of the regional transportation network in Los Angeles County. Whereas the Metro Real Time Traffic Webpage has been developed to allow the general public to access the latest traffic congestion information to plan and/or change their travel plans.

The objectives of RIITS Network are:

- To provide and maintain a multi-modal communication network that supports information exchange in near-real time between freeway, traffic, transit and emergency service agencies to improve mobility and safety of the Los Angeles County transportation network and better serve the traveling public;
- To expand the Los Angeles Regional ITS Architecture and Network and develop interface standards in the provision and development of a functional multi-modal communication network;
- To provide applicable traffic congestion and incident information data to Metro's Motorists Aid and Traveler Information System (Los Angeles 511) and Information Service Providers (ISPs) for traveler information dissemination to benefit the widest possible travelers and audience.
- To provide RIITS Network training to transportation and transit operation agencies using near-real time traffic and incident data to enhance regional transportation system coordination and incident management.
- To develop a multi-modal data management system by archiving the near-real time operational data for planning, monitoring and evaluating regional mobility performances along major travel corridors.

ABOUT RIITS NETWORK

MAINTENANCE & OPERATION

The operation and maintenance of RIITS Network has been advanced from regular working hours of weekdays only when the Network was launched in November 2004, to become 24/7 operation starting March 2008. The task of managing day-to-day network operation has been provided for through a contract arrangement entered between Delcan and Metro which has been in place since the deployment of RIITS Network. Recently the entire RIITS Network set up has also been upgraded to achieve a 99.95% level of redundancy internally within the Metro environment. Both 24/7 operations and high level of system redundancy are mission-critical functionalities since the RIITS Network will serve as the primary data engine providing continuous data stream to the Los Angeles 511 program scheduled to be launched in early 2009.

CONFIGURATION MANAGEMENT (CM) COMMITTEE

Organizationally, the management of the RIITS Network operation reports to the Configuration Management (CM) Committee which was established in conjunction with the RIITS Network and became operational in 2004. The purpose of the CM Committee is to allow all data contributing agencies working as a unified body providing coordinated operational oversight of the formal configuration management process of the RIITS Network. The configuration management process involves all aspects of change to the original starting baseline network configuration, established in 2004, as well as the various changes in data sharing with agencies and private

users. The objective of the CM Committee is two-fold: to protect the interests of the data contributing agencies and their respective data ownership, and to safeguard the RIITS Network while promoting change and expansion of the network in an orderly and documented fashion.

Based on the By-Laws of the CM Committee, all technical issues relates to the Network and use or application of RIITS Network data have to be reviewed, commented and decided upon by the CM Committee members. Therefore, the developer of the proposed Archived Data Management System project will have to work closely with RIITS CM Committee on all technical approach and data application issues through all project phases.

The RIITS CM Committee members consist of the source data contributing agencies that are voting members and the RIITS Baseline Agency Users who are non-voting members. The current voting members of the RIITS CM Committee include:

- City of Los Angeles, Department of Transportation (LADOT)
- Caltrans District 7
- Metro Transit (Bus and Rail)
- Long Beach Transit (MOU pending)

The RIITS CM Committee also serves as a regional forum and the meetings are open to all public agencies to participate as non-voting members. The RIITS CM Committee meets on a bi-monthly basis, on the 4th Thursday of odd numbered months, at the Bus Operation Center on the 6th floor of Metro Headquarter Building.

DATA SOURCE

The following briefly lists the data type that RIITS Network currently receives from the data contributing and/or source agencies:

Caltrans District 7

- Freeway detector data
- State Highway detector data
- Changeable Message Signs data
- CCTV data
- Event data
- Travel time and speed data
- Congestion data

Los Angeles DOT

- Intersection detector data
- Volume, speed and occupancy data

Metro Transit Operation (Bus)

- Vehicle data
- Route data
- Direction data
- Arrival time data of next time point

Metro Transit Operation (Rail)

- Vehicle data

- Route Data

California Highway Patrol

- Incident data

Long Beach Transit

- Vehicle data
- Route data
- Vehicle direction data
- Arrival time data of next time point

A more detailed tabulation of the various data sources, types, update frequencies and attributes is shown in Appendix A.

It should be noted that the RIITS Network set of data sources is currently being expanded and is expected to continue to expand as programmed and documented in the Metro's Long Range Transportation Plan. The public agencies and their respective data types listed below represent interface projects currently undertaken by Metro. These projects are scheduled to be completed in Fiscal Year 2008 which ends June 30, 2009:

Los Angeles County Public Works Department

- Arterial signal data
- Volume data
- Speed data
- Occupancy data
- Timing data

Caltrans District 8 and District 12 (similar as District 7)

Foothill Transit (similar as Long Beach Transit)

Caltrans District 7

- Speed data from SpeedInfo (I-710 s/o I-405)
- 100 CCTV Snap Shots from 3rd Dimension

PROJECT OBJECTIVE

In viewing the recent legislative developments and new transportation funding initiatives sponsored by both Federal and California State Governments, it has become evident that the implementation of multi-modal transportation solutions along major travel corridors will be emphasized in the future to maximize the total outputs of transportation infrastructures particularly in the major metropolitan regions. The funding for new and future transportation improvement projects will be heavily competed and weighted on the basis of effective monitoring and evaluation of multi-modal corridor performances. The recent federal Integrated Corridor Initiative and Urban Partnership programs and the state Corridor Mobility Improvement Application program are good examples emphasizing multi-modal transportation solutions to address the regional mobility issues.

The rapid advancement in information processing and communication technologies plus the system integration work that Metro developed over the last eight years has helped the RIITS Network become a rich data resource with great potential to meet the challenges of monitoring and evaluating multi-modal corridor mobility performance and basis for more in-depth regional transportation planning work. The real time data sources passing through the RIITS Network, if captured and archived, would be ideal for regional transportation planning, policy analysis, monitoring and corridor performance evaluation. Yet there is no physical structure set in place at Metro to capture and store the RIITS Network data to make them available for research and development purposes. It is equally important that sound monitoring and evaluating methodologies be established, tested and validated by our key transportation partners in the region including, but not limited to, U.S. DOT Los Angeles Office, Southern California Association of Governments (SCAG), Caltrans, LADOT and LACDPW, etc. Metro also needs expert assistance to devise a scalable ADMS data mining and management structure to manage the ever expanding RIITS data sources in the most effective and efficient manner.

Since mobility issues in a metropolitan region as complex as Los Angeles County is affected by so many direct and indirect factors such as goods movement, incident management, congestion pricing, air quality and safety, it is the intent of Metro's Countywide Planning and Development Department to seek and establish long term transportation research, development and technology support to assist Metro in this endeavor. The initial objective is to set up a data archiving system to capture the near-real time data from RIITS Network and develop Proof of Concept Reports addressing the feasibility of multi-modal corridor performance and related issues. Second, Metro intends to conduct a focused scoping study with a recommended action plan to 1) establish sound corridor monitoring and evaluation methodologies, 2) implement a data mining system and structure that Metro can use to address multi-modal corridor performance and regional transportation system planning, 3) layout a roadmap of a long term transportation research and technology transfer program assisting Metro to reach the regional mobility goal and 4) develop applicable joint research, planning and development project proposals to compete for federal and state funding opportunities.

PROJECT IMPLEMENTATION

Metro envisions the project shall be implemented in two separate phases. Phase A to be completed within a year from the date contract is executed and Phase B to be completed within the overall project schedule which shall not exceed three years.

Phase A – Archived Data Management System Implementation

Specific project tasks in this Phase include, but are not limited to:

1. In conjunction with Metro, develop and implement an initial data archiving system and a preliminary data mining structure that is scalable and easily expandable to capture and store the near real-time traffic, transit and incident data from the RIITS Network; Metro would like to capture a minimum of three (3) years of multi-modal data with a storage capacity of approximately 2-3 terabytes;
2. Examine and collect existing and planned RIITS Network data sources, validate and evaluate their applicability; Caltrans District 7 has captured and saved approximately 2 terabytes freeway data on magnetic tapes which can be accessed for the RIITS project applications;

3. Introduce and recommend other near real-time data sources that are readily available and can be accessed and integrated to compliment and enhance transportation planning capabilities and the use of data archiving system;
4. Investigate revenue generating potential if certain existing or expanded data sources can be immediately applied for commercial applications;
5. Produce Proof of Concept Reports for multi-modal mobility performance and revenue-generating initiatives.
6. Identify and seek future federal and state funding opportunities/grants for joint partnership projects for continuing transportation research, planning and development in the Southern California Association of Governments (SCAG) Region.

Phase A Deliverables:

- A.1. An on-site operational data archiving system and preliminary data mining and management structure at the selected bidder's facility and install necessary equipment on Metro facility
- A.2. Data Needs Assessment Report on existing and future data sources that need to be included in the Archived Data Management System and data sources need to be integrated on RIITS Network
- A.3. Communication Assessment Report on future equipment and hardware needs at both the selected bidder's site and Metro facility
- A.4. White Paper Report on data applications that may have revenue generating potentials
- A.5. Proof of Concept reports on multi-modal corridor mobility performances
- A.6. Proof of Concept Report on revenue generating initiatives
- A.7. White Paper Report on potential joint research, planning and development projects that may be qualified for future federal and state funds/grants.

Upon the review and approval of Proof of Concept Reports, Metro reserves the right to revise, modify and continue the Phase B work scope and tasks as outlined below:

Phase B – Scoping, Deployment and Action Plan

Specific work tasks in this Phase include, but are not limited to:

1. Conduct a detailed scoping study analyzing all data sources that are accessible and need to be collected, assessed, validated, and integrated to enhance the initial data archiving system and data mining structure deployed in Phase A,
2. Expand and enhance the initial data archiving system and mining structure to a formal Archived Data Management System with complete documentation,
3. Develop Measurement of Effectiveness (MOEs) and formulate comprehensive methodologies to monitor and evaluate multi-modal corridor mobility performances; conduct sensitivity analysis and modeling tests to verify its effectiveness for the review and acceptance by key regional transportation stakeholders, including but not limited to, U.S. DOT Los Angeles Office, Southern California Association of Governments (SCAG), Caltrans, LADOT, LACDPW and Metro Planning Department,
4. Prepare, specify and refine the White Paper Report on revenue generating initiatives documented in Phase A, this work is to be directed by Metro Countywide Planning and Development,
5. Develop a White Paper Report which examines the possibilities of developing a long-term research, development and technology transfer program in partnership with Metro

including the development of a roadmap identify of new areas of transportation research needs, data expansion and policy analysis activities of regional transportation planning that Metro and the region can benefit by utilizing the ADMS, and

6. Develop an Action Plan with financial analysis to address the on-going operation, maintenance, expansion and enhancement of the ADMS to serve Metro regional transportation planning, development and research needs.

Phase B Deliverables:

- B.1. A focused Scoping Study Report addressing all aspects of data bases need to be included in the Archived Data Management System and a Concept of Operation Report
- B.2. Deploy an expanded and enhanced Archived Data Management System with complete documentation
- B.3. A comprehensive methodology that meets the approval and acceptance of Metro and other key transportation agencies for monitoring and evaluating multi-modal corridor mobility performances,
- B.4. A refined White Paper report on a Metro-selected revenue generating initiative and/or public-private partnership arrangement utilizing the developed archived data management system,
- B.5. A White Paper Report on the possibility of developing a long term collaborative Co-op and research partnership programs/projects with Metro
- B.6. An Action Plan for the operation, maintenance and enhancement of RIITS Network Archived Data management System.

COST SHARING/PARTICIPATION

The proposed ADMS project aims at developing a long term collaborative planning, development and research program. Metro is interested to receive any cost sharing /participation proposals to reduce the overall project cost. The type of cost sharing/participation of the proposed ADMS project can be of any form either in hard cash match or soft match of in-kind services directly applied toward the development and implementation cost of the ADMS project. Cost sharing/participation is a part of the proposal evaluation criteria.

OWNERSHIP OF DATA WITHIN THE ADMS

In accordance with the principles and standards of practice of the RIITS Network, the ownership of data within the ADMS, especially data provided by data contributing agencies through the RIITS Network, is retained by the respective source agencies. Specific arrangement shall be made via the RIITS Network CM Committee with regard to the data access, data archiving, data uses and their applications.

APPENDIX - (EXISTING DATA TYPE & ATTRIBUTES)

Currently Available Through RIITS		
Data Type	Frequency	Attributes
<i>Caltrans District 7</i>		
Freeway Detector Inventory Data	Once per Day	• Route • Cross Street • Direction • Lane Count • ID • Geo-location (lat/long)
Freeway Detector Real-time Data	Once per Minute	• Occupancy (avg.) • Volume (avg.) • Speed (avg.) • HOV Speed • Status
Arterial Detector Inventory Data	Once per Day	• Street • Cross Street • Direction • Lane Count • ID • Geo-location (lat/long)
Arterial Detector Real-time Data	Once per Minute	• Occupancy (avg.) • Volume (avg.) • Speed (avg.) • Status
CMS Inventory Data	Once per Day	• Route • Cross Street • Direction • City • ID • Geo-location (lat/long)
CMS Real-time Data	Once per Minute	• Status • Display State • Message Displayed
CCTV Inventory Data	Once per Day	• Route • Cross Street • Direction • City • ID • JPEG URL • Geo-location (lat/long)

Currently Available Through RIITS		
Data Type	Frequency	Attributes
Event Data	Once per Minute	• Route • From Cross Street • To Cross Street • Direction • City • ID • Start Time • Clear Time • Severity • Event Type • Vehicle Type • Affected Lane Count • Vehicle Count • Fatality Count • Injury Level • Injury Count • Event Responders • Contract Name • Contract Phone • Event Status • Geo-location (lat/long)
CCTV Real-time Data	Once per Minute	• JPEG Files
Freeway Travel Times	Once per Minute	• Link ID • Link Speed • Link Travel Time
LADOT		
Arterial Detector Inventory Data	Once per Day	• Street • Cross Street • Direction • Lane Count • ID • Geo-location (lat/long)
Arterial Detector Real-time Data	Once per Minute	• Occupancy (avg.) • Volume (avg.) • Speed (avg.) • Status
MTA Bus Operations		
Vehicle Data	Once per Minute	• Agency • Update Date • Update Time • Bus ID (Train ID) • Line ID • Route Description • Bus Direction • Bus Location - Lat/Long • Schedule Deviation • Arrival Time at Next Time Point • Next Time Point Location (Street/Cross Street) • Run ID

Currently Available Through RIITS		
Data Type	Frequency	Attributes
Route Data	Twice per Year	• Route ID • Route Description • Zone Number
MTA Rail Operations		
Vehicle Data	Once per Minute	• Agency • Update Date • Update Time • Train ID (Train ID) • Line ID • Route Description • Train Direction • Train Location - Lat/Long
Route Data	Twice per Year	• Route ID • Route Description
California Highway Patrol		
Event Data	Once per Minute	• Route • Cross Street • Direction • ID • Start Time • Vehicle Type • Event Responders • Contract Name • Contract Phone • Event Status • Geo-location (lat/long)
LBT		
Vehicle Data	Once per Minute	• Agency • Update Date • Update Time • Bus ID (Train ID) • Line ID • Route Description • Bus Direction • Bus Location - Lat/Long • Schedule Deviation • Arrival Time at Next Time Point • Next Time Point Location (Street/Cross Street)
Route Data	Three Times per Year	• Route ID • Route Description • Zone Number

EXHIBIT 3 – INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons, or damages in property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employee or subcontractors. As respects Errors and Omissions, coverage must be maintained, and evidence provided, for two years following the expiration of this contract.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG0001)
2. Insurance Services Office form number CA0001 covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability Insurance

MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits no less than:

1. General Liability: \$ 1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be twice the required occurrence limit or \$2,000,000. Products/Completed Operations aggregate shall apply separately to this contract/agreement or the aggregate limit shall be twice the required per occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance
4. Professional Liability: \$1,000,000 per occurrence.

OTHER INSURANCE PROVISIONS

The insurance policies required per the terms of the contract are to contain, or be endorsed to contain, the following provisions:

1. Los Angeles Metropolitan Transportation Authority, its subsidiaries, officials and employees are to be covered as additional insureds as respects liability arising out of the activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned leased, hired or borrowed by the Contractor. The general liability coverage shall also include contractual, personal injury, independent contractors and broad form property damage liability. The coverage shall contain no special limitations on the scope of protection afforded to LACMTA, its subsidiaries, officials and employees.
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects LACMTA, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by LACMTA shall be excess of the Contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to LACMTA, its subsidiaries, officials and employees.

4. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to LACMTA.
6. Workers' Compensation and Employer's Liability policies shall provide a waiver of subrogation in favor of LACMTA.
7. Professional Liability insurance shall be continued, and evidence provided to LACMTA, for two years following the expiration of the contract or, tail coverage provided for two years in the event of cancellation or non-renewal.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to, and amounts over \$25,000 approved by LACMTA.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with California admitted insurers with a current A.M. Best's rating of no less than A- VII, unless otherwise approved by LACMTA.

VERIFICATION OF COVERAGE

Contractor shall furnish LACMTA with original endorsements and certificates of insurance evidencing coverage required by this clause. All documents are to be signed by a person authorized by that insurer to bind coverage on its behalf. All documents are to be received and approved by LACMTA before work commences. If requested by LACMTA, the Contractor shall submit copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

SUBCONTRACTORS

Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsement for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. If requested by LACMTA, the Contractor shall submit copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

GENERAL CONDITIONS (SERVICES)

Note: * = Flow-down requirement as defined in the Article entitled SUBCONTRACTORS AND SUPPLIERS herein

GC-01 GLOSSARY OF TERMS*

GC-01-A Abbreviations And Symbols

ADR	Alternative Disputes Resolution
Cal-OSHA	California Occupational Safety and Health Administration
CEO	Chief Executive Officer
CFR	Code of Federal Regulations
EPA	United States Environmental Protection Agency
FAR	Federal Acquisition Regulations
FTA	Federal Transit Administration
GEC	General Engineering Consultant
Metro	Los Angeles County Metropolitan Transportation Authority
NTE	Not-to-Exceed
OSHA	United States Department of Labor, Occupational Safety and Health Administration, and Occupational Safety and Health Act
PUC	Public Utilities Code, State of California
RFC	Request for Change
USC	United States Code

GC-01-B Definitions

Acceptance	Documentation prepared by Metro or its Authorized Representative attesting to the completion of all of the Services or Work under the Contract or a CWO or a specified portion thereof.
Alternative Disputes Resolution:	Means for settling a disputed claim which may include arbitration, mediation or other recognized means for settling a dispute.
Amendment:	A document mutually agreed to by the Parties modifying the Contract.
Approve:	To confirm documents presented by and/or actions of the Contractor related to the Work under the Contract or CWO.
Assessment:	A cost imposed on the Contractor for non-compliance with certain contractual requirements.
Authorized Representative:	Person or firm empowered to act for or in the place of the named business or governmental entity.
Chief Executive Officer:	The Chief Executive Officer (CEO) of Metro.

Claim:	A written demand by one of the Contracting Parties for: 1. Time extension; and/or 2. Payment of money.
Consultant	One that provides Services or Work to Metro, also defined as the Contractor.
Consultant Change Notice (CCN):	A document issued by Metro to the Contractor detailing a proposed change to the Contract or CWO.
Contract:	Written agreement executed by Metro and the Contractor which sets forth the rights and obligations of the parties in connection with the Services and Work, and which includes the Contract Documents.
Contract Work Order (CWO):	The document issued by Metro for each separate assignment detailing the Scope of Work, price and completion time.
CWO Period of Performance:	The total time period allowed for completion of the Work, including all authorized time extensions, as specified in each CWO.
CWO Price:	The not-to-exceed amount agreed to by the Parties to perform the Scope of Work.
Contracting Officer:	The CEO or a designated representative who is authorized and empowered to execute contracts, contract amendments, CWOs, CWO Revisions, WACNs, and agreements on behalf of Metro.
Contractor:	The individual, firm, partnership, corporation, joint venture or combination thereof, referred to throughout the Contract in the singular and by the neuter term "it", that has entered into the Contract with Metro.
Cure Notice:	Written notice from Metro to the Contractor to correct Work performed not in conformance with the Contract or CWO.
Days:	Unless otherwise stated, "days" shall mean calendar days. When a required submittal falls on a non-business day, submittal shall be on the next business day.

Design Professional (DP):	A person licensed as an architect, registered as a professional engineer, licensed as a land surveyor or otherwise licensed or registered in a professional discipline pursuant to the laws of the State of California.
DALP	Disadvantaged Business Enterprise Anticipated Level of Participation
Goods:	Equipment, material and/or products required to perform the Services. Goods may be furnished by Metro or required to be furnished by the Contractor.
Government Entity	Any federal, state, or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than Metro.
Home Office:	The home office(s) of the Contractor's firm.
Invoice:	A request for payment for Work performed.
Milestone:	An established event or occurrence that is associated with the Schedule as defined in the Contract or CWO.
Modification	Any written addition, deletion, adjustment or alteration to the Contract, whether arising out of the unilateral exercise by the MAT of any right under the Contract, or by mutual agreement/action executed by the Parties. A Modification may be unilateral or bilateral, and includes Change Orders, adjustments in quantities, extensions of time, administrative changes and adjustments, and all other actions and events that result in an alteration, correction or adjustment of the Total Contract Price or Time, any Contract term or process, or any other obligation of either Party.
Metro or MTA	The Los Angeles County Metropolitan Transportation Metro (Metro) or its successor, or any successor in interest, or its Authorized Representative.

Notice of Termination:	Written notice from Metro to the Contractor terminating the Contract or/CWO, or a portion thereof, either for convenience of Metro or for default due to the Contractor's failure to perform its contractual obligations.
Payment Application:	A request for payment for Work performed.
Parties:	Metro and the person(s), governmental entities, or business entities entering into the Contract.
Period of Performance:	The total time period allowed for completion of all Services or Work under the Contract or CWO, as specified in the Form of Contract or CWO.
Prime Design Professional (PDP):	A design professional with a written Contract directly with Metro.
Program:	Existing and planned rail transit system that is and will be operated by Metro.
Project:	A portion of Metro Transit System as defined in the Form of Contract
Provide:	In reference to Work to be performed by the Contractor, "provide" means to perform Work in accordance with the Scope of Services and the Scope of Work.
Request for Change (RFC):	A document issued by the Contractor to Metro detailing a proposed change to the Contract or CWO.
Request for Substitution:	Goods, service(s), or system(s) that the Contractor requests to use in lieu of that specified in the Contract.
Revision:	A document issued by Metro to the Contractor or mutually agreed to by the Parties modifying the Contract or CWO.
Schedule:	A time phased Project execution plan that identifies all activities necessary to implement a given Project in a logical time phased manner. The Contract or CWO Schedule provides the start and completion date of each activity and its Milestones. The Project Schedule shall include the Milestones for the entire Project.
Scope of Services (Services):	Description of the sum total of productive and operative efforts used to generate the results

	specified, indicated, or implied in the Contract, including all technical and professional services, and Goods used during all related activities whether originally or subsequently Scheduled.
Scope of Work:	Description of the Work to be provided by the Contractor under the Contract or CWO.
Special Provisions:	Requirements applicable to the Contract that invoke, modify, and/or supplement the General Conditions
State:	The State of California.
Sub-consultant Design Professional (SDP):	Design professional hired by a prime design professional.
Subcontractor:	Any individual, firm, partnership, corporation, joint venture or combination thereof, other than employees of the Contractor, that enters into a legal agreement with the Contractor to furnish Work, labor or Goods as a portion of the Work. Unless otherwise specified, Subcontractors includes Subcontractors of any tier.
Supplier:	Any individual, firm, partnership, corporation, joint venture, or combination thereof, other than employees of the Contractor, or Subcontractor that enters into a legal agreement with the Contractor and that manufacturers, distributes or furnishes tangible Goods as a portion of the Work, with Work usually limited to delivery and/or required testing.
Technical Review:	A technical quality and progress audit including, but not limited to, a check of budget versus expenses to date, technical progress, quality of work, Schedule assessment and a measurement of design hours per drawing, review of adherence to policies and procedures and safety requirements.
Total Contract Price (TCP):	The total compensation approved by Metro's governing board to be paid to the Contractor in accordance with the terms of the Contract (and Amendments thereto).
Transit System:	The entire fixed guideway rail transportation system, including right-of-way, pavement, tracks, structures, equipment appurtenances, and all other related property of Metro.

Work:	The sum of all activities, Services and Deliverables, to be accomplished under the Contract or CWO.
Worksite:	The location where the Contractor's Work will be performed as defined in the Contract or CWO(s). The term may include the location of work performed by others (i.e., the construction site of a Project).

GC-02 INTERPRETATION*

GC-02-A Information

1. Furnished By Metro:

Upon request by the Contractor, Metro shall furnish the Contractor any general information and data readily available to Metro or those under contract to Metro, which the Contractor determines, may be of use to the Contractor in the performance of the Work. Metro shall rely upon the Contractor to determine which of the general information and data readily available to Metro the Contractor requires for the performance of the Work hereunder. Metro makes no representations with respect to the reliability, accuracy, or completeness of any information or data it may furnish hereunder. The Contractor is entitled to rely on the information or data to the extent a professional engineer believes it is appropriate to do so. The Contractor is expected to apply its professional judgment and seek any clarification it deems necessary.

2. Furnished by Others:

The Contractor is to obtain, utilizing its own personnel, any required information that has been developed by other public or private agencies or companies that are not under contract to Metro. The Contractor is to apply its professional judgment as to the reliability of the information or data for the purpose for which the Contractor intends on utilizing such information or data.

GC-03 PRECEDENCE OF CONTRACT DOCUMENTS

See Form of Contract Article 1

GC-04 CONTRACT DOCUMENTS

GC-04-A Explanations

Should it appear that the Work to be performed or any relative matters are not sufficiently detailed or explained in the Contract, the Contractor shall request in writing from Metro a written explanation as may be necessary and shall conform to the explanation given.

GC-04-B Omissions And Misdescriptions

1. The Contractor shall carefully study the Contract; shall verify all figures in the Contract Documents before performing the Work; shall promptly notify Metro of all errors, inconsistencies, and/or omissions that it discovers; and, in instances where such non-conformities are discovered, shall obtain specific instructions in writing from Metro before Contractor's proceeding with the Work. Any Work affected that is performed prior to Metro's decision shall be at the Contractor's risk. The Contractor shall not take advantage of any apparent non-conformity that may be found in the Contract. Metro shall be entitled to make such corrections therein and interpretations thereof as it may deem necessary for the fulfillment of the intent of the Contract. Omissions or misdescription of any Work that are manifestly necessary to carry out the intent of the Contract, or that are customarily performed, shall not relieve the Contractor from performing such Work at no additional expense and/or delay, and such Work shall be performed as if fully and correctly set forth in the Contract.

2. Terms

Where the terms "as indicated" and "as detailed," or words of similar import are used by themselves, it shall be understood that reference is made to the Technical Specifications or other technical documents provided by Metro, or Contract drawings unless otherwise expressly stated. "Directed," "required," "permitted," "ordered," "designated," "selected," "approve," "accept," "satisfactory," "equal," "necessary," or words of like import shall be understood to require an identifiable action by Metro unless otherwise expressly stated.

3. References within the Contract

References to Articles and Subarticles herein are made by citing the Title of the Articles only, e.g., a reference to this particular paragraph would be phrased "in the Article entitled 'INTERPRETATION,' which would necessarily be inclusive of all other paragraphs in this Article. However, where a reference is made to other paragraphs within the same Article, the reference is made as in the preceding sentence, i.e., "in this Article." References to other Sections of the Contract are made by citing the title of the Section.

GC-05 AUTHORITY OF THE CONTRACTING OFFICER

Metro has the final approval in all matters relating to or affecting the Work. Except as expressly specified in the Contract, the Contracting Officer may exercise any powers, rights, and/or privileges that have been lawfully delegated by Metro. Metro shall inform Contractor in writing of delegations given by it to the Contracting Officer. Nothing in the Contract shall be construed to bind Metro for acts of its employees and Authorized Representatives that exceed the delegation of Metro specified herein.

GC-06 METRO'S TECHNICAL REPRESENTATIVE (PROJECT MANAGER)

Metro shall provide a Project Manager and/or a technical representative for all technical aspects related to the performance of the Contract. The Contractor shall make such oral or written reports to Metro's technical representative with an information copy to Metro's Contract Administrator as may be requested by Metro or as specifically required by the Contract. ALL CONTRACTUAL MATTERS SHALL BE ADDRESSED TO THE DESIGNATED CONTRACT ADMINISTRATOR.

GC-07 INDEPENDENT CONTRACTOR

The Contractor represents that it is fully experienced and properly qualified to perform the class of Work required for the Contract and that it is properly licensed, equipped, organized, and financed to perform the Work. The Contractor shall be an independent contractor. The Contractor is not an agent of Metro in the performance of the Contract, and shall maintain complete control over its employees and its Subcontractors and Suppliers of any tier. Nothing contained in the Contract or any Subcontract awarded by the Contractor shall create any contractual relationship between any Subcontractor and Metro. The Contractor shall perform the Work in accordance with its own methods, in compliance with the terms of the Contract.

Metro reserves the right of prior approval of all subcontractors and retains the right to request Contractor to terminate any subcontractor, for any reason deemed appropriate by Metro, by so notifying Contractor in writing. Should said notification be submitted to Contractor, it shall terminate said subcontractor immediately.

GC-08 ORGANIZATIONAL AND KEY PERSONNEL

- A. Before starting any Work, the Contractor shall submit for Metro review and acceptance, an organization chart showing the proposed organization established by the Contractor for the performance of the Work, including:
 - 1. Lines of authority, responsibility, and communication;
 - 2. Office organizations, if any; and
 - 3. Names, titles, and functions of all supervisory and other key personnel.
- B. The Contractor's Project Manager shall supervise and direct the Work, and have overall responsibility for the Work in accordance with the Contract. The Contractor shall be solely responsible for implementation of all Work, means, methods, techniques, sequences, and procedures and for coordination of all portions of the Work under the Contract.
- C. The Contractor shall not reassign such key personnel to other projects without Metro's prior written approval and until a satisfactory replacement has been approved by Metro. The Contractor shall secure the prior written

approval of Metro for any change or reassignment of the key personnel, submitting written documentation of the new individuals' qualifications.

- D. If Metro provides office space to the Contractor, or requires Contractor to locate its office space in a specific location, then at all times during the performance of Work hereunder, only related Work shall be performed in such office space and Contractor shall not use such office space to perform non-Contract related work.

GC-09 SUBCONTRACTORS AND SUPPLIERS*

GC-09-A Documentation And Acceptance

The Contractor shall submit a copy of all executed subcontracts at any time within fourteen (14) days of execution regardless of value to Metro for fulfillment of the DALP and SBE Goals, and a copy of insurance certificates in accordance with the Exhibit to the Form of Contract entitled INSURANCE REQUIREMENTS. Failure to submit subcontracts and certificates within the required time period will result in the Subcontractor's not being permitted to perform Work on the Project.

GC-09-B Performance Of Work

The Contractor shall:

1. Be responsible to Metro for all acts and omissions of its own personnel, and of Subcontractors, Suppliers and their employees; and
2. Be responsible for coordinating the Work performed by Subcontractors and Suppliers.

Should a portion of the subcontracted Work not be performed in accordance with the terms of the Contract, or if a Subcontractor commits or omits any act that would constitute a breach of the Contract, the Subcontractor shall be replaced and shall not again be employed on the Program.

GC-09-C Acceptance Of Substitution Of Subcontractor

1. The Contractor shall notify Metro in writing of any proposal to substitute a Subcontractor in place of a Subcontractor listed in the Contractor's Qualification/Proposal. Prior to such substitution the Contractor shall secure the acceptance of Metro. The Contractor shall submit the following information in a form similar to that contained in the Contractor's original Qualification/Proposal.
 - a. Name of Subcontractor
 - b. Location and Phone Number of Place of Business
 - c. Contact Person
 - d. Subcontractor's License(s) number and expiration date (if applicable)

- e. Current Metro Contract Compliance Certification Status (if applicable)
- f. The portion of the Services that will be performed by each Subcontractor.

Metro will promptly initiate a review of the information submitted on each Subcontractor and transmit written notification to the Contractor concerning its decision.

- 2. Metro shall not be responsible for delays incurred by the Contractor because of a timely disapproval by Metro of a Subcontractor proposed by the Contractor, or for the late submittal for acceptance of a Subcontractor to Metro, or because of a Subcontractor's removal from the performance of the Work.
- 3. The Contractor shall not do any of the following without the prior written consent of Metro:
 - a. replace any previously accepted Subcontractor;
 - b. permit any previously accepted Subcontract to be assigned or transferred; and/or
- 4. However, the Contractor may perform the Work itself with qualified personnel, provided written permission is obtained from Metro prior to performance of the Work.

GC-09-D Flow-Down Requirements

- 1. The Contractor shall incorporate the following into each Subcontract and require insertion of same into all lower-tier Subcontracts:
- 2. All Articles, Subarticles or portions of the Contract noted by a star (*) shall be included in all Subcontracts of any tier.
- 3. All provisions required by law, regulation, rule, or the Contract shall apply to subcontracts and shall apply to all subcontracts of any tier.
- 4. By virtue of signing the subcontract, the following apply:
 - a. The Subcontractor acknowledges and agrees that all Work being performed by it under the subcontract shall be performed in accordance with the Contractor's Contract with Metro.
 - b. The Subcontractor agrees that it shall have the same duties and obligations to the Contractor with respect to its performance of its own Work as the Contractor has to Metro under its Contract.
 - c. The Contractor and the Subcontractor agree that Metro is the third party beneficiary of the Subcontract and shall have the right to enforce all of the terms of the Subcontract for its own benefit. All guarantees and

warranties, express or implied, shall inure to the benefit of both Metro and the Contractor during the performance of the Work; upon final completion of the Work, such guarantees and warranties shall inure to the benefit of Metro.

The Contractor and the Subcontractor agree that nothing contained in the Subcontract shall be deemed to create any privity of the Contract between Metro and the Subcontractor, nor does it create any duties, obligations, or liabilities on the part of Metro to the Subcontractor except those allowed under California Law. In the event of any claim or dispute arising under the subcontract and/or the Contractor's Contract with Metro, the Subcontractor shall look only to the Contractor for any payment, redress, relief, or other satisfaction. The Subcontractor hereby waives any claim or cause of action against Metro arising out of the subcontract.

GC-09-E This Article does not and shall not operate to relieve the Contractor of any duty or liability under the Contract nor does it create any duty or liability on the part of Metro. The Contractor shall have sole responsibility for promptly settling any disputes between its Subcontractors and between the Subcontractors and any of their Subcontractors.

GC-09-F No Subcontractor shall be permitted to perform the Work under the Contract until it, or the Contractor, has supplied satisfactory evidence of required insurance to Metro, in compliance with the Exhibit to the Form of Contract entitled INSURANCE REQUIREMENTS.

GC-10 PERMITS

Except for any permits furnished by Metro, the Contractor shall be fully responsible for identifying and obtaining, at its own expense, all necessary licenses and permits required for the timely prosecution of the Work.

The Contractor acknowledges that prior to entering into the Contract or any CWO it familiarized itself with the requirements of all applicable federal, state, county, and municipal laws, codes, rules, and regulations, as well as the conditions of any required licenses and permits, in effect at time of execution of the Contract or issuance of any CWO. The Contractor shall be responsible for complying with all of the foregoing, at its sole expense and without any increase in the TCP or CWO Price or Contract or CWO Period of Performance set forth in the Form of Contract or CWO on account of such compliance, regardless of whether such compliance would require additional labor, equipment, or Goods not expressly stated in the Contract or CWO.

GC-11 GOODS*

GC-11-A The Contractor shall furnish all Goods required to complete the Work, except those designated to be furnished by Metro. Unless otherwise indicated in the Contract or CWO, Goods incorporated into the Work shall be new, of good quality, and of the grade specified for the purpose intended. Unless otherwise specifically stated, reference to Goods or patented processes by trade name,

make, or catalog number shall be regarded only as a means of establishing a standard of quality; such references shall not be construed as limiting competition. The Contractor may, at its option, use any Goods or process that is equivalent to that named subject to the prior written acceptance by Metro. Metro shall be the sole judge of the quality and suitability of proposed alternative Goods or processes subject to the right of Metro to accept or reject such alternative.

GC-11-B Any Goods that may be purchased under the Contract shall be transported, handled, and stored by the Contractor in a manner that shall ensure the preservation of their quality, appearance, and fitness for the Work. All Goods shall also be stored in a manner that facilitates inspection.

GC-12 STANDARDS OF PERFORMANCE*

GC-12-A The Contractor shall perform and require its Subcontractors to perform the Work in accordance with the requirements of the Contract and in accordance with professional standards of skill, care, and diligence adhered to by firms recognized for their expertise, experience and knowledge in performing Work of a similar nature. The Contractor shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Work, it being understood that Metro will be relying upon such professional quality, accuracy, completeness, and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the "Standard of Performance" for purposes of the Contract.

GC-12-B Contractor hereby represents that it has made the necessary commitment, that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available or will make the necessary equipment, materials, tools, and facilities to perform the Work in an efficient, professional, and timely manner in accordance with the terms and conditions of the Contract.

GC-12-C All personnel shall have sufficient skill and experience to perform the work assigned to them. Contractor shall ensure that any individual performing work under the Contract requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the Work assigned to them.

GC-12-D If any Work provided by the Contractor is deficient because of the Contractor's or a Subcontractor's failure to perform the Work in accordance with the above standards, Metro shall report such deficiencies in writing to the Contractor. Metro thereafter may:

1. Have the Contractor re-perform such Work at the Contractor's own expense; or
2. Have such Work performed in accordance with the Article entitled TERMINATION FOR DEFAULT herein, by others and the costs thereof charged to and collected from the Contractor.

GC-12-E Corrected or re-performed Work shall be subject to the above standards of performance.

GC-12-F The Contractor shall provide such specific standards of performance as may be set forth in individual CWOs as agreed to by the parties. If parties cannot agree Metro shall unilaterally establish them.

GC-12-G Metro shall have the right, in its absolute discretion, to require the removal of Contractor's personnel at any level assigned to the performance of the Services or Work, if Metro considers such removal necessary in the best interests of the Program and requests such removal in writing. Such personnel shall be promptly removed from the Project by the Contractor at no cost or expense to Metro. Further, an employee who is removed from the Project for any reason shall not be re-employed on the Program.

GC-13 UNAUTHORIZED ACTIONS*

Any action taken by the Contractor or its Subcontractors not in conformance with the terms and conditions of the Contract will be considered as unauthorized and at the sole expense of the Contractor. Contractor or its Subcontractors will not be compensated for any actions deemed by Metro to be unauthorized. No extensions of time will be granted under the Contract or CWO due to unauthorized actions.

No Metro employee or officer, except the Contracting Officer, may authorize any Amendments to the Contract, issue a CWO or make Revisions to CWOs.

GC-14 PERIOD OF PERFORMANCE

- A. Neither party hereto shall be considered in default in the performance of its obligations with respect to schedule, to the extent that the performance of any such obligation is prevented or delayed by an excusable delay. Should Contractor's Work be delayed by an excusable cause, Contractor's schedule for completion of tasks affected by such delay may be extended. Excusable delays may include, but are not limited to, Acts of God or acts or failures to act of government agencies or Metro in either their sovereign or contractual capacities; fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, civil disturbance; but, in every case, the failure to perform must be reasonably beyond the control, and without the fault or negligence of the Contractor.
- B. Within 30 days after the last day of delay, the Contractor shall furnish Metro with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Contract references, and the measures taken to prevent or minimize the delay. Failure to submit such information shall be sufficient cause for denying the delay claim.

GC-15 INSPECTION OF WORK (ACCEPTANCE)*

- GC-15-A** Metro reserves the right to inspect all and every part of the Work at any time during the performance and after completion, at its discretion.
- GC-15-B** If the Work or any parts thereof have not been performed in accordance with the Contract, the Contractor will be notified in writing that such Work is rejected. Thereupon, the Contractor shall take the necessary corrective action. Metro shall not be obligated to make any inspections, however, and neither the inspection of the Work, nor the lack thereof, shall relieve the Contractor of its responsibility for performing and providing the Work in accordance with the terms of the Contract.
- GC-15-C** Metro shall not be deemed to have accepted the Contractor's performance of the Work unless Metro or its designated representative has given written notice of final acceptance of the Work to the Contractor. No payment in whole or in part shall be construed to be an acceptance of the Work.
- GC-15-D** Metro shall have access, at all reasonable times, to the Contractor's calculations, supporting materials, data, and information concerning the Work, including computer programs and printouts, which Metro determines are required to review the Work properly and expeditiously. The Contractor shall furnish sufficient and convenient facilities for such inspection and review, and shall grant Metro's designated representatives free access at all reasonable times to all locations where the Work is performed.
- GC-15-E** Prior to the release of Work or issuance of a CWO, Metro and the Contractor shall determine which required reports will be submitted to Metro in draft form before final submission of the report.

GC-16 FINAL ACCEPTANCE*

GC-16-A Final Acceptance Of Work

When the Contractor determines that all Work as authorized in the Contract or CWO is fully completed including all required submissions and deliveries to Metro specified in the Contract or CWO, the Contractor shall give Metro a written Request for final Contract or CWO Acceptance within ten (10) working days thereafter, specifying that the Work is completed and the date on which it was completed. Within ten (10) days after the receipt of the Request for Final Contract or CWO Acceptance, Metro will commence a final review of the Work and, within 60 days will either:

1. Give the Contractor a final Contract/CWO Acceptance; or
2. Advise the Contractor in writing of any outstanding item or items which must be furnished, completed or corrected at the Contractor's cost.

Upon submittal of the request for final Contract/CWO Acceptance, the Contractor shall make no additional charges for Work under the Contract/ CWO. Metro shall

not pay for any additional charges or be liable for any costs incurred after the date of receipt of the request for final Contract/CWO Acceptance of Contract/CWO Work.

This procedure shall comply with Metro's procedure entitled Services Contract Close-out in effect at the time of the request for Final Acceptance and shall be repeated until such time as Metro is satisfied that GC-17-B Final Acceptance of CONTRACT

GC-16-B Final Acceptance Of Contract

When Metro determines that all Work authorized under the Contract has been completed and Metro requires no further work from Contractor, or the Contract is otherwise terminated or expires in accordance with the terms of the Contract, Metro shall give the Contractor written notice that the Contract will be closed out. Contractor shall submit all outstanding Billings, Work submittals, Deliverables, reports or similarly related documents as required under the Contract and any CWO, within ninety (90) days of receipt of notice of Contract close-out. Upon Metro's receipt of Contractor's submittals under this Article, Metro shall commence a closeout audit of the Contract within one hundred twenty (120) days after final submission of the last Contractor's or Subcontractor's overhead rates and will either:

1. Give the Contractor final Contract acceptance; or
2. Advise the Contractor in writing of any outstanding item or items which must be furnished, completed or corrected at the Contractor's cost.

This procedure shall comply with Metro's procedure entitled Services Contract Close-out. Notwithstanding the final Contract/CWO Acceptance the Contractor will not be relieved of its obligations hereunder, nor will the Contractor be relieved of its obligations to complete any portions of the Work, the non-completion of which were not disclosed to Metro (regardless of whether such nondisclosures were fraudulent, negligent, or otherwise); and the Contractor shall remain obligated under all those provisions of the Contract which expressly or by their nature extend beyond and survive final Contract and/or CWO Acceptance.

GC-16-C Any failure by Metro to reject the Work or to reject the Contractor's Request for final Contract or CWO Acceptance as set forth above, shall not be deemed to be Acceptance of the Work by Metro for any purpose nor imply Acceptance of, or agreement with, the Contractor's Request for final Contract and/or CWO Acceptance.

GC-17 SAFETY*

GC-17-A The Contractor shall at all times conduct its operations in such a manner as to avoid risk of bodily harm to persons or damage to property. The Contractor shall promptly take all reasonable precautions to safeguard against such risks and shall make regular safety inspections of its operations. The Contractor shall be solely responsible for the discovery, determination and correction of any unsafe conditions caused by the Contractor's performance of the Work.

GC-17-B In addition, the Contractor shall comply with all applicable safety laws, standards, codes, rules, and regulations, including any safety program established by Metro. The Contractor shall cooperate and coordinate with Metro and with other Metro Contractors on safety matters and shall promptly comply with any specific safety instructions or directions given to the Contractor by Metro. Notwithstanding, the construction contractor shall remain responsible for the construction site safety.

GC-17-C The Contractor shall inform its personnel of Metro safety practices and the requirements of Metro's safety program. If any of the Contractor's personnel are required to visit any Worksites, the Contractor shall furnish suitable safety equipment and enforce the use of such equipment by those personnel.

GC-18 WARRANTY*

The Contractor warrants that all Work shall be in accordance with the Contract and shall comply with the Standard of Performance for a period of one year from final acceptance of the Work. In the event of breach of this warranty, the Contractor shall take the necessary actions to correct the breach and the consequences thereof, at the Contractor's sole expense, in the most expeditious manner as permitted by existing circumstances. If the Contractor does not promptly take steps to correct the breach upon notification thereof by Metro, Metro without waiving any other rights or remedies it may have at law or otherwise, may do so or cause others to do so, and the Contractor shall promptly reimburse Metro for all expenses and costs incurred in connection therewith.

GC-19 RIGHTS IN PROPERTY*

GC-19-A Title

1. All property purchased by the Contractor for Metro, shall be hereinafter referred to as Metro Property. Title to Metro Property shall pass to and vest in Metro upon the vendor's delivery and acceptance of such property by the Contractor.
2. Title to Metro Property shall not be affected by its incorporation into or attachment to any property not owned by Metro, nor shall Metro Property become a fixture or lose its identity as personal property by being attached to any real property.
3. The title transferred as described above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances. The Contractor shall not pledge or otherwise encumber the items in any manner that would result in any lien, security interest, charge, and/or claim upon or against said items.
4. The Contractor shall promptly execute, acknowledge, and deliver to Metro proper bills of sale or other written instruments of title in a form as required by Metro; said instruments shall convey to Metro title to material free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.

GC-19-B Metro Property shall be used only for performing Work on the Contract or CWO, unless otherwise provided in the Contract or approved by Metro's Contract Administrator.

GC-19-C PROPERTY ADMINISTRATION

1. The Contractor shall be responsible and accountable for all Metro Property provided under the Contract and shall submit an inventory list, or revised list, in a form acceptable to Metro's Contract Administrator within thirty (30) days of acquisition of Metro Property.
2. The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Metro Property in accordance with sound business practice.
3. If damage occurs to Metro Property, the Contractor shall replace the items not otherwise covered by any warranties, or the Contractor shall make the necessary repairs at Metro's direction, all at no additional charge to Metro.

GC-19-D Metro and all its designees shall have access at all reasonable times to the premises in which any Metro Property is located for the purpose of inspecting Metro Property.

GC-19-E Upon completing the Contract or CWO or at such earlier dates as may be fixed by Metro: (1) the Contractor shall prepare and submit a final inventory list of all Metro property which includes the property's description, location and condition, and; (2) the Contractor shall prepare for shipment, and deliver F.O.B. destination, Metro property as may be directed or authorized by Metro.

GC-20 EXTENTION OF TIME

GC-20-A The Contractor will be granted an extension of time for any portion of a delay in completion of the Work caused by acts of a public enemy, wars, civil disturbances, fires, floods, earthquakes, epidemics, quarantine restrictions, freight embargoes, strikes, weather more severe than normal, any other cause not in the reasonable control of the Contractor or acts of God, providing that the:

1. Aforesaid causes were not foreseeable and did not result from the fault or negligence of the Contractor;
2. Contractor has taken reasonable precautions to prevent further delays owing to such causes; and
3. Contractor notifies Metro in writing of the cause(s) for the delay within five (5) days from the beginning of any such delay.

GC-20-B Claims for additional compensation shall be limited to the costs incurred during an Metro approved extension of time measured at end of period of performance not at time of delay.

GC-20-C An extension of time will not be granted for a delay described above caused by a shortage of Goods, except Metro-furnished Goods, unless the Contractor supplies Metro with documented proof that it made every effort to obtain such Goods from every known source within reasonable distance of the Work. The Contractor shall also submit proof, that the inability to obtain such Goods when originally planned, did in fact cause a delay in final completion of the Work that could not be compensated for by revising the sequence of its operations. Only the physical shortage of Goods will be considered as a basis for an extension of time. No consideration will be given to any claim that Goods could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of Metro that:

1. Such Goods could have been obtained only at exorbitant prices or;
2. The prices were entirely inconsistent with current rates, taking into account the quantities involved and the usual practices employed in obtaining such quantities; and
3. Such facts could not have been known or anticipated at the time the Contract or CWO was executed.

GC-20-D In case the Contractor is actually and necessarily delayed by any act or omission on the part of Metro, or others under contract with Metro and providing that the Contractor notifies Metro in writing within five (5) days from the beginning of any such delay, specifying the act or omission causing such delay, the time for completion of the Work shall be extended accordingly, and an adjustment shall be made to the TCP or CWO Price for any increase in the cost of performance of the Services or Work (excluding profit) necessarily caused by such delay. If the delay in the performance of the portion of Work described in the Contractor's five (5) day notice has been similarly delayed by Contractor-induced causes, including but not limited to the fault or negligence of the Contractor or any of its Subcontractors, the time for completion of the Work will be extended for the period of any such concurrent delay with no adjustment to the TCP or CWO Price.

GC-20-E Within thirty (30) days after the last day of a delay, the Contractor shall supply Metro with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Contract and CWO references, and the measures taken to prevent or minimize the delay. Failure to submit such information shall be sufficient cause for denying the delay claim. Metro will ascertain the facts and the extent of the delay; its findings thereon will be final and conclusive unless the Contractor disputes the decision. All time extensions must be approved by Metro prior to Contract or CWO Final Acceptance.

GC-20-F No extension of time will be granted under this Article for any delay in which remedies are included or excluded by any other provision of the Contract. Only the actual delay necessarily resulting from the causes specified in this Article shall be grounds for extension of time. In case the Contractor is delayed at any time or for any period by two or more of the causes specified in this Article, the

Contractor shall not be entitled to a separate extension for each one of the causes; only one extension will be granted for the entire delay.

The Work shall continue and be carried on in accordance with all the provisions of the Contract. The Contract shall remain in full force and effect during the continuance and until the completion and Final Acceptance of the Services or Work covered by the Contract or CWO, unless formally suspended or terminated in accordance with the terms of the Contract. Permitting the Contractor to finish the Work, or any part thereof, after the time fixed for completion or after the date to which the time for completion may have been extended and/or making payments to the Contractor after any such periods shall not constitute a waiver on the part of Metro of any rights under the Contract.

GC-20-G Neither the granting of an extension of time beyond the date fixed for the completion of any part of the Work nor the performance and Acceptance of any part of the Work after the time specified for the completion of the Work shall be deemed to be a waiver by the authority of Metro's right to terminate the Contract or CWO for abandonment or failure to complete within the total time specified or to impose and deduct damages as may be specified.

GC-20-H In all cases that the Contractor either claims or intends to claim a delay, the Contractor shall submit to Metro at the earliest possible date and supplement thereafter as information becomes available:

1. An analysis of the impact of the claimed delay event upon the Contractor's then current Schedule, identifying the affected activities and the actual impacts; and
2. Proposals to minimize the effects of the claimed delay.

GC-21 CHANGES

GC-21-A The term "Change(s)," as used herein, means substitutions, additions, or deletions which result in revisions to the Contract or CWO. Change does not mean work performed by the Contractor to correct defective Work caused by the Contractor's negligent acts, errors or omissions.

GC-21-B Metro may at any time, and from time to time without invalidating the Contract or CWO, make Changes in the Scope of Work. Metro and Contractor will endeavor to reach mutual agreement regarding costs and Schedule associated with the Change; however, Metro reserves the right to direct the Contractor to perform the Changed Work. Such Changes, including any increase or decrease in the amount of the Contractor's compensation and/or the period of performance, shall be incorporated into the Contract or CWO through the issuance of a Contract Amendment or CWO Revision. All of the provisions of the Contract shall apply to Changes. Upon receipt of a Contract Amendment or CWO Revision, approved by Metro, the Contractor shall continue performance of the Scope of Work as modified by the Amendment.

GC-21-C If a Fixed Fee as defined in the Compensation and Payment section is a part of the compensation for the Contract or CWO, it is the agreed intent of the parties

that the Fixed Fee is an amount fixed at the inception of a CWO with respect to the Work planned and Scheduled as set forth in the Scope of Work and is not intended to vary with actual costs for the Work. A Contract Amendment or CWO Revision issued hereunder may, but will not automatically; result in a Change to the Fixed Fee.

GC-21-D Contractor's Cost and Schedule Proposal: The Contractor shall submit a Contractor's Cost and Schedule Proposal (utilizing the Form 60 provided in Compensation and Payments Provisions) to Metro within ten (10) days after receipt of a change request. The proposal shall detail price and scheduling information showing all of the cost and time ramifications of the Changes shown in the request. If any prices or other aspects are conditional, such as orders being made by a certain date or the occurrence of a particular event at a specified time, the Contractor shall identify these conditions in its proposal. The components to be used by the Contractor in preparing the proposal shall be those set forth in the Compensation and Payment Provisions and shall be presented in such a manner that all elements of the proposal can be easily identified and certified upon request. The submittal shall include certified current cost or pricing data as described in the Article entitled AUDITS herein.

GC-21-E Contract Amendment Or CWO Revision:

A Contract Amendment shall be agreed to by the Parties to reflect changes in the Contract terms and/or Scope of Services.

When the Contractor's compensation for a Change and the required adjustments, if any, to the Total Contract Price or CWO Price and/or Schedule have been determined, a Contract Amendment or CWO Revision will be issued containing the following items:

1. The total Contract/CWO adjustments to be made.
2. A statement that it is Metro's intention to treat the items described therein as Changes in the Work.
3. Scheduling requirements, time extensions, prices, and all costs of any nature arising out of each Change and a Certificate of Current Cost or Pricing Data.
4. A statement that the adjustment to the Total Contract Price or CWO Price, if any, includes all amounts to which the Contractor is entitled as a result of the events giving rise to the CWO Revision.

The execution of a Contract Amendment or CWO Revision by both parties shall be deemed to be an agreement to all Changes in Contract terms and/or Scope of Services and costs and time of performance related to each Change. There will be no reservation of rights by either party on a bi-lateral Contract Amendment or CWO Revision.

For all Contract Amendments or CWO Revisions greater than or equal to one-hundred-thousand dollars (\$100,000), an Ethics Declaration must be submitted by the Contractor.

GC-21-F Except as expressly provided herein, no order, statement, or conduct of any person shall be treated as a Change under the Contract or a CWO or entitle the Contractor to any adjustment under the Contract or a CWO.

GC-22 AUDIT SOFTWARE

At the request of Metro, the Contractor, Subcontractors and Suppliers shall allow installation of computer assisted audit techniques (CAAT) software supplied by Metro on its computer systems during the audit of Metro's contract. In lieu of installation of CAAT software on the Contractor's, Subcontractor's or Supplier's Home Office computers, a verified backup copy of its computer systems' database(s) can be supplied. Upon reasonable advance notice, the Authorized Auditors shall have access at all reasonable times to this software, database or verified copy for the purpose of auditing and verifying the Contractor's costs claimed to be due and payable hereunder. Prior to the start of an audit, the CAAT software will be supplied to the Contractor, its Subcontractors and Suppliers to allow for testing and review on its computer system. Once the audit is complete, the software will be removed from the Contractor's, its Subcontractors' and its Suppliers' computer system. The software will be installed permanently at the Program Office in order to assist the Authorized Auditors in the review of the Program Office costs.

GC-23 NOTICE OF INTENT TO CLAIM AND CLAIMS

- A. The Contractor shall give to Metro a written notice of potential claim within five (5) days of any act or event for which it intends to seek adjustment in the Contract/CWO price, terms, or schedule. The written notice shall set forth the basis of the claim and an estimate of any costs involved. The claim shall be filed within 30 days of the act or event and shall be in sufficient detail to allow Metro to evaluate the claim. The Contractor shall also furnish any additional information relating to the claim as Metro may request. Failure of the Contractor to comply with these requirements shall be sufficient cause for denying the Contractor's claim.
- B. Metro shall, within 30 days of the receipt of the claim, render a decision or provide an estimate of when a decision will be made. If no decision is made within 30 days of the filing of the claim, or within any extended period mutually agreed to in writing by the parties, the claim shall be deemed rejected by Metro. The Contractor shall proceed diligently with performance of the Contract/CWO, pending resolution of any claim or appeal or action ensuing under the Contract/CWO.

GC-24 RESOLUTION OF DISPUTES

The Parties shall use their best efforts to resolve disputes under the Contract by submission of the dispute to Metro's Contract Administrator and the Contractor's Contract Administrator. If a dispute cannot be resolved at this administrative level, the Parties may mutually agree to utilize an alternative dispute resolution

(ADR) process such as arbitration, mediation, or other recognized ADR process for settling a dispute.

GC-25 SUSPENSION*

GC-25-A The requirements of this Article are in addition to other audit, inspection, and record keeping requirements specified elsewhere in the Contract.

GC-25-B If Metro notifies Contractor that work on a particular portion of the Project will be suspended for a period to exceed one hundred eighty (180) days, Contractor shall immediately notify Metro that key personnel working on that portion of the work can either:

- (1) Be moved to support another portion of the Program, as approved by Metro, or
- (2) Be released because there is no need for the services of the specific key personnel on the Program

If suspension is less than one hundred eighty (180) days, Contractor and Metro shall agree upon the short-term duties of all affected personnel.

GC-25-C The Contractor shall comply immediately with any written order it receives from Metro suspending the Work and take all reasonable steps to minimize costs allocable to the Work covered by the suspension during the period of suspended Work. The Contractor shall resume performance of the suspended Work upon expiration of the notice of suspension, or upon direction of Metro.

GC-25-D The Contractor shall be allowed an equitable adjustment in the TCP and CWO Price (not to include profit) and/or an extension of the Contract or CWO Time, directly attributable to any suspension and/or to recover reasonable costs incurred during suspension, provided that the Contractor makes a Claim as provided in the Article entitled NOTICE OF INTENT TO CLAIM AND CLAIMS herein. However, no adjustment shall be made under this Article for any suspension, delay or interruption to the extent that Contractor's performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment or an extension of time is provided for or excluded under any other term or condition of the Contract.

GC-25-E Submittal of an RFC by the Contractor for an equitable adjustment of the TCP or CWO Price or the Contract or CWO Time extension shall be filed in compliance with the Article entitled CHANGES herein; and within twenty (20) days after the end of the Work suspension. The provisions of this Article shall only apply if a written order of suspension is issued by Metro.

GC-25-F Metro will make partial payments against costs authorized by Metro and incurred by the Contractor in connection with the suspended portion of the Contract or CWO, so long as the aggregate of such payments does not exceed the authorized value of the Contract or CWO.

GC-26 TERMINATION FOR CONVENIENCE OF METRO*

GC-26-A The performance of the Services or Work under the Contract or a CWO may be terminated at any time, in whole or in part, as determined by Metro in its sole discretion. Such termination will be accomplished by delivery of a Notice of Termination to the Contractor, specifying the extent to which performance of the Services or Work under the Contract or CWO shall be terminated and the date upon which such termination shall become effective.

GC-26-B After receipt of a Notice of Termination, except as otherwise directed by the AUTHORITY, the Contractor shall:

1. Stop Work under the Contract or a CWO on the date and to the extent specified in the Notice of Termination.
2. Place no further orders or Subcontracts for Goods or Work, except as may be necessary for completion of such portions of the Services or Work expressly excluded from the Notice of Termination.
3. Communicate any Notice of Termination to the affected Subcontractors and Suppliers, and any other parties, at any tier.
4. Terminate all orders and Subcontracts that relate to the performance of the Work terminated by the Notice of Termination.
5. Settle outstanding liabilities and Claims arising out of such termination of orders and Subcontracts, with the acceptance of Metro if required (which acceptance shall be final for the purposes of this Article).
6. Assign to Metro in the manner, at the times, and to the extent directed by Metro all of the rights, titles, and interests of the Contractor under the orders and Subcontracts so terminated; in which case Metro will have the right, at its sole discretion, to settle or pay any or all Claims arising out of the termination of such orders and Subcontracts.
7. Transfer title and deliver to Metro in the manner, at the times, and to the extent directed by it:
 - a. Work in process, completed Work, and other Goods procured as a part of, or acquired in connection with, the performance of the Work terminated; and
 - b. The completed or partially completed plans, drawings, information, and other items that would have been required (per the Scope of Services and Scope of Work) to be furnished to Metro if the Contract or a CWO had been completed.
8. Use its best efforts to sell the Goods of the types referred to above in the manner, at the times, to the extent, and at the price(s) directed or authorized by Metro, providing that the:

- a. Contractor is not required to extend credit to any purchaser;
 - b. Contractor may acquire any such Goods under the prescribed conditions; and/or
 - c. Proceeds of any such transfer or disposition are applied or otherwise credited to reduce payments made by Metro to the Contractor under the Contract or CWO.
9. Take any action that may be necessary, or that Metro may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which Metro has or may acquire an interest.
 10. Comply with all other requirements of Metro as may be specified in the Notice of Termination.
 11. Complete performance of that portion of the Work that has not been terminated by the Notice of Termination, as applicable and in accordance with the Contract.

GC-26-C If the termination is for the convenience of Metro, Contractor shall submit a final invoice within 60 days of termination and upon approval by Metro, Metro shall pay Contractor a percentage of the total Contract price based on the percentage of the Work completed prior to the effective date of termination and other costs reasonably incurred by the Contractor to implement the termination.

GC-26-D Upon failure of the Contractor to submit its termination claim within the time specified, Metro will determine the amount due the Contractor, if any, on the basis of information available, and will pay the Contractor the amount so determined. Such payment shall constitute payment in full for the Work performed under the Contract or CWO. Any allowable costs incurred prior to the date of termination shall be handled in accordance with the Compensation and Payment Provisions.

GC-26-E Subject to the provisions of the above Subarticle, the Contractor and Metro may agree upon the total or partial amount to be paid to the Contractor by reason of the total or partial termination of the Work pursuant to this Article. The Contract or CWO will be amended or revised accordingly and the Contractor will be paid the agreed-upon amount. Nothing in the following Subarticle, which deals with the failure to reach agreement on the total amount to be paid to the Contractor, shall be deemed to limit, restrict, or otherwise determine or affect the amount that may be agreed upon pursuant to this Subarticle.

GC-26-F In the event of failure of the Contractor and Metro to agree on the total amount to be paid the Contractor by reason of the termination of Work pursuant to this Article, Metro will pay the Contractor the amounts determined by Metro as follows, exclusive of any amounts agreed upon in accordance with the preceding Subarticle:

1. The Contract or CWO Price allocable to the portion of the Work properly performed by the Contractor as of the date of termination, including overhead, and Fixed Fee or profit, as determined in accordance with the Compensation and Payment Provisions, reduced by any sums previously paid to the Contractor.
2. The cost of settling and paying Claims arising out of the termination of the Work under Subcontracts or orders as specified above, exclusive of the amounts paid or payable on account of Goods delivered or Work furnished by Subcontractors prior to the effective date of the Notice of Termination of Work under the Contract or CWO, which amounts are included in subarticle E of this Article.
3. Profit on the cost of Work performed is included in the amount determined in subarticle E of this Article. However, if the Contractor would have sustained a loss on the entire Contract or CWO had it been completed, the Contractor shall not be entitled to a profit and the settlement will be reduced to reflect the indicated rate of loss.
4. The reasonable cost of preserving and protecting property will also be paid, as well as any other reasonable costs incidental to the termination of the Work under the Contract or a CWO, including those reasonable expenses incurred to determine the amounts due.

GC-26-G Except to the extent that Metro will have otherwise expressly assumed the risk of loss, the fair value (as determined by Metro) of property that is destroyed, lost, stolen, or damaged (so as to become undeliverable to Metro or other buyer as described above) shall be excluded from the amounts paid to the Contractor.

GC-26-H In arriving at the amount due the Contractor under this Article, retention shall be made for the following:

1. The amount of the Claim that Metro may have against the Contractor in connection with the Contract or a CWO; and
2. The agreed upon price for and/or proceeds from the sale of Goods or other items acquired or sold by the Contractor that have not been otherwise recovered by or credited to Metro.

GC-26-I Under such terms and conditions as it may prescribe and at its sole discretion, Metro may make partial payments against costs incurred by the Contractor in connection with the terminated portion of the Contract or a CWO whenever Metro decides that the aggregate of such payments is within the amount to which the Contractor is entitled hereunder. If the total of such payments is in excess of the amount finally agreed-upon or determined to be due under this Article, such excess shall be payable by the Contractor to Metro upon demand, together with interest at a rate equal to that set forth in California Code of Civil Procedure Section 685.010.

GC-26-J The Contractor shall not be entitled to anticipatory or consequential damages as a result of any termination under this Article. Payment to the Contractor in

accordance with this Article shall constitute the Contractor's exclusive remedy for any termination hereunder. The rights and remedies of Metro provided in this Article are in addition to any other rights and remedies provided by law or under the Contract.

GC-26-K Anything contained in the Contract or a CWO to the contrary notwithstanding, a termination under this Article shall not waive any right or claim to damages that Metro may have; Metro may pursue any cause of action that it may have by law or under the Contract.

GC-27 TERMINATION FOR DEFAULT*

GC-27-A Metro may terminate the Contractor's Work, in whole or in part, for default under any of the following circumstances:

- 1) Failure or refusal of the Contractor to perform any obligation required under the Contract or a CWO, or violation of any duty required of the Contractor under the Contract or a CWO.
- 2) Bad faith by the Contractor.
- 3) Violation by the Contractor of an order or requirement of Metro authorized by or within the scope of the Contract or a CWO.
- 4) Abandonment of the Contract or a CWO by the Contractor.
- 5) A filing by or against the Contractor of a petition in bankruptcy, reorganization, insolvency, conservatorship, or similar proceeding.
- 6) Failure of the Contractor to pay any amounts owing to any persons performing any portion of the Work, or the failure of the Contractor to pay its debts incurred on the Contract as they become due, providing that such failure continues for a period of ten (10) working days after written notice to the Contractor by Metro.
- 7) The attachment, levy, execution, or other judicial seizure of any portion of the Contractor's property, or any substantial portion of the other assets of the Contractor, which is not released, expunged, or discharged within a period of ten (10) working days.
- 8) Material failure to comply with any law, ordinance, rule, regulation, or order of a legal authority applicable to the Contractor, the Services, the Work, the Contract, a CWO, the Program or the Project.
- 9) Failure to indemnify any party that the Contractor is obligated to indemnify under the Article entitled LIABILITY AND INDEMNIFICATION herein or elsewhere under the Contract.
- 10) Failure to promptly correct or re-perform rejected Work.
- 11) Conviction of the Contractor or any of its officers, partners, principals, or employees for a violation of any federal, state or local safety law or

regulation, or for a crime arising out of, or in connection with, the Work to be done or payment to be made under the Contract.

GC-27-B If Metro determines the Contractor is in default of the Contract or CWO, Metro will so notify the Contractor by issuing a Cure Notice describing the default. If the Contractor fails to cure the default within five (5) days after receipt of such Cure Notice, or if the default cannot be cured within five (5) days, and the Contractor fails to commence to cure within five (5) days and diligently proceed to cure within the time Metro determines to be necessary, Metro may, by written notice, terminate the Contractor's right to proceed under all or such part of the Contract or CWO as Metro at its sole discretion deems to be in its best interest. Whether or not the Contract or a CWO or any part thereof is terminated, the Contractor shall be liable for any damage to Metro resulting from the Contractor's default.

GC-27-C Upon receipt of a Notice of Termination for default from Metro, the Contractor shall:

- 1) Stop all Work under the Contract or a CWO on the date and to the extent specified in the Notice of Termination.
- 2) Place no further orders or Subcontracts for Goods or Work, except as may be necessary for completion of such portions of the Services or Work expressly excluded from the Notice of Termination.
- 3) Communicate any Notice of Termination to the affected Subcontractors and Suppliers, and any other parties, at any tier.
- 4) Terminate all orders and Subcontracts that relate to the performance of Work terminated by the Notice of Termination.
- 5) Comply with all other requirements of Metro as may be specified in the Notice of Termination.

GC-27-D Upon Metro's termination of the Contract or CWO because of the Contractor's default under the Contract or a CWO, Metro shall have the right to complete the Work by whatever means and methods it deems advisable. Metro will not be required to obtain the lowest prices for completing the Work, but shall make such expenditures that, in Metro's sole judgment, best accomplish such completion.

GC-27-E If the termination is due to the failure of the Contractor to fulfill its contractual obligations, Metro may take over the Work, and complete the Work by contract or otherwise. In such case, the Contractor shall be liable to Metro for any reasonable costs or damages occasioned to Metro thereby. The expense of completing the Work, or any other costs or damages otherwise resulting from failure of the Contractor to fulfill its obligations, will be charged to the Contractor and will be deducted by Metro out of such payments as may be due or may at any time thereafter become due to Metro. If such costs and expenses are in excess of the sum which otherwise would have been payable to the Contractor, then the Contractor shall promptly pay the amount of such excess to Metro upon notice of the excess so due.

GC-27-F If the Contract or CWO is terminated as specified in this Article, Metro may require that the Contractor transfer title to and deliver the following items to Metro as directed: any Goods, fixtures, plans, drawings, information, reports, estimates, Contract or CWO rights and other items that the Contractor has specifically produced or acquired for the terminated portion of the Contract or a CWO and would have been required to be furnished to Metro if the Contract or a CWO had been completed. The Contractor also shall, at its sole expense, protect and preserve property in its possession in which Metro has an interest.

GC-27-G If, after the notice of termination for failure to fulfill Contract obligations, it is determined that the Contractor has not so failed, the termination shall be deemed to have been effected for the convenience of Metro. In such event, adjustment shall be made as provided in Article entitled TERMINATION FOR CONVENIENCE herein.

The Contractor shall not be entitled to anticipatory or consequential damages as a result of any termination under this Article. Payment to the Contractor in accordance with this Article shall constitute the Contractor's exclusive remedy for any termination hereunder. The rights and remedies of Metro provided in this Article are in addition to any other rights and remedies provided by law or under the Contract.

GC-28 ASSIGNMENT*

GC-28-A The Contractor shall not assign, transfer, convey, or otherwise dispose of the Contract or a CWO (or the right, title, or interest in it or any part of it) without the prior written consent and endorsement of Metro, which consent shall not be unreasonably withheld.

GC-28-B No right under the Contract shall be asserted against Metro, in law or in equity, by reason of any assignment of the Contract, or any part thereof, unless authorized by Metro as specified in this Article.

GC-28-C Any assignment of proceeds of the Contract shall be subject to all proper setoffs and withholdings in favor of Metro and to all deductions specified in the Contract or CWO. All monies withheld, whether assigned or not, shall be subject to being used by Metro for completion of the Work, pursuant to the terms of the Contract. In the event that Metro consents to such assignment of monies, written notice thereof shall be given by the Contractor to Metro at least ten (10) days before payment is due.

GC-29 ENVIRONMENTAL COMPLIANCE

GC-29-A The Contractor shall include the requirements of the following Subarticles in every Subcontract that is more than one hundred thousand dollars (\$100,000) and shall take such action as Metro directs to enforce these requirements.

GC-29-B The Contractor shall comply with all air, water, and noise pollution provisions set forth in the Scope of Services or Scope of Work.

GC-29-C Air Quality Control

1. The Contractor shall comply with all applicable standards, orders, and requirements issued under the Clean Air Act (42 USC § 7401); all applicable standards of the State of California; and all clarifications, mitigation measures, and any other requirements approved by Metro in accordance with state and federal laws.
2. The Contractor shall comply with all rules, regulations, and ordinances of the South Coast Air Quality Management District (SCAQMD) and statutes of the State that apply to any Work performed pursuant to the Contract or CWO, including any air quality control rules, regulations, ordinances, and statutes specified in Section 11017 of the California Government Code. Contractor, Subcontractors, and Suppliers shall submit evidence to Metro that the governing air quality control criteria are being met; such evidence will be retained by Metro.
3. In the absence of applicable air quality control rules, regulations, ordinances, or statutes governing solvents, including but not limited to the solvent portions of paints, thinners, curing compounds, and liquid asphalt used on the Contract or CWO, the Contractor shall comply with the applicable material requirements of the SCAQMD. Containers of paints, thinner, curing compound, or liquid asphalt shall be labeled to indicate that the contents fully comply with said requirements.
4. The Contractor shall comply with California state law regarding pollution controls in purchasing new motor vehicles with Project funds.
5. Material to be disposed of shall not be burned.

GC-29-D Water Quality:

The Contractor shall comply with all applicable standards, orders, and requirements issued under the Clean Water Act (33 USC § 1251); all applicable water standards of the State of California; and all clarifications, mitigation measures, and any other requirements approved by Metro in accordance with state and federal laws.

GC-29-E Environmental Protection Agency Regulations

1. The Contractor shall comply with all applicable regulations (40 CFR Part 15) of the Environmental Protection Agency (EPA).
2. The Contractor shall not use any facility in the performance of the Contract or CWO that is listed on the EPA List of Violating Facilities, unless and until the EPA eliminates said name of such facility from said listing. The Contractor shall promptly notify Metro of the receipt of any communication from the Director, Office of Federal Activities, EPA (or any successor agency), indicating that a facility to be used by the Contractor is under consideration for listing on the EPA List of Violating Facilities. The Contractor shall also

report violations to Metro, to the FTA, and to the EPA Assistant Administrator for Enforcement.

GC-29-F Energy Conservation:

The Contractor shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6321). Refer to the Scope of Services or the Scope of Work for energy conservation measures.

GC-30 HISTORICAL, ARCHAEOLOGICAL, PALEONTOLOGICAL, AND SCIENTIFIC DISCOVERIES*

All things of historical, archaeological, paleontological, or scientific interest encountered by the Contractor during performance of the Work shall be reported immediately to Metro. Work in the vicinity of the discovery shall be halted in order to preserve and protect it until its significance can be determined by Metro. Metro will issue instructions to the Contractor with respect to the disposition of the discovery.

GC-31 THE CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC*

1. Metro shall review and approve all Metro related copy proposed to be used by the Contractor for advertising or public relations purposes prior to publication. The Contractor shall not allow Metro related copy to be published in its advertisements and public relations programs prior to receiving such approval. The Contractor shall ensure that all published information is factual and that it does not in any way imply that Metro endorses the Contractor's firm, service, and/or product.
2. The Contractor shall refer all inquiries from the news media to Metro, and shall comply with the procedures of Metro's Public Affairs staff regarding statements to the media relating to the Contract or the Work.
3. If the Contractor receives a complaint from a citizen or the community, the Contractor shall inform Metro about what action was taken to alleviate the situation.
4. The Contractor shall not publish information or technical data acquired or generated by the Contractor in performing the Contract until such time as such information or technical data is released in published reports by Metro or otherwise authorized by Metro.

GC-32 WHISTLEBLOWER REQUIREMENTS*

- GC-32-A** The Contractor shall not adopt any rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee believes the information discloses violation or

noncompliance with a state or federal regulation; nor shall an employer retaliate against an employee for taking such actions as set forth in the California Labor Code Sections 1101 et. seq.

GC-32-B The Contractor shall post and maintain all Metro Phone Hotline literature provided by Metro ("Hotline Literature") at place(s) of performance during the term of the Contract. All Hotline Literature is to be posted in prominent locations that are highly visible and accessible to Contractor's employees. Contractor shall not hinder or coerce its employees from using Metro Phone Hotline to voice ideas, suggestions, or concerns relative to the performance of any Metro contract. The Contractor shall provide access to Metro representatives for the purpose of verifying Contractor's adherence to this section. In the event Metro inspection finds the Contractor has failed to comply herewith, the Contractor shall correct such failures including, but not limited to, replacing Hotline Literature and sponsoring training sessions, with Metro representatives, on the use of Metro Phone Hotline.

GC-33 COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT*

The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act in performing the Work under the Contract.

GC-34 SEVERABILITY*

In the event any Article, section, Subarticle, paragraph, sentence, clause, or phrase contained in the Contract or CWO shall be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication shall in no manner affect the other Articles, sections, Subarticles, paragraphs, sentences, clauses, or phrases of the Contract or CWO, which shall remain in full force and effect as if the Article, section, Subarticle, paragraph, sentence, clause, or phrase declared, determined, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, was not originally contained in the Contract or CWO.

GC-35 GOVERNING LAW*

The Contract has been negotiated between Metro and the Contractor and shall be subject to the laws of the State of California.

By entering into the Contract, the Contractor consents and submits to the jurisdiction of the Courts of the State of California, County of Los Angeles, over any action at law, suit in equity, and/or other proceeding that may arise out of the Contract.

GC-36 PUBLIC RECORDS ACT*

GC-36-A All records, documents, drawings, plans, specifications and other information relating to conduct of Metro's business, including information submitted by the Contractor shall become the exclusive property of Metro and shall be deemed public records. Said materials are subject to the provisions of the California

Public Records Act (Government Code sections 6250 et. seq.). Metro's use and disclosure of its records are governed by this Act. Metro will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.

GC-36-B In the event of litigation concerning the disclosure of any information submitted by the submitting parties, Metro's sole involvement will be as a stakeholder, retaining the information until otherwise ordered by a court. The submitting party, at its sole expense and risk, shall be responsible for any and all fees for prosecuting or defending any action concerning the information, and shall indemnify and hold Metro harmless from all costs and expenses including attorneys' fees, in connection with any such action.

GC-37 LIABILITY AND INDEMNIFICATION*

GC-37-A Indemnification

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless Metro, its subsidiaries, and any of their respective members, directors, officers, employees and agents, from and against any and all Claims, actions, demands, costs, judgments, liens, penalties, liabilities, damages, losses, and expenses, including but not limited to workers compensation suits, breaches of contract and any fees of accountants, attorneys or other professionals arising out of, or resulting from any act, omission, fault or negligence of the Contractor or any of its officers, Authorized Representative, employees, Subcontractors or Suppliers, or any person or organization directly or indirectly employed by any of them, in connection with or relating to, or claimed to be in connection with or relating to, the Services, the Work, the Contract, or the Program, including but not limited to any costs or liability on account of:

1. Personal injury to or death of any person (including employees of the parties to be indemnified) or for damage to or loss of use of property (including property of Metro); and
2. Metro's reasonable reliance upon the use of data or other information provided or delivered by the Contractor pursuant to the Contract or CWO.

The indemnification specified in this Article shall apply even in the event of the act, omission, fault or negligence whether active or passive, of the party or parties to be indemnified, but shall not apply to Claims, actions, demands, costs, judgments, liens, penalties, liabilities, damages, losses, and expenses arising from the willful misconduct of, or defects in design furnished by, the party or parties to be indemnified. Metro shall not be responsible for any negligence, willful misconduct or defects in design caused and/or furnished by the Contractor.

The indemnification specified in this Article shall survive termination or closeout of the Contract, CWO or Final Payment thereunder and is in addition to any other rights or remedies that Metro may have under the law or under the Contract. In the event of any Claim or demand made against any party that is entitled to be indemnified hereunder, Metro may at its sole discretion reserve, retain, and/or apply any monies due the Contractor under the Contract or CWO, for the

purpose of resolving such Claims; provided, however, that Metro may release such funds if the Contractor gives Metro reasonable assurance that the Metro's interests will be protected. Metro shall, at its sole discretion, determine whether such assurance is reasonable.

Claims against the indemnified parties by any employee of the Contractor, its Subcontractors, Suppliers, anyone directly or indirectly employed by any of them, and/or anyone for whose acts any of them may be liable shall not in any way limit the Contractor's indemnification obligation as set forth above, including the amount and/or type of damages, compensation, and/or benefits payable by or for the Contractor or its Subcontractors under workers' compensation acts, disability benefit acts, and/or other employee benefit acts and/or insurances.

GC-37-B Third Party Liability

Nothing contained in the Contract or CWO is intended to or shall have the effect of creating any rights in any third party against Metro. The inclusion of the Contract or any part thereof in any other document shall not be deemed to be creating or incorporating any obligation, duty, or liability on the part of Metro. The Contractor shall indemnify the AUTHORITY in accordance with the provisions of this Article against any claim made by any third party claiming rights under the Contract.

GC-37-C Joint Severable Liability

If the Contractor is a joint venture or partnership, each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of the Contractor that are assumed under or arise out of the Contract. Each of such venturers or partners waives notice of the breach or non-performance of any undertaking or obligation of the Contractor contained in, resulting from or assumed under the Contract, and the failure to give any such notice shall not affect or impair such venturer's or partner's joint and several liability hereunder.

GC-37-D Professional Liability

The Contractor shall be responsible for the professional quality, technical accuracy, completeness and coordination of all Work furnished by the Contractor (including the Work performed by Subcontractors on the basis provided herein) under the Contract or CWO. In addition to any other remedies provided Metro under the Contract, CWO or at law, the Contractor or Subcontractor shall correct or revise at no additional cost or fee to Metro any defective Work caused by the Contractor's or Subcontractor's negligent acts, errors or omissions in the performance of the Work hereunder. Neither Metro's inspection of, nor failure to inspect, review, accept, make payment for, any of the Work required under the Contract shall be construed to relieve the Contractor or Subcontractor of its obligations and responsibilities under the Contract or CWO for any negligent acts, errors and omissions in its performance of Work hereunder, nor operate as a waiver of any of Metro's rights under the Contract or of any cause of action arising out of the performance of the Contract. The Contractor or Subcontractor shall be and remain liable to Metro in accordance with applicable law for all damages to Metro caused by any failure of the Contractor or Subcontractor to

comply with the terms and conditions of the Contract or CWO, or by the Contractor's or Subcontractor's negligent acts or errors or omissions in the performance of the Contract or CWO. With respect to the performance of Work by Subcontractors, the Contractor shall use its professional judgement, care and prudence in approving and accepting such Work but shall also take all action necessary to ensure correctness/accuracy of Subcontractors work. The Contractor warrants that the Work performed hereunder is of high professional quality and has been performed in full conformity with all codes, rules, regulations and statutory requirements.

In the event that the Contractor fails to perform its obligations under this Article (or under any other warranty or guarantee under the Contract) within the specified time and to the reasonable satisfaction of Metro, Metro shall have the right to correct and/or cause to be re-performed any defective or non-conforming Work and any Work of third parties damaged by such defective or non-conforming Work or the correction or re-performance thereof. The Contractor shall be obligated to fully reimburse Metro upon demand for any expenses incurred hereunder.

GC-37-E Investigation Of Potential Negligence

Contractor shall pay for all costs associated with its investigation of any negligence alleged against it under the terms and conditions of the Contract, unless there is a finding that the Contractor was not negligent; in which case Metro shall only pay for the reasonable cost of the Contractor's staff time to investigate the alleged negligence. Where it has been determined Contractor was in fact negligent, Contractor shall be responsible for and charged with Metro's staff time to investigate or review any alleged negligence by the Contractor, or any construction change order request, request for information, or claim related thereto, which shall not include third party costs.

The Contractor shall be a participant in the review of any construction change order request, request for information, or claim which alleges or involves potential Contractor negligence, and shall not be responsible for or charged with any claims for delay by the Construction Manager or any construction Contractor unless the Contractor has been given a reasonable opportunity to participate in the review.

GC-37-F The Contractor acknowledges that the rights and remedies of the AUTHORITY specified in this Article are in addition to and do not limit any rights or remedies of Metro, afforded by the Contract or by law.

GC-37-G Warranty

Contractor Warranties: Contractor warrants that: it is aware of and understands the hazards which are presented to persons, property and the environment in the performing of transportation, storage, remediation and disposal Work as described within the Scope of Work of the Contract or CWO. It will transport, store, remediate and dispose of such materials in full compliance with all applicable governmental laws, regulations and orders. If the Scope of Work requires off-site storage or disposal, the selected storage and disposal facilities

described in the work plan are now appropriately licensed and permitted to store and dispose of the waste, materials or hazardous substances detailed within the work plan. In the event the storage or disposal facility loses its permitted status hereafter during the terms of the Contract or CWO, Contractor will promptly notify Metro of such loss.

GC-37-H Indemnification - Environmental Impairment Losses

Environmental Impairment Losses (in addition to the indemnification provisions of the Contract). It is agreed that the Contractor, at the Contractor's sole cost and expense, shall indemnify and hold harmless Metro from and against the full amount of any and all present and future Environmental Impairment Losses that may arise out of the negligent performance of the activities or Work provided by the Contractor under the Contract or CWO. The term "Environmental Impairment Losses" shall mean any and all loss, liability, expense or damage (including, without limitation, all attorneys' fees and costs and all other professional or contractors' fees and costs), incurred by Metro under federal, state or local environmental law as a result of the activities conducted by the Contractor under the Contract or CWO.

GC-37-I Environmental Indemnity

In addition to any other indemnification provisions of the Contract, Contractor shall indemnify, defend and hold harmless Metro, its subsidiaries, and all of their officials, officers, agents, employees, and contractors, from and against any and all present and future liability, loss, cost, damage, and expense of every kind and nature, including, but not limited to, clean up costs, releases or substances resulting from acts of Contractor, failure to recognize or report the existence, quantity, or location of substances, remedial work required under any federal, state, or local law, regulation, or ordinance, contractors' fees, and attorneys' fees, resulting, directly or indirectly, from any negligent act or omission of Contractor, or any employee, Subcontractor, or Supplier of t Contractor, in the performance or failure to perform any work carried out, wholly or in part, pursuant to the Contract or CWO.

GC-38 RIGHTS IN TECHNICAL DATA, PATENTS AND COPYRIGHTS*

GC-38-A All documents and materials prepared or developed by the Contractor and its subcontractors pursuant to the Contract shall become the property of Metro without restriction or limitation on their use and shall be made available upon request, to Metro at any time. Original copies of such shall be delivered to Metro upon completion of the Work or termination of the Work. The Contractor shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the written approval of Metro.

GC-38-B Metro shall have the right to use, duplicate, modify or disclose the technical data and the information conveyed therein, in whole or in part, in any manner whatsoever, and to have or permit others to do so except as limited by the Article entitled PUBLIC RECORDS ACT herein.

GC-38-C The Contractor shall agree to grant to Metro and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free license to publish, translate, reproduce, deliver, and use as they deem fit all technical data covered by copyright supplied for the Contract. No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for Metro to use such in the manner herein described.

GC-38-D The Contractor warrants that the Work and Goods used in providing the Work shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. If a suit or proceeding based on a claimed infringement of a patent or copyright is brought against Metro, the Contractor shall, at its own expense, defend or settle any such suit or proceeding if authorized to do so in writing by Metro, and indemnify and hold harmless Metro, its subsidiaries, agents and employees from all liability, damages, costs, and expenses associated therewith, including, but not limited to, defense costs and attorneys' fees.

When use of these Goods and/or processes is judged to be an infringement and such use is banned, the Contractor, at its own expense, shall, with the concurrence of Metro, do one of the following:

1. Secure for Metro the right to continue using said Goods and/or processes, by suspension of the injunction or by procuring a license(s);
2. Replace said Goods and/or processes, with non-infringing Goods and/or processes;
3. Modify said Goods and/or processes, so that they become non-infringing; or
4. Remove said Goods and/or processes, and refund the sum paid therefor without prejudice to any other rights of Metro.

The preceding subarticles shall not apply to Goods and/or processes furnished to the Contractor by Metro.

For Metro provided software, Metro, at its own cost, shall obtain any required license agreement(s). Metro shall indemnify, hold harmless and defend the Contractor from and against any and all Liability, damages, costs, and expenses, including but not limited to, defense costs and attorneys' fees, for or by any reason of any actual or alleged infringement of any United States patent or copyright, or any actual or alleged trade secret disclosure, arising from or related to the operation and utilization of Metro provided software, except for the unauthorized use of Metro provided software by the Contractor, its Director, Officers, employees, agents or representatives.

GC-39 SOFTWARE LICENSING AGREEMENT AND PROVISIONS FOR USE*

GC-39-A The Terms Used In This Article Are Defined As Follows:

1. Software: The computer programs and products required to be developed and delivered by the Contractor to Metro under the Contract, in object code

(but excludes commercial software developed at private expense and not in the public domain).

2. Source Code Materials: A human-readable copy of the Software and related materials and documentation generated in preparing the Software, including programmer notes, flow charts, logic diagrams, and listings.
3. Documentation: Systems and user manuals sufficient to enable a person skilled in the applicable art to operate, maintain, and support the Software for its intended purposes.

GC-39-B The Contractor shall deliver to Metro the Software, Source Code Materials, and Documentation, in such tape, disk, or hardcopy format as Metro may designate.

GC-39-C The Contractor shall retain ownership of the Software, Source Code Materials, and Documentation with the right to exploit the same, subject to Metro's rights as herein provided. Metro shall place such copyright notices affirming the Contractor's ownership rights as the Contractor may reasonably require on all materials licensed hereunder which are reproduced by Metro.

GC-39-D The Contractor hereby grants to Metro a royalty-free, paid-up, non-exclusive license, in perpetuity, to use duplicate, and disclose the Software, Source Code Materials, and Documentation, and to make modifications of and enhancements to the Software, and permit others (who sign standard nondisclosure agreements) to do the same, but only for governmental purposes and not for any commercial purposes.

GC-39-E Metro shall hold the Software, Source Code Materials, and Documentation in confidence, shall use and disclose them only as expressly authorized herein or as required by law and only to its employees, agents or sublicensees to whom disclosure is necessary or appropriate for the performance and exercise of its rights hereunder, and shall take reasonable steps to ensure that unauthorized persons will have no access to them.

GC-39-F The Contractor warrants that the Software will perform according to the specifications set forth in the Contract, that it is owner of the Software, Source Code Materials, and Documentation that it has the right to convey and grant the license herein granted to Metro, and that Metro's use thereof as herein contemplated will not infringe any third party's proprietary rights in the United States. The foregoing warranties shall not apply to the extent the Software is modified by Metro.

GC-39-G Upon Metro's request the Contractor shall generate modifications of and enhancements to the Software not required by the Contract, at the Contractor's rates charged for comparable Work to its most favored customers.

GC-40 AGENT TO ACCEPT SERVICE

The Contractor shall maintain within Los Angeles County a duly authorized agent as identified in the Article entitled NOTICE AND SERVICE THEREOF of the Special Provisions to accept service of legal process on its behalf, and shall keep

Metro advised of such authorized agent name and address during the duration of the Contract and for three (3) years after Final Payment, or as long as the Contractor has warranty obligations under the Article entitled WARRANTY herein, whichever period terminates later. In the event that no such duly authorized agent is on file with Metro, the Contractor agrees that the Secretary of State of the State of California shall be the Contractor's authorized agent for service of legal process.

GC-41 CONFLICT OF INTEREST*

- GC-41-A** Contractor warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for Contractor, to solicit or secure the Contract and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of the Contract. For breach of this warranty, or violation of any other prohibition in this Article, Metro shall have the right to terminate the Contract for failure of Contractor to fulfill its Contract obligations.
- GC-41-B** Contractor agrees that, for the term of the Contract, no member, officer, or employee of Metro, or of a local public body during their employment and for one (1) year thereafter, shall have any interest, direct or indirect, in the Contract, or to any benefit arising thereof as prohibited by Government Code § 1090 and 87100.
- GC-41-C** The employment by Contractor of personnel on the payroll of Metro for the performance of Work under the Contract will not be permitted, even though such employment may be outside of the employee's regular working hours or on Saturdays, Sundays, holidays, or vacation time. The employment by the Contractor of personnel who have been on Metro payroll within one (1) year prior to the date of Contract award, where such employment is caused by and/or dependent upon Contractor securing the Contract or a related contract with Metro, is also prohibited.
- GC-41-D** Neither the Contractor nor its employees nor its subcontractors or their employees shall give or offer to give any campaign contribution to any member of Metro in violation of Government Code Section 84308.
- GC-41-E** The Contractor shall not be permitted to participate in any capacity in contracts, subcontracts or proposals (solicited or unsolicited) which may arise from its performance under the Contract and from any solicitations relating to the Project.

GC-42 COVENANT AGAINST CONTINGENT FEES*

- GC-42-A** The Contractor warrants that no person or Authorized Representative has been specifically employed or retained to solicit or obtain the Contract in exchange for a contingent fee, except a bona fide employee or Agent. A breach or violation of this warranty shall be considered a breach of Contract pursuant to the Article entitled TERMINATION FOR DEFAULT herein. In addition to any rights and

remedies otherwise provided for in the Contractor by law, Metro may deduct from the TCP or consideration, or otherwise recover, the full amount of the contingent fee.

GC-42-B "Bona fide Agent", as used in this Article, means an established commercial or selling entity that is maintained by the Contractor for the sole purpose of securing business and that neither exerts nor proposes to exert improper influence to solicit or obtain Metro contract(s) nor holds itself out as being able to obtain any Metro contract(s) through improper influence.

GC-42-C "Bona fide employee", as used in this Article, means a person who is employed by the Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance and who neither exerts nor proposes to exert improper influence to solicit or obtain Metro contract(s) nor holds itself out as being able to obtain any Metro contract(s) through improper influence.

GC-42-D "Contingent fee", as used in this Article, means any commission, percentage, or other sum that is payable only upon success in securing an Metro contract.

GC-42-E "Improper influence," as used in this Article, means any influence that induces or tends to induce an Metro employee, officer, Contractor, Subcontractor, Authorized Representative, or Consultant to give consideration or to act regarding an Metro Contract on any basis other than the merits of the matter.

GC-43 NO WAIVER

GC-43-A Failure of Metro to enforce at any time, or from time to time, any provision of the Contract shall not be construed as a waiver thereof.

No waiver by Metro of any breach of any provision of the Contract shall constitute a waiver of any other breach or of such provision.

Failure or delay by Metro to insist upon strict performance of any terms or conditions of the Contract, or to exercise any rights or remedies provided herein by law, shall not be deemed a waiver of any right of Metro to insist upon strict performance of the Contractor's obligations set forth in the Contract, or any of its rights or remedies as to any prior or subsequent default hereunder.

GC-44 CONFIDENTIALITY*

Contractor agrees that for and during the entire term of the Contract, any information, data, figures, records, findings and the like received or generated by the Contractor in the performance of the Contract, shall be considered and kept as the private and privileged records of Metro and will not be divulged to any person, firm, corporation, or other entity except on the direct authorization of Metro. Further, upon termination of the Contract for any cause, Contractor agrees that it will continue to treat as private and privileged any information, data, figures, records and the like, and will not release any such information to any person, firm, corporation or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Metro.

The Contractor shall not publish information or technical data acquired or generated by the Contractor in performing the Contract until such time as such information or technical data is released in published reports by Metro.

GC-45 SAFETY AND LOSS PREVENTION *

This Article is to be construed in its broadest sense for the protection of persons and property by the Contractor and no action or omission by METRO, the Contracting Officer, any Authorized Representative or any other person shall relieve the Contractor of any of its obligations and duties hereunder.

A. METRO's Safety Principles

1. Safety is a 24/7 priority
2. Safety is everyone's responsibility
3. Accidents and injuries are preventable
4. Working safely is a condition of employment
5. Training is essential for good safety performance
6. Management is accountable for safety

B. Contractor Responsibilities

The Contractor is responsible for:

1. Complying with all applicable safety Laws
2. Enforcing Worksite safety practices; and
3. The discovery, determination and correction of any unsafe conditions related to the Contractor's performance of the Work or Goods supplied by the Contractor on METRO property.
4. The Contractor shall cooperate and coordinate with METRO and with other METRO Contractors on safety matters and shall promptly comply with any specific safety instructions or directions given to the Contractor by METRO.

C. Safety Practices

1. The Contractor shall inform its personnel of METRO safety practices and the requirements of METRO's safety program identified in [METRO Safety Manual For Other Than Major Construction](#).
2. If any of the Contractor's personnel are required to visit any Worksites, the Contractor shall furnish suitable safety equipment and enforce the use of such equipment by those personnel. The Contractor shall cooperate and coordinate with METRO and with other METRO Contractors on safety matters and shall promptly comply with any specific safety instructions or directions given to the Contractor by METRO.

GC-46**ENGLISH REQUIREMENTS ***

At all times, all Contractor personnel on site must have sufficient knowledge of the English language to comprehend safety related directions and requirements. At all times the Contractor shall have a lead representative on site who has sufficient comprehension of the English language to read, write, speak and understand all job related directions and discussions.

End Of General Conditions (Services)

REGULATORY REQUIREMENTS

RR-01 ADMINISTRATIVE CODE *

A. Applicability

This Article applies to all contracts.

B. Metro Administrative Code

Contractor warrants and represents that it has read and understands Title 4, Procurement, and Title 5, Ethics, of the [Metro Administrative Code](http://www.metro.net/images/MTA_Administrative_Code_Enactment.pdf) (hereinafter "Administrative Code" - available at [www.metro.net/images/MTA Administrative Code Enactment.pdf](http://www.metro.net/images/MTA_Administrative_Code_Enactment.pdf)), and will comply with each and every one of those requirements in accordance with their terms to the extent that they are applicable to contractors doing business with Metro. All definitions used in the Administrative Code are hereby incorporated herein as though fully set forth.

Without reducing or affecting its obligation to comply with any and all provision of the Administrative Code, as applicable, Contractor specifically warrants, represents and covenants that it will:

1. Comply with:
 - a. Chapter 5-20, Contractor Code of Conduct;
 - b. Chapter 5-25, Lobbying the Metro; and
 - c. Chapter 5-35, Metro Conflict of Interest Code, and
2. Not induce, attempt to induce, or solicit:
 - a. Board members to violate Chapter 5-10;
 - b. Metro employees to violate Chapter 5-15;
 - c. Metro Financial employees to violate Chapter 5-30: or
 - d. Either Board members, Metro employees or Metro Financial employees to violate any other provision of the Administrative Code.

C. Compliance with §§1090 et. seq. and §§87100 et. seq. of the California Government Code

Contractor shall comply with all applicable provisions of §§1090 et. seq. and §§87100 et. seq. of the California Government Code. Without reducing or affecting its obligation to comply with any and all of said provisions, Contractor specifically covenants:

1. Contractor shall not cause or permit any member, officer, or employee of Metro to have any financial interest in the Contract;
2. Contractor shall not enter into any Subcontract involving services or property with a person or business prohibited from transacting such business with Metro;
3. Contractor warrants and represents that to its knowledge no Board member, officer, or employee of Metro has any interest, whether contractual, non-contractual, financial or otherwise, in this Contract, or in the business or any other contract or transaction of the Contractor or any Subcontractor and that if any such interest comes to Contractor's knowledge at any time, Contractor shall make a full and complete disclosure of all such information in writing to Metro.

D. Campaign Contributions

Neither Contractor nor its Agents shall give or offer to give any campaign contribution to any member of Metro's Board of Directors in violation of the California Government Code §§84300 et seq or of the Administrative Code. Contractor shall submit a Certification of Campaign Contributions with all COs of two hundred thousand dollars (\$200,000) or more.

RR-02 DISCRIMINATION *

A. Applicability

This Article applies to all contracts.

- B.** In connection with the performance of Work provided for under this Contract, Contractor agrees that it will not, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, medical condition, marital status, sex, sexual orientation, or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal, State or local laws.

RR-03 WHISTLEBLOWER REQUIREMENTS *

A. Applicability

This Article applies to all contracts.

- B.** Contractor shall not adopt any rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee believes the information discloses violation or noncompliance with a state or Federal regulation; nor shall Contractor retaliate against an employee for taking such actions as set forth in the California Labor Code §1101 et. seq.

RR-04 PUBLIC RECORDS ACT *

A. Applicability

This Article applies to all contracts.

- B.** Except as otherwise provided herein, all records, documents, drawings, plans, specifications, and all other information relating to the conduct of Metro's business, including all information and documents submitted by Contractor ("**Records**"), shall become the exclusive property of Metro and shall be deemed public records. Said Records are subject to the provisions of the California Public Records Act (Government Code §6250 et. seq.). Metro's use and disclosure of its records are governed by this Act. Metro will use its best efforts to inform the Contractor of any request for any financial records or documents marked "Trade Secret", "Confidential" or "Proprietary" provided by Contractor to Metro. Metro will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.
- C.** In the event of litigation concerning the disclosure of any Records, Metro's sole involvement will be as a stakeholder, retaining the Records until otherwise ordered by a court. The submitting party, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the Records and shall indemnify and hold Metro harmless from all costs and expenses including attorney's fees in connection with any such action.

RR-05 ACCESS TO RECORDS

A. Applicability

This Article applies to all federally funded contracts.

- B.** Contractor agrees to provide Metro, 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 the FTA's authorized representatives, including any FTA Project Management Oversight 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.
- C.** If this Contract is for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) and was entered in to through other than competitive bidding, the Contractor shall make records related to this Contract available to Metro, 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. Contractor shall permit any of the foregoing parties to reproduce without any cost by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- E. Contractor shall 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 Metro, 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.

RR-06

FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES*

A. Applicability

This Article applies to all federally funded contracts.

- B. This Contract includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003 (including any changes), is hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Metro requests which would cause Metro to be in violation of the FTA terms and conditions.

This Contract is subject to a financial assistance agreement between Metro and the Federal Transit Administration of the US Department of Transportation and all laws, regulations, guidelines, and provisions of the financial assistance agreement apply to this Contract and are incorporated by reference as if fully set forth herein.

- C. Contractor shall at all times comply with all applicable federal laws and regulations, including without limitation FTA regulations, policies, procedures and directives, including those listed directly or by reference in Applicable Grant Agreements between Metro and FTA, as they may be amended or promulgated from time to time during the term of this Contract collectively "Federal Requirements". These Federal Requirements may change and the changed Federal Requirements will apply to this Contract as required unless the Federal Government determines otherwise. Contractor's failure to so comply with the Federal Requirements shall constitute a material breach of this Contract.

RR-07 ENERGY CONSERVATION REQUIREMENTS

A. Applicability

This Article applies to all federally funded contracts.

- B.** Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 USC §6321 et seq.

RR-08 CIVIL RIGHTS REQUIREMENTS *

A. Applicability

This Article applies to all federally funded contracts.

- B.** 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, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

C. Equal Employment Opportunity

- (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, Contractor shall 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 activities undertaken in the course of the Contract. Contractor shall 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, Contractor shall 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, Contractor shall refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor shall 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, Contractor shall 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, Contractor shall comply with any implementing requirements FTA may issue.

RR-09 NO GOVERNMENT OBLIGATION TO THIRD PARTIES *

A. Applicability

This Article applies to all federally funded contracts.

- B.** Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award this 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 Metro, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from this Contract.

Contractor shall include this Article in each Subcontract and shall not modify the Article, except to identify the Subcontractor who will be subject to its provisions.

RR-10 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS *

A. Applicability

This Article applies to all federally funded contracts.

- B.** 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, shall apply to actions pertaining to this Contract. Upon execution of this Contract, 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 this Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, 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 Contractor to the extent the Federal Government deems appropriate.

- C. Contractor also acknowledges that this Contract is 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 and if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate.
- D. Contractor shall include this Article in each subcontract financed in whole or in part with Federal assistance provided by FTA. Contractor shall not modify the Article, except to identify the Subcontractor who will be subject to the provisions.

RR-11 SUSPENSION AND DEBARMENT*

A. Applicability

This article applies to federally funded contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services.

- B. This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, Contractor shall 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.

Contractor shall comply with 49 CFR 29, Subpart C and shall include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

- C. By entering into this Contract, Contractor certifies that it shall comply with the requirements of 49 CFR 29, Subpart C throughout the period of this Contract.

This certification is a material representation of fact relied upon by Metro. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to Metro, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment .

RR-12 RECYCLED PRODUCTS

A. Applicability

This Article applies to federally funded operations/management, construction, or materials & supplies contracts for items designated by the Environmental Protection Agency, when procuring \$10,000 or more per year.

- B. To the extent practicable and economically feasible, a competitive preference shall be given for products and services that conserve natural resources and protect the environment and are energy efficient.

RR-13 CLEAN WATER AND CLEAN AIR REQUIREMENTS*

A. Applicability

This Article applies to all federally funded contracts over \$100,000.

B. CLEAN WATER REQUIREMENTS

Contractor shall 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., and all applicable clean water standards of the State of California and any state or local agency having jurisdiction. Contractor shall report each violation to Metro. Metro will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office, and all other agencies having jurisdiction.

C. CLEAN AIR

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and all applicable Clean Air Standards of the State of California or any state or local agency having jurisdiction. Contractor shall report each violation to Metro. Metro will, in turn, report each violation as required to FTA, the appropriate EPA Regional Office and all other agencies having jurisdiction.

RR-14 COMPLIANCE WITH FEDERAL LOBBYING POLICY *

A. Applicability

The following Article applies to federally funded contracts over \$100,000.

- B. The Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, requires that Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, attached hereto as the certification entitled, "Certification of Compliance with Federal Lobbying Requirements." As set forth in the certifications, each tier of subcontractors shall certify 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 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 shall be forwarded from tier to tier up to Metro.

RR-15**BUY AMERICA *****A. Applicability**

The following Article applies to federally funded rolling stock purchase and construction contracts over \$100,000 and to contracts over \$100,000 for materials & supplies for steel, iron, or manufactured products.

- B.** Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.

Metro may investigate Contractor's, any Subcontractor's, and any Supplier's compliance with this Article. If an investigation is initiated, Contractor, Subcontractor, or Supplier shall document its compliance, in accordance with 49 CFR 661.15, and cooperate with the investigation. Contractor shall incorporate the Buy America conditions set forth in this Article in every subcontract or purchase order and shall enforce such conditions.

RR-16**CARGO PREFERENCE*****A. Applicability**

The following Article applies to federally funded contracts involving equipment, materials, or commodities which may be transported by ocean vessels

B. USE OF UNITED STATES FLAG VESSELS

Contractor shall 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 this Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels

Contractor shall 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 Metro (through Contractor in the case of a subcontractor's bill-of-lading.)

Contractor shall 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.

RR-17**FLY AMERICA****A. Applicability**

This Article applies to federally funded contracts if the contract or subcontracts may involve the international transportation of goods, equipment, or personnel by air.

- B.** 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. 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. Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

RR-18**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT *****A. Applicability**

This Article applies to federally funded construction contracts over \$2,000 (including ferry vessels), rolling stock purchases over \$2,500 and to operations/management contracts over \$2,500 (except transportation services)

- B.** Pursuant to the Labor Standards Provisions Applicable to Non-construction Contracts subject to the Federal Contract Work Hours and Safety Standards Act, 40 U.S.C.A. § 327 through 332 as implemented by U.S. Department of Labor regulations, 29 CFR 5.5 (b) and (c) Contractor and Subcontractor’s contracting for any part of the Contract work shall comply with the following:
- 1. Overtime requirements** – Neither Contractor nor any Subcontractor contracting for any part of the Contract work that requires or involves 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 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 Article set forth in paragraph 1 of this Section

Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, 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 Article set forth in paragraph 1 of this Section, in the sum of ten dollars (\$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 Article set forth in paragraph 1 of this Section.

3. **Withholding for unpaid wages and liquidated damages** – Metro 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 monies payable on account of work performed by Contractor or Subcontractor under the Contract or any other Federal contract with Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the Article set forth in paragraph 2 of this Section.
4. **Subcontracts** – Contractor or Subcontractor shall insert in any Subcontracts the Articles set forth in this Section and also a Article requiring the Subcontractors to include these Articles in any lower tier Subcontracts. Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the Articles set forth in this Section.
5. **Payrolls and basic records** – The records to be maintained hereinabove shall be made available by Contractor or Subcontractor for inspection, copying, or transcription by Metro and U.S. Dept. of Labor. Contractor and Subcontractor shall maintain payrolls and basic records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid.

RR-19

SEISMIC SAFETY

A. Applicability

This Article applies to federally funded Architect & Engineer contracts for the design of new buildings or additions to existing buildings and to contracts for the construction of new buildings or additions to existing buildings.

- B.** Any new building or addition to an existing building shall be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and Contractor shall certify to compliance to the extent required by the regulation. Contractor shall ensure that all work performed under this Contract, including work performed by a Subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

RR-20

ADA ACCESS

A. Applicability

This Article applies to federally funded Architect & Engineer, Operations/Management, Rolling Stock Purchase, and Construction contracts

B. Access Requirements for Persons with Disabilities

Contractor shall comply with:

1. The requirements of 49 U.S.C. § 5301(d), which states the Federal policy that elderly persons 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 that policy;
2. 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;
3. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act;
4. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act; and
5. All applicable requirements of the following regulations and any subsequent 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 Financial Assistance," 49 C.F.R. Part 27;
 - (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/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. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) 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;
- (8) 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; and
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609;
- (11) Any implementing requirements FTA may issue.

RR-21 ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM *

A. Applicability

This Article applies to federally funded contracts for transit operations.

B. FTA Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations Regulations

Contractor and its Subcontractors shall comply with the FTA anti-drug and alcohol misuse regulations (49 CFR Part 655) and the U.S. Department of Transportation (DOT) Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40) to the full extent that they are, by their terms, applicable to Contractor and its Subcontractors. The regulations apply to all "contractors" that have "covered employees" that perform "safety sensitive functions" as those terms are defined in the regulations.

C. Certificate of Compliance

The CERTIFICATE OF COMPLIANCE WITH 49 CFR PARTS 655, PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN TRANSIT, submitted by Contractor prior to award, is incorporated as part of the Contract Documents.

D. Drug and Alcohol Testing Program

In the event that any part of the Work under this Contract falls within the scope of 49 CFR Part 655, Contractor, and its Subcontractors (as applicable), shall implement all programs required under the regulations, including without limitation, a Drug and Alcohol Testing Program and an anti-drug use and alcohol misuse program, in full compliance with the regulations.

E. Alcohol and Drug Free Workplace Program

In addition to the above, for Work performed on Metro property, Contractor shall provide an Alcohol and Drug-free Workplace Program in accordance with FTA requirements found at <http://transit-safety.volpe.dot.gov/Safety/DATesting.asp>.

RR-22 TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS *

A. Applicability

Subject to the limitations in Sections B, C and D, this Article applies if this Contract involves transit operations to be performed by employees of a Contractor recognized by FTA to be a transit operator, and if FTA has determined that it is financed in whole or in part with Federal assistance.

B. General Transit Employee Protective Requirements

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance (other than Federal assistance authorized by 49 U.S.C. § 5310(a)(2) or 49 U.S.C. § 5311), and if the U.S. Secretary of Transportation has determined that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for Metro under this Contract, then Contractor shall perform the transit operations work under the Contract in compliance with terms and conditions, (a) determined by the U.S. Secretary of Labor to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. Department of Labor ("U. S. DOL") guidelines at 29 C.F.R. Part 215, and any amendments thereto, and (b) stated in a U. S. DOL letter of certification to FTA, the date of which is set forth in the applicable Grant Agreement or Cooperative Agreement with Metro, and which is incorporated in the Form of Contract as a Contract Document entitled "U. S. DOL Certification".

C. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for Metro under the Contract, Contractor shall perform the Work in compliance with the terms and conditions determined, (a) by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto, and (b) stated in the U.S. DOL's letter of certification to FTA, the date of which is set forth in the applicable Grant Agreement or Cooperative Agreement with Metro, and which is incorporated in the Form of Contract as a Contract Document entitled "U. S. DOL Certification".

D. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

E. Indemnity

Contractor shall defend, indemnify and hold harmless Metro, and its Board Members, employees and agents from and against all liability, claims, demands actions, costs, judgments, penalties, damages, losses and expenses arising out of or in connection with Contractor's failure to comply with or failure to carry out its responsibilities under all applicable provisions of Sections B, C and D of this Article.

RR-23 CHARTER SERVICE OPERATIONS

A. Applicability

This Article applies to federally funded Operational Service Contracts.

- B.** Contractor shall comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

RR-24 SCHOOL BUS REQUIREMENTS

A. Applicability

This Article applies to federally funded Operational Service Contracts

- B.** Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

RR-25 FEDERAL PATENT AND DATA RIGHTS*

A. Applicability

This Article applies to each contract involving experimental, developmental or research work and for which the purpose of the FTA grant is to finance the development of a product or information.

B. Subject Data

The term "Subject Data" used in this Article 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.

C. Restrictions on Subject Data

The following restrictions apply to all Subject Data first produced in the performance of the Contract:

1. Except for its own internal use, metro or Contractor may not publish or reproduce Subject Data in whole or in part, or in any manner or form, nor may metro or 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.

2. 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 subparagraphs C.2(a) and C.2(b) of this Paragraph C.2. 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.
 - (a) Any Subject Data developed under the Contract, whether or not a copyright has been obtained; and
 - (b) Any rights of copyright purchased by metro or Contractor using Federal assistance in whole or in part provided by FTA.
3. 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, Metro and Contractor performing experimental, developmental, or research work required by the Contract shall permit FTA to make available to the public, either FTA's license in the copyright to any Subject Data developed in the course of the Contract, or a copy of the Subject Data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become Subject Data and shall be delivered as the Federal Government may direct. This Paragraph C.3 shall not apply to adaptations of automatic data processing equipment or programs for Metro's or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
4. Unless prohibited by state law, upon request by the Federal Government, Metro and Contractor shall 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 Metro or 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 the Contract. Neither Metro nor Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agent of the Federal Government
5. Nothing contained in this Article 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.

6. Data developed by Metro or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the Contract is exempt from the requirements of Paragraphs 2, 3, and 4 of this Article, provided that Metro or Contractor identifies that data in writing at the time of delivery of the Contract Work.

D. Patent Rights

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

E. Provision of Rights in Invention to Federal Government

Unless the Federal Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), Metro and Contractor shall 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.

END OF REGULATORY REQUIREMENTS

SPECIAL PROVISIONS (SERVICES)

All Articles, Subarticles, or portions of the Contract noted by a asterisk (*) shall be included in all Subcontracts of any tier.

SP-01 SBE PARTICIPATION

- A. The Contractor shall ensure that all Small Business Enterprise (SBE) requirements specified in the Contract have been met, and acknowledges that the SBE participation goal for the Contract is Five (5%) percent of the Firm Fixed Price Amount.
- B. Achievement of the goal shall be measured by SBE work completion and compensation.

SP-02 BROWZ REQUIREMENTS

- A. In order to enable Metro to track and monitor certain documentation necessary for the administration of this contract, including but not limited to Certificates of Insurance, etc., Contractor shall register with The Browz Group, LC, by completing and submitting the required registration form and associated documents specified therein.
- B. Contractor shall bear the cost and be responsible for paying the following fees to remain registered with The Browz Group, LC, through the term of the Contract. The initial (1st year) \$595 registration fee is due to Browz within ten (10) days of receipt of Award Notice.
- C. For multi-year contracts, the 2nd year fee of \$536 is due to Browz within ten (10) calendar days of the start of the 2nd year of the contract. For the 3rd year of a multi-year contract a \$476 fee is due to Browz within ten (10) calendar days of the start of the 3rd year of the contract.
- D. For task order contracts the \$595 fee is due within ten (10) calendar days of award of the first task order. Subsequent years shall follow the fee schedule set forth in C above.
- E. Should the Contractor fail to register with Browz and pay the applicable fee, Metro reserves the right to terminate the contract and or withhold any unpaid fee from any outstanding payment due Contractor. Contractor will not be allowed to proceed with the Work and will not be granted any additional time to complete the Work.

SP-03 ORGANIZATIONAL CONFLICTS OF INTEREST*

This Contract is subject to the restrictions against organizational conflicts of interest promulgated by the Federal Transit Administration in FTA Circular 4220.1E § 8.a.(5). Contractor shall not provide Project Management Assistance

to the Metro, under this Contract, related to any other or future contract which would constitute or create an organizational conflict of interest related to this Contract.

SP-04 NOTICES AND SERVICE THEREOF*

- A. Any Notice legally required to be given by one party to another under the Contract, including but not limited to those regarding interpretation of the Contract or changes thereto, shall be in writing and dated. The Notice shall be signed by the party giving such Notice or by a duly authorized representative of such party.

- B. Notices shall not be effective for any purpose whatever unless enclosed in a sealed envelope and transmitted by registered mail or any certifiable delivery service addressed to:

Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, California 90012-2952

Attention: Calvin S. Rascoe, Sr. Contract Administrator
Contract No. RFP No. PS4340-2301

- C. All Notices to the Contractor will be enclosed in a sealed envelope and transmitted by personal delivery to the Contractor or its authorized representative or by registered mail or any certifiable delivery service addressed as follows:

(Information will be incorporated at time of award)

- D. Any Notice of changes of address shall be given according to the provisions of this Special Provision.

SP-05 APPROVED SUBCONTRACTORS AND SUPPLIERS*

Subcontractor	Services Performed	??License Type and Number	??DBE/ MBE/ WBE
Name Address Phone			

Supplier	Material Supplied	??DBE/ MBE/ WBE
Name Address		

Supplier	Material Supplied	??DBE/ MBE/ WBE
Phone		

(Information will be incorporated at time of award)

SP-06 RELEASE OF INFORMATION*

The Contractor shall not publish information or technical data acquired or generated by the Contractor in performing the Contract until such time as such information or technical data is released in published reports by the Los Angeles County Metropolitan Transportation Authority (Metro).

SP-07 INSURANCE (RESERVED)

SP-08 ALLOWABILITY, ALLOCABILITY & REASONABLENESS DEFINITIONS*

- A. This clause is intended to clarify and further define the allowability, allocability and reasonableness of costs. It is not all-inclusive and is not intended to modify and/or interpret the Federal Acquisition Regulation (FAR) or the Cost Accounting Standards (CAS) requirements or conflict with any other Contract terms and conditions. The Metro has the right to determine the allocability, allowability and reasonableness of all costs incurred by Contractor under the Contract. If Contractor disputes the Metro's findings, Contractor may file a dispute under the Article entitled RESOLUTION OF DISPUTES. The allowability, allocability and reasonableness of reimbursable costs claimed under the Contract will include the following considerations:
- B. Allowability of costs is determined using FAR Part 30 (CAS), FAR Subpart 31.204, Compensation and Payment Provisions, Generally Accepted Accounting Principles (GAAP) (promulgated by the AICPA) and any Advance Cost Understanding incorporated into the Contract.
- C. Reasonableness of costs is determined using FAR Subpart 31.201-3, GAAP, Internal Revenue Code (IRC) (where applicable), the Advance Cost Understanding and the Metro's Contractor Cost Guidelines. Reasonableness of costs must be carefully examined to ensure that costs incurred would be similar to those expected to be incurred in a competitive pricing environment. The burden of proof shall be upon the Contractor to establish that a cost is reasonable.
- D. Costs are allocated to final cost objectives. The allocability of cost is determined using FAR Part 30, FAR Subpart 31.201.4 and Compensation and Payment Provisions entitled REIMBURSABLE COSTS AND FEE FOR CPFF CONTRACTS. Specifically, indirect expenses shall be allocated on the basis of the beneficial or causal relationship between supporting (indirect expense) and receiving activities (final cost objective). Such expenses shall be distributed directly to business units/segments and/or final cost objectives to the maximum extent possible. Expenses not directly identifiable to a final

cost objective, if significant in amount, shall be grouped in separate logical and homogeneous pools and allocated based on a causal or beneficial relationship to final cost objectives.

- E. Allocation of costs to the Project Office indirect pool shall be determined in strict accordance with FAR Subpart 31.201.4 and FAR Part 30 and Compensation and Payment Provision entitled REIMBURSABLE COSTS AND FEE FOR CPFF CONTRACTS.
- F. Specifically, the Contractor shall abate its indirect expenses (associated with non-Project Office direct labor) allocated to the Project Office for items which are similar to those provided by the Metro to the Project Office's operations at no cost or reimbursed by the Metro as a Project Office Other Direct Cost.
- G. For example, any expense (eg., rent, building ownership cost, office equipment or supplies) associated with the Contractor's or Subcontractors' non-Project Office direct labor shall be deemed similar to any expense (e.g., rent, office equipment or supplies) that Metro has paid for 100% at the Project Office. However, any expense (eg., rent, building ownership cost, office equipment or supplies) associated with the Contractor's or Subcontractors' indirect labor is allocable to the direct labor at the Project Office.
- H. For Contractors where the Contract represents more than fifty (50%) percent of the Contractor's business (% defined as Direct Labor v. Total Contractor Direct Labor), outside professional expenses incurred in preparing and negotiating Contractor's positions on claims, disputes, or audits related to issues of reasonableness, allowability, or allocability shall not be allowable as a direct or indirect cost to the Metro, unless prior written approval is obtained from the Metro.

SP-09 SOFTWARE LICENSING AGREEMENT AND PROVISIONS FOR USE*

A. Definitions: As used herein:

1. Software

The computer programs and products required to be developed and delivered by the Contractor to the Metro under the Contract, in object code (but excludes commercial software developed at private expense and not in the public domain).

2. Source Code Materials

A human-readable copy of the Software and related materials and documentation generated in preparing the Software, including programmer notes, flow charts, logic diagrams, and listings.

3. Documentation

Systems and user manuals sufficient to enable a person skilled in the applicable art to operate, maintain, and support the Software for its intended purposes.

B. Deliveries

The Contractor shall deliver to the Metro the Software, Source Code Materials, and Documentation, in such tape, disk, or hard copy format as the Metro may designate.

C. Ownership

The Contractor shall retain ownership of the Software, Source Code Materials, and Documentation with the right to exploit the same, subject to the Metro's rights as herein provided. The Metro shall place such copyright Notices affirming the Contractor's ownership rights as the Contractor may reasonably require on all materials licensed hereunder which are reproduced by the Metro.

D. License Rights

The Contractor hereby grants to the Metro a royalty-free, paid-up, non-exclusive license, in perpetuity, to use duplicate, and disclose the Software, Source Code Materials, and Documentation, and to make modifications of and enhancements to the Software, and permit others (who sign standard nondisclosure agreements) to do the same, but only for governmental purposes and not for any commercial purposes.

E. Confidentiality

The Metro shall hold the Software, Source Code Materials, and Documentation in confidence, shall use and disclose them only as expressly authorized herein or as required by law and only to its employees, agents or sublicensees to whom disclosure is necessary or appropriate for the performance and exercise of its rights hereunder, and shall take reasonable steps to ensure that unauthorized persons will have no access to them.

F. Warranty

The Contractor warrants that the Software will perform according to the specifications set forth in the Contract, that it is owner of the Software, Source Code Materials, and Documentation that it has the right to convey and grant the license herein granted to the Metro, and that the Metro's use thereof as herein contemplated will not infringe any third party's proprietary rights in the United States. The foregoing warranties shall not apply to the extent the Software is modified by the Metro.

G. Modifications and Enhancements

Upon the Metro's request the Contractor shall generate modifications of and enhancements to the Software not required by the Contract, at the Contractor's rates charged for comparable services to its most favored customers.

SP-10 THE CONTRACTOR'S LICENSE

- A. The contracting firm and the majority owner of the subcontracting firm shall have the experience and professional capability to perform the work; and the majority owner of the subcontracting firm shall possess and maintain for the duration of the contract work, the appropriate State of California Professional license(s) and registration required.
- B. The majority Contractor and Subcontractor(s) must possess and maintain the appropriate State of California license and registration required for the contracted work throughout the duration of the Work. Proof of validity of such license and/or registration shall be provided on an annual basis.

SP-11 METRO MANAGEMENT OF CONTRACTOR'S PERSONNEL *

- A. In the event the Metro determines it becomes necessary to request Contractor personnel to assist in the management of any Project, Metro may request the Contractor to assign its personnel to any Project subject to the direction of the Metro's Project Manager or designee. The Metro shall request such assignment of the Contractor's personnel through a Contract Amendment or individual Task Order approved by the Project Manager requesting such personnel. The Contractor shall advise the Metro of its concurrence or rejection of the request within three (3) business days. If Contractor fails to advise Metro within the three (3) business day period, Contractor shall be deemed to concur with the Metro's request.
- B. Any Contract Amendment/Task Order issued under this Special Provision shall include the following information:
 - 1. Name of Contractors personnel;
 - 2. Direct and indirect costs associated with the Contractor's personnel;
 - 3. Description of duties to be performed by Contractor's personnel;
 - 4. Description of the limit of authority, if any, of Contractor's personnel;
 - 5. Indemnification language to be provided by the Metro in connection with the proposed duties of the Contractor's personnel; and
 - 6. All information required by Article 6 of the Form of Contract.
- C. For purposes of this Provision only, the Contractor's personnel identified in a Contract Amendment/Task Order issued under this Special Provision shall be defined as the Personnel.

- D. The Metro shall provide the Personnel with office space and associated supplies and equipment necessary to perform the duties described under the Contract Amendment/Task Order. The Metro shall have no obligation for any Contractor personnel who are not specifically identified in a Contract Amendment/Task Order issued under this Special Provision.
- E. Any document or work product produced, generated or reviewed by the Personnel in their capacity described in the Contract Amendment/Task Order shall be the property of the Metro. Except for the Personnel's immediate superior in the Contractor's Program office the Personnel shall not discuss their work assignment with any other Contractor personnel without prior consent of the Metro's Project Manager.
- F. The Personnel shall perform the Work described in the Contract/Task Order in compliance with the Metro's policies and procedures, including, without limitation, the Metro's Ethics Policy, Code of Conduct and other applicable policies and procedures. Further, Personnel's work hours shall be compatible with the Metro's normal work hours.
- G. During the term of the Contract/Task Order, the Personnel shall remain an employee of the Contractor and shall continue to have their salary and benefits paid for the Contractor. In no event will the Personnel be considered an Metro employee. Further the Personnel shall not receive any benefits normally accruing to Metro employees unless provided by the Contractor.
- H. The Metro, in its sole discretion, has the right to terminate a Contract Amendment/Task Order issued pursuant to this Provision notwithstanding the duration stated in the Contract Amendment/Task Order or remove the Personnel at any time, all in accordance with the terms of the Contract.

SP-12 SUBCONTRACT ADMINISTRATION

In accordance with 49 CFR Part 26, the Contract Document entitled COMPENSATION AND PAYMENT and the Sub-Article entitled PROMPT PAYMENT OF WITHHELD FUNDS TO SUBCONTRACTORS, the METRO has elected to implement the following requirements related to the Work that is performed by all Subcontractors of any tier under this Contract.

- A. Executed Subcontract Agreements. - Contractor shall submit to the METRO Contracting Officer complete copies of all executed Subcontracts and/or Purchase Orders within fourteen (14) calendar days after the Contractor, or its Subcontractors, executes each Subcontract or Purchase Order. Contractor shall also submit copies of all Changes Orders, Modifications, Addendums or Amendments to such Subcontracts and Purchase Orders within fourteen (14) calendar days after execution. Contractor shall not darken out or delete any information from the submitted Subcontract and Purchase Order documents. The Subcontract and Purchase Order prices shown in the submitted documents shall not be cause for any reason by any Party to make an adjustment to the Contract Price and such pricing information will only be used to implement the provisions hereunder and in

the Contract Document entitled COMPENSATION AND PAYMENT related to Subcontractor payments and retention.

- B. Subcontract Values. – Contractor shall, in accordance with the Specification entitled COST/SCHEDULE INTEGRATION SYSTEM, breakdown the Schedule of Values and its monthly Application for Progress Payment making all work activities, the value thereof, payments made to date and retention withheld, distinguishable between the Contractor, its Subcontractors and Suppliers, inclusive of the baseline Work and all Contract Modifications.
- C. Releases. - In accordance with the requirements set forth in the Contract Document entitled COMPENSATION AND PAYMENT and the Article entitled PROGRESS PAYMENTS and the Article entitled PAYMENT TO SUBCONTRACTORS, Contractor shall cause that its Subcontractors and Suppliers complete and provide Conditional and Unconditional Waiver and Release forms, attached hereto as Exhibits SA-1 and SA-2, for Contractor to submit with its Applications for Progress Payment and Request for Final Payment. In the event Contractor fails to submit the required Waiver and Release form then any money's due for that Work performed shall not be paid and will be carried over to the next Progress Payment, or the Final Payment delayed, until such time Contractor submits the required Waiver and Release form. Any such payment withheld shall not be cause for a Contract Change, Claim, or subject to any accrued interest.
- D. Survival of Obligations. - Without limiting any other provision of the Contract relating to continuing obligations that extend beyond Final Acceptance of the Work or any Subcontractors' or Suppliers' Work under this Contract, the Contractor's responsibility for injury to persons and/or property arising from its duties and obligations under the Contract, including without limitation, the Articles entitled LIABILITY AND INDEMNIFICATION, GOODS, and WARRANTY in the Contract Document entitled GENERAL CONDITIONS, shall survive acceptance and any payment to Contractor by METRO for any element of the Work performed by a Subcontractor or Supplier under this Contract.
- E. Undisclosed Incomplete Work. - Contractor will not be relieved of its obligations to complete any element of the Work, or any portion or item thereof, the non-completion of which was not disclosed to METRO prior to Final Acceptance of the Contract, regardless of: (1) whether such nondisclosures were fraudulent, negligent, or otherwise; and (2) METRO having inspected or accepted the element of the Work, having accepted Contractor's certification that the element of the Work is completed, having made payment to Contractor for the element of the Work, or Contractor having made final payment, including a release of retention to its Subcontractor or Supplier for that element of the Work. Contractor shall remain obligated to correct all such items after Final Acceptance of the Contract under this Article and all other provisions of the Contract that, expressly or by their nature, extend beyond or survive Final Acceptance.
- F. Modified General Condition. The Contract Document entitled GENERAL CONDITIONS, the Article entitled ACCEPTANCE OF ELEMENTS OF THE

WORK, and the sub-Article entitled PARTIAL ACCEPTANCE, is modified to read:

“If portions of the Work (due to having independent utility or a subcontract being fully completed) are completed in advance of the deadlines specified in this Contract, METRO shall have the right to accept them in advance of the deadline for completion of the entire Contract. Any such partial Acceptance shall follow a procedure similar to that required for Substantial Completion, modified as specified by the Contracting Officer. The Contracting Officer will also determine the effect of such partial Acceptance on Contractor’s responsibility for maintenance during construction and its Warranty obligations.”

- G. Inspection of a Subcontractor’s work, under the terms of this Special Provision, shall not constitute an exception for Acceptance as contemplated by the General Condition Article entitled PERFORMANCE AND INSPECTIONS, sub-article 20.1.4, unless it is specified in writing as stated therein.
- H. The terms of this Special Provision, as it relates to General Condition entitled PERFORMANCE AND INSPECTIONS, sub-article 20.1.5, creates an METRO obligation to make inspections of Subcontractors completed work for the limited purpose of implementing the terms of this Special Provision, such inspections shall not relieve Contractor of any of its responsibilities under this Contract.
- I. After the Contractor has notified METRO that a Subcontractor’s work is complete, METRO may charge the Contractor for any additional costs METRO incurs for the inspections when the Work is not ready at the time indicated in the notice or when an additional inspection is necessitated by prior rejection.
- J. Contractor shall consider and plan for the requirements of this Special Provision and any delay in any Critical Path, or other interruption to the Contractor, resulting from any inspections or other terms of this Special Provision shall **not**, for any reason, result in an increase to the Contract Price or Time, nor entitle Contractor to any recovery of any costs, or delay, or interest payments occasioned thereby.
- K. Notwithstanding any terms of this Special Provision, the terms of Warranty, either express or implied in this Contract remain unchanged.

L. Modified Compensation and Payment Article -

CP-3 RETENTION AND ESCROW ACCOUNTS*
(Only paragraphs A & B are revised.)

A. Retention:

METRO shall retain from each Progress Payment ten percent (10%) of the Progress Payment as part security for the fulfillment of the Contract by the Contractor. However, after fifty percent (50%) of the Work has been completed, if in the sole discretion of METRO progress on the Work is satisfactory, METRO will not make further deductions on the remaining Progress Payments, except that the amount of the retention withheld shall not at any time thereafter be less than five percent (5%) of the Contract Price, as amended, or as adjusted by Change Orders. However, if METRO determines that the Work or progress of the Work is unsatisfactory, METRO may reinstate, continue or increase retentions in amounts necessary to increase the total retention to an amount not to exceed ten percent (10%) of the Contract Price. Notwithstanding any payments made to Contractor, out of retention or other monies withheld, or other monies due Contractor under this Contract, in the implementation of 49 CFR Part 26 and the Article entitled PROMPT PAYMENT OF WITHHELD FUNDS TO SUBCONTRACTORS, in the Contract Document entitled COMPENSATION AND PAYMENT, METRO shall withhold retention from each progress payment, consistent with the amounts allowed above, whereas METRO shall withhold not less than 5% of the Contract price until final completion and acceptance of the Contract.

B. Substitution of Securities:

To ensure performance under the Contract, the Contractor may, at its sole expense, substitute securities equivalent to the retention withheld by METRO. Such securities shall be deposited with an escrow agent approved by METRO, who shall then pay such retention to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor. The Contractor shall be the beneficial owner of any security substituted for monies withheld and shall receive any accrued interest thereon. Securities eligible for investment shall include those listed in Government Code §16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and METRO. No such substitution shall be accepted until the Escrow Agreement, securities, and any other documents related to the substitution are reviewed and accepted in writing by METRO. In the event Contractor's subcontractors elect to do any of the following the Contractor shall:

1. If a subcontractor elects to substitute securities in lieu of retention with the Contractor, then in accordance with the sub-Article herein entitled "Prompt Payment of Withheld Funds to Subcontractors", when Contractor certifies to METRO that all tasks called for in the subcontract have been satisfactorily accomplished and METRO has inspected the Work, Contractor shall release the subcontractor's

securities within thirty (30) days after receipt of the METRO notice on the completed inspection, even though there may be no adjustment(s) to be made to Contractor's substitute securities in lieu of retention.

2. In the event the Contractor elects to substitute securities in lieu of retention and a subcontractor has not elected to substitute securities in lieu of retention, Contractor may withhold from his or her subcontractor the amount of retention that would have otherwise been withheld, yet when, in accordance with the sub-Article herein entitled "Prompt Payment of Withheld Funds to Subcontractors", Contractor certifies to METRO that all tasks called for in the subcontract have been satisfactorily accomplished and METRO has inspected the Work, Contractor shall release the subcontractor's retention within thirty (30) days after receipt of the METRO notice on the completed inspection, even though there may be no adjustment(s) to be made to Contractor's substitute securities in lieu of retention.

END OF SPECIAL PROVISIONS

EXHIBIT SA-1 - CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Upon receipt by the undersigned of a check from _____
(Maker of Check)

in the sum of \$ _____ payable to _____
(Amount of Check) (Payee or Payees of Check)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of _____ located at _____
(Owner)

_____ (Job Description)
to the following extent. This release covers a progress payment for labor, services, equipment, or material furnished to _____
(Your Customer)

through _____, only and does not cover any retentions retained before or after the
(Date)

release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

Original Contract Price	\$ _____
Executed Changes to date	\$ _____
Total Contract Price to date	\$ _____
Total Earned to date	\$ _____
Total Payments Received to date	\$ _____
Retention withheld to date	\$ _____
Any other withholdings to date	\$ _____

Dated: _____ Company Name: _____

Signed by: _____
(Print Name) (Print Title)

**EXHIBIT SA-2 - UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS
PAYMENT OR FINAL PAYMENT**

The undersigned has been paid and has received a progress payment, or final payment, in the sum of \$_____ for labor, services, equipment, or material furnished to

_____ on the job of _____
(Your Customer) (Owner)

located at _____ and does hereby release any
(Job Description)

mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to _____ through

_____ only and does not cover any retentions retained before or after the
(Date)

release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress or final payment.

Original Contract Price \$_____

Executed Changes \$_____

Total Contract Price \$_____

Total Payments Received to Date \$_____

Total Retention Amount \$_____

Other withholdings, Total \$_____

Dated: _____ Company Name: _____

Signed by: _____
(Print Name) (Print Title)

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

RFP No. PS4340-2301
Archived Data Management System for Regional Integration of ITS (RIITS) Network

EXHIBIT 1 - RATE CERTIFICATION

This is to certify that I have reviewed this proposal to establish final annual indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final annual indirect cost rates for (identify period covered by rate) are allowable in accordance with this Contract and the cost principles of the Federal Acquisition Regulation (FAR) and its supplements that are applicable to the contracts to which the final annual indirect cost rates will apply; and
2. This proposal does not include any costs which are expressly unallowable under this Contract, or cost principles of the FAR or its supplements made applicable under the Contract.

I certify under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

COMPENSATION & PAYMENT PROVISIONS (FIRM FIXED PRICE)

Note:

Articles flagged with an asterisk (*) are Flow-down requirements as defined in Article SUBCONTRACTORS AND SUPPLIERS in Contract Document GENERAL CONDITIONS.

CP-01 BASIS OF COMPENSATION *

Contractor will be paid the Contract Price in accordance with the following Articles, the Payment Schedule in the Article entitled COMPENSATION in the Form of Contract and all other applicable terms and conditions of the Contract.

CP-02 PROGRESS PAYMENTS

A. Applicability

This Article applies only if the Payment Schedule in the Contract provides for Progress Payments.

B. Definition

A Progress Payment is a payment of a portion to the Contract Price for partial completion of the Work based upon the Payment Schedule.

C. Application for Progress Payment

Contractor's Applications for Progress Payments ("Applications") shall contain:

1. The original and two copies of the invoice, dated and identifying the Contract Number;
2. A description of the Work completed;
3. Any other documentation the Metro requires to process the Progress Payment;
4. The Contractor's signature and certification that the Work has been performed in accordance with the Contract, using the form attached hereto as Attachment 1; and
5. Signature of the Metro's Authorized Representative acknowledging that the Work described in the Application has been done in accordance with the Contract.
6. Certification for Request for Payment attached as Exhibit 1

D. Terms of Payment

1. Contractor shall submit the Application to the Metro, based on the Payment Schedule, not later than the 25th day of each month.
2. Metro will make Progress Payments within thirty (30) days after it's receipt of an undisputed and properly submitted Application. Upon receipt of an Application, the Metro shall:
 - a. Review the Application to determine if it is complete and meets Contractual requirements.
 - b. Return any Application that is not complete or does not meet Contractual requirements, setting forth in writing the reasons for the determination.
 - c. No Progress Payments shall be made for Work not performed in accordance with the Contract.

CP-03 RETENTIONS, ESCROW ACCOUNTS AND DEDUCTIONS

A. Applicability

Except for the Section herein entitled Additional Deductions, this Article applies only if (1) the Payment Schedule in the Contract provides for Progress Payments, as described in the Article herein entitled Progress Payments, and (2) a portion of each Progress Payment will be retained by the Metro.

B. Retention

The Metro shall retain from each Progress Payment ten percent (10%) of the Progress Payment as part security for the fulfillment of the Contract by the Contractor. However, after fifty percent (50%) of the Work has been completed, if in the sole discretion of the Metro, progress on the Work is satisfactory, Metro will not make further deductions on the remaining Progress Payments, except that the amount of the retention withheld shall not at any time thereafter be less than 5% of all of the Total Contract Price, as amended, or as adjusted by Change Orders. However, if the Metro thereafter determines that the Work, or progress of the Work, is unsatisfactory, Metro may reinstate, continue or increase retentions in amounts necessary to increase the total retention to an amount not to exceed ten percent (10%) of the Total Contract Price.

C. Substitution of Securities

To ensure performance under the Contract, the Contractor may, at its sole expense, substitute securities equivalent to the retention withheld by the Metro. Such securities shall be deposited with an escrow agent approved by the Metro, who shall then pay such retention to the Contractor. Upon

satisfactory completion of the Contract, the securities shall be returned to the Contractor. The Contractor shall be the beneficial owner of any security substituted for monies withheld and shall receive any accrued interest thereon. Securities eligible for investment shall include those listed in Government Code §16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the Metro. No such substitution shall be accepted until the Escrow Agreement, securities, and any other documents related to the substitution are reviewed and accepted in writing by the Metro.

D. Payment to Escrow Agent

In lieu of substitution of securities as provided above, the Contractor may request and the Metro shall make payment of retention earned directly to the escrow agent described in the previous Section at the expense of the Contractor. At the expense of the Contractor, the Contractor may direct the investment of the payments into securities consistent with Government Code §16430 and the Contractor shall receive the interest earned on the investments upon the same terms provided for in this Article for securities deposited by the Contractor. Upon satisfactory completion of the Contract, the Contractor shall receive from the escrow agent all securities, interest and payments received by the escrow agent from the Metro, pursuant to the terms of this Article. The Contractor shall pay to each Subcontractor, not later than twenty (20) days after receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each Subcontractor, on the amount of retention withheld to ensure the performance of the Subcontractor. The escrow agreement used by the escrow agent pursuant to this Article shall be substantially similar to the form set forth in §22300 of the California Public Contract Code.

E. Release of Retention

Release of retention shall be in accordance with the Article herein entitled FINAL PAYMENT.

F. Additional Deductions

The Metro may deduct from each Progress Payment any or all of the following:

1. Liquidated Damages that have accrued as of the date of the Application for Progress Payment;
2. Deductions from previously paid Progress Payments, due to Metro's discovery of Deficiencies in the Work or non-compliance with the Specifications or any other requirement of the Contract;
3. Sums expended by the Metro in performing any of the Contractor's obligations under the Contract that the Contractor has failed to perform; and

4. Other sums that the Metro is entitled to recover from the Contractor under the terms of the Contract including without limitation insurance deductibles and assessments.

The failure of the Metro to deduct any of the above-identified sums from a Progress Payment shall not constitute a waiver of the Metro's right to such sums or to deduct them from a later Progress Payment.

CP-04 PAYMENT TO SUBCONTRACTORS *

A. Applicability

This Article applies only if the Contractor has employed Subcontractors.

B. Requirements

1. Progress Payments - Contractor shall pay each Subcontractor under this Contract for satisfactory performance of its Subcontract no later than ten (10) days after its receipt of each Progress Payment from the Metro.
2. Final Payment to Subcontractors - The Contractor shall pay to each Subcontractor all amounts it has retained from payments under the Subcontract within ten (10) days after the Subcontractor's Work is satisfactorily completed.
3. Delay in Payment – Contractor shall not delay payment beyond the ten (10) day time limit except for good cause, and only upon the prior written approval of the Metro.

C. Failure to Comply

If the Metro determines that the Contractor has failed to comply with this Article, the Metro may give written notice to the Contractor and the Contractor's Surety describing the default, that the default shall be cured, and if the default is not cured as provided the Article entitled TERMINATION FOR DEFAULT in the GENERAL CONDITIONS of this Contract, the Contract may be terminated for default as provided therein, or Metro may exercise any other remedy it has under the Contract or Law.

CP-05 PAYMENT OF TAXES *

Unless otherwise specifically provided in this Contract, the Contract Price includes compensation for all taxes the Contractor is required to pay by Laws in effect on the date the Contractor's bid was opened. The Contractor shall pay all federal, state, and local taxes, and duties applicable to and assessable against any Work, including but not limited to retail sales and use, transportation, export, import, business, and special taxes. The Contractor shall ascertain and pay the taxes when due. The Contractor will maintain auditable Records, subject to Metro reviews, confirming that tax payments are current at all times.

FINAL PAYMENT ***A. Final Acceptance**

After Final Acceptance of the Work, as provided in the General Conditions of this Contract, Final Payment will be made as follows:

1. Prior to Final Acceptance of the Contract, as provided in the General Conditions of this Contract, the Contractor shall prepare and submit an Application for Final Payment to the Metro including:
 - a. The proposed total amount due the Contractor, segregated by items on the Payment Schedule, Amendments, Change Orders, and other bases for payment;
 - b. Deductions for prior Progress Payments;
 - c. Amounts retained;
 - d. List of Claims the Contractor is filing concurrently with the Application for Final Payment, or a statement that no Claims will be filed with the Application for Final Payment; and
 - e. List of pending unsettled Claims, stating claimed amounts.
2. Prior Progress Payments shall be subject to correction in Metro's review of the Application for Final Payment. Claims filed with the Application for Final Payment, or at any time thereafter prior to Final Payment, must be otherwise timely under the Contract and applicable Law.
3. The Metro will review the Contractor's Application for Final Payment will forward any required changes or corrections to the Contractor. Within ten (10) days after receipt of required changes from the Metro, the Contractor will make the changes, and, if applicable, list Claims that will be filed as a result of the required changes, and shall submit the revised Application for Final Payment. Upon acceptance by the Metro, the revised Application for Final Payment will become the approved Application for Final Payment.
4. If no Claims have been filed with the initial or any revised Application for Final Payment and no Claims remain unsettled within thirty (30) days after Final Acceptance of the Work by the Metro, and agreements are reached on all issues regarding the Application for Final Payment, the Metro, in exchange for an executed release, satisfactory in form and substance to the Metro, will pay the entire sum found due on the approved Application for Final Payment, including the amount, if any, allowed on settled Claims.

5. The release from the Contractor shall be from any and all Claims arising under the Contract, except for Claims that with the concurrence of Metro are specifically reserved, and shall release and waive all unreserved Claims against the Metro and its officers, directors, employees and Authorized Representatives. The release shall be accompanied by a certification by the Contractor that:
 - a. It has resolved all Subcontractor, Supplier and other Claims that are related to the settled Claims included in the Final Payment;
 - b. It has no reason to believe that any party has a valid Claim against the Contractor or the Metro which has not been communicated in writing by the Contractor to the Metro as of the date of the Certificate;
 - c. All warranties are in full force and effect; and
 - d. The releases and warranties shall survive final payment.
6. If any Claims remain open, the Metro may make final Payment subject to resolution of those Claims. The Metro may withhold from the Final Payment an amount not to exceed one hundred fifty percent (150%) of the amount of the open Claims.

B. Discovery of Deficiencies *

Notwithstanding the Metro's acceptance of the Application for Final Payment and irrespective of whether it is before or after Final Payment has been made, the Metro shall not be precluded from subsequently showing that:

1. The true and correct amount payable for the Work is different from that previously accepted;
2. The previously accepted Work did not conform to the Contract requirements; or
3. A previous payment, or portion thereof, for Work was improperly made.

The Metro shall not be estopped from demanding and recovering damages from the Contractor, as appropriate, under any of the foregoing circumstances as permitted under the Contract or applicable Law.

CP-07 AUDIT REQUIREMENTS *

A. Applicability

This Section applies to the Contractor, its Subcontractors and Suppliers. The Contractor, its Subcontractors and Suppliers shall be subject to audit at any reasonable time by the Authorized Auditors for;

1. Any Costs proposed for a Modification, or

2. Defective Cost or pricing on the Contract including any Modification.

B. Defined Terms

Audit: audit, examine, verify, review, excerpt, vouch or transcribe Contractor's, Subcontractors' or Suppliers' Records.

Authorized Auditors: Metro employees, any firms appointed by the Metro or other authorized agencies acting as agents of a Governmental Entity. For federally funded Contracts, Authorized Auditors shall also include the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives.

Costs: Amounts (both direct and indirect) claimed to be due and payable, or anticipated to be incurred in performing the proposed Modification.

Records: All of the Contractor's, Subcontractors' or Suppliers' Cost or pricing data supporting the Modification or Element thereof, including but not limited to books, data, Records, documents, reports, computations and projections, accounting procedures and practices and other evidence, in all forms (e.g. paper or machine readable media such as disk, tape, etc.) or types (e.g., databases, applications software, database management software, utilities, etc.), sufficient to properly reflect the performance of the Work and all Costs claimed to have been incurred or anticipated to be incurred in performing the Work on a proposed Modification. Any information provided by the Contractor, Subcontractor or Supplier on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. The detail and depth of Records required as backup support for Audits shall be that which adequately establishes and maintains visibility of both allowable, and identified unallowable costs including directly associated costs.

Reproduce: copy, download, transcribe, print etc. by any means whatsoever free of charge.

C. Access

1. Records

Upon reasonable written advance notice to the Contractor, Subcontractors or Suppliers, with a copy sent to the Contractor's Authorized Representative, the Authorized Auditors shall have access during Contractor's normal business hours to all Records related to Costs or performance of the proposed Modification for the purpose of Auditing.

2. Worksites

For any federally funded major capital project, the Authorized Auditors shall include the FTA Administrator or his authorized representatives including any PMO Contractor. Access shall include the Worksite.

D. Records Retention

The Contractor, Subcontractors and Suppliers shall maintain all Records required under this Contract for a period of not less than three years after the date of Termination, in whole or in part or Final Payment, whichever is later. In the event of litigation or settlement of claims arising from the performance of this Contract, the Contractor, Subcontractor and Suppliers shall maintain all Records related to this Contract until the Metro or any Governmental Agency or their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

E. Reproduction of Records

The Authorized Auditors shall have the right to Reproduce any Contractor, Subcontractor or Supplier Records related to Costs proposed for a Modification. The Contractor, Subcontractor or Supplier shall make said evidence (or to the extent accepted by the Authorized Auditors, photographs, micro-photographs or other authentic reproductions thereof) available to the Authorized Auditors at the Contractor's offices at all reasonable times and without charge.

F. Modifications

The Contractor, Subcontractors or Suppliers shall maintain and segregate Cost and pricing data and Records sufficient to properly reflect all direct and indirect Costs of whatever nature claimed to have been incurred or anticipated to be incurred in connection with a Modification to the Contract.

G. Defective Cost and Pricing Data

FAR 52-215-10 Price Reduction for Defective Cost or Pricing Data and 52.215-11 Price Reduction for Defective Cost or Pricing Data-Modifications shall apply to this Contract. The term Government referred to in the FAR clauses shall include Metro for purposes of this Contract.

H. Disposition of Audit Findings

The Contracting Officer may use all evidence in the Records including the Audit findings to:

1. Negotiate Modifications, or
2. Demand payment from the Contractor or adjust any Contractor's invoice to:
 - a. Reduce amounts found by the Contracting Officer to be unallowable costs; or
 - b. Adjust for prior overpayments or underpayments.

RFP No. PS4340-2301
Archived Data Management System for Regional Integration of ITS (RIITS) Network

EXHIBIT 1 - PAYMENT CERTIFICATION

1. I hereby certify to the best of my knowledge and belief that:
 - A. This Payment Request represents a true and correct statement of the Work performed;
 - B. The Work completed to date under this Contract is in full accordance with the terms of the Contract; and
 - C. All Subcontractors and/or Suppliers who have performed Work on the project through the closing date of the prior Payment Request have been paid their proportionate share of all previous payments from the Metro.
2. I understand that it is a violation of both the federal and California False Claims Acts to knowingly present or cause to be presented to the Metro a false claim for payment or approval. A claim includes a demand or request for money. It is also a violation of the False Claims Acts to knowingly make use of a false Record or statement to get a false claim paid. The term "knowingly" includes either actual knowledge of the information, deliberate ignorance of the truth or falsity of the information, or reckless disregard for the truth or falsity of the information. Proof of specific intent to defraud is not necessary under the False Claims Acts. I understand that the penalties under the Federal False Claims Act and State of California False Claims Act are non-exclusive, and are in addition to any other criminal and/or civil remedies which the Metro may have either under contract or law.

I certify under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

END OF COMPENSATION & PAYMENT PROVISIONS

**DIVERSITY & ECONOMIC OPPORTUNITY PROGRAMS
COMPLIANCE MANUAL (NON-FEDERAL - SBE)
REVISION 4 – ISSUED MAY 15, 2002**

SECTION 1 SBE PROGRAM REQUIREMENTS

1.0 EQUAL OPPORTUNITY POLICY

It is the policy of the Los Angeles County Metropolitan Transportation Authority (METRO) to provide equal opportunity in procurement and contracting actions to each Bidder, Offeror or Proposer in connection with their projects. No person or business shall be discriminated against in any METRO procurement or contracting action because of race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), age (over 40), marital status, veteran status, or any other status protected by applicable federal or state statutes.

The contractor agrees that the above statement of policy shall be inserted into all subcontracts issued pursuant to this contract and agreed to by all subcontractors, suppliers and sources participating in this contract. Failure to carry out the above statement of policy or failure to comply with the METRO Small Business Enterprise (SBE) Program shall be treated as a breach of this agreement. Upon notification to the METRO of any failure to carry out this policy or failure to comply with the METRO SBE Program and this SBE Contract Compliance Manual by any contractor, subcontractor, supplier or other source participating in this contract, the METRO shall investigate and may impose sanctions as provided in the Special Provisions Section and/or other sections of the contract and/or may take other legal action as is deems appropriate.

1.1 INCORPORATION OF THE SBE PROGRAM DOCUMENT INTO THE CONTRACT

The SBE Program document, approved by the Board of Directors of the Los Angeles County Metropolitan Transportation Authority, is hereby incorporated into this contract by reference as though set forth in full. Copies of the SBE Program are available from Diversity and Economic Opportunity Department

A. POTENTIAL CONFLICTS WITH THE SBE PROGRAM DOCUMENT

This Contract Compliance Manual, which is part of this contract, focuses on SBE Program compliance requirements set forth in the SBE Program document. Any errors, omissions, ambiguities, conflicts or inconsistencies between this SBE Contract Manual and the SBE Program Document shall be resolved in favor of the SBE Program Document. All record keeping and reporting requirements of the SBE Program will be monitored and enforced by METRO throughout the life of the Contract.

2.0 PROGRAM PURPOSE AND STANDARDS

2.1 PURPOSE

The METRO has received funds from sources other than the federal government for the support of this contract effort. These sources of funds include state, county or local governments or agencies. As a condition of this contract, contractors shall comply with the terms and conditions of the Small Business Enterprise (SBE) Program, sections of which are presented in this Contract Compliance Manual. This manual sets forth contract provisions implemented by the METRO to ensure that all small businesses have a maximum opportunity to participate in METRO contracts funded from other than federal sources.

2.2 SBE STANDARDS

(a) SBE COMMITMENT

The level of SBE participation of which the Contractor commits to in its bid or proposal becomes the Contractor's SBE commitment, the commitment of record in the contract. The contractor's SBE commitment is stated in the Special Provision section of the Contract and shall be monitored and enforced as described herein.

(b) COMMERCIALLY USEFUL FUNCTION

- (1) Expenditures to an SBE subcontractor or supplier will count toward SBE commitment only if the SBE subcontractor or supplier performs a commercial useful function.
- (2) A commercially useful function is performed when the business 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 company must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) the material and paying for the material itself. To determine whether a company is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount of the firm is to be paid under the contract is commensurate with the work it is actually performing and the SBE credit claimed for its performance of the work and other relevant factors.
- (3) If a SBE 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 SBE 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, METRO must presume that the SBE firm is not engaged in performing a commercially useful function. The presumption that arises is rebuttable.

2.3 FRAUDS AND FRONTS

- (a) Suspension or debarment proceedings may be initiated against any firm:
 - (1) That attempts to participate in a program as an SBE if the firm does not meet the eligibility criteria stated in the certification standards for SBE programs and if it attempts to participate on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, or
 - (2) That in order to meet SBE contract goals or other SBE program requirements uses or attempts to use on the basis of false, fraudulent or deceitful statements or representations, another firm that does not meet the SBE eligibility criteria stated in the SBE Program's certification standards.
- (b) In either case the METRO may take whatever administrative, legal and/or contractual action it deems appropriate.
- (c) While the METRO may consider that the purported SBE business was issued an SBE certification letter, SBE certification issued on false or misleading grounds will not preclude the METRO from determining that the purported SBE or that any firm which used or attempted to use the purported SBE to meet SBE goals, should be suspended or debarred.

3.0 CONTRACT COMPLIANCE

3.1 REVIEW AND MONITORING SYSTEM

This section describes the reviewing and monitoring system to ensure that all contractors, subcontractors, consultants, vendors, suppliers of goods and services, regular dealers and brokers, and all METRO departments comply with the SBE utilization requirements and all other contract specifications related to SBE participation.

Non-compliance by the contractor with the requirements of the SBE regulations constitutes a breach of contract. It requires submission of documentation of actions (Good Faith Efforts) toward meeting the level of commitment to SBE participation in the contract. Failure to comply with this request and/or satisfy the METRO of good faith efforts (GFE) may result in (1) METRO directing the contractor to mandatory participation in a SBE Program training session, and/or (2) termination of the contract, and/or (3) imposition of liquidated damages and/or (4) other appropriate remedies.

3.2 NOTIFICATION OF REPORTING RESPONSIBILITY

Prime contractors at all tiers shall directed subcontractors and sources to the provisions in the contract governing SBE Program record keeping and reporting requirements.

3.3 SBE ACTIVITY REPORTING

All prime contractors shall submit monthly progress reports on SBE utilization to the SBE Program Office on the SUMMARY OF CONTRACTORS PAID REPORT (FORM 103). Failure to submit FORM 103 reports by the 15th of each month may result in the imposition of a penalty of \$100 per day, per report.

a. The FORM 103, SUMMARY OF SUBCONTRACTORS PAID REPORT, includes the following information:

- i. Name of each SBE subcontractor.
- ii. General work assignment of each SBE subcontractor.
- iii. The specific portion of work executed by each SBE Subcontractor during the reporting period.
- iv. The dollars committed to each SBE Subcontractor.
- v. The dollars paid to each SBE Subcontractor during the reporting period.
- vi. The dollars paid to date for each SBE Subcontractor.
- vii. The dollars paid to date as a percentage of the total commitment to each SBE.
- viii. Modification to dollars paid resulting from change order activity.
- ix. Submit a copy of its Affirmative Action Plan on an annual basis.

b. MONTHLY EXPENDITURE PLAN

A monthly expenditure plan in calendar form for each of its approved SBE Subcontractors/Suppliers shall be submitted within 30 days of Notice to Proceed. The planned expenditures shall equal the dollars committed to each SBE Subcontractor/Supplier and shall be developed according to the approved project schedule. The plan shall be updated to incorporate any schedule changes and executed Changed Notices and Work Authorization Change Notices (WACN) affecting the SBE's work. A revised plan shall be submitted within 30 days from the incorporation of the change. The original plan, together with any revisions, must first be approved by the, "Construction Manager's Resident Engineer," before being submitted to the assigned DEO Representative and the Contract Administrator.

c. SUBMIT COPIES OF SBE SUBCONTRACTS

The Contractor shall submit to METRO copies of all executed SBE subcontracts within fourteen (14) working days after the Contractor executes the contract with Subcontractor. The subcontract should be sent to the METRO, attention name of the assigned DEO Representative. The contractor shall incorporate this Contract Compliance Manual/Non-Federal into each agreement, whether purchase order (PO) or subcontract, issued under this contract, and each subcontractor, vendor,

consultant, dealer, broker or other source shall agree to the terms and conditions thereof.

d. COUNTING AND CALCULATING SBE PARTICIPATION

Counting and calculating SBE participation shall be done as set forth in the SBE Program and in the "Instructions to Bidders, Offerors and Proposers" distributed in the bid and proposal phase of this procurement, prior to contract award.

Expenditures to an SBE subcontractor or supplier will count toward the contract commitment only if the subcontractor or supplier performs a commercially useful function. Only those amounts actually paid to an SBE count toward SBE participation when calculating a contractor's progress toward achieving the contract goal.

3.4 PRE-CONSTRUCTION (KICK-OFF) MEETING

Both the Contractor and the Subcontractor(s) or a representative of each firm shall attend the pre-construction meeting concerning SBE requirements and other matters, prior to or immediately after all executed Notice to Proceed subcontracts have been submitted. Listed first-tier subcontractors shall enter into subcontract agreements with the Contractor within fourteen (14) business days of the date the Prime Contractor executes contract documents with METRO. Failure to execute subcontract agreements in a timely manner shall be considered a violation of the SBE program requirements.

Further, the Contractor shall report its failure to execute subcontract agreements for any of the listed SBE subcontractors within 20 business days of the Prime Contractor signing of the contract with the Authority. The Contractor shall be responsible for informing the Subcontractors of all SBE requirements as specified by METRO herein.

3.5 SBE MAXIMUM OPPORTUNITY TO PARTICIPATE

The Contractor shall ensure that the SBEs it has committed to in its bid or proposal have maximum opportunity to successfully perform their contract responsibilities and that the Contractor further commits to meet its SBE goal. These efforts should include but are not limited to the following:

- a. Negotiate in good faith to attempt to finalize subcontract and supply agreements with the SBEs listed in its bid. Contractors using additional SBEs after award shall notify the Contract Compliance Unit for verification of SBE Program and SIC eligibility. Notification should include proposed firm names, scope of work and proof of certification.
- b. Continue to provide assistance to SBE Subcontractors or Suppliers in obtaining bonding, lines of credit, or other capital financing, and/or refer the SBEs to the Transit Bond Assistance Program (818) 294-1017.
- c. Contractors who failed to meet the SBE goals established for the contract, but who were determined by the AUTHORITY to have fulfilled the good faith effort requirements to meet the goal, shall make additional documented efforts to seek out and utilize additional first-tier SBE Subcontractors and Suppliers to increase its SBE participation, during the life of the contract.

- d. Immediately inform the METRO SBE Program Office of any problems anticipated in attaining the SBE commitment agreed upon at the time of award.
- e. Issue the SBE(s) a written Cure Notice of any potential problem and provide a reasonable time frame for the SBE to cure the problem. Concurrently with the issuance of the Cure Notice to the SBE, send a copy of the Cure Notice by First Class Mail, postage pre-paid, to the assigned DEO Representative and METRO Contract Administrator. In instances where the SBE fails to cure, the Contractor is then obligated to take the steps outlined in the section RESOLUTION OF EQUAL OPPORTUNITY (EO) SBE DISPUTES BETWEEN CONTRACTOR AND SBE SUBCONTRACTORS before formally requesting approval from the AUTHORITY to substitute a SBE; and
- f. Make timely payments of all monies due and owing to SBE firms as per the contract agreement and Prompt Payment Act.

3.6 RESOLUTION OF SBE EQUAL OPPORTUNITY (EO) DISPUTES BETWEEN CONTRACTORS AND SUBCONTRACTORS

For disputes arising out of or related to this contract between the Contractor and any lower tier SBE subcontractor which cannot be settled by discussions between the parties involved, the parties may seek to settle the dispute as described herein.

These provisions shall not apply to disputes between the Contractor and the METRO. These provisions do not alter in any way or waive compliance with any provisions in Section GC36, SUBMITTAL OF CLAIMS of the Contract Documents.

The Contractor and subcontractors SHALL include in their contract a provision indicating that in the event of a dispute to their contract they agree to proceed through informal meetings, mediation, or arbitration, or any combination thereof, specifying the terms under which disputes are to be submitted, the service or assistance to be employed, and the timing or submission of disputes

a. INFORMAL MEETINGS

The assigned Diversity and Economic Opportunity Representative will conduct informal meetings with the parties to a dispute at the request of any party to the contract, however, all parties must voluntarily agree to the procedure. Interested parties should contact the DEO Contract Compliance Manager at (213) 922-2603. The assigned Diversity and Economic Opportunity Representative may require the parties to meet in an attempt to resolve the perceived differences.

b. MEDIATION

The parties to a contract may agree to endeavor to settle a dispute through informal mediation under independent third party organizations. The METRO's Diversity and Economic Opportunity Department is considered an independent third party. Submission to informal mediation is voluntary by the parties, is not binding and offers advisory opinions only.

c. ARBITRATION

Should the parties fail to resolve any EO related dispute arising out of or related to the contract via informal meetings or mediation, the parties are contractually obligated to submit the claims for arbitration. Arbitration conducted pursuant to the contract shall be binding upon all parties to the arbitration. All arbitrations are to be conducted in a manner consistent with §1020 et. seq. of the California Public Contract Code and §1296 of California Code of Civil Procedure.

Available mediation and arbitration services include:

The American Arbitration Association (213) 383-6516
Dispute Resolution Center (818) 793-7174

The Contractor shall incorporate this Paragraph, 3.6 into each SBE subcontract related to work arising under this contract and shall not incorporate by reference.

Only when resolution of SBE disputes attempted through informal meetings, mediation, and/or arbitration has failed may the Contractor formally request substitution of a SBE subcontractor.

d. TIMELINESS

Should the parties proceed to arbitration, moneys due, if any, shall be placed in a trust account. Such funds shall be released to the appropriate party within five (5) business days of a determination being issued by the arbitrator.

NOTE: Arbitration findings are binding upon the parties. However, the findings do not in any way relieve the contractor of its obligation to meet the SBE goals.

3.7 SUBSTITUTIONS

If, after award, and following the above dispute resolution procedures, a Contractor should request a substitution of Subcontractors pursuant to the provisions of the California Public Contracts Code, the Contractor shall replace a SBE Subcontractor with another SBE firm. THE CONTRACTOR SHALL PROVIDE WRITTEN NOTICE TO THE ASSIGNED DEO REPRESENTATIVE OF ANY FAILURE IN WHOLE OR IN PART TO USE LISTED SBES.

- a. If a SBE Subcontractor substitution is requested, the Contractor shall submit a list of any requested substitute SBE Subcontractors, together with corresponding certification to the METRO.
 - i. The Contractor shall, at a minimum, provide the Resident Engineer and the Contract Compliance Department with a listing of firms and organizations of enterprises solicited and those utilized as subcontractors on the proposed project. Such listing shall clearly delineate which firms are classified as SBE.
 - ii. Efforts made to identify and retain a SBE as a substitution subcontractor when arrangements with the original SBE proved unsuccessful shall be submitted in writing to the METRO SBE Compliance Officer for approval. Work in the Category concerned shall not begin until such approval is granted in writing.

- iii. Notification of a subcontractor's termination shall be sent to the METROs Resident Engineer and to the assigned DEO Representative and the Manager, Contract Compliance Unit, Diversity and Economic Opportunity (DEO) Department. Said termination notice will include the subcontractor's ethnic classification and reason for termination.
- b. The new list shall include the dollar value and the type of work covered by each Subcontractor. All substitutions are subject to the approval of the METRO.
- c. The METRO will authorize the substitution of a subcontractor only for the below listed reasons:
 - i. The listed SBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions, plans and specifications for the project, or on the terms of such subcontractor's or supplier's written bid is presented by the Contractor.
 - ii. The listed SBE becomes bankrupt or insolvent.
 - iii. The listed SBE fails or refuses to perform his subcontract or furnish the listed materials.
 - iv. The listed SBE subcontractor fails or refuses to meet the bond requirements of the Contractor.
 - v. The prime contractor demonstrates to METRO, or its duly authorized officer, subject to the further provisions set forth in the Public Contract Code, Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.
 - vi. The listed subcontractor is not licensed pursuant to the Contractors License Law.
 - vii. METRO determines that the work performed by the listed subcontractor is substantially unsatisfactory and is not in accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.
- d. If substitution with another SBE firm is not viable, the Contractor shall:
 - i. Document its good faith efforts in attempting the substitution with other SBE firms; and
 - ii. Submit this documentation along with the REQUEST FOR SUBSTITUTION WITH OTHER THAN AN SBE to METRO for review and approval.
- e. The prime Contractor shall obtain the written consent of the METRO prior to making any substitutions of SBE firms or other Subcontractors.

3.8 ATTAINMENT OF THE CONTRACT'S SBE COMMITMENT

- a. The Contractor shall not make any falsification of a Subcontract as to Subcontractor's name, Subcontract amount and/or actual work to be performed by SBE firms.
- b. The Contractor shall use SBEs according to the participation levels committed to at the time of contract award, or be requested to demonstrate an adequate and positive good faith effort to do so throughout the life of the contract.
- c. The dollar amount of Change Orders or any other contract modifications that increase or decrease the scope of work committed to SBEs shall be commensurately added to or subtracted from the total contract amount used to compute actual dollars paid to SBEs.
- d. All contract amounts revised as a consequence of a Change Order or other contract modification shall be reflected in the Contractor's monthly progress reports referenced in the Section entitled SBE CONTRACT COMPLIANCE REPORTING, herein.

Any Contractor's monthly progress report that reflects contract amounts revised as a consequence of Change Order(s) shall be accompanied by a copy of said Change.

- e. Order(s) which the Contractor shall submit the final SBE report within fourteen (14) calendar days of acceptance of the contract work by the METRO.
- f. Failure to adhere to any of the requirements of this Section shall constitute a breach of contract and may result in the METRO's terminating the contract for default and/or imposing of appropriate sanctions as outlined in the Section entitled REMEDIES FOR BREACH OF SBE REQUIREMENTS.

3.9 FINAL REPORTING

The Contractor shall submit the final Form 103 report within 14 calendar days of acceptance of the contract work by METRO.

3.10 FAILURE TO COMPLY

Failure to adhere to any of the SBE requirements shall constitute a breach of contract and may result in METRO terminating the contract for default and/or imposition of appropriate sanctions as outlined in the Section entitled POLICY and the Articles entitled, ASSESSMENT FOR SBE NON-COMPLIANCE, of the Compensation and Payment Provisions. The Contract Staff shall review the contractor's monthly progress reports to determine whether the utilization of SBE firms is consistent with the commitment of the contractor as stated in its bid or proposal and/or agreed to at the time of contract award.

Failure to use an SBE that was listed toward the goal is a breach of contract and may result in the imposition of administrative sanction.

If it is determined that the Contractor's SBE utilization is not consistent with the commitment thereto, the contractor shall be requested in writing to submit evidence of its good faith efforts to meet the goal. The contractor shall be given ten (10) working days to submit this documentation. Failure to respond shall place the contractor in non-compliance subject to sanctions provided herein. The contractor's good faith efforts documentation shall then be reviewed for accuracy, sufficiency and internal consistency. Staff shall make a determination as to the adequacy of the contractor's good faith efforts documentation and so inform the contractor. If it is determined that the contractors' good faith efforts documentation is acceptable, the contractor shall be deemed to be in compliance with the SBE utilization goals.

If it is determined that the Contractor's good faith efforts documentation is not acceptable, the Contractor shall be notified and be deemed to be in non-compliance with the SBE utilization goals and/or be requested to correct its non-compliance within a reasonable time frame, and/or may result in the AUTHORITY terminating the contract for default and/or the imposition of other appropriate sanctions. Contracts executed prior to the de-certification of the SBE may remain undisturbed. Neither the prime contract nor the subcontract will be subject to cancellation because of the de-certification, provided there is no culpability on the part of either the prime contractor or the subcontractor which led to the de-certification. The prime contractor for whom the decertified SBE is working receives credit toward the project goal provided the prime contractor acted in good faith in relying on METRO's certification of the firm. However, if the decertified SBE were also found not to have performed a commercially useful function, no credit is to be made to the project goal or METRO's overall goal. The contractor shall replace decertified firms with a SBE firm(s) on contract amendments and/or option year(s).

3.11 REMEDIES FOR BREACH OF SBE REQUIREMENTS

All intended Bidders or Proposers and successful Contractors are hereby notified that, should a Contractor be found in violation of any part of METRO SBE requirements during the performance of the Work, such Contractor will be required to "correct" its deficiency or be subject to the Administrative Sanctions listed in this Section.

A. ADMINISTRATIVE SANCTIONS

All Contractors deemed to be in non-compliance with any part of the SBE Program requirements shall be informed in writing, by certified mail, that administrative sanctions shall be imposed for non-compliance of the SBE Program requirements and/or failure to provide documentation of good faith efforts as requested. Administrative Sanctions shall include, but not be limited to:

- (a) A mandatory four (4) hour SBE Training Session (STS) to be attended by at least two decision makers of the Contractor(s) in violation. The METRO Contract Compliance Unit will conduct the SBE Training Session. Each contractor attending the STS will be responsible for all associated expenses, including, but not limited to, travel, lodging, meals and etc;
- (b) Penalties, as described in Assessment For SBE Non-Compliance Section;
- (c) Suspension of payment to the Contractor of any monies held by the authority, as retained on the Contract;

(d) Termination of the Contract for default.

3.12 APPEAL OF SANCTION DETERMINATION

THE CONTRACTOR SHALL BE GIVEN TEN (10) BUSINESS DAYS FROM THE DATE OF THE NOTICE TO FILE A WRITTEN APPEAL WITH THE DIVERSITY AND ECONOMIC OPPORTUNITY DEPARTMENT'S MANAGER OF CONTRACT COMPLIANCE OR HIS/HER DESIGNEE.

Failure to respond within the ten (10) day period shall constitute a waiver of the Contractor's right to appeal. If the Contractor files an appeal, the Contract Compliance Unit Manager, or his designee, shall issue a written recommendation within ten (10) working days of receipt of the written appeal.

If, after review of the Contractor's appeal, the Manager of Contract Compliance or his/her designee, decides to uphold the decision to impose administrative sanctions on the Contractor, the written recommendation shall state the specific sanction(s) to be imposed and inform the Contractor of its right to a hearing on the merits.

3.13 CONTRACTOR'S RIGHT TO A HEARING

The Contractor shall be given ten (10) business days from the date of the written recommendation to file a written request for a hearing with the Manager, Contract Compliance Unit, Diversity and Economic Opportunity. Failure to respond within the ten (10) business day period shall constitute a waiver of the Contractor's right to a hearing.

The Contract Compliance Manager, Diversity and Economic Opportunity shall issue a written final determination within five (5) business days of the hearing. There shall be no right of appeal to the METRO Board of Directors.

3.14 ASSESSMENT FOR SBE NON-COMPLIANCE

Should the Contractor fail to comply with any part of the Contract SBE Program requirements, the Contract payments will be reduced by whichever is the greater

- (1) Five Hundred dollars (\$500) per day from the date the Contractor is found by the EO Department to be in non-compliance with any part of the SBE Program requirements until compliance is either attained, or excused;
- (2) An amount equal to ten percent (10%) of the total contract value including any approved change orders.

4.0 AUDITS AND INSPECTIONS

METRO reserves the right to audit the records and inspect the facilities of its Contractors and any Subcontractors of any tier for the purpose of verifying the SBE participation and/or adherence to the SBE Program requirement. Contractors and Subcontractors shall permit access to their records at the request of METRO. Notice is hereby given that state, local, and

federal authorities may initiate or cooperate with METRO in auditing and inspecting such records.

SECTION 2 NON-DISCRIMINATION ANDEQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

1.0POLICY

The Los Angeles County Metropolitan Transportation Authority (METRO) will not do business with any employer who discriminates on the basis of: race; sex; color; religion; ancestry; national origin; marital status; age (over 40); disability (including AIDS, and cancer-related medical condition) or covered veteran status.

2.0IMPLEMENTATION

2.1 The METRO has adopted the Construction Industry Compliance Program procedures for compliance reviews of construction contractors and subcontractors including those involved in federally assisted construction to determine whether they are complying with requirements prohibiting discrimination and requiring affirmative action to ensure equal employment opportunity without regard to race, color, religion, national origin, sex, disability, or covered veteran status.

2.2 Any Contractor who is performing work financed in whole or in part by an agency of the federal government, whether on a project sponsored by the METRO or another agency, may follow the federal regulations which implement Executive Order 11246.

2.3 The Diversity and Economic Development Department is responsible for implementing the Equal Employment Opportunity program. This office shall collect all reports and related information, and conduct all monitoring and enforcement activities as outlined in the regulations. Any Contractor who is performing work as described in paragraph B of this Section is also required to submit reports and related information to the regional office of the U.S. Department of Labor Employment Standards Administration, Office of Federal Contract Compliance Program (OFCCP).

2.4 A Contractor is covered under Executive Order if the contract exceeds \$ 10,000 and Section 503 if the amount is more than \$2,500; and under 38 U.S.C. 4212 if the amount exceeds \$10,000 or more. Federal Assisted construction contracts and subcontracts in excess of \$10,000 are covered under Executive Order 11246 only and not under 503 or 38 U.S.C. 4212. Contractors meeting the threshold criteria in this paragraph are required to include the following clause in their contract:

- A. During the performance of this Contract, the Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of: race; sex; color; religion; ancestry; national origin; marital status; age (over 40); or, disability (including AIDS, and cancer-related medical condition). Contractors and Subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination, Contractors and Subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) The applicable regulations of the Fair Employment and Housing implementing Government Code, Section 12900, set forth in Chapter 5 of Division 4 of Title 2 of the

California Administrative Code are incorporated into this Contract by reference and made a part hereof as if set forth in full. The Contractor and its Subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- B. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform Work under the Contract.

3.0 NONCOMPLIANCE

The Diversity and Economic Development Department has the METRO to determine violations of the nondiscrimination and compliance requirements and recommend possible remedies. In the event of noncompliance by an METRO Contractor or Subcontractor, the Diversity and Economic Development Department will inform the Prime and Contract Administrator of such finding. The METRO may pursue such remedies as it deems appropriate, including cancellation, termination or suspension of the Contract, declaring the Contractor ineligible to bid on future contracts for a specified period of time, or such other sanctions which shall take into account the severity of the violation or violations.

4.0 EQUAL EMPLOYMENT OPPORTUNITY

- 4.1 The Contractor shall not discriminate against any employee or applicant for employment because of: race; sex; color; religion; ancestry; national origin; marital status; age (over 40); or, disability (including AIDS, and cancer-related medical condition). The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to: race; sex; color; religion; ancestry; national origin; marital status; age (over 40); or, disability (including AIDS, and cancer-related medical condition). Such actions shall include but not be limited to the following: employment, upgrading, demotion, and transfer; recruitment and recruitment advertising; layoff and termination; rates of pay and other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post notices to be provided, setting forth the conditions of this Section, in conspicuous places available to employees and applicants for employment. The Contractor shall insert a similar condition in all subcontracts, except subcontracts for standard commercial supplies or raw materials.
- 4.2 The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to: race; sex; color; religion; ancestry; national origin; marital status; age (over 40); or, disability (including AIDS, and cancer-related medical condition).
- 4.3 The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided, advising the said labor union or workers' representatives of the Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- 4.4 The Contractor shall comply with all provisions of Executive Order 11246, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 4.5 The Contractor shall furnish information and reports required by Executive Order 11246, as amended, and by rules, regulations, and orders of the Secretary of Labor or pursuant thereto and shall permit access to its books, records and accounts by the METRO and the Secretary of Labor, for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 4.6 In the event of the Contractor's noncompliance with the nondiscrimination conditions of the Contract or with any of the said rules, regulations, or orders, the Contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts, in accordance with procedures authorized in Executive Order 11246, as amended; and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 4.7 The Contractor shall include the conditions of this Section in every subcontract of any tier or purchase order, unless exempted by rules, regulations, or orders of the Secretary of Labor, issued pursuant to Section 204 of Executive Order 11246, as amended, so that such conditions shall be binding upon each Subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the METRO may direct, as a means of enforcing such conditions, including sanctions for noncompliance, provided, however, that, if a Contractor becomes involved in or is threatened with litigation with a Subcontractor or vendor as a result of such direction by the METRO the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

5.0 AFFIRMATIVE ACTION REQUIREMENTS - EQUAL EMPLOYMENT OPPORTUNITY SPECIFICATIONS

- 5.1 Requirements for Affirmative Action to Ensure Equal Employment Opportunity pursuant to Executive Order 11246, as amended, apply to this Contract.
- 5.2 The Contractor shall comply with the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth herein.
- 5.3 The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the Los Angeles County Area are as follows:

A. Goals and Timetables for Female Participation.

TIMETABLE	TRADE GOAL
From April 7, 1978 extended indefinitely	All 6.9%

B. Goals and Timetables for Minority Participation.

TIMETABLE	TRADE GOAL
Until further notice by the Office of Federal Contract Compliance Programs (OFCCP)	All 28.3%

These goals are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside the covered area, it shall apply the goals established for such geographical area where the work is generally performed. With regard to this second area, the Contractor is also subject to the goals for both its federally involved and non-federally involved construction.

5.4 The Contractor's compliance with Executive Order 11246, the regulations in 41 CFR Part 60-4, and the METRO's Equal Employment Opportunity Policy shall be based on its implementation of this Section, specific affirmative action obligations set forth in 41 CFR 60-4.3 (a) and its efforts to meet the goals established for the Los Angeles County geographical area where the Work is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor must demonstrate a good faith effort to employ minority persons and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goal shall be a violation of the Contract, Executive Order 11246, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

5.5 The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days after award of any construction subcontract in excess of ten thousand dollars (\$10,000) at any tier for construction work under the Contract. The notification shall list the name, address, and telephone number of each subcontractor and employer identification number; estimated dollar amount of subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

5.6 As used in the Contract, the "covered area" (or otherwise termed the "Work") is the area of jurisdiction of the Los Angeles Building and Construction Trades Council.

6.0 STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

Pursuant to 41 CFR 60-4.3 (a) and the METRO's policy as follows:

6.1 As used in this Manual:

A. "Covered area" (or otherwise termed the "Work") means the area of jurisdiction of the Los Angeles Building and Construction Trades Council.

- B. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, and any person to whom the Director delegates authority.
- C. "Employer Identification Number" means the Federal Social Security Number used on the Employer's Quarterly Federal Tax Return, United States Treasury Department Form 941.
- D. "Minority" includes:
1. Black (all persons having origins in any of the Black African racial groups not of Hispanic origins);
 2. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);
 3. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, South-East Asia, the Indian Subcontinent, or the Pacific Islands); and
 4. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

6.2 Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the Work involving any construction trade, it shall include in each subcontract in excess of ten thousand dollars (\$10,000) the provisions of these specifications and the notice which contains the applicable goals, for minority and female participation and which is set forth in this Contract.

6.3 If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the Covered Area either individually or through an association, its affirmative action obligations on all work in the Plan Area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to make good faith efforts to achieve the Plan goals and timetables.

6.4 The Contractor shall implement the specific affirmative action standards provided in the Section entitled AFFIRMATIVE ACTION REQUIREMENTS - EQUAL EMPLOYMENT OPPORTUNITY, paragraphs A through F, herein. The goals set forth in this Contract are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress towards its goals in each craft during the period specified.

6.5 Neither the provisions of any collective bargaining agreement, nor the failure by a union, with whom the Contractor has a collective bargaining agreement, to refer either minority persons or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6.6 In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

6.7 The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these actions fully and implement affirmative action steps at least as extensive as the following:

- A. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- B. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority, and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- C. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a Union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the Union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore; along with whatever additional actions the Contractor may have taken.
- D. Provide immediate written notification to the METRO's Diversity and Economic Development Department and OFCCP's Director when the Union or Unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- E. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minority persons and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's

employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under this Section, paragraph G, subparagraph 3.

- F. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- G. Review, at least annually, the Contractor's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- H. Disseminate the Contractor's EEO Policy externally by including it in any advertising in the news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- I. Direct its recruitment efforts both oral and written, to minority, female and community organizations, to schools with minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment sources, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- J. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- K. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- L. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities, through appropriate training, etc.
- M. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

- N. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- O. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- P. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

6.8 Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations as identified in the Section entitled AFFIRMATIVE ACTION REQUIREMENTS - EQUAL EMPLOYMENT OPPORTUNITY, paragraphs A through F, herein. The efforts of a Contractor association, joint Contractor-union, Contractor-community, or similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations as identified in the Section entitled AFFIRMATIVE ACTION REQUIREMENTS - EQUAL EMPLOYMENT OPPORTUNITY, paragraphs A through F, herein, provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minority persons and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and a failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

6.9 A single goal for minority persons and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is under-utilized).

6.10

The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of: race; sex; color; religion; ancestry; national origin; marital status; age (over 40); or, disability (including AIDS, and cancer-related medical condition).

6.11

The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246, as amended by Executive order 11375.

6.12

The Contractor shall carry out such sanctions and for violation of these specifications and of the Equal Opportunity Article, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

6.13

The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in the Section entitled AFFIRMATIVE ACTION REQUIREMENTS - EQUAL EMPLOYMENT OPPORTUNITY herein, so as to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

6.14

The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade rate of pay, and locations at which the work was performed. (Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.)

6.15

Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

7.0 NONCOMPLIANCE

Failure to carry out the requirements of this Section shall constitute a breach of Contract and, after notification to the US Department of Transportation, may result in termination of the Contract by the METRO or imposition of other appropriate sanctions. This notice is given pursuant to 49 CFR 23.43(c).

END OF SECTION 2.0

APPENDIX A - SMALL BUSINESS DIVERSITY MANUAL DEFINITION OF TERMS

49 C.F.R. Part 26 Title 49 Code of Federal Regulations Part 26

These are federal regulations titled, "PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS." They apply to all recipients of any of the types of funds fully described in 49 C.F.R. §26.3. Generally, these include, but are not limited to, certain Federal transit funds and Federal-aid highway funds, in support of contracts performed within the United States, its territories, possessions, Puerto Rico, Guam or the Northern Marianas Islands. Source: 49 C.F.R. Parts 1-99, Rev. 10/2002

Commercially Useful Function

Work performed by a DBE firm in a particular transaction that in light of industry practices and other relevant considerations, has a necessary and useful role and the firm's role is not a superfluous step added in an attempt to obtain credit toward goals. If, in METRO's judgment, the firm (even though an eligible DBE) does not perform a commercially useful function in the transaction, no credit toward the goal may be awarded.

Commitment

The level of small business participation the Contractor commits to in its Bid or Proposal.

Contracting Opportunity

Any decision by METRO or its contractors to institute a procurement action to obtain a product or service commercially (as opposed to intergovernmental actions).

Department

A functional unit of METRO responsible for management and administration of specific projects included within the capital and operating budget.

Directory of Certified Firms

METRO's list of Certified Firms which is used by METRO and its contractors to identify potential DBE/MWBE/SBE primes, subcontractors and suppliers.

Disadvantaged Business Enterprises(DBE)

A DBE firm is one that has demonstrated to a DBE certifying authority, by a preponderance of the evidence, that it meets the requirements of Subpart D of 49 CFR Part 26 concerning group membership or individual disadvantage, business size, ownership and control. It is a firm that is:

- Owned either by members of designated groups identified in §26.67(a) which are rebuttably presumed to be socially and economically disadvantaged or owned by individuals who have proved to the certifying authority, by a preponderance of the evidence, that they are socially and economically disadvantaged within the guidance of Appendix E of 49 CFR Part 26, including proof that their Personal Net Worth (excluding interest in primary residence or applicant business is less than \$750,000);
- An existing small business as defined by SBA standards found at 13 CFR Part 121, appropriate to the type of work the firm seeks to perform in DOT-assisted contracts and has

had average annual gross receipts, as defined by SBA regulations found at 13 CFR 121.402, over the previous three years, not in excess of \$17,420,000;

- At least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals;
- An independent business whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it;
- An organization in business to make a profit; and
- In compliance with other rules affecting certification set forth at §26.73.

DOT

The U.S. Department of Transportation.

DOT Assisted Contract

Any contract or modification of a contract between METRO and a contractor which is paid for in whole or in part with DOT financial assistance.

FTA

Federal Transit Administration, an agency of the U.S. Department of Transportation.

Goal

A numerically expressed objective which METRO or its contractors are required to make good faith efforts to achieve.

Good Faith Efforts

Specific affirmative actions required to be taken by METRO and its contractors and subcontractors to maximize opportunities for DBEs to compete for and perform on contracting opportunities.

METRO

The Los Angeles County Metropolitan Transportation Authority.

Manufacturer

Means a business that operates, or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.

Metro Rail Project

The design, engineering and construction of the high-capacity, high-speed conventional rapid rail system, currently proposed as an 18 mile subway system with multi-car trains, steel rails and at least 16 stations serving the Los Angeles' Regional Core.

Non-Compliance

The condition existing when a contractor has failed to implement or meet the requirements of 49 CFR 23 and 26 or METRO policy or procedure pertaining to DBE participation.

Payroll Form

The State of California WH 347 Dept. of Transportation form for completing the Contractor employee's number of hours worked, hourly rate of pay, employee's classification, name, SSN, address, and fringe benefits paid, etc.

Pre-Bid/Construction Conference

A meeting held by METRO after award of contract on a particular construction project, but prior to the beginning of any work, at which the prime contractor is advised of its federal compliance obligations and any final technical requirements.

Pre-Bid/Pre-Proposal Conference

A meeting held by METRO prior to the bid/proposal closing date of a particular project, at which prospective bidders/proposers are advised of METRO specification requirements which include DBE provisions.

Professional/Technical Services Contract

Contracts for the professional and technical services of accountants, architects, engineers, landscape architects, lawyers, planners, surveyors, title companies, urban designers, appraisers, option negotiators, and other persons performing similar services for the METRO.

Public Works Contract

Contracts for the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Secretary

The Secretary of U.S. Department of Transportation or any person whom he/she has designated to act for him/her.

Small Business Concern

A small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$16.6 million over the previous three fiscal years.

Small Business Enterprise(SBE)

An SBE firm is one that has demonstrated to satisfaction of the certifying authority at METRO in charge of issuing SBE certifications, that it meets the eligibility requirements of the METRO Small Business Enterprise (SBE) Program concerning individual disadvantage, business size, ownership and control. It is a firm that is:

- Owned by individuals who can prove to the satisfaction of the certifying authority that they are socially and economically disadvantaged within the guidance of the Paragraph 7.1(a)(iii) on Page 25 of the METRO SBE Program; including personal net worth of not to exceed \$250,000 individually, excluding the value of the owners' personal residence(s), stocks and bonds owned in the applicant business and other interests in applicant business. The Secretary shall adjust this figure from time to time for inflation;

- An existing “small business concern” as defined by SBA, pursuant to section 3 of the Small business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same individual or individuals which has annual average gross receipts in excess of \$17,420,000 over the previous three fiscal years.
- At least 51 percent owned, in the determination of METRO, by one or more economically disadvantaged individuals;
- An independent business whose management and daily business operations are controlled by one or more of the socially disadvantaged persons who own the firm;
- An organization in business to make a profit;
- In compliance with other rules affecting certification set forth in Section 7 of the SBE Manual, Pages 25 through Page 30.

Small Business Diversity Section

The staff that oversees and monitors labor standards activities for applicability to the State of California Labor Code and, where applicable, Title 8 of the California code of Regulations.

State

State of California.

Statement of Compliance

The statement on the back of Payroll Form WH 347, whereby the Contractor declares how the fringes are paid whether by cash or through a bona fide fringe program.

U.S. Department of Transportation Regulation (49 CFR Part 26)

Federal rules and regulations published in the Federal Register dated February 2, 1999; by the Department of Transportation, Office of the Secretary; entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," and codified at Title 49, Code of Federal Regulations, Part 26.

Wages

The basic hourly rate of pay, any contribution made pursuant to, or cost anticipated to provide, a bona fide fringe benefit plan, fund or program.

APPENDIX B - COMPLIANCE SUBMITTAL FORMS



**LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
SUMMARY OF SMALL BUSINESS ENTERPRISE (SBE) SUBCONTRACTORS PAID REPORT**

REPORTING PERIOD (MONTH/YEAR): _____

Project Name:		Report No.:		Signature:			
Project Location		Contract No.:		Prepared by:			
Prime Contractor:		Original Award Amount:		Company:			
Address		Current Contract Value		Area Code/Phone #:			
		% of project complete		Contact Person:			
City, State, Zip		Date of last progress payment rec'd from METRO:		Area Code/Phone #:			
Contract Award Date		Total \$ Paid-to-date to Prime *					
SBE (committed) Goal:		SBE \$					
SUBCONTRACTOR/SUPPLIER		Dollars Paid This Month	Dollar Amount Paid To Date	(Construction Only) Schedule Activity I.D.	Type Of Work Performed	Original Dollar Amount Committed	Dollar +/- Resulting From Change Order Activity
NAME							
ADDRESS							
(Area Code) Phone							
CONTACT:							
SUBCONTRACTOR/SUPPLIER #1							
NAME							
ADDRESS							
(Area Code) Phone							
CONTACT:							
SUBCONTRACTOR/SUPPLIER #2							
NAME							
ADDRESS							
(Area Code) Phone							
CONTACT:							
SUBCONTRACTOR/SUPPLIER #3							
NAME							
ADDRESS							
(Area Code) Phone							
CONTACT:							
Special Instructions:		The Prime shall make prompt payment of all monies due and owed to DBE and non-DBE firms within 10 business days upon receipt of payment from the METRO as per contract agreement and Prompt Payment Act. Payment of retention shall be made to all DBE and non DBE subcontractors within 30 days after satisfactory completion of the subcontracted work.					

FORM 103 (March 2002) (Page 2)

Invoice Payment History

METRO 08-217mw
RFP No. PS4340-2301
ISSUED: 12.22.08

MONTHLY EMPLOYMENT UTILIZATION REPORT																	
U. S. Department of Labor																	
Employment Standards Administration																	
Office of Federal Contract Compliance Program																	
This report is required by Executive Order 11246, Sec. 203. Failure to report can result in contracts being cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts.												1. Covered area:		2. Employer's I.D. #		OMB No. 1215-0163	
3. Current Goals Minority: 28.3% Female: 6.9%		4. Reporting period From: To:		Name and Location of Contractor												Federal Funding Agency	
Project Name and Number										Location of Project							
6.TOTAL FEDERAL & NON-FEDERAL CONSTRUCTION WORK HOURS																	
Construction Trade	Classification	6a.Total All Employees By Trade		6b. Black (Not of Hispanic Origin)		6c. Hispanic		6d. Asian or Pacific Islander		6e.AmericanIndian or Alaskan Native		7.Minority Percentage	8. Female Percentage	9. Total Number of Employees		10. Total Number of Minority Employees	
		M	F	M	F	M	F	M	F	M	F			M	F	M	F
	Journeyworkers																
	Apprentices																
	Trainees																
	Subtotal																
	Journeyworkers																
	Apprentices																
	Trainees																
	Subtotal																
	Journeyworkers																
	Apprentices																
	Trainees																
	Subtotal																
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	Apprentices																
	Trainees																
	Subtotal																
	Journeyworkers																
	Apprentices																
	Trainees																
	Subtotal																
Total Journeyworkers																	
Total apprentices																	
Total Trainees																	
Grand Total																	
11. Company Official's Signature & Title								12. Area Code & Phone Number				13. Date Signed				Page ____ of ____	

SECTION 3 – BID/PROPOSAL DOCUMENTS

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INSTRUCTIONS TO PROPOSERS

IP-01 PREQUALIFICATION REQUIREMENTS

- A. All contractors, subcontractors, material suppliers (supplying directly to Metro), and any other firm competing for award of contracts or subcontracts of \$100,000 or more will be required to complete and submit a Contractor Pre-Qualification Application. Failure to do so may cause your Proposal to be rejected as non-responsive.
- B. Contractor Pre-qualification Applications are due to the pre-qualification office no later than the Proposal due date. Do not put copies of pre-qualification documents in your Proposal.
- C. For contact information, please refer to the Letter of Invitation. For detailed instructions, refer to the Pre-Qualification Application which can be downloaded from the Metro website (<http://www.metro.net/EBB/PQA/vprequal.htm>), or provided by the Pre-Qualification Office.

IP-02 BIDDERS LIST FORM

- A. In accordance with 49 CFR 26.11 (c), Los Angeles County Metropolitan Transportation Authority (Metro) is required to maintain a Bidders List, consisting of all firms bidding on prime contracts and bidding or quoting subcontracts, who seek an award or participation on Metro contracts funded in whole or in part with Federal funds. Each Bidders List is a compilation of Bidders, Proposers, Quoters, subcontractors, manufacturers, and suppliers of materials who have submitted bids during the advertising period of a specific project.
 - B. **If the Letter of Invitation identifies this RFP as federally funded, all businesses are required to complete and submit a Bidders List Form (PRO FORM 132) when submitting a Bid, Proposal, or Quote directly to Metro.**
 - C. All businesses that submit a Bid, Proposal, or Quote directly to Metro must also ensure that all of its quoting subcontractors, suppliers, manufacturers and suppliers that the Proposer included in its response to Metro, are required to complete and submit a Bidders List Form (PRO FORM 132).
- D. Bidders List Forms (PRO FORM 132) are due at time of Proposal due date as provided in the Letter of Invitation. Failure to submit the Bidders List Form(s) may deem the Proposer non-responsive.
- E. Metro will use the Bidders List to identify the universe of DBE and non-DBE contractors and subcontractors who seek to work on Metro contracts for use in establishing Metro overall goals.

IP-03**BROWZ REGISTRATION**

- A. This clause only applies to construction contracts greater than \$25,000, and service contracts greater than \$100,000.
- B. The successful proposer (i.e., only the firm awarded the contract) shall complete and submit the required registration form and associated documents specified therein to The Browz Group, LC, (Browz) and pay the applicable fee(s) to remain registered with Browz, for the term of the contract. Metro certified Small Business are exempt from this requirement through April 30, 2006.
- C. The initial (1st year) \$595 registration fee is due to Browz within ten (10) days of receipt of Award Notice.
- D. For multi-year contracts, the 2nd year fee of \$536 is due to Browz within ten (10) calendar days of the start of the 2nd year of the contract. For the 3rd year of a multi-year contract a \$476 fee is due to Browz within ten (10) calendar days of the start of the 3rd year of the contract.
- E. For task order contracts the \$595 fee is due within ten (10) calendar days of award of the first task order. Subsequent years shall follow the fee schedule set forth in D above.
- F. Should the successful bidder fail to register with The Browz Group, LC or pay the applicable fee, Metro reserves the right to determine the successful bidder as non-responsive, withdraw the Award Notice and not execute a contract.
- G. To obtain additional information about Browz go to <http://www.Browz.com>, or call (888) 276-9952.

IP-04**EXAMINATION OF RFP DOCUMENTS**

- A. All proposals shall be in strict accordance with the Request for Proposal (RFP) Documents.
- B. Copies of the solicitation, Metro responses to all written questions, and requests for interpretation and clarification will be available for examination and/or purchase as noted in the Request for Proposal Letter. The proposer is solely responsible for the examination of solicitation documents; reviewing all Amendments; comprehending all conditions that may impact the proposal, and the performance of the Work should the proposer be selected. Failure of the proposer to so examine and inform itself must be at its sole risk.

IP-05**INTERPRETATION OF RFP DOCUMENTS**

- A. Requests for interpretation or clarification of the solicitation documents shall be submitted in writing. All written requests shall be forwarded to the Metro Contract Administrator identified in the Request for Proposal Letter.

- B. To ensure that responses are provided to all Planholders, inquiries shall be received at least ten (10) working days prior to the submittal due date. Where such interpretation or clarification requires a change in the solicitation documents, the Metro will issue an Amendment.
- C. The Metro shall not be bound by, and the Planholder shall not rely on for any purpose, any oral interpretation or oral clarification of the solicitation documents.

IP-06 COMMUNICATION WITH THE METRO

All communications between the Metro and the proposers must be in writing addressed to the Contract Administrator identified in the Request for Proposal Letter, except for:

- Issues regarding Pre-qualification addressed in PREQUALIFICATION REQUIREMENTS, and
- The Diversity and Economic Opportunity (DEO) department (such as a list of certified firms and the certification status of a particular firm) may be obtained by contacting the responsible party noted in the Request for Proposal Letter.

IP-07 AMENDMENT

- A. The Metro reserves the right to revise the solicitation documents prior to the proposal submittal due date. Such revisions, if any, will be made by Amendment to this RFP.
- B. Proposers shall acknowledge receipt of all Amendments to the solicitation documents in the Proposal Letter. Failure to acknowledge receipt of all Amendments and to include all the requirements of the Amendments in the proposal may render the proposal unacceptable and cause it to be rejected.
- C. Prior to submitting the proposal to the Metro for consideration, each proposer is responsible for checking the Metro website to ensure that it has received all applicable Amendments.

IP-08 PREPARATION OF SUBMITTAL

- A. The proposal shall be formatted in accordance with the requirements specified herein. Proposals shall include the forms provided with the solicitation documents, or on legible photocopies of the forms. Proposers shall complete the forms in accordance with the directions specified in these Instructions and the forms. All required explanatory narratives and the supplementary data are to be included with the proposal forms as indicated.
- B. Pencil or erasable ink shall not be accepted. Initial all modifications made to the proposer's entries and identify the proposer's name on the top right of each page. Liquid or dry correction materials shall not be used.

- C. Failure to comply with the requirements outlined in these solicitation documents may render the proposal(s) incomplete and may cause proposal rejection. This RFP does not commit the Metro to enter into a contract nor does it obligate the Metro to pay for any costs incurred in the preparation and submission of proposals.

IP-09 MODIFICATIONS AND ALTERNATIVE PROPOSALS

- A. Proposers are cautioned to limit exceptions, conditions, limitations to the provisions of this RFP as they may be determined to be so fundamental as to cause rejection of the proposal for not responding to the requirements of the RFP.
- B. Proposers submitting conforming proposals may submit alternate proposals to this RFP as complete separate offers, if the alternate proposals offer technical improvements or modifications that are to the overall benefit of the Metro. The Metro reserves the right to accept or reject any alternate proposal. Oral or telephonic proposals and/or modifications shall not be considered.

IP-10 SIGNING OF PROPOSAL AND AUTHORIZATION TO NEGOTIATE

- A. Proposer or its authorized representative (Proposer's Representative) shall execute the Proposal and all required solicitation documents. Proposers shall submit evidence of the Proposer's Representative's authority.
- B. If the proposer is a joint venture or partnership, it shall submit with its proposal a duly notarized Venturer or Partner-executed Irrevocable Power of Attorney that designates the Proposer's Representative along with a copy of the signed Joint Venture or Partnership Agreement. The Proposer's Representative shall be empowered to execute the proposal on behalf of the proposer and to act for and bind the proposer in all matters relating to the proposal. The Irrevocable Power of Attorney shall specifically state that each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of the proposer that are assumed under the proposal and under any contract arising therefrom. The Proposer's Representative shall execute the proposal on behalf of the joint venture or partnership in its legal name.

IP-11 SUBMISSION OF PROPOSAL

- A. Metro will accept proposals submitted by the proposer at the address and place shown in the Letter of Invitation, up to the date and time shown therein.
- B. It is the proposer's sole responsibility to see that its proposal is received as stipulated. The Metro may leave unopened any proposal received after the date and time for receipt of proposals. Any such unopened proposal may be returned to the proposer.

IP-12 PROPOSAL EVALUATION PROCESS

- A. The Metro shall review and evaluate the proposals in accordance with the requirements of solicitation documents, including any Good Faith Efforts submittals. Following the evaluation period the Notice of Intent to Award will be sent to all proposers and posted on the Metro's website.
- B. During the proposal evaluation period, staff shall determine if proposals are complete and proposers are responsible. Responsibility is defined as the apparent ability of the proposer to meet and successfully complete the requirements of the Contract. Responsibility includes, but is not limited to; consideration of a proposer's trustworthiness, the quality of past performance, financial ability, and fitness and capacity to do the proposed Work in a satisfactory manner. Proposers may be required to present further evidence that it has successfully performed similar Work of comparable magnitude or provide other proof satisfactory to the Metro that it is competent to successfully perform the Work.

IP-13 WITHDRAWAL OF SUBMITTAL

The proposer by means of a written request, signed by the Proposer's Representative, may withdraw a proposal. Such written request shall be delivered to the Contract Administrator identified in the Request for Proposal Letter prior to the award.

IP-14 PRE-AWARD AUDIT

The Metro or its representatives, upon reasonable advance written notice, shall have the right to examine any books, records, accounts and other documents of any proposer to determine the reasonableness, allowability, and allocability of the proposal.

IP-15 METRO RIGHTS

The Metro may investigate the qualifications of any proposer under consideration inclusive of, but not limited to, the information provided in the Pre-Qualification Application. The Metro may require confirmation of information furnished by a proposer, and require additional evidence of qualifications to perform the Services described in this RFP. The Metro reserves the right to:

1. Reject any or all of the proposals, at its discretion;
2. Remedy errors in the RFP;
3. Cancel the entire RFP;
4. Issue subsequent RFP;
5. Appoint evaluation committees to review proposals;
6. Seek the assistance of outside technical experts to review proposals;
7. Approve or disapprove the use of particular subcontractors and suppliers;

8. Establish a short list of proposers eligible for discussions after review of written proposals;
9. Solicit best and final offers (BAFO) from all or some of the proposers;
10. Negotiate with any, all or none of the proposers;
11. Award a contract to one or more proposers;
12. Accept other than the lowest priced proposal;
13. Disqualify the proposal(s) upon evidence of collusion with intent to defraud or other illegal practices on the part of the proposer(s);
14. Waive any informalities or irregularities in any proposal, to the extent permitted by law; and
15. Award a Contract without interviews, discussions or negotiations.

IP-16 PUBLIC RECORDS ACT

- A. Responses to this RFP must be subject to the provisions of the California Public Records Act (California Code Government Code, §6250 et seq.).
- B. Any documents provided by the Contractor to the Metro marked "Trade Secret," "Confidential," or "Proprietary" or any financial records provided by the Contractor to the Metro shall be handled in accordance with the General Condition entitled "Public Records".

IP-17 DISQUALIFICATION OF PROPOSERS

- A. Federal Organizational Conflict of Interest may apply to this procurement. See Supplemental Condition entitled, Organizational Conflict of Interest.
- B. Any person, firm, corporation, joint venture or partnership, or other interested party that has been compensated by the Metro or a contractor engaged by the Metro for assistance in preparing the RFP Documents and/or estimate shall be considered to have gained an unfair competitive advantage in proposing and shall be precluded from submitting a proposal in response to this RFP.
- C. After the RFP is issued, any person, firm, corporation, joint venture or partnership, or other interested party that has discussions regarding this RFP with anyone within the Metro other than the Contract Administrator may be considered to have gained an unfair competitive advantage. The enclosed Metro Lobby Ordinance, Certification of Conflict Checklist and Metro Code of Conduct shall govern the limits of participation. Non-compliance with these regulations could lead to disqualification. All communications with the Metro shall be in accordance with the instruction, COMMUNICATIONS WITH THE METRO.

IP-18**FILING OF PROTESTS**

- A. Appeals related to a Pre-Qualification Denial must be filed in accordance with the Pre-Qualification Appeal entitled Contractor Pre-Qualification Program (available for download at <http://www.metro.net/EBB/PQA/vprequal.htm>).
- B. All Protests must be filed and resolved in a manner consistent with the requirements of FTA Circular 4220.1E Third Party Contracting Guidelines dated June 19, 2003 (including any changes) available for download at http://www.fta.dot.gov/laws/circulars/leg_req_4063.html, and the Metro Protest Procedures available for download at <http://www.metro.net/EBB/protest.pdf>.
- C. Upon request, the Contract Administrator (for the subject proposal) will provide a copy of any of the aforementioned documents in this Article.

END OF INSTRUCTIONS TO PROPOSERS

SBE INSTRUCTIONS TO BIDDERS/PROPOSERS AND FORMS

METRO'S EQUAL OPPORTUNITY POLICY

It is the policy of the Los Angeles County Metropolitan Transportation Authority (Metro) and the Public Transportation Services Corporation (PTSC) to provide equal opportunity in procurement and contracting actions to each Bidder, Offeror or Proposer in connection with their projects. It is the policy of metro and the PTSC that no person or business shall be discriminated against in any procurement or contracting action because of race, color, ancestry, religious creed, national origin, physical disability (including HIV & AIDS), mental disability, medical condition (including cancer), age (over 40), marital status, veteran status, or any other status protected by applicable federal or state statutes.

S100 AN SBE PARTICIPATION GOAL HAS BEEN ESTABLISHED

The Los Angeles County Metropolitan Transportation Authority (Metro) has established a goal for Small Business Enterprise (SBE) participation for this state and/or locally-assisted project. The goal was announced in the Letter of Invitation.

Guidelines to help each Bidder, Offeror or Proposer obtain enough SBE participation to meet the goal and to help document that it made adequate good faith efforts to meet the goal start in, 'SUGGESTED METHODS TO MEET THE GOAL AND DOCUMENT THE EFFORTS MADE, ' at paragraph S120 of these instructions.

S101 BIDDER RESPONSIVENESS

Bidder responsiveness includes, but is not limited to, the following SBE requirements.

A bidder must have either:

- (a) Achieved the SBE goal set forth in the bid or proposal, or, if the goal was not achieved,
- (b) Documented to Metro's satisfaction that good faith efforts requirements are satisfied.
 - (1) Documentation of a bidder's good faith efforts shall be submitted within 48 hours of Metro's request for the documentation.
 - (2) A bidder shall be deemed to have exercised good faith efforts only if the bidder satisfies Metro that it complied with each of the good faith efforts criteria, thereby scoring at a minimum 75 of 100 points.

Please note: contractors that fail to fully comply with the literal requirements for each good faith effort criteria shall be scored accordingly and be deemed non-responsive.

S101.2 INFORMATION MUST BE CURRENT ACCURATE AND COMPLETE

The Bidder, Offeror or Proposer shall ensure all required information provided in response to this procurement is current, complete and accurate. Metro will perform an independent review and assessment of the data and information provided.

S101.3 RESOLUTION OF ISSUES WITH THE SBE PROGRAM OR WITH STATE LAW

The Small Business Enterprise (SBE) Program, approved by metropolitan Transportation Authority (Metro) Board of Directors, is hereby incorporated herein by reference as though set forth in full. Any error, omission, ambiguity or conflict that may arise between these, "Instructions to Bidders, Offerors or Proposers," and metro's SBE Program or California law shall be resolved first in favor of California law and then in favor of metro SBE Program. Failure by a Bidder, Offeror or Proposer or its subcontractors, consultants or other sources to carry out these requirements may be grounds for a finding of non-responsiveness or for metro to resort to such other remedy as Metro deems appropriate.

S102 CERTIFICATION CONSIDERATIONS IN BID & PROPOSAL PREPARATION

S102.1 CERTIFICATION IS GOVERNED BY THE SBE PROGRAM ESTABLISHED BY Metro

Only firms certified as eligible SBEs may participate in the SBE Program. Metro has a responsibility to ensure that the only firms who participate in Metro's SBE program are those certified as eligible SBEs under the SBE Program established by Metro. Certification as an SBE means the firm has followed the procedures and met the standards described in metro SBE Program.

S102.2 Metro GRANTS SBE CERTIFICATION

Firms desiring SBE certification in connection with Metro projects must be certified by metro. Metro currently does not accept nor does it have reciprocity agreements with other agencies that have similar programs. In the FORMS, SBE firms must identify that they are SBE certified by metro.

S102.3 VERIFY THAT SBE CERTIFICATION IS CURRENT

Firms participating in the contract as SBE firms must be SBE Certified in order for their participation to count toward the contract's SBE commitment. Where applicable metro will seek to enter into SBE reciprocity agreements with agencies that have established similar programs. All SBE firms shall be certified at the bid/proposal opening or proposal due date.

Bidders, Offerors and Proposers must verify that each business it represents to be a certified business, does in fact, hold up-to date, current SBE certification. SBE Certification is granted for a two (2) year period and verified annually. Up-to-date, current certification must be verified prior to the date of bid opening or proposal submittal.

Due to rapid changes in SBE firms' certification status all Bidders, Offerors or Proposers shall contact DEO certification reps to obtain written verification of the certification status and the SIC or NAIC codes of proposed listed SBE firms.

S102.4 Metro DIRECTORY

SBE firms certified by Metro shall be listed in Metro's DIRECTORY OF CERTIFIED FIRMS. The directory is published annually. It lists each SBE firm's name, address, telephone number and a description of the goods or services offered. The directory is also available on the Internet at, www.metro.net, Metro Website. Do not rely on the directory for verification of the SBE's status as current or up-to date.

S 102.5 BIDDERS RESPONSIBILITY

Bidders are solely responsible for obtaining verification of the current status of any SBE firm.

(a) THE SBE DIRECTORY

The certification directory merely lists those firms that have applied to Metro and have been granted certification. The directory, however, makes no claim as to the SBE firm's immediate availability, nor as to their expertise or capabilities to perform.

(b) BIDDERS, OFFERORS & PROPOSERS VERIFY SBE STATUS

Bidders, Offerors and Proposers shall also verify the listed SBEs by contacting Diversity and Economic Opportunity. To ensure SBE participation for goal credit, Bidders Offerors and Proposers shall verify the listed DBE's certification status according to NAISC or SIC certification.

Requests for verification of a firm's SBE certification status, granted by Metro, can be sent by FAX to (213) 922-7660. This is metro Diversity and Economic Opportunity (DEO) FAX number. It is recommended that verification be made within 72 hours of the bid/proposal due date. For information or questions concerning certification, call metro Certification Hotline at (213) 922-2600. Metro will independently verify the certification status of each business represented to be an up-to-date, currently certified SBE business.

(c) FIRMS WITH RECERTIFICATIONS PENDING

Firms pending SBE re-certification are considered certified and are eligible for participation unless de-certified)

(d) APPLICATION FOR CERTIFICATION

An application for certification by Metro may be filed by submitting SCHEDULE C (for individual business concerns) or Schedule B (for joint ventures). If the SBE is a joint venture partner, a Schedule B form and a copy of the joint venture agreement must be submitted to Metro for approval at least ten (10) working days prior to bid or proposal opening.

S102.6 SBE COMPLIANCE & CERTIFICATION ADDRESSES "FRAUDS AND FRONTS"

Bidders/Offerors and Proposers are hereby cautioned against knowingly and willfully using "fronts" to meet the SBE goal. Only legitimate certified SBEs are eligible to participate on non-federally funded contracts. The use of "fronts" and "pass through" subcontracts to non-SBE firms may constitute criminal violations. Any indication of fraud, waste, abuse, or mismanagement of these

funds found by Diversity and Economic Opportunity Representatives shall be immediately reported to Metro's Office of Inspector General. Individual citizens aware of such violations may report to Metro such incidents to metro Certification Hotline at (213) 922-2600.

S103 HOW SBE CERTIFICATION IS AWARDED TO APPLICANT BUSINESSES

This discussion of certification of selected businesses serves as an overview of SBE Certification to inform those preparing bids or proposals, it is not intended to be an in-depth discussion of SBE certification requirements. If your business is not a certified SBE, do not presume your business to be eligible or ineligible, based on this brief discussion.

Certification is the process by which all firms seeking to participate in the SBE program are determined to meet the SBE eligibility standards of the SBE Program. SBE certification letters issued by Metro evidence that a firm has satisfied the procedures and met the standards of metro's SBE Program as a Small Business Enterprise (SBE).

The SBE Program is a race and gender-neutral program specifically designed to increase the availability of contracting opportunities for small businesses on Metro state or locally funded negotiated procurements.

S103.1 CERTIFICATION STANDARDS & PROCEDURES ARE DESCRIBED IN THE CERTIFICATION INSTRUCTIONS

Metro follows certification standards and procedures outlined in the Small Business Administration (SBA). Program to determine whether a business meets the SBE eligibility standards.

These certification standards are described in more detail in the Certification Instructions, available, along with the Application for Certification, from Diversity and Economic Opportunity Representatives. Interested individuals or companies will start the process by visiting the offices of the Diversity and Economic Opportunity Representatives to pick up an SBE Application and Instructions.

S103.2 SBE CERTIFICATION STANDARDS

SBE Certification Standards are defined by the SBE Program established by Metro. Each applicant for SBE Certification must demonstrate to Metro's certification authority that the applicant meets the criteria of the SBE Program concerning economic disadvantage (personal net worth), business size, ownership and control.

S103.3 NAICS BUSINESS SIZE STANDARDS

Metro defines an eligible SBE firm, including its affiliates, as an existing small business, defined by the US Small Business Administration (SBA) standards (found in federal regulations at 13 CFR part 121 and 124,) appropriate to the type of work that the firm seeks to perform on the project. Further, the applicant firm can only be deemed eligible for participation in the SBE Program if the firm, including its affiliates, meets the size standard promulgated in 13 CFR Part 121 (North American Industry Classification System (NAICS) limits) and has had average gross

receipts over the previous three years of less than \$17.4 million. The SBA, adjusts this amount for inflation from time to time.

S103.4 ECONOMIC DISADVANTAGE

Certification of economic disadvantage, including signed notarized Statements of Personal Net Worth (PNW) and supporting documentation is required. The PNW of each socially and economically disadvantaged owner cannot exceed \$250,000. Exceeding \$250,000 will disqualify the firm from DBE certification. The PNW EXCLUDES the individual's ownership interest in the applicant firm and the equity in his/her primary residence. If a Statement of PNW that an individual submits shows that the individual's personal net worth exceeds \$250,000 the individual's economic disadvantage is rebutted and the person is not a qualified SBE owner.

S103.5 REAL SUBSTANTIAL AND CONTINUING ECONOMIC JUSTIFICATION

A firm's ownership by socially and economically disadvantaged individuals must be real, substantial and continuing, going beyond pro forma ownership of the firm as reflected in the ownership documents.

S103.6 SBE FIRM INDEPENDENCE MUST BE BEYOND "PRO FORMA"

The firm must also be independent, one the viability of which does not depend on its relationship with another firm or firms.

PARAGRAPHS S104 THROUGH S109 ARE RESERVED

S110 DEFINING THE WORK TO BE COUNTED AND CALCULATED (CALCULATING AND COUNTING SBE PARTICIPATION)

Bidders, Offerors and Proposers must define the portions of the work they intend to place with Small Business Enterprise (SBE) firms. Doing so will help each Bidder Offeror or Proposer achieve SBE participation goals, make good faith efforts and meet the level of SBE participation commitments. Metro calculates and counts SBE participation toward goal achievement.

The Director, Diversity and Economic Opportunity, will resolve calculation and counting disagreements. The Director's decision is final.

Rules for calculating and counting SBE participation are defined by the SBE Program and by Metro counting and calculating rules and regulations, as described below. Metro provides FORM 6, THE CONTRACTOR'S COUNTING & CALCULATING REPORT" to help each business properly identify those expenditures that count toward the contract goal and those that do not. FORM 6 is evidence of, "Good Faith Efforts," for the limited purpose of helping contractors document their counting and calculation of credit toward achieving the contract goal. "Good Faith Efforts" is discussed starting at paragraph S120, below.

S111 SBE PARTICIPATION IN DOLLAR VALUES

The bidder shall indicate each SBE's contract participation, expressed as an estimated dollar value.

- a. An SBE must perform a commercially useful function, that is, must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work. In light of standard industry practices and other relevant considerations, the SBE must have a necessary and useful role in the transaction of a kind for which there is a market outside the context of the SBE Program.
- b. Credit for participation of SBE vendors of materials and supplies is counted as follows:
 1. Sixty (60%) of expenditure(s) for equipment, materials, and supplies obtained from a regular dealer.
 2. One-Hundred (100%) percent of expenditure(s) for materials and supplies obtained from a SBE Supplier who substantially alters the material before resale.
- c. The Fees or commissions paid to SBE consultants, brokers, and packagers may be counted toward the goal, provided that the fee or commission is reasonable and not excessive. Bidders are required to submit documentation to justify fees and commissions customarily allowed for similar services with proposals on package due date.
 1. The fees or commissions charged for providing bona fide services such as professional and technical, or procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the contract.
 2. The fees charged for delivery of materials and supplies required on a Work site (but not the cost of the materials or supplies themselves) when the hauler, trucker or delivery service is licensed and is not also the manufacturer of, or a regular dealer, in the materials and supplies.
 3. The fees charged for Bond and insurance may be counted toward the goal if the bond or insurance is required for the performance of the contract.
 4. Awards/expenditures in contracts with businesses that are joint ventures may be counted on the basis of percentage of ownership of the eligible SBE and following Metro's determination of the JV meeting the standards, control and ownership requirements in the joint venture.
 5. In calculating the total SBE utilization percentage, the Bidder/Proposer shall include the percentage of Total Contract Price:
 - a. Of all SBE Subcontractors;
 - b. Of all materials, supplies, trucks, & equipment to be supplied by SBEs; and;
 - c. Performed with its own forces.

If the Bidder/Proposer is a Joint Venture Participant, only the SBE's proportionate interest in the Joint Venture shall be calculated.

S112 SBE BUSINESSES LATER DENIED PRE-QUALIFICATION

All businesses seeking to compete for contracts with metro of One Hundred Thousand Dollars (\$100,000) or more, shall complete a pre-qualification questionnaire prior to doing business with metro. Please contact the Pre-Qualification Office by telephone at (213) 922-4130 or send an e-mail to, pre-qual@mta.net, for the most current information. They can be reached my mail at:

METROPOLITAN TRANSPORTATION AUTHORITY
MAILSTOP 99-21-3
ONE GATEWAY PLAZA
LOS ANGELES, CA 90012-2952
ATTN: CONTRACTOR PRE-QUALIFICATION OFFICE

If a Bidder, Offeror or Proposer has listed an SBE Subcontractor, which is later denied PREQUALIFICATION, the Bidder, Offeror or Proposer must submit documentary evidence of the efforts it made to replace the SBE with another SBE firm before the contractor is granted approval to substitute with a non-SBE firm. Sufficient efforts include at a minimum, but are not limited to, a dated log of SBE names, contact persons, phone numbers, and methods used for following up on solicitations. The Bidder, Offeror or Proposer is required to contact a portion of those SBE firms identified by metro and provided in Attachment I, List of Certified Firms. Adequate contact is defined in the Table below:

Number of SBEs Identified by Metro	Number or Percentage to Contact
5 or less	Contact all on list
6 – 10	Contact at least 5
11-50	Contact at least 50%
51 or more	Contact at least 25

This table provides assistance in the definition of adequate contacts required with respect to good faith efforts needed before replacing an SBE contractor or source with a non-SBE contractor or source.

PARAGRAPHS S113 THROUGH S119 ARE RESERVED

S120 SUGGESTED METHODS TO MEET THE GOAL AND DOCUMENT THE EFFORTS MADE

To determine whether a competitor who failed to meet the SBE contract goal may be further considered for contract award, Metro must determine whether the efforts taken to obtain SBE participation satisfy the good faith efforts requirement. Metro's good faith efforts requirements follow:

- a. If the Proposer has not met the stated SBE goal, documentation of its Good Faith Efforts shall be submitted to the Contract Administrator in the proper form and content prescribed by Metro within 48 hours from the request by metro.
- b. Proposers who do not meet the SBE goal must, at a minimum, undertake all of the following efforts, to satisfy the requirement that the Proposer made Good Faith Efforts to comply with the SBE goal.
- c. Passing good faith efforts requires a minimum of 75 of 100 points. Each item is evaluated on a pass/fail basis. Either full or zero (0) points received for compliance with each item. Efforts and evidence for each item is detailed in the Instructions to Bidders.

S120.1 DESCRIPTION OF THE KINDS OF ACTIONS CONSTITUTING GOOD FAITH EFFORTS

The following are the kinds of actions generally considered by Metro to be necessary and reasonable. Bidders, Offerors and Proposers are encouraged to undertake these kind of actions. Many contractors on past Metro contracts have employed these actions and demonstrated that they can be quite successful employing these actions to achieve SBE goals. This list of actions and the required documentation are addressed in detail in the following paragraphs.

- (1) ADVERTISEMENT
- (2) NOTIFICATION TO SMALL BUSINESS ORGANIZATIONS COMMUNITYGROUPS
- (3) SELECT PORTION OF THE WORK TO BE SUBCONTRACTED
- (4) WRITTEN REQUEST FOR PROPOSAL / SPECIFICATION INFORMATION
- (5) SOLICITATION FOLLOW-UP
- (6) ASSISTANCE IN OBTAINING BONDS & INSURANCE
- (7) ATTEND PRE-PROPOSAL CONFERENCE
- (8) LIST OF SUBCONTRACTORS SUBMITTING PROPOSALS

- a. The achievement of Good Faith Efforts will be based on evaluation of the following criteria:

1. ADVERTISEMENT (15 points)

Effort: Proposers shall advertise in at least one newspaper of general circulation media, at least one trade association publication, and at least one small business focused media. The advertisement shall include, at a minimum, the name of the newspaper, company contact person, type of publication, circulation dates of advertisement, project name and number, date of proposal submittal date, description of subcontracting work solicited, and time and location where RFP/contract documents may be reviewed. The advertisement must further indicate Metro as owner and that the solicitation is in response to the authority's SBE requirements. Additionally, the advertisement must contain a statement of intention to conduct the requirements of the SBE program in good faith". Advertisements should appear at least 20 days prior to the Proposal submittal date to metro. If metro solicitation does not allow 20 days, a shorter publication time is acceptable.

Evidence: Include a list of advertisements placed, including a copy of the advertisements and/or tear sheets. Analyst must closely analyze the tear sheets to verify dates and adherence to requirements.

Evaluation: Number of Newspapers, Verification of Newspaper status, Definition of newspaper type, where newspaper (directory), circulation - should be reviewed as to consistency with 20-day period requirement.

2. NOTIFICATION TO SMALL BUSINESS ORGANIZATIONS AND COMMUNITY GROUPS (5 points)

Effort: Notification must be made to outreach small business organizations listed in Metro Directory. Notification to organizations shall include at a minimum, a description of the scope of services, the company's contact person, and the proposal submittal date.

Evidence: Copies of letters, faxes, fax confirmation sheets, telephone logs, etc. used to contact organizations. The documentation must include names of organizations/groups, dates, names of contacts, and telephone numbers. Copies of correspondence received from any of these organizations/groups acknowledging contact by proposer shall be considered in assessing evidence of good faith effort. A minimum of five (5) organizations/groups, as listed in Appendix C, Part E of the Contract, must be attached.

Evaluation:

- Verify that contact was actually made, by calling a representative number of agencies solicited.
- Verify scope of work described was consistent with ad solicitation.
- Verify that contact was made for specific project and scope of work is consistent with project.

3. SELECT PORTION OF THE WORK TO BE SUBCONTRACTED (15 points)

Effort: The Proposer shall determine which services it intends to perform with its own work force and those services that it intends to subcontract.

Evidence: Documents showing all the work that the Proposer intends to perform with its own work force and all the work that the Proposer has identified for subcontracting should be evidenced on the selected work categories form or a reasonable facsimile.

4. REQUEST FOR PROPOSAL, SPECIFICATIONS AND INFORMATION (10 points)

Effort: Extend written Requests for Bid or Proposal to SBE firms for all services that the Proposer intends to subcontract and provide specification requirements to SBEs.

Evidence: Names, contact persons, addresses, phone numbers, and dates of all SBE firms solicited at least 10 days prior to proposal submittal date and by what means (letter, fax, phone, etc.). A copy of the solicitation letter must be

included. Only firms certified by Metro or by an agency with which Metro recognizes SBE certification will be taken into consideration.

- Verify log
- Check compliance within 10 days
- Check compliance with number of solicitations
- Copy solicitation letter
- Check certification status of SBE
- Firms not certified with Metro or by reciprocity cannot be counted towards the # required for solicitations.

Note: Determination of an adequate number of SBE's contacted shall depend on the number of SBE certified subcontractors available in each of the work categories that were identified by metro.

Guidelines for Contracts for Work Categories:	
Number of SBEs Identified	Guidelines for number of SBEs to Contact
5 or less SBEs	Contact all SBEs on list
6 to 10 SBEs	Contact at least five (5) firms on list
11 to 50 SBEs	Contact at least 50% of list
51 or more SBEs	Contact at least twenty-five (25) firms on list

5. SOLICITATION FOLLOW-UP (15 points)

Effort: Oral and/or written follow-up of initial solicitation of SBE firms.

Evidence: The Proposer shall maintain a log of the contacts made with SBE firms. The log shall include names, contact persons, phone numbers, dates and methods used for following up initial solicitation to determine whether or not SBEs were interested. Follow-up must be done with a minimum of 75% of the initial solicitations to Certified SBEs.

6. ASSISTANCE IN OBTAINING BONDS AND INSURANCE (5 points)

Effort: Offer assistance to SBE firms in obtaining bonding and insurance.

Evidence: A brief description of assistance provided by the Proposer to SBEs in obtaining bonding and insurance. (May be included in Letter of Solicitation and/or advertisement).

7. ATTENDANCE AT PRE-PROPOSAL CONFERENCE (5 points)

Effort: Attendance at the specific Pre-Proposal/Contract Conference scheduled by metro. Although attendance is optional, this is a good faith effort criteria. Only those firms represented, receive points on this item.

Evidence: Name and date of person(s) attending (verified by conference sign-in sheet).

8. LIST OF SUBCONTRACTORS SUBMITTING PROPOSALS (30 points)

Effort: The Proposer negotiated in good faith with SBEs and did not unjustifiably reject proposals prepared by any SBE.

Evidence: Names, addresses, dates, contact person, and phone numbers of all subcontractors who submitted proposals and copies of all proposals including telephone bids. State the reason for your choice of subcontractor. Submit documentation of good faith negotiations between subcontractor and prime. Bidders must have selected enough subcontracting item to meet the goal.

S121 GOOD FAITH EFFORT RESPONSIVENESS DETERMINATION

After all information has been evaluated, the SBE Program Office shall determine if the Proposer was responsive to Good Faith Efforts requirement. The SBE representative shall notify in writing the Contract Administrator, who shall notify the proposer of metro's decision concerning its responsiveness to the SBE requirements.

S122 BIDDERS OBLIGATION

Bidders' SBE Commitment - Bidders shall identify in their Bid (on the LIST of PROPOSED SUBCONTRACTORS/SUPPLIERS FORM) all of the SBEs proposed to participate in the contract, regardless of their percent of participation. The following information must be provided:

- a. The bidder shall identify how SBE firms will participate on the contract. The SBE goal may be satisfied by a commitment to SBE participation by the following methods: the contractor as a SBE prime contractor, joint venture partner, subcontractor, regular dealer, broker, supplier, or service provider.
- b. On this same form the bidder must also list itself as a certified SBE if it intends to use itself towards the goal; joint venture partner, subcontractor, trucker, regular dealer, supplier, broker, or manufacturer. A description of work to be performed and the total dollar value of the work must be indicated. Note: The dollar value indicated will be the basis from which Metro will calculate the eligible SBE amount to be counted. Thus with a regular dealer, supplier, or broker, the actual amount counted will differ from the total subcontract amount. The complete legal business name as used for SBE certification shall be identified on the form.
- c. The bidder shall indicate the business location for each SBE as well as other pertinent information requested.

- d. The bidder shall provide a complete description of work to be performed, materials supplied, and service or broker function to be performed by each SBE firm listed.

S123 GOOD FAITH EFFORT REQUIREMENTS & RESPONSIVE BIDDERS

- a. Bidders who fail to meet the SBE goal shall submit good faith effort documentation upon request of metro. Any of the following conditions constitute failure to meet the goal and will require submittal of good faith effort documentation:
 - i. The total percentage participation by SBE firms reflected in the LIST OF PROPOSED subcontractors is less than the SBE goal set forth in the Bid/Proposal.
 - ii. Firms listed toward meeting the SBE goal but are not properly certified by Metro, SBA or any agency with which reciprocity certification exists as of the bid/proposal opening/due date.

SBE firms pending re-certification by Metro at the time of bid/proposal opening/due date shall be deemed certified for the purpose of being credited toward the goal.

PARAGRAPHS S124 THROUGH S129 ARE RESERVED

S130 FORMS SECTION

Complete and submit the forms, FORM 1 through FORM 7, with the bid or proposal. Form 7a will be submitted only if requested by the Diversity and Economic Opportunity Representative at Metro.

FORM 1	LIST OF PROPOSED SUBCONTRACTORS & SUPPLIERS
FORM 2	DECLARATION OF CERTIFICATION STATUS
FORM 3	BUSINESS DATA SHEET
FORM 4	PRIME CONTRACTOR COMMITMENT / SBE CONFIRMATION FORM
FORM 5	GOAL DECLARATION FOR BIDDERS, OFFERORS OR PROPOSERS
FORM 6	CONTRACTOR'S COUNTING AND CALCULATING REPORT
FORM 7	SUMMARY OF COUNTING AND CALCULATING REPORT
FORM 7a	COUNTING AND CALCULATING WORKSHEETS

S130.1 INSTRUCTIONS: FORM 1, LIST OF PROPOSED SUBCONTRACTORS & SUPPLIERS

Identify all businesses planned to participate in the contract resulting from this procurement on FORM 1, "LIST OF PROPOSED SUBCONTRACTORS, SUPPLIERS." Name the participating business, provide the dollar value of their portion of the work, the percentage of the participating business's price to the total contract price set by the prime contractor and state whether the participating business is an SBE.

Also, in Column 2, indicate whether the subcontractor will be a prime contractor to the e next lowest tier. If so, such next tier prime shall complete a Form 1 naming their next tier subcontractors and submit all the forms and information expected of this Prime Contractor.

By entering the name of a subcontractor on this FORM 1, the Prime Contractor indicates its intention to enter into a formal agreement for the work with the named Subcontractor, Supplier or other Source conditioned on the named Bidder, Offeror or Proposer being awarded this contract by metro.

Failure to provide completed forms may be cause for Metro to deny the bid or proposal as non-responsive.

FORM 1 - LIST OF PROPOSED SUBCONTRACTORS & SUPPLIERS

RFP or IFB Number: _____

Project/Program Name: _____

Col. 1	Col. 2	Col. 3	Col 4	Col 5
NAMES OF SUBCONTRACTORS SUPPLIERS OR OTHER SOURCES	PRIME AT NEXT TIER? (Y/N)	\$ VALUE OF WORK	% of Total Price	SBE? Yes/No
PRIME CONTRACTOR NAM		PRIME'S PRICE	<u>100%</u>	
1. _____	_____	_____	_____ %	_____
2. _____	_____	_____	_____ %	_____
3. _____	_____	_____	_____ %	_____
4. _____	_____	_____	_____ %	_____
5. _____	_____	_____	_____ %	_____
6. _____	_____	_____	_____ %	_____
7. _____	_____	_____	_____ %	_____
8. _____	_____	_____	_____ %	_____
9. _____	_____	_____	_____ %	_____
10. _____	_____	_____	_____ %	_____
11. _____	_____	_____	_____ %	_____
12. _____	_____	_____	_____ %	_____
13. _____	_____	_____	_____ %	_____
14. _____	_____	_____	_____ %	_____
15. _____	_____	_____	_____ %	_____
16. _____	_____	_____	_____ %	_____
17. _____	_____	_____	_____ %	_____
18. _____	_____	_____	_____ %	_____

Total Value of Work, This Page (Add Line 1 thru Line 18) _____

S130.2 INSTRUCTIONS FOR FORM 2: DECLARATION OF SBE CERTIFICATION STATUS

Each business, whose participation is to be counted toward the contract goal, must submit with the bid or proposal, a completed and signed, FORM 2, DECLARATION OF SBE CERTIFICATION STATUS.

BUSINESSES THAT ARE JOINT VENTURES

If your business is a Joint Venture, attach a copy of the Joint Venture Agreement to this form. Attach also, a copy of the most recent SBE Certification Letter from each SBE participant in the Joint Venture.

BUSINESSES THAT ARE NOT A JOINT VENTURE

If your business is not a Joint Venture, attach a copy of your business's most recent SBE Certification Letter. Businesses that are not participants in a Joint venture need to submit only one copy of the certification letter attached to the completed FORM 2, DECLARATION OF SBE CERTIFICATION STATUS.

BUSINESSES THAT ARE PARTICIPANTS IN A JOINT VENTURE

Businesses that are participants in a Joint Venture will submit two copies of their SBE Certification Letter. One copy of the SBE certification letter will be attached to the FORM 2, completed by their business, independently documenting the business as an SBE. The second copy of their business's SBE Certification Letter is attached to the FORM 2, completed by the Joint Venture, documenting their status as an SBE participant in that Joint Venture.

Failure to provide these completed forms and the accompanying documents may be cause for Metro to deny the bid or proposal as non-responsive. Individual businesses failing to provide a completed form will be presumed not certified and their participation will not be counted.

FORM 2 - DECLARATION OF SBE CERTIFICATION STATUS

Firms wanting their participation in this contract to count toward the contract goal for SBE participation must complete and sign this Declaration of Certification Status and attach the proper documentation. Metro requires the SBE certification of each business to be recognized by Metro, to be current and to be up-to-date. SBE requirements, including annual affidavits, must be satisfied, on or before the date the bid is opened or the proposal is due. Prime Contractors must independently confirm the required certification status of each business they are relying on to meet the contract goal.

1. BUSINESSES THAT ARE JOINT VENTURES
- | | Yes | No |
|---|--------------------------|--------------------------|
| a. Is the Bidder, Offeror or Proposer a Joint Venture? | ☐ | ☐ |
| b. If your business is a Joint Venture, is any participant in the Joint Venture a current and up-to-date SBE: | ☐ | ☐ |

Attach a copy of each participants most recent certification letter if your Joint Venture, includes at least one currently certified participant. Attach to this form a copy of your business's Joint Venture Agreement.

2. BUSINESSES PARTICIPATING IN A JOINT VENTURE

Yes No

Is your business a participant in a Joint Venture? ☐ ☐

Name of Joint Venture: _____

3. BUSINESSES NOT JOINT VENTURES NOR PARTICIPANTS IN A JOINT VENTURE

	Yes	No
Is your business, a current and up-to-date SBE:	☐	☐

Attach with the bid or proposal.

4. FEDERAL EMPLOYER IDENTIFICATION NUMBER: _____ - _____

If the Bidder, Offeror or Proposer is a corporation, partnership or joint venture, this form must be signed by the President of the Corporation, a General Partner, or the President/General Partner of one of the Joint Venture participants. If it is signed by anyone else, provide proof confirming that the person signing this form is authorized to do so. By signing below, the Bidder, Offeror or Proposer authorizes metro to verify all information on all forms submitted with this proposal.

The undersigned declares, they are authorized to sign this declaration, and that the certification status of the Bidder, Offeror or Proposer, stated above, is current, accurate, complete and not misleading.

Company Name: _____

By: _____
Signature of Person Authorized by the Firm to Sign this Form

Printed Name of Person Authorized by the Firm to Sign this Form

Title: _____ Telephone (_____) _____

Date: _____

S130.3 INSTRUCTIONS FOR FORM 3: BUSINESS DATA SHEET

Bidders, Offerors or Proposers will submit a completed, "BUSINESS DATA SHEET" for each business that will participate in the contract work. ALL FIRMS complete questions number 1 through 7. Prime Contractors, Joint Ventures and Joint Venture Participants and SBE firms complete questions number 1-17.

A completed form is required regardless of the price bid or proposed for the work, labor or goods & services to be provided. It is required even if the participant's price does not exceed 0.5% of the Prime Contractor's Total Bid or Proposal price. This form is provided to help satisfy requirements of the Code of Federal Regulations (CFR), California law and Metro policies and procedures. Bidders, Offerors and Proposers in a construction IFB or RFP completing this form satisfy those requirements of the California Public Contract Code, Section 4104, requiring disclosure of a contractors name, business address and definition of the portion of the work they will do.

Describe your business by the type of economic activity or by your industry by using the North American Industry Classification System (NAICS). NAICS is the, "North American Industry Classification System Manual, United States." The Manual contains the categories, definitions and codes for all economic activity within twenty broad sectors. Describe your business briefly, completely, and accurately. Select one or more NAICS codes that fit the kinds of work your business does. Write the code number(s) and written description in the applicable Item #3-16. Describe the work your business seeks to do in this project and write the description and the NAICS Code number(s) in the applicable Item # 13-16. NAICS Codes can be obtained via the internet at: www.census.gov/epcd/www/naics.html. Or they can also be obtained at: www.ntis.gov/yellowbk/1nty205.htm. A NAICS Manual will also be available for consultation from Diversity and Economic Opportunity Representatives at Metro.

Consider this form your business's resume for this procurement. Describe the knowledge, skills and abilities your business offers the project. Be specific when describing you, your employment and/or your business's experience (10 years) and projects and past performance (5 years). Do the same when you describe what your business seeks to do in this project. Identify the portion(s) of the Statement of Work (SOW) or the Work Breakdown code applicable to each portion of the work.

This form may be freely duplicated. One subcontractor and only one subcontractor shall be listed for any one portion of the work. Failure to provide these completed forms and the required documentation may be cause for the bid or proposal to be non-responsive.

FORM 3 - BUSINESS DATA SHEET

All firms complete #1 thru 8. This Form May Be Freely Copied. Attach Continuation Sheets, If Needed. Page 1 of 2

1. Company Name: _____ 1a \$ _____
Bid/Proposal Price
2. Street Address: _____
PO Box or Street Address
City _____ State _____ Zip _____
3. Mailing Address: _____
PO Box or Street Address
City _____ State _____ Zip _____
4. Contact Person's Name: _____ 5. Telephone _____
6. Age of Firm: _____ Years _____ Months
7. If your business a specialty contractor, please provide:
Type of License: _____ License # _____ Expires on: _____
8. Annual Gross Receipts: ☐ Less than \$500,000 ☐ \$1,000,000 to \$2,000,000
of your business ☐ \$500,000 to \$1,000,000 ☐ \$2,000,000 to \$5,000,000
☐ Over \$5,000,000

If your business is a Prime Contractor and/or a currently certified Small Business Enterprise (SBE), answer questions #9-16. If not, stop here & complete the signature block on the next page.

9. Value of SBE Work Counting Toward Contract Commitment*: \$ _____
Value of Work Not Counting Toward Commitment: \$ _____
Total Contract Price \$ _____
10. How is this business related to the Bidder Offeror or Proposer?
☐ Our business is one of _____ members of the, _____,
Number Name of Joint Venture
☐ A Joint Venture, the Prime Contractor submitting this bid offer or proposal to Metro.
☐ Our business is the Prime Contractor submitting this bid, offer or proposal to Metro.
☐ Our business is NOT the Prime Contractor to Metro.
It is a subcontractor to _____ on this project.
Name of Prime Contractor & Second Tier Prime, if applicable
☐ Other, Please describe: _____
11. Is your business organized as a/an:
☐ Corporation: _____
State of Incorporation: _____
☐ S-Type Corporation _____
State of Incorporation: _____
☐ Partnership
☐ Sole Proprietorship
☐ Limited Liability Company (LLC):
LLC In What State: _____
12. Will your business provide trucking company services on this project? If so, please complete items a. to c., below. If not, answer "Not Applicable."
a. How many trucks does your company own? _____
b. How many trucks does your company lease? _____
c. How many trucks are registered to your company? _____

NAICS CODE(S) FOR THE BUSINESS: _____ FOR THIS PROJECT: _____

13. Does your business produce, in a factory or other establishment, any materials, supplies, articles or equipment described by this contract? If so, describe the items your business seeks to provide and the facilities where they will be produced, your business operations, past projects, past performance and experience. If this is not your business, state "Not Applicable."

Attached are _____ continuation pages. _____

NAICS CODE(S) FOR THE BUSINESS: _____ FOR THIS PROJECT: _____

14. Does your business own, operate or maintain a store, warehouse or other establishment from which materials, supplies, articles or equipment, generally described by this contract, will be bought, held in stock, regularly sold or leased to the public in the usual course of business? If so, identify the items you seek to furnish. Identify & describe the facilities from which they will be purchased. Describe your business operations, projects, past performance & experience. If not your business, answer "Not Applicable." Use NAICS code(s). Attached are _____ continuation pages. _____

NAICS CODE(S) FOR THE BUSINESS: _____ FOR THIS PROJECT: _____

15. Does your business serve as a packager, broker, manufacturer's representative, an arranger or expeditor of transactions? Describe your business, its operations, facilities, past projects, performance and experience. Use NAICS Code(s). Describe the portion of the work you seek by SOW section, WBS element and NAICS Code(s). If not your business, answer, "Not Applicable." Attached are _____ continuation pages. _____

NAICS CODE(S) FOR THE BUSINESS: _____ FOR THIS PROJECT: _____

16. If your business isn't described above, do so here. Describe your business, its facilities, experience, & past performance and provide its NAICS code(s). Describe the work and preferred work location(s) you are seeking. Attached are _____ continuation pages.

The undersigned Director, Officer, General Partner, or similarly situated principal of the firm declares they are informed and believe, and thereon allege, that to the best of their knowledge, information and belief, the information set forth on both pages of this document and any attachments, is current, complete and accurate.

Company Name: _____

By: _____
Signature of Director, Officer, General Partner or similarly situated Principal of the Firm

Printed Name of Person Authorized to Sign: _____

Title of Person Authorized to Sign: _____

Date: _____

S130.4 INSTRUCTIONS FOR FORM 4: PRIME CONTRACTOR COMMITMENT/SBE CONFIRMATION FORM

Bidders, Offerors and Proposers will document their commitment to use the SBE firms whose participation they propose to use to meet a contract goal. Each SBE business will, likewise, confirm in writing that they are participating, as stated, in the prime contractor's commitment. These commitments are conditioned on the bidder offeror or proposer being awarded the contract.

The principals of the Bidder, Offeror or Proposer and the principals of the SBE business will, together, complete:

FORM 4, "PRIME CONTRACTOR COMMITMENT/SBE CONFIRMATION FORM," and FORM 6, CONTRACTOR'S COUNTING AND CALCULATING REPORT.

FORM 4: The Bidder, Offeror or Proposer will describe clearly and completely the commitment to portion of the work the SBE firm is to provide in both technical and financial terms. The description shall identify the relevant portions of the Statement of Work or the Work Breakdown Structure where the SBE firm will participate. The Bidder, Offeror or Proposer will first sign their written commitment. A Director, Officer, General Partner, or similarly situated Principal of the SBE firm authorized to commit the firm will read the signed prime contractor's commitment. If the written commitment signed by the Prime Contractor fully agrees with the SBE firm's understanding of the work and the financial commitments, the SBE signs the FORM 4, confirming it is participating in the contract resulting from this procurement, as stated.

FORM 6: This form is the attachment to Form 4. The Bidder, Offeror or Proposer and the SBE submit the financial report of the Prime's commitment and the SBE's confirmation, identifying the category of expenditures to be made by the Prime Contractor to the SBE. FORM 6 identifies the amount of SBE participation that will count and the amount that will not count toward the contract goal.

PRIME CONTRACTORS WILL NOT DIRECTLY MAIL ANY OF THIS DOCUMENTATION TO Metro. IT WILL BE SUBMITTED AS PART OF THE BID OR PROPOSAL.

SBE's DO NOT MAIL THIS COMPLETED FORM TO Metro. EACH SBE RETURNS THIS SIGNED COMMITMENT FORM TO THE PRIME CONTRACTOR WHO IS COMMITTING TO USE THEM IN THE PROJECT. THE PRIME CONTRACTOR BIDDER, OFFEROR OR PROPOSER WILL SUBMIT ALL COMPLETED AND SIGNED COMMITMENT FORMS WITH THE BID OR PROPOSAL THEY SEND TO Metro.

FORM 4 - PRIME CONTRACTOR COMMITMENT / SBE CONFIRMATION FORM

Every firm bidding on an Metro project must provide a written commitment to use each firm they will rely on to help meet the level of contract goal and a confirmation by each SBE firm that they are participating in the contract, as provided in the Prime Contractor's commitment. Complete this form and submit the form and attachments with the bid or proposal. If you have any questions please call your Prime Contractor or the Diversity and Economic Opportunity Representative assigned to the project.

RFP/IFB Number: _____ Release Date: _____

Project Title: _____

Name of Contractor: _____

Name of SBE firm: _____

Financial Description: Complete FORM 6, CONTRACTOR'S COUNTING & CALCULATION REPORT describing your commitment in dollars to SBE participation by this firm in each of the categories. The total value of SBE participation committed to this firm is \$ _____

Technical Description: Describe clearly and completely the portion of the work assigned to this SBE. Provide NAICS code(s). Identify the relevant section number(s) of the Statement of Work and the element number(s) of the Work Breakdown Structure, if available. Attach continuation sheets, if needed.

SOW, WBS & NAICS CODE(S): _____

Signatures of the authorized representatives of the Contractor and of the SBE firm below represent the commitment by each of them to enter into a formal agreement for the work and any terms or conditions described above and in the accompanying attachments, conditioned on the Bidder; or Proposers being awarded this contract by metro.

Name of Contractor

Date

Name of SBE

Date

By: _____

Signature of Authorized Contractor's Representative

Typed or Printed Name of Person Signing for the Firm

Title of Person Signing for the Firm

Telephone Number

FAX Number

By _____

Signature of Authorized SBE's Representative

Typed or Printed Name of Person Signing for the Firm

Title of Person Signing for the Firm

Telephone Number

FAX Number

S130.5 INSTRUCTIONS FOR FORM 5: GOAL DECLARATION FOR BIDDERS, OFFERORS OR PROPOSERS

Bidders, Offerors or Proposers will declare on FORM 5, "GOAL DECLARATION FOR BIDDERS, OFFERORS OR PROPOSERS," whether they achieved the SBE participation goal for this project or program. Submit this form and its attachment with the proposal.

The Declaration must be simply completed; do not alter the document. If the firm did not achieve the goal, the Bidder, Offeror or Proposer declares that, to the best of their knowledge, information and belief, it made good faith efforts toward achieving the goal. Attach a copy of the completed FORM 7, SUMMARY OF COUNTING AND CALCULATION REPORTS, to FORM 5 in support of your firm's declaration.

If evidence of "Good Faith" efforts is needed, a Bidder, Offeror or Proposer will provide the documentation and other evidence of their efforts within 48 hours of receiving a written request from Metro. You are directed only to complete and submit this form and its attachment as part of the bid or proposal package. If more detailed information is needed Metro will contact your firm. Failure to provide these completed forms may be cause for Metro to deny the bid or proposal as non-responsive.

DO NOT SUBMIT EVIDENCE OF GOOD FAITH EFFORTS AT THE TIME THE BID OR PROPOSAL IS SUBMITTED. Metro will request evidence of good faith efforts in writing, if and when they are needed. Bidder, Offeror, or Proposer evidence of Good Faith efforts will be sent, if called for, to the offices of the Diversity and Economic Opportunity Representative identified in the Letter of Invitation.

FORM 5 - SBE GOAL DECLARATION FOR BIDDERS/PROPOSERS

SBE Goal Achieved

The Bidder, Offeror or Proposer declares to the best of its knowledge, information and belief that by its efforts, it ACHIEVED a level of participation greater than or equal to the _____% goal established by Metro for SBE participation. The level achieved by its efforts was _____percent (_____%).

See FORM 7, SUMMARY OF COUNTING AND CALCULATING REPORTS, attached.

Executed on: _____, 20____, at, _____, _____
Date City State

Company Name: _____

By: _____
Authorized Signature Printed Name

Title: _____

SBE Goal NOT Achieved

The Bidder, Offeror or Proposer declares to the best of its knowledge, information and belief that while it made efforts to achieve the SBE participation goal, it DID NOT ACHIEVE a level of SBE participation greater than or equal to the _____% goal established by Metro.

While the Bidder, Offeror or Proposer did exert efforts to achieve the goal, it was not successful. The Bidder or Proposer certifies that, if requested, it will submit evidence in support of its good faith efforts, within forty-eight (48) hours of Metro's request.

See FORM 7, SUMMARY OF COUNTING AND CALCULATING REPORTS, attached.

DO NOT SUBMIT EVIDENCE OF GOOD FAITH EFFORTS WITH THE BID OR PROPOSAL.

Executed on: _____, 20____, at, _____, _____
Date City State

Company Name: _____

By: _____
Authorized Signature Printed Name

Title: _____

FOR ASSISTANCE PREPARING THIS FORM SEE "CALCUATING AND COUNTING SBE PARTICPATION," STARTING AT PARAGARAPH S110 OF THE INSTRUCTIONS AND FORM 7a WORKSHEETS .

<u>FEES AND COMMISSIONS</u> Count 100% of that portion of the work consisting of fees or commissions charged by SBE firms for providing:	COUNT Qualified Amounts to SBE Firms	DO NOT COUNT Amounts to SBE Firms that are Disqualified	Amounts to Non-SBE Firms	TOTAL
1. Professional Services	_____	_____	_____	_____
2. Technical Services	_____	_____	_____	_____
3. Consultant Services	_____	_____	_____	_____
4. Managerial Services	_____	_____	_____	_____
5. Bonding, and	_____	_____	_____	_____
6. Insurance	_____	_____	_____	_____
LABOR & LEASED EQUIPMENT				
7. CONTRACTOR'S WORK FORCE:	_____	_____	_____	_____
8. LEASING: Count 100% of lease, but not from the prime or its affiliates ...	_____	_____	_____	_____
SUBCONTRACTED WORK				
9. Count work subcontracted by the SBE to another SBE. Do not count work to a Non-SBE	_____	_____	_____	_____
MATERIALS AND SUPPLIES (#10-12)				
10. A MANUFACTURER:	_____	_____	_____	_____
11. REGULAR DEALER :				
(a) From SBE, 60% Qualifies = _____	a			
(b) From SBE, 40% doesn't = _____		b		
(c) Items not from a SBE _____			c	Enter a+b+c
<u>FIRM NOT A REGULAR DEALER OR A MANUFACTURER</u>				
12. (a) Procurement Assistance, and	_____	_____	_____	_____
(b) Required Delivery to job site	_____	_____	_____	_____
(c) Delivery not required to job site	_____	_____	_____	_____
13. TRUCKING COMPANIES	_____	_____	_____	_____
14. FUNDS NOT EARMARKED <u>FOR EXPENDITURE</u>	_____	_____	_____	_____
TOTAL	\$ _____	_____	_____	_____
Items 1-14	Counts Toward Goal	Does Not Count	Does Not Count	Contract Price

Caution: Expenditures to SBE's count only if the SBE firm performs a "Commercially Useful Function.

FOR ASSISTANCE PREPARING THIS FORM SEE "CALCUATING AND COUNTING SBE PARTICPATION," STARTING AT PARAGARAPH D110 OF THE INSTRUCTIONS AND FORM 7a WORKSHEETS .

<u>FEES AND COMMISSIONS</u> Count 100% of that portion of the work consisting of fees or commissions charged by SBE firms for providing:	COUNT Qualified Amounts to SBE Firms	DO NOT COUNT Amounts to SBE Firms that are Disqualified	Amounts to Non-SBE Firms	TOTAL
1. Professional Services	_____	_____	_____	_____
2. Technical Services	_____	_____	_____	_____
3. Consultant Services	_____	_____	_____	_____
4. Managerial Services	_____	_____	_____	_____
5. Bonding, and	_____	_____	_____	_____
6. Insurance	_____	_____	_____	_____
LABOR & LEASED EQUIPMENT				
7. CONTRACTOR'S WORK FORCE:	_____	_____	_____	_____
8. LEASING: Count 100% of lease, but not from the prime or its affiliates	_____	_____	_____	_____
SUBCONTRACTED WORK				
9. Count work subcontracted by the SBE to another SBE. Do not count work to a Non-SBE	_____	_____	_____	_____
MATERIALS AND SUPPLIES (#10-12)				
10. A MANUFACTURER:	_____	_____	_____	_____
11. REGULAR DEALER :				
(a) From SBE, 60% Qualifies = _____	a			
(b) From SBE, 40% doesn't = _____		b		
(c) Items not from a SBE _____			c	Enter a+b+c
<u>FIRM NOT A REGULAR DEALER OR A MANUFACTURER</u>				
12. (a) Procurement Assistance, and	_____	_____	_____	_____
(b) Required Delivery to job site	_____	_____	_____	_____
(c) Delivery not required to job site	_____	_____	_____	_____
13. TRUCKING COMPANIES	_____	_____	_____	_____
14. FUNDS NOT EARMARKED <u>FOR EXPENDITURE</u>	_____	_____	_____	_____
TOTAL \$	_____	_____	_____	_____
Items 1-14	Counts Toward Goal	Does Not Count	Does Not Count	Contract Price

Caution: Expenditures to SBE's count only if the SBE firm performs a "Commercially Useful Function.

**FORM 7A - COUNTING AND CALCULATING WORKSHEET (CONTINUATION
WORKSHEET)**

NAME OF CERTIFIED FIRM	SBE FIRM COUNT	SBE FIRM, DO NOT COUNT	NOT A SBE DO NOT COUNT	TOTAL

GOOD FAITH EFFORTS DOCUMENTATION FORMS

The following forms are recommended for incorporation in the Bidder/Proposer's efforts to meet good faith criteria. Using these or similar forms will enhance your Good Faith Effort documentation.

ATTACHMENT A - GOOD FAITH EFFORTS EVALUATION CRITERIA

ATTACHMENT B - SAMPLE ADVERTISEMENT

ATTACHMENT C - NEWSPAPER ADVERTISEMENT LOG

ATTACHMENT D - SELECTED WORK CATEGORIES FORM

ATTACHMENT E - WRITTEN SOLICITATION SUBMITTAL FORM

ATTACHMENT F - SOLICITATION FOLLOW-UP LOG

ATTACHMENT G - LIST OF ALL FIRMS/SOLICITATION RESPONSES RECEIVED

ATTACHMENT H - SAMPLE LETTER OF SOLICITATION

ATTACHMENT I - LIST OF CERTIFIED FIRMS/DISCLAIMER

ATTACHMENT A - GOOD FAITH EFFORTS EVALUATION CRITERIA

ITEM #	INDICATORS	POINTS											
		POSSIBLE	ACTUAL										
1	<u>ATTEND PRE-BID OR PRE-PROPOSAL CONFERENCE</u> Attendance at the Pre-Bid/Pre-Proposal conference scheduled by metro. Name and date of person(s) attending, to be verified by conference sign-in sheet.	15											
2	<u>PLACE ADS IN GENERAL, TRADE & FOCUSED PUBLICATIONS</u> Bidder/Proposer shall provide proof of advertisement in one general newspapers, one trade publications, and one minority/women focus media, or tear sheet copies showing date and name of publication. Advertisements should appear at least 20 days prior to metro's bid/proposal submittal date. If metro's solicitation does not allow 20 days, a shorter publication time is acceptable. Evidence: Name of Newspapers, trade publications, journals, etc. which Bidder/Proposer advertised. <table><tr><td><u>Name of Publication</u></td><td><u>No. Of Days Advertised</u></td></tr><tr><td>_____</td><td>_____</td></tr><tr><td>_____</td><td>_____</td></tr><tr><td>_____</td><td>_____</td></tr><tr><td>_____</td><td>_____</td></tr></table> The advertisement shall include, at a minimum: 1. Project Name, and Location; 2. Indication of Metro as Owner; 3. Location where plans and specifications may be obtained or viewed; 4. Sub-bid due date; 5. Trade or scopes of work for which subcontractors/suppliers are being solicited; 6. Statement that SBE Bid/Proposal solicitation is in response to Metro's SBE Program; and 7. Statement that Contractor intends to conduct itself in good faith with SBE firms for participation on the Project.	<u>Name of Publication</u>	<u>No. Of Days Advertised</u>	_____	_____	_____	_____	_____	_____	_____	_____	15	
<u>Name of Publication</u>	<u>No. Of Days Advertised</u>												
_____	_____												
_____	_____												
_____	_____												
_____	_____												

ITEM #	INDICATORS	POINTS	
		POSSIBLE	ACTUAL
3	<u>DEFINE PORTION OF WORK TO BE SUBCONTRACTED</u> The Bidder/Proposer shall provide in solicitation documents written determination of the services that are intended to be performed by its own workforce and those services that have been identified for subcontracting/supply (use <u>Selected Work Categories</u> form). A. Document showing the work that the Bidder/Proposer intends to perform with its own workforce including the dollar estimate of each item; B. Work that the Bidder/Proposer has identified for subcontracting, and the dollar value of each item.	5	
4	<u>NOTIFY COMMUNITY ORGANIZATIONS AND GROUPS</u> Notification should be made to outreach to minority, women, and other small business organizations. Must outreach to a minimum of five (5) organizations. A. Notification to organizations shall include at a minimum, a description of the scope of services, the company's contact, and the bid/proposal submittal date; B. Copies of letters, faxes, telephone logs, etc. used to contact organizations; C. Include names of organizations/groups, dates, names of contacts, and telephone numbers; D. Copies of correspondence received from any of these organizations/groups acknowledging contact by Bidder/Proposer.	5	
5	<u>WRITE INVITATIONS TO SBE's TO DISTRIBUTE RFP OR RFQ's</u> Extend written Requests for Bid/Proposal to SBE firms for all services that the Bidder/Proposer intends to subcontract/supply and provide specification requirements to SBEs. A. Names, <u>contact persons</u>, <u>addresses</u>, phone numbers, and dates of all SBE firms contacted; B. Solicited at least 10 days prior to proposal submittal date and by what means (letter, fax, phone, etc.); C. A copy of the solicitation letter; D. Firms are certified by metro; and E. Adequate number of SBEs contacted in each work category identified by metro (5 or less - contact all; 6 to 10 - contact at least 5; 11 to 50 - contact at least 50%; 51 or more - contact at least 25).	10	

ITEM #	INDICATORS	POINTS	
		POSSIBLE	ACTUAL
6	<u>FOLLOW-UP INITIAL SOLICITATION & MAINTAIN CONTACT LOGS</u> Oral and/or written follow-up of initial solicitation of SBE firms. A. The log with names, contact persons, phone numbers, dates and methods used for following up initial solicitation to determine whether or not SBEs were interested; and B. Follow-up to a minimum of 75% of the initial solicitations to SBEs (Attachment F Solicitation Follow-up Log Form used).	15	
7	<u>LIST SBE FIRMS, RETAIN SBE PROPOSALS JUSTIFY SELECTION OF SUBCONTRACTOR OR OTHER SOURCE.</u> Bidder/Proposer negotiated in good faith with SBEs and did not unjustifiably reject bids/proposals prepared by any SBE. A. Names, addresses, phone numbers of all subcontractors/suppliers who submitted bids/proposals; B. Copies of all SBE and non-SBE bids/proposals for each item of work solicited; and C. State reason for choice of subcontractor. Barring lack of qualifications to perform work, only significant price differences (10% or more) between selected subcontractor/supplier and rejected SBE will be considered as a cause for rejecting bids/proposals.	30	
8	<u>ASSIST SBE's WITH BONDING AND INSURANCE</u> Offer assistance to SBE firms in obtaining bonding and insurance. (5 points automatically given if bonding and insurance is not required) Description of assistance provided by the Bidder/Proposer to SBEs in obtaining bonding and insurance (may be included in Attachment F Letter of Solicitation).	5	
TOTAL POINTS POSSIBLE 100			

Metro REQUIRES A MINIMUM OF SEVENTY-FIVE (75) OF 100 POINTS TO BE IN COMPLIANCE.

Metro evaluates each item on a pass/fail basis - either full or zero points received for compliance with each item.

ATTACHMENT B - SAMPLE ADVERTISEMENT

**SBE SUBCONTRACTORS/SUPPLIER BIDS
REQUESTED**

**CONTRACT NO. B234
WINDOW INSTALLATION, LOS ANGELES, CA.**

BID SUBMITTAL DATE: DECEMBER 29, 1993 @ 2:00 PM

**OWNER: LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
(Metro)
PERFORMANCE/PAYMENT/SUPPLY BOND MAY BE REQUIRED**

**THIS ADVERTISEMENT IS IN RESPONSE TO Metro'S SBE PROGRAM. LAMAR CORP.
INTENDS TO CONDUCT ITSELF IN "GOOD FAITH" WITH SBE FIRMS REGARDING
PARTICIPATION ON THIS PROJECT. DRAWINGS AND SPECS MAY BE REVIEWED IN
OUR OFFICE MONDAY THROUGH FRIDAY, 8:00 AM TO 5:00 PM. QUOTES ARE
REQUESTED BY COB, DECEMBER 28 SO THAT ALL BIDS CAN BE FAIRLY EVALUATED.
PLEASE SUBMIT BIDS FOR THE FOLLOWING WORK (BUT NOT LIMITED TO): SIGNS,
TRACK CONSTRUCTION, TIMBER TIES, BALLAST, APPURTENANCES, RAIL WELDING,
A.C. PAVING, REINFORCING STEEL, SUPPLY PORTLAND CEMENT, CONCRETE
PUMPING, METAL FABRICATIONS AND ELECTRICAL.**

**LAMAR CORP.
8134 MAYFLOWER DRIVE LOS ANGELES, CA 90343
213/555-9800 FAX 213/555-9801**

ATTACHMENT C - NEWSPAPER ADVERTISEMENT LOG
(Attach copies of ads)

Newspaper	Phone No.	Type of Publication Minority/General/Trade	Circulation	Dates of Advertisement

ATTACHMENT D - SELECTED WORK CATEGORIES FORM

Work Categories	Type of Bid (Subcontractor/Supplier)	Bidder's Estimated Budget	Additional Comments

ATTACHMENT E - WRITTEN SOLICITATION SUBMITTAL FORM
Attach copy of Solicitation Letter

Please check one:

- ☐ I've attached a list of solicitations*
- ☐ Refer to log below

Date Sent	Name of SBE Firm	Contact Person	Phone Number	Work Category

* List must contain same information as found on log above.

ATTACHMENT F - SOLICITATION FOLLOW-UP LOG

Date and Time	Follow-up Method	Name of SBE Firm	Contact Person	Phone No.	Bidding Yes/No	Date Bid Received	If SBE not bidding indicate reason

ATTACHMENT G - LIST OF ALL FIRMS/SOLICITATION RESPONSES RECEIVED
for
Metro - PROJECT NAME AND NUMBER

Name of Subcontractor/Supplier/ Broker/Regular Dealer	Address	Phone	Category of Work	Amount	Lowest Bidder, will award contract	Reasons for rejecting

ATTACHMENT H - SAMPLE LETTER OF SOLICITATION

Date

SBE Firm
Address
City, State, Zip

ATTN: Chief Estimator

Project: B234, Trackwork Installation
Owner: Metropolitan Transportation Authority
Bid/Proposal Due Date: December 29, 1993 at 2:00 p.m.

We are bidding the above project as a prime contractor and would appreciate quotes from SBEs who are currently certified with metro for the following services and/or materials:

Clearing and Grubbing	Signal & Lighting
Excavation	Fencing
Backfill	Construction Area Signs
Landscaping	

Plans and specifications are available for inspection at our office or at a local plan room (give name and location of alternate plan rooms, if available). Should you need any assistance in obtaining bonding or insurance, please feel free to call us. SBE firms are also referred to the Small Business Administration (SBA) and/or the Federal Department of Transportation (DOT) Bond Assistance Programs.

We are an Equal Opportunity Employer and, as a matter of policy, encourage the participation of Small Business Enterprises.

All SBE firms must be certified by the bid/proposal due date and must provide our office with a copy of your SBE certification to include with the bid/proposal. Should you have any questions regarding metro's certification process, contact metro's certification Hotline at (213) 922-2600.

We will be contacting you by phone regarding this project, but feel free to contact us at (phone number) or by fax (phone number).

Yours truly,

Mr. Jim Mason
Chief Estimator

ATTACHMENT I - LIST OF CERTIFIED FIRMS (DISCLAIMER)

This listing will be provided by metro Diversity and Economic Opportunity Department at the time the solicitation (IFB/RFP) is issued, as an attachment to the Letter Of Invitation Supplement (SBE - State & Local Funding) Form 032 in the solicitation.

SUBMITTAL REQUIREMENTS (SAMPLE)

1.1 GENERAL FORMAT

Proposals shall be prepared single-sided on 8-1/2 x 11" paper (recycled paper preferred) with 1" left, top, bottom and right margins. Typing shall be single spaced and with a minimum font size of ten. The original shall be bound in a three ring binder. Copies may be bound in any other fashion. Use of 11" x 17" fold out sheets for large tables, charts or diagrams is permissible, but should be limited. Elaborate format is not necessary. Do not provide promotional or advertising information.

One original and 8 copies of the proposal, including all submittal forms, are required. The proposals shall:

- Contain concise written materials and drawings that enable the reviewer to clearly understand the Proposer's capabilities;
- Specifically describe the Proposer's role in relationship to its subcontractors and suppliers and shall describe the interfaces with said subcontractors and suppliers; and
- Be submitted in multiple volumes as specified below.

1.2 PROPOSAL CONTENT

The proposal shall have the following components and shall be laid out in the format exactly as shown here:

VOLUME I

PROPOSAL LETTER (see Section 5); this letter must be completed and executed by an authorized representative of the Proposer. No other letter may replace or be included in addition to the Proposal Letter.

EXECUTIVE SUMMARY (maximum of 10 pages)
PRIME CONTRACTOR'S SKILL AND EXPERIENCE

Discuss the degree of corporate skill and experience in similar projects. List the major projects your firm has managed within the last 5 years. State the current status of each project. Present references.

Discuss your ability to manage personnel changes and work unrelated to the METRO without sacrificing quality of Services on METRO assignments.

Discuss the relevant knowledge, availability and experience of your personnel and the quality of technical resources to be used on METRO assignments.

ROLE AND RELEVANT EXPERIENCE AND CAPABILITY OF THE FIRMS ON
THE PRIME CONTRACTOR'S TEAM

List each subcontractor member of the Team. Identify DBE firms, describe the firm's specific role and present the firm's relevant qualifications for performing that role. Include references for related work performed within the last 5 years for each member firm.

PERSONNEL

Present an organization chart showing the key personnel for the project. Provide resumes of key personnel showing education, work experience and other credentials appropriate to performing the services. Resumes may not exceed two pages per resume. Include a discussion of other commitments of key personnel and how these commitments will affect their availability for the METRO's assignments.

MANAGEMENT PLAN

Clearly show how all member firms form an integrated team. The Plan must include, at a minimum, the following:

- Project organization chart
- Resources available for the project and how they will be accessed
- Project controls methodology and implementation
- How the scope of services will be implemented

UNDERSTANDING OF THE WORK AND APPROACH

Explanation of the Firm's understanding of the METRO's requirements and expected outcomes for the Project

Discussion of the approach to be used to satisfy the requirements of the Scope of Work (i.e. how will the firm implement pre-construction surveys; and manage data collection/analysis and reporting.)

[Standard Form 330](#) (For Qualifications based procurements - Architecture and Engineering, Construction Management, Surveying, etc.)

VOLUME II CERTIFICATION FORMS

VOLUME III COST PROPOSAL (CHOOSE ONE)

(TO BE SUBMITTED IN A SEPARATE ENVELOPE)

The Proposers Price Proposal must include a completed and signed METRO Form 60 covering the entire Scope of Work for itself and any joint venture partners and Subcontractors.

EVALUATION CRITERIA

Any proposals resulting from this RFP will be evaluated according to the following criteria and associated weights. Sub-criteria are equally weighted. The criteria for SBE participation are either responsive or non-responsive.

EVALUATION FACTORS

The factors and sub-factors used in evaluation the proposal are set forth below and listed here in descending order of importance. Adjacent factors and/or sub-factors may be of equal importance:

1. Quality of Proposal – *40 points*
 - Does the proposal describe how the project will be completed in a timely manner to achieve the stated objectives, tasks and deliverables, and schedule?
 - Does the proposal indicate a clear understanding of the project goal and objectives?
 - Have concurrent activities been proposed to ensure adherence to project schedule?
2. Transportation Research and Data Mining Expertise – *30 points*
 - Has the Proposer been designated as an Urban Transportation Center?
 - Does the Proposer have proven transportation and academic research expertise?
 - Does the Proposer have proven expertise in developing performance measurement methodologies and modeling?
 - Does the Proposer have in-depth knowledge of, and experience working with, transportation issues in Los Angeles County and the Southern California Association of Governments (SCAG) Region?
 - Does the Proposer have expertise with data archiving and mining systems?
3. Project Experience and Staff Assigned – *20 points*
 - Does the proposal suggest that the staff to be assigned is technically competent and has performed like or similar work in the past?
 - Does the proposal cite any particularly relevant project work noting any unexpected problems/difficulties that were identified and discussing respective solutions?
 - Does the Proposer have experience working on multi-agency projects?
 - Do the proposed project approach, work plan, and schedule utilize staff efficiently?
4. Price – *10 points*
 - Does the cost proposed seem relevant to completing the project?
 - Does the proposal include cost sharing/participation?

Total Possible – *100 points*

SECTION 4 – PRE-QUALIFICATION DOCUMENTS

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**Los Angeles County
Metropolitan Transportation Authority
CONTRACTOR PRE-QUALIFICATION APPLICATION**

Other Than Construction Projects

If this Application is being submitted in response to a Request For Proposal (RFP), Invitation For Bid (IFB), or other procurement action, please reference the RFP or IFB name and number in the spaces provided below.

If this Application is not in response to a specific contracting action and is being submitted for general purposes, please write "GENERAL" in the "Name of Procurement" space.

Name of Procurement: _____

RFP or IFB Number: _____

Name of Applicant Firm: _____

Date Submitted: _____

Preparer's Name: _____

THIS PAGE MUST BE COMPLETED AND INCLUDED WITH THE APPLICATION

**READ THE INSTRUCTIONS
BEFORE FILLING OUT THE QUESTIONNAIRE**

PRE-QUALIFICATION APPLICATION INSTRUCTIONS

1. This is a Pre-Qualification Application for the Los Angeles County Metropolitan Transportation Authority (LACMTA). There are two different applications to be used for firms seeking contracts of \$100,000 or greater with the LACMTA.
2. **Which application should you use?** Use the Construction Related Projects application if you are a construction company that will be bidding on any type of construction work. Use the Other than Construction Projects application if you are an engineering firm, consultant, legal firm, product vendor, or other business entity seeking a contract with LACMTA for the furnishing of goods or services.
3. The application should be completed by a person in the firm who is knowledgeable of and duly authorized to attest to the past and present operations of the firm and its policies. A corporate officer of the firm, owner or partner, as appropriate, must sign the Pre-Qualification Certification form (or Validation form if the firm is already approved).
4. All questions must be answered completely and any Yes answers must be fully explained. Disclaimers, general statements with global qualifications, or notations of Not Applicable (N/A) are not acceptable. Please note that a Yes answer to any question does not automatically result in denial of pre-qualification for a particular procurement.

DEFINITIONS

1. **Affiliate** is defined as any one of the following: (1) any Firm other than Applicant Firm which owns 25% or more of Applicant Firm, such as parent companies or holding companies; (2) a subsidiary or a Firm in which Applicant Firm owns 25% or more; (3) a Firm in which a major stockholder or owner of Applicant Firm owns controlling interest; (4) a Firm with which Applicant Firm has or has had an unseverable business or professional identity, and (5) any permanent or temporary common business enterprise relationship in which the parties share operating responsibility and profits such as joint ventures.
2. **Key Person** – For purposes of pre-qualification a key person is (1) any person in Applicant Firm who owns 10% or more of the Firm and/or those who make decisions with respect to its operations, finances, or policies, such as the President, CEO, CFO, COO, and, in the case of partnerships, the General Partner(s); (2) Corporate Secretaries and Treasurers, as well as Directors, if they meet criteria #1, above; (3) Division or Regional Business Managers who operate away and independently from the Applicant Firm, but only if the division or regional office is bidding directly with the LACMTA.

APPLICATION SUBMITTAL

Do not submit applications with bid or proposal, mail or deliver them to:

LACMTA Pre-Qualification Office
Mail Stop 99-21-3
One Gateway Plaza
Los Angeles, CA 90012-2952

If you have questions, call the Pre-Qualification Office at (213) 922-4130.

Applicant Firm: _____
Tax ID No. or SSN: _____

SECTION I: IDENTIFICATION

1. Identification Of Applicant Firm

A. _____
Name of Applicant Firm

B. _____
Address City State Zip Code

C. _____
(Mailing Address, if different from above)

D. _____
(If doing business with the LACMTA under a DBA or other name, include legal name of the company and Tax ID No., if different)

E. Primary Company Telephone No. () _____ Fax No. () _____

F. Applicant Firm's Contact Person for Pre-Qualification Office follow-up:

Print or Type Name	Position	E-Mail	Telephone Number
--------------------	----------	--------	------------------

G. Has the Applicant Firm changed its address or has the Firm or its owner operated under any other name(s) including other DBAs in the past five years? If yes, explain fully on a separate sheet of paper.

☐ No ☐ Yes

H. Type of business organization: _____

YEAR organization established: _____ NUMBER of current employees: _____

☐ Sole Proprietor ☐ Corporation
[Date and State of Incorporation _____]

☐ Limited Liability Corporation (LLC)
(Date and State of Incorporation _____)

☐ Limited Partnership (LP) ☐ Limited Liability Partnership (LLP)

☐ General Partnership (GP)

[Date and State of Partnership filing _____]

☐ Other (describe) _____

Applicant Firm: _____
Tax ID No. or SSN: _____

- I. List general type of business in which Applicant Firm is engaged (may include more than one). Attach copies of business licenses, if appropriate:

- J. List type of product or service to be provided to the LACMTA.

SECTION II: OWNERSHIP/MANAGEMENT, PROJECT TEAM MEMBERS, AND RELATED ENTITIES

1. Owners/Key Persons (Pres, CEO, COO, CFO, etc)

List Owners and Key Persons of Applicant Firm. For large publicly traded companies, list only Key Persons. (See DEFINITIONS for clarification if necessary.)

Full Legal Name	Title	Social Security No. (last four digits only)	% Of Ownership

[Use additional sheets if necessary]

2. Affiliations

- A. List Affiliates, subsidiaries, holding companies, joint ventures, etc., of Applicant Firm. If no affiliates, state NONE. N/A is not an acceptable answer. Provide organizational, geographical or functional chart, if it would assist in clarifying the line(s) of authority. (See DEFINITIONS for clarification if necessary.)

Affiliate Name & Address	Tel. #	% Owned	Top Executive's Name	*Type of Relation

*Type of Relationship: 1. Joint Venture (JV), 2. Parent Co (PC), 3. Holding Co (HC), 4. Subsidiary (S), 5. Other (O), please explain.

Applicant Firm: _____
Tax ID No. or SSN: _____

- B. At any time during the past five years have any Owners or Key Persons of Applicant Firm (if yes, explain fully):
1. Served as Key Person, Officer or Director, in any other Firm not affiliated with applicant Firm?
If so, please explain in a separate sheet.
☐ No ☐ Yes
 2. Had any ownership interest in any other Firm other than shares of publicly owned companies? If so, please explain in a separate sheet.
☐ No ☐ Yes

SECTION III: CIVIL ACTIONS

If "Yes" to Sections III, IV, or V, provide details including a brief summary of cause(s) of action, indicate if Applicant Firm, Key Person or Affiliate Firms were plaintiffs (P) or defendants (D); define charges explicitly, by what authority, court or jurisdiction, etc. In the case of tax liens, please indicate whether the liens were resolved with the tax authorities. Please submit proof of payment or agreements to pay the liens.

Complete details are required.

1. Violations Of Civil Law

In the past five years has Applicant Firm, any of its Key Persons, or any Affiliate been the subject of an investigation of any alleged violation of a civil antitrust law, or other federal, state or local civil law?
☐ No ☐ Yes

2. Lawsuits With Public Agencies

At the present time is, or during the past five years has the Applicant Firm, any of its Key Persons, or any Affiliate been a plaintiff or defendant in any lawsuit regarding services or goods provided to the LACMTA or to a public agency?
☐ No ☐ Yes

3. Bankruptcy

During the past five years, has the Applicant Firm or any Affiliate filed for bankruptcy or reorganization under the bankruptcy laws?
☐ No ☐ Yes

4. Tax Liens

During the past five years, has the Applicant Firm been the subject of a tax lien by federal, state or any other tax authority?
☐ No ☐ Yes

Applicant Firm: _____
Tax ID No. or SSN: _____

SECTION IV: COMPLIANCE WITH LAWS AND OTHER REGULATIONS

1. Criminal

In the past five years has the Applicant Firm, any of its principals, officers, or Affiliates been convicted or currently charged with any of the following:

- A. Fraud in connection with obtaining, attempting to obtain, or performing a public contract, agreement or transaction?
☐ No ☐ Yes
- B. Federal or state antitrust statutes, including price fixing collusion and bid rigging?
☐ No ☐ Yes
- C. Embezzlement, theft, forgery, bribery, making false statements, submitting false information, receiving stolen property, or making false claims to any public agency?
☐ No ☐ Yes
- D. Misrepresenting minority or disadvantaged business entity status with regard to itself or one of its subcontractors?
☐ No ☐ Yes
- E. Non-compliance with the prevailing wage requirements of the California or similar laws of any other state?
☐ No ☐ Yes
- F. Violation of any law, regulation or agreement relating to a conflict of interest with respect to a government funded procurement?
☐ No ☐ Yes
- G. Falsification, concealment, withholding and/or destruction of records relating to a public agreement or transaction?
☐ No ☐ Yes
- H. Violation of a statutory or regulatory provision or requirement applicable to a public or private agreement or transaction?
☐ No ☐ Yes
- I. Do any Key Persons in Applicant Firm have any felony charges pending against them that were filed either before, during, or after their employment with the Applicant Firm?
☐ No ☐ Yes

2. Regulatory Compliance

In the past five years, has Applicant Firm, any of its Key Persons, or Affiliates:

- A. Been cited for a violation of any labor law or regulation, including, but not limited to, child labor violations, failure to pay wages, failure to pay into a trust account, failure to remit or pay withheld taxes to tax authorities or unemployment insurance tax delinquencies?
☐ No ☐ Yes

Applicant Firm: _____
Tax ID No. or SSN: _____

- B. Failed to comply with California corporate registration, federal, state or local licensing requirements?
☐ No ☐ Yes
- C. Had its corporate status, business entity's license or any professional certification, suspended, revoked, or had otherwise been prohibited from doing business in the State of California, in the last three years?
☐ No ☐ Yes
- D. During the past five years, has Applicant Firm or any of its Key Persons had any certificates or certifications revoked or suspended, including disadvantaged-, minority-, or woman-owned business certifications?
☐ No ☐ Yes
- E. Been suspended, debarred, disqualified, or otherwise declared ineligible to bid?
☐ No ☐ Yes

SECTION V: ETHICS

1. Conflict Of Interest

- A. Does the Applicant Firm or any of its Key Persons have any existing relationships that could be construed as either personal or organizational conflicts of interest, or which would give rise to a conflict if Applicant Firm should be a recipient of a contract with the LACMTA?
☐ No ☐ Yes
- B. Has any Owner, Key Person or Project Team member of Applicant Firm ever (if yes explain fully):
1. Been an employee of the LACMTA, or served as a Member of the LACMTA Board of Directors or as an Alternate?
☐ No ☐ Yes
 2. Been related by blood or marriage to an LACMTA employee, LACMTA Board Member or Alternate?
☐ No ☐ Yes

2. Political, Charitable, And Other Contributions

Has the Applicant Firm, any of its Key Persons, or Affiliates ever, regardless of amount:

- A. Given (directly or indirectly), or offered to give on behalf of another or through another person, money, contributions (including political contributions), or other benefits, to any current LACMTA Board Member or Alternate?
☐ No ☐ Yes
- B. Given, or offered to give on behalf of another, money, contributions, or other benefits, directly or indirectly, to any current or former LACMTA employee?
☐ No ☐ Yes

Applicant Firm: _____
Tax ID No. or SSN: _____

- C. Been directed by any LACMTA employee, Board member or Alternate Board member, or contractor to offer or give money, contributions or other benefits, directly or indirectly, to any current or former LACMTA employee, Board member or alternate Board member?
☐ No ☐ Yes
- D. Directed any person, including employees or subcontractors, to give money, contributions or other benefits, directly or indirectly, to any current or former LACMTA employee, Board member, Alternate Board member, or to someone else in order to benefit an LACMTA employee, Board member, or Alternate Board member?
☐ No ☐ Yes
- E. Been solicited by any LACMTA employee, Board member, or Alternate Board member to make a contribution to any charitable nonprofit organization?
☐ No ☐ Yes

IF YES TO ANY OF THE ABOVE, SUBMIT LIST OF CONTRIBUTIONS AND FULL DETAILS.

SECTION VI: ADDITIONAL DOCUMENTATION REQUIRED

Copies of the following documents are to be submitted with this application:

1. Applicant Firm's Current Local Business Licenses, if required by city, county or state, and
2. Applicant Firm's Financial Statements (see specific requirements below):
 - A. PUBLICLY TRADED COMPANIES: Financial information will be accessed on-line. However, if additional information is needed, it will be specifically requested from the firm.
 - B. NON-PUBLICLY TRADED COMPANIES WITH AUDITED OR REVIEWED FINANCIAL STATEMENTS: Statements, including balance sheet, statement of earnings and retained income, with footnotes, for the most recent three years.
 - C. NON-PUBLICLY TRADED COMPANIES WITHOUT AUDITED OR REVIEWED FINANCIAL STATEMENTS: Company generated financial statements, including balance sheet, statement of earnings and retained income for the most recent three years. The Chief Financial Officer of the corporation, a partner, or owner, as appropriate, must certify these financial statements.
 - D. SOLE PROPRIETORSHIPS: Refer to C. If financial statements are not generated, please fill out and sign the Financial Statement form (page 9). Submit one form for each of the most recent three years.

NOTE: The LACMTA reserves the right to ask for additional documentation if it is reasonably required to make a determination of integrity and responsibility relevant to the goods or services the Applicant Firm will provide to the LACMTA if awarded a contract.

FINANCIAL STATEMENT

To be completed by Applicant Firms that do not produce company generated financial statements, including balance sheet, statement of earnings and retained income for the most recent three years (one sheet per year.)

ASSETS

Cash on Hand and in Banks.....\$
Account and Notes Receivable.....\$
Fixed Assets (net of depreciation).....\$
Other Assets.....\$

Total Assets.....\$

LIABILITIES

Accounts Payable\$
Notes Payable to Banks in next twelve months\$
Notes Payable to Others.....\$
Taxes Payable\$

Long Term Liabilities (More than twelve months).....\$

Other Liabilities.....\$

Total Liabilities.....\$

Net Worth.....\$

INCOME FROM OPERATIONS

Revenue.....\$
Interest from Bank Accounts.....\$

Cost of Goods Sold (if appropriate).....\$

Gross Profit.....\$

General & Administrative Expenses\$
Depreciation\$
Interest Paid.....\$
Net Gain or Loss\$

This information is provided for pre-qualification purposes only. It is considered a confidential document not subject to public disclosure under California law.

I hereby certify that the above information is true and accurate to the best of my knowledge and belief. I understand false statements may result in denial of pre-qualification, and possible debarment for a period of five years.

Signature of Owner or Officer

Date Signed

Company Name

For the Year Ended

Federal ID #

Applicant Firm: _____
Tax ID No. or SSN: _____

PRE-QUALIFICATION CERTIFICATION

A COPY OF THIS CERTIFICATION MUST BE COMPLETED AND SIGNED BY A GENERAL PARTNER, OWNER, PRINCIPAL OR CORPORATE OFFICER AUTHORIZED TO LEGALLY COMMIT THE APPLICANT FIRM, AND SUBMITTED WITH THE APPLICATION.

The signer of this declaration recognizes that the information submitted in the questionnaire herein is for the express purpose of inducing the LACMTA to award a contract, or to allow the Applicant to participate in LACMTA projects as contractor, subcontractor, vendor, supplier, or consultant. The signer has read and understands the requirements of the program, and has read and understands the instructions for completing this form.

DECLARATION

State of: _____
County of: _____

I, (printed name) _____, Social Security Number (last four digits) _____, being first duly sworn, state that I am the (title) _____ of Applicant Firm. I certify that I have read and understood the questions contained in the attached Application, and that to the best of my knowledge and belief all information contained herein and submitted concurrently or in supplemental documents with this Application is complete, current, and true. I further acknowledge that any false, deceptive or fraudulent statements on the Application will result in denial of pre-qualification.

I authorize the LACMTA to contact any entity named herein, or any other internal or outside resource, for the purpose of verifying information provided in the questionnaire or to develop other information deemed relevant by the LACMTA.

Signature of Certifying Individual Date

Subscribed and sworn to (or affirmed) before me this _____ day of _____, _____
by _____, ☐ Personally known to me, or ☐ Proved to me on the basis of
satisfactory evidence to be the person who appeared before me.

Place Notary Seal Above

Signature of Notary Public

NOTICE TO APPLICANTS

A material false statement, omission or fraudulent inducement made in connection with this pre-qualification application is sufficient cause for denial of the application or revocation of a prior approval, thereby precluding the applicant Firm from doing business with, or performing work for, the LACMTA, either as a vendor, prime contractor, subcontractor, consultant or subconsultant for a period of five years. In addition, such false submission may subject the person and/or entity making the false statement to criminal charges. (Title 18 USC 1001, false statements; California Penal Code Section 132, offering altered or antedated or forged documents or records; and Section 134, preparing false documentary evidence].

NOTE: Applicant information submitted to the LACMTA in connection with pre-qualification is considered confidential. All such applicant information is confidential business information and will be afforded protection to the fullest extent permitted by law.

SECTION 5 – BID/PROPOSAL FORMS

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PROPOSAL LETTER

HONORABLE CHAIRMAN AND MEMBERS OF THE BOARD
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
ONE GATEWAY PLAZA
LOS ANGELES, CA 90012-2952

SUBJECT: REQUEST FOR PROPOSAL CONTRACT NO. RFP No. PS4340-2301
Archived Data Management System for Regional Integration of ITS (RIITS)
Network

In response to the above referenced Request for Proposals (RFP) and in accordance with the accompanying Instructions to Proposers and Submittal Requirements, we the undersigned hereby offer to perform and complete the work as required in the Contract Documents.

If recommended for contract award, will provide to the METRO all required Certificates of Insurance.

The proposal submitted in response to subject RFP shall be in effect for 120 days after the proposal due date.

Further, the undersigned agrees to execute the METRO prepared Contract within ten calendar days after receipt of Notice of Award and provide to the METRO all required Certificates of Insurance. The Proposer represents that the following person(s) are authorized to negotiate on its behalf with the METRO in connection with this RFP and will provide appropriate evidence of authorization upon request:

Printed Name	Title	Phone
--------------	-------	-------

Printed Name	Title	Phone
--------------	-------	-------

Printed Name	Title	Phone
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In addition to the formal certifications provided, the Proposer certifies that it has:

- A. Examined and is fully familiar with all of the provisions of the RFP Documents and any amendment thereto;
- B. Satisfied itself as to the requirements of the Contract;
- C. Carefully reviewed the accuracy of all statements shown in this Proposal;
- D. Examined the experience, skill and certification (if any) requirements specified in the Statement of Work and that the entities (Contractor, Subcontractor, Supplier) performing the work fulfill the specified requirements, and

- E. Satisfied itself with respect to other matters pertaining to the RFP which in any way affect the performance of the Work.
- F. Unless otherwise noted within this letter, the proposal has been submitted without exception and all METRO Contract Terms and Conditions are acceptable to the Proposer. Noted exceptions will be evaluated for responsiveness and significance, and may initiate discussions with the selected firm to clarify or resolve such exceptions. It is understood that if it is not in the best interests of the METRO to accept proposed exceptions, notice will be provided to the Proposer to accept the Terms and Conditions as stated in the RFP, or be eliminated for further consideration.

Exceptions (if any):

Therefore, the undersigned hereby agrees that the METRO will not be responsible for any errors and/or omissions in the Proposal.

The undersigned acknowledges receipt, understanding and full consideration of the following amendment to the RFP Documents:

Amendment No(s):

The Proposer further certifies that:

- A. The only persons, firms, corporations, joint ventures/partnerships, and/or other parties interested in the Proposal as principals are those listed as such in the Proposal Forms; and
- B. The Proposal is made without collusion with any other person, firm, corporation, joint venture/partnership, and/or other party.
- C. Joint ventures/partnerships are to provide a signed copy of their agreement with their Proposal.

Proposer's
Name: _____

Business
Address: _____

Contractor's License
No.: _____

License Expiration
Date: _____

Classification
Type: _____

Phone: _____ Fax: _____

e-mail address

Signature of Authorized Official

Type or Print
Name

Title

Date

_____ being duly sworn, deposes and says
Name

That he/she is the _____ of _____
Title Company

and that all statements and information contained in the Proposal and made a part of through attachment and/or reference, are true and correct.

Subscribed and sworn before me before this _____ day of _____, 200__.

Notary Public: _____

My Commission expires: _____

BIDDER/PROPOSER: _____

LIST OF CURRENT PROJECTS (BACKLOG)

PROJECT NAME AND LOCATION	DESCRIPTION OF WORK	OWNER'S NAME, ADDRESS, PHONE NO. CONTACT PERSON	ESTIMATED COST OF BIDDER'S WORK	ESTIMATED COMPLETION
	Prime ☐ Sub ☐		\$	
	Prime ☐ Sub ☐		\$	
	Prime ☐ Sub ☐		\$	
	Prime ☐ Sub ☐		\$	
	Prime ☐ Sub ☐		\$	

LIST OF COMPLETED PROJECTS - LAST THREE YEARS

Include only projects that are pertinent for this Invitation For Bids/Request for Proposal, in order to demonstrate Bidder's/Proposer's ability to perform the required Work.

PROJECT NAME AND LOCATION	DESCRIPTION OF WORK	OWNER'S NAME, ADDRESS, PHONE NO. CONTACT PERSON	ACTUAL FINAL CONTRACT VALUE	DATE CONTRACT DURATION
	Prime ☐ Sub ☐		\$	
	Prime ☐ Sub ☐		\$	
	Prime ☐ Sub ☐		\$	
	Prime ☐ Sub ☐		\$	
	Prime ☐ Sub ☐		\$	

FORM 60 AND INSTRUCTIONS

CONTRACT PRICING PROPOSAL

INSTRUCTIONS TO PROPOSERS

1. The purpose of this form is to provide a standard format by which the Proposer submits to the METRO a summary of incurred and estimated costs (and attached supporting information) suitable for detailed which are review and analysis.
2. In addition to the specific information required by this form, the Proposer is expected, in good faith, to incorporate in and submit with this form any additional data, supporting schedules, or substantiation reasonably required for the conduct of an appropriate review and analysis in the light of the specific facts of this procurement. For effective negotiations, it is essential that there be a clear understanding of:
 - A. The existing, verifiable data,
 - B. The judgmental factors applied in projecting from known data to the estimate, and
 - C. The contingencies used by the Proposer in his proposed price.

In short, the Proposer's estimating process itself needs to be disclosed.

3. When attachment of supporting cost or pricing data to this form is impracticable, the data will be described (with schedules as appropriate) and made available to the Contract Administrator or representative upon request.
4. The formats for the "Cost Elements" and the "Proposed Contract Estimate" are not intended as rigid requirements. These may be presented in different format with the **prior** approval of the Contract Administrator if required for more effective and efficient presentation. In all other aspects this form will be completed and submitted **without change**.
5. By submission of this Proposal the Proposer grants to the METRO, the right to examine, for the purpose of verifying the cost or pricing data submitted, those books, records, documents and other supporting data which will permit adequate evaluation of such cost or pricing data, along with the computations and projections used therein. This right may be exercised in connection with any negotiations/discussions prior to contract award.

ADDITIONAL INSTRUCTIONS "FORM 60"

1. Direct Labor

This category covers all of the types of labor -- engineering (delineating different levels as appropriate), support staff, etc. -- that will be directly charged to the Contract. (The Proposer is free to group labor in any categories that assist in managing the Statement of Work as long as the costs are accumulated for the same categories that are used for estimating purposes. A "time-phased breakdown" of labor hours and rates reflects the fact that the process of estimating and analyzing labor costs normally considers hours and rates separately).

A. Labor Hours

In cases where the Proposer has performed the same or similar Work in the past, the number of labor hours incurred will be considered factual data and must be presented in the proposal. When the Proposer has no previous experience in performing the Work to be procured, the estimate of labor hours must be made by breaking down the projected Work into its constituent parts and projecting the labor hours necessary to perform each part of the Work. In most cases, each part of the Work can be compared to similar Work that the Proposer has performed in the past and this data can be used to support the estimate.

B. Labor Rates

Even if the Proposer has never performed the specific Work to be contracted for, there will be factual (auditable) information regarding the labor rates that have been paid to the various categories of employees to be used on the contract. This information must be included as part of the Proposer's cost or pricing data.*

***Note:** Another factor that is assessed is the number of workers the Proposer expects to employ during the contract performance period. If the number is increasing, average labor rates will normally go down while a reduction in the number of employees will normally increase the rate.

2. Labor Overhead

Indicate the rates used and provide an appropriate explanation. Where agreement has been reached with the Contract Administrator the use of forward pricing rates, describe the nature of the agreement. Provide the method of computation and application of Proposer's overhead expenses, including cost breakdown and showing trends and budgetary data as necessary to provide a basis for evaluation of the reasonableness of proposed rates. Provide the rationale for use of overhead rates which depart significantly from actual rates (reduced volume, a planned major rearrangement, etc.).

3. Travel

Travel shall be itemized to include the number of trips, the number of people traveling, the estimated cost of the transportation (including mode), the per diem cost of each traveler, etc. Provide itemized supporting data on the second page of "Form 60". Travel costs shall be limited to costs consistent with METRO Travel Policy.

4. Subcontractors

Identify and provide total estimated cost for each subcontractor. Attach individual METRO "Form 60(s)" for all proposed subcontractors.

5. Other Direct Costs (ODC)

Proposers charge a variety of costs directly to contracts to obtain more accurate cost allocation. Such costs are frequently sporadic in nature varying greatly from contract effort to another; however, Proposers must submit past data on such costs. (The Contract Administrator/Evaluation Team will assess each type of direct cost in terms of its relationship to the Work on the contract to determine if the Proposer is estimating a level of cost that is reasonable in the circumstances.) (Material costs, if any, shall be itemized and supported on the basis for pricing materials such as vendor quotes, shop estimates, or invoice prices, etc.) Provide itemized supporting data related to ODC on the second page of the "Form 60".

6. General & Administrative (G & A)

If applicable, the allocation base for general and administrative expense is total expense before G & A. Identify the percentage used for G & A and the item numbers to which it is applied. Provide estimated cost.

7. Fee/Profit

Proposer shall provide the estimated fee/profit that is expected to be earned.

The cost and pricing data must be accurate, complete and current, and the judgment factors used in projecting from the data to the estimates must be stated in sufficient detail to enable the METRO to evaluate the proposal.

FORM 60

CONTRACT PRICING PROPOSAL (Services)			MTA "Form 60"	Page _____ of _____
Name of Proposer			DIVISION(S)/LOCATION(S) WHERE SERVICES ARE TO BE PERFORMED	
Home Office Address			CONTRACT NO.	
Services to be Performed			TOTAL AMOUNT OF PROPOSAL \$	
DETAILED DESCRIPTION OF COST ELEMENTS				
1. Direct Labor (Specify)	Estimated Hours	Rate/Hour	Est. Cost (\$)	Total Est. Cost
Total Direct Labor				
2. Labor Overhead	O.H Rate	X Base =	Est. Cost	
Total Labor Overhead				
3. Travel*			Est. Cost	
a. Transportation				
b. Per Diem or Subsistence				
Total Travel				
4. Subcontractors/Suppliers**			Est. Cost	
Total Subcontractors/Suppliers				
5. Other Direct Costs*				
6. General & Admin. Expense (_____ % of Item Nos. _____)				
7. Fee				
TOTAL ESTIMATED COST AND FEE				
* Itemize on second page of "Form 60" ** Attach METRO "Form 60" for all proposed subcontractors				

[illegible]

METRO TRAVEL AND EXPENSE GUIDELINES

All invoices shall include an itemized listing supported by copies of the original bills, invoices, expense reports and miscellaneous supporting data.

All travel submitted for reimbursement either to Los Angeles or from Los Angeles to other locations, shall have by the METRO's Project Manager.

Time for travel will not be reimbursed except for travel during normal business hours.

A. Auto Mileage

Auto mileage will be reimbursed at the METRO's current mileage rate.

B. Air Travel

Air fares will be reimbursed based on the most direct route at coach class travel rates. Upgrading (coach to a higher class) of airline tickets will only be reimbursed when approved, and only when the business schedule requires immediate travel, and only higher class seats are available. Downgrading (exchange) of airline ticket where the Contractor receives financial or personal gain is not permitted. If a trip is postponed, reservations should be canceled immediately.

Travel arrangements should be made as early as possible (preferably three weeks) to take advantage of advanced reservation rates.

C. Combining Business Travel with Personal Travel

The Contractor's employees may combine personal travel with METRO business only if the personal travel does not increase the cost to the METRO. Arrangement for personal travel should be handled by the Contractor's employee. The METRO will not manage personal travel.

D. Air Travel Insurance

The METRO does not pay for air travel insurance.

E. Accommodations

The METRO will reimburse hotel room fees at the governmental rate. The METRO may reimburse hotel room fees at the standard rate based on single room occupancy in cases where a government rate is not available. The METRO will provide a letter to the Contractor which authorizes hotels to provide rooms at a government rate. This authorization only applies to METRO business travel.

F. Laundry

Laundry and dry cleaning charges will only be paid if a Contractor's employee is on travel for the METRO for a period in excess of six (6) consecutive days.

G. Entertainment

The METRO will not pay for the rental of premium channel movies, use of health club facilities or other forms of entertainment.

H. Auto Rental

The METRO will pay for reasonable car rental charges when required. The Contractor's employees are expected to request the rental of an economy car.

I. Meals

Meals will be reimbursed based on the actual cost up to a maximum of \$50.00 per day of travel. Receipts are required for all meals. In order to be reimbursed, meal receipts (itemized if possible) in the form of receipts, credit card receipts, or cash register tape must be submitted. The METRO will not pay for alcoholic beverages.

In lieu of itemizing meal expenses and submitting receipts, the Contractor's employees may claim the standard \$26.00 per diem for the duration of the travel.

J. Telephone Usage

The Contractor's employees shall submit documentation regarding all telephone calls charged to the METRO. Documentation must include the name of the party being called and the purpose of the call. The METRO shall allow one business call upon arrival and one call prior to departure. The METRO will not pay for additional business calls unless directly related to the Contract. Personal telephone calls are not reimbursable unless the Contractor's employee is on travel for the METRO for more than three consecutive days. In this case, the cost of a call shall not exceed \$5.00 and one call is permitted every other day.

K. Parking and Ground Transportation

Public transportation should be used whenever possible; however, if necessary, rental car expenses including gas will be reimbursed for authorized travel only. Cab fare (on a shared basis whenever possible) is reimbursable. Receipts shall be required to document all parking charges as well as other ground transportation charges.

The Contractor's employees shall rent the lowest automobile classification appropriate for the size or purpose of the group using the vehicle.

1-2 Travelers	Compact
3 Travelers	Medium/Intermediate
4-5 Travelers	Full Size/Standard Equipment
6+ Travelers	Van

The Contractor's employees must fuel rental automobiles prior to turn-in.

L. General Parking

The Contractor's employees should take advantage of "Early Bird Parking" whenever possible. Parking expense incurred while conducting METRO business is reimbursable.

M. Tolls and Fees

Transportation related toll charges incurred while on METRO business is reimbursable.

N. Baggage Handling

Baggage handling service fees within or outside the Los Angeles region are reimbursable at standard reasonable rates.

O. Other Business Expenses

Supplies, equipment rental, reprographics, and facsimile related expenses may be reimbursed when traveling on METRO business. Such expenses shall be billed at cost.

P. Non-Allowable Expenses

The METRO will not provide any reimbursement for personal entertainment expenses, alcoholic beverages, travel expenses for family members, use of health club facilities, movies in hotels, personal items, charitable contributions, etc.

Q. Other Source of Information

Information not addressed herein regarding the allowability of cost reimbursement expenses is contained in the Federal Acquisition Regulations.

SECTION 6 – REQUIRED CERTIFICATIONS

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ETHICS DECLARATION

- A. The following questions are designed to ensure contractors and Metro, including its employees and Board of Directors, are able to comply with their obligations to avoid conflicts of interest issues. Your company should make or cause to be made a reasonably diligent investigation prior to responding to the questions to ensure your responses are correct and you must have an authorized official sign below where indicated.

The authorized official is responding on behalf of your company and your sub-contractors and other persons and entities that your company or its subsidiaries have designated to perform the work requested in the bid/proposal.

An affirmative response to any of the questions will not automatically cause your company to be disqualified. However, failure to answer the questions in good faith or providing material false answers may subject your company to consequences up to and including disqualification of its bid.

If you have any questions please contact the contract administrator assigned to this procurement.

- B. State the names of your company's parent, all subsidiaries, and "related business entities" as that term is defined in California Code of Regulations 18703.1(d). If none, circle "none" under each category below:

Name of parent: (none)

Name of subsidiaries (use additional sheet if necessary): (none)

Name of related businesses (use additional sheet if necessary) (none)

Questions	Yes/No
1. Are any of your employees, officers, shareholders, partners, or directors (including your and those of your subcontractors' and consultants' collectively "Employees") formerly a Metro board member or employee within the previous 12 months?	
2. Are any of your Employees related to any Metro board member or employee?	
3. Are any of your Employees also Metro board members or employees?	
4. Do any Metro board members or employees own any stock in your company, or that of your consultants or subcontractors?	
5. Have you or Employees given any gifts within the previous 12 months to a Metro board member or employee?	

Questions	Yes/No
6. Have you, your Employees or their family members of your parent, subsidiaries and relate business entities as stated above, made any campaign contributions any present Metro Board Member or employee in the past four years?	
7. Have you employed or do you intend to employ as a lobbyist any former Metro board member or employee who has left the Metro within the last twelve months?	
8. Did you or you Employees receive any confidential information concerning this contract?	
9. Did you or any of your Employees perform work within the last 3 years relating to the project or services contemplated to be performed under this contract, including development of the specifications or earlier phases of the project or services to be provided under this contract?	

	No. of Pages Attached
10. If you answered "yes" to any question 1 through 9 above, explain in detail on a separate sheet the facts and information, including names, dates, amounts, and other circumstances relevant to the question.	

You have read and shall abide by the Metro Code of Conduct for Contractors at all times during your relationship with the Metro. Your consultants and subcontractors you retain (if any) to perform any services under the contract you are seeking have or will promptly upon your hiring of those persons, shall read and abide by the Metro Code of Conduct for Contractors. You have read and will continually remain in compliance with the Metro Lobby Ordinance.

C. **DECLARATION**

I, (name) _____, on behalf of (name of bidder/proposer) including _____ its _____ subcontractors and _____ consultants, _____ at which I am employed as (your title) _____, declare that after having made or caused to be made a reasonably diligent investigation both regarding my company and all sub-contractors and consultants designated by the above bidder/proposer, the foregoing responses, and the explanation on the attached sheet, if any, in response to question 10, are correct to the best of my knowledge and belief.

Signature

Date

BIDDER/PROPOSER: _____

GENERAL CERTIFICATIONS

The Bidder/Proposer shall respond either "Yes" or "No" to each of the following where indicated. If the Bidder/Proposer's response is "No", a full explanation shall be provided in the space following the last item.

1.0 CERTIFICATE OF NONDISCRIMINATION

Yes ☐ No ☐

The Bidder/Proposer hereby certifies: that it does not unlawfully discriminate against any employee or applicant for employment with regard to race, sex, color, religion, ancestry, national origin, marital status, age (over 40), or disability (including AIDS, and cancer-related medical condition); that it is in compliance with all applicable Federal, state, and local directives and executive orders regarding nondiscrimination in employment; and that it agrees to pursue positively and aggressively the principle of equal opportunity in employment. The Bidder/Proposer and its Subcontractors shall comply with the provisions of the Fair Employment and Housing Act Gov. Code § 12900 and the applicable regulations promulgated thereunder. The Bidder/Proposer agrees specifically to adhere to the following:

- A. Establish and observe employment policies that actively promote opportunities for minority persons and women at all job levels.
- B. Communicate this policy to all company employees, outside recruiting services, especially those serving minority communities and women, and minority communities and women at large.
- C. State in all solicitations or advertisements for employees that the Bidder/Proposer will consider all qualified applicants for employment without regard to race, sex, color, religion, ancestry, national origin, marital status, age (over 40), or disability (including AIDS, and cancer-related medical condition).

2.0 AFFIRMATIVE ACTION

Yes ☐ No ☐

The Bidder/Proposer certifies that it and those Subcontractors with subcontracts in excess of ten thousand dollars (\$10,000) are maintaining Affirmative Action Programs consistent with those required under Federal Executive Order 11246. The detailed requirements are set forth in the Contract Compliance Manual.

3.0 FRAUDULENT USE OF DBE FRONTS

Yes ☐ No ☐

Only legitimate DBE's are eligible to participate in Metro contracts as DBEs. The Bidder/Proposer certifies that it has not knowingly and willfully used "fronts" as defined in section 100.6 of Metro's Contract Compliance Manual (Federal) to meet the Disadvantaged Business Enterprise Anticipated Level of Participation (DALP)

4.0 WHISTLEBLOWER REQUIREMENTS

Yes ☐ No ☐

The Bidder/Proposer certifies that it will take no action, or adopt any rule, regulation or policy which is contrary to the provisions set forth in California Labor Code § 1101.

A full explanation of all "No" answers shall be provided below.

Bidder/Proposer hereby declares under the penalty of perjury under the laws of the State of California that the certifications made above in No. 1-4 are true and correct.

Executed on _____, 20____, at _____, _____
(Date) (City) (State)

_____	_____	_____
Typewritten or Printed Name	Signature of Authorized Official	Title