

RFP No. UT-10-21WJ

REQUEST FOR PROPOSALS

for

DECISION SUPPORT TOOL SOFTWARE

November 3, 2010



*Utah Transit Authority
3600 South 700 West
Salt Lake City, Utah 84119*

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Request for Proposals

DECISION SUPPORT TOOL SOFTWARE

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NOTICE OF REQUEST FOR PROPOSALS

REQUEST FOR PROPOSALS RFP UT-10-21WJ

DECISION SUPPORT TOOL SOFTWARE

Utah Transit Authority (UTA) is requesting proposals any time prior to the hour of **2:00 PM M.D.T. on November 19, 2010** from qualified individuals and/or firms to provide and support a **DECISION SUPPORT TOOL SOFTWARE**.

Requests for proposal documents or any related questions should be in writing and directed to Utah Transit Authority, Attention: **Wes Jones**, Grants and Contracts Administrator, 3600 South 700 West, Salt Lake City, Utah 84119 or by email at wjones@rideuta.com. Complete instructions to proposers are included in the proposal documents. The contract, when awarded, will be to the proposer(s) whose proposal best meets the objectives and requirements of the Authority.

The individual(s) and/or firm(s) selected will be required to comply with all applicable Federal and State laws, regulations and certifications, and equal employment opportunity laws and regulations. The Utah Transit Authority, in accordance with Title VI of the Civil Rights Act of 1964, as amended, and 49 CFR Part 26 will afford Disadvantaged Business Enterprises (DBEs) full opportunity to respond and will not discriminate against any interested firm or person on the basis of race, color, sex, age, religion, or national origin in the review of qualifications or contract award.

If subcontracting is involved, responsive responsible proposers will be required to address the utilization of Disadvantaged Business Enterprises (DBEs) in their proposal documents submitted.

Issuance of this RFP does not commit the Authority to award any contract, to pay any costs incurred in preparation of a proposal, or to procure or contract for services or supplies. The Authority reserves the right to waive any irregularities and informalities or to reject any or all proposals submitted, to re-advertise and to make contract awards in the best interest of the Authority.

Utah Transit Authority
3600 South 700 West
Salt Lake City, Utah 84119

SCOPE OF WORK AND INSTRUCTIONS

1. SCOPE OF WORK

1.1 Introduction

The Utah Transit Authority (UTA) is interested in procuring a software based decision making tool to support our strategic planning management process.

1.2 Objective

The objective of the UTA strategic planning process is to optimize the prioritization of strategies and allocation of limited resources. Strategies focus on a variety of topics including, but not limited to: service expansion, day-to-day operations, continual service delivery improvement, maintaining infrastructure in a state of good repair, joint development, and technology deployment.

1.3 Decision Tool Requirements

The decision-support tool shall:

1. Optimize the prioritization of strategies and allocation of limited resources.
2. Be fully functional at one or more existing business entity. Fully functional at a transportation service provider is preferred.
3. Incorporate both quantitative and qualitative information.
4. Allow for “real-time” collaboration by multiple stakeholders originating from geographically dispersed operating and administrative facilities throughout the Wasatch Front (including Weber, Davis, Salt Lake, Tooele, and Utah Counties) metropolitan area.
5. Aid in establishing criteria for prioritizing goals, objectives, and strategies.
6. Perform “what if” scenarios in real-time.
7. Implementable at UTA prior to December 31, 2010.
8. Be compatible with UTA existing technology infrastructure. Allow UTA staff to operate the tool, without consultant support, following appropriate training.
9. Model multi-year strategies and resource allocation.
10. Be user friendly in both the implementation and on-going operation.

1.4 Proposal Requirements

The proposer shall describe how their software decision support tool satisfies all requirements.

The proposer shall define, in detail, the information, data, and support activities must provide to operate the proposed software tool.

The proposal must include the following:

- Cost of software tool
- Cost of consultant support during implementation
- Cost of training

The proposal must define all hardware required to support the software tool.

The proposal shall list contacts from previous customers, with names, phone numbers, and email addresses.

The proposal shall include resumes of key personnel that will be assisting with the installation and training of UTA staff.

1.5 Product Demonstration

After the initial proposals are evaluated UTA may invite the top scoring firms to provide a product demonstration to the evaluation committee. Please note that it is very important that your proposal gives the evaluation committee a clear understanding of the solution that you are proposing as there will not be any product demonstrations prior to the proposal due dates.

2. PROPOSAL FORMAT AND INSTRUCTIONS TO PROPOSERS

Responses to this Request for Proposals for “Decision Support Tool Software” must conform to the following outline for uniformity and for the evaluation purposes. The proposal shall be bound with divider tabs using primarily 8-1/2” x 11” paper and shall be limited to a maximum of 100 pages including cover letter and all UTA forms excluding tabs. Double-sided pages and any 11” by 17” sized pages shall be counted as two pages. Proposers shall address and comply with those evaluation factors listed in this RFP and shall also include a cover letter identifying the point of contact person, address, telephone and fax numbers, and e-mail address.

Although brochures can be submitted with the RFP, they cannot be used as a substitute to the format or as a response to the RFP. Do not submit a brochure as a substitute for the above format. If proposer desires to submit brochures or other printed material, please submit separately with fourteen (14) copies.

Please submit one (1) original and thirteen (13) copies of your proposal, (total of 14), and a CD-ROM media containing the submittals in electronic file formats such as MS Word, Excel and Adobe Acrobat.

This is a Request for Proposal (RFP) and as such shall be opened and evaluated by the Selection Committee in private.

Based on submitted information, UTA may select a firm with whom to negotiate; UTA may ask for more information; may undertake further negotiations with one or more proposers, UTA may decline to accept any proposal; UTA may elect to re-advertise; or UTA may elect to otherwise procure the needed services in accordance with its policies and procedures.

Proposal forms are supplied for the purpose of listing the proposed consultant team and/or individual. Please supply the information in the appropriate form. Failure to follow the format specified may result in the proposal being deemed unresponsive. Oral, telephone, telegraphic, or facsimile responses or modifications may not be considered. The following summarizes what shall be submitted in your proposal:

The following sections with forms and certifications shall be submitted with each PROPOSAL as a condition of compliance to be considered a responsive, responsible, acceptable proposal:

Tab 1:

Cover Letter

Tab 2:

The proposer shall describe how their software decision support tool satisfies all requirements.

Tab 3:

The proposer shall define, in detail, the information, data, and support activities must provide to operate the proposed software tool.

Tab 4:

The proposal must include the following:

- Cost of software tool
- Cost of consultant support during implementation
- Cost of training

Tab 5:

The proposal must define all hardware required to support the software tool.

Tab 6:

The proposal shall list contacts from previous customers, with names, phone numbers, and email addresses.

Tab 7:

The proposal shall include resumes of key personnel that will be assisting with the installation

and training of UTA staff.

Tab 8:

Bid/Proposal Declaration:	Statement
Joint Venture:	Certification
Subcontractors:	Certification
Addenda:	Acknowledgement
Signature of Bidder:	Declaration
Attachment A:	EEO Statement
Attachment A1:	DBE Participation Form
Attachment A2:	Letter of Intent to Subcontract with DBE Firms
Attachment A3:	Good Faith Efforts Documentation Form
Attachment A5:	EEO Practices/EEO Plan
Attachment B:	Buy America Certification
Attachment C:	Lobbying Certification
Attachment D:	Cargo Preference Certification
Attachment E:	Solicitation Statistics

3. PROPOSER CONTRACTUAL RESPONSIBILITY

A duly authorized official of the proposer must sign the proposal documents including all Federal Certification Forms and Declaration pages. Consortiums, joint ventures, or teams submitting proposals will not be considered responsive unless they are identified as such and it is established that all contractual responsibility rests solely with one contractor or legal entity, which shall not be a subsidiary, or affiliate with limited resources. Each proposal should indentify the organization of the proposal team and indicate the entity responsible for execution on behalf of the proposal team.

The selected contractor and any subcontractors will be required to comply with all applicable Federal and State laws, regulations and certifications, and equal employment opportunity laws and regulations. The Utah Transit Authority, in accordance with Title VI of the Civil Rights Act of 1964, as amended, and 49 CFR Part 26, will afford Disadvantaged Business Enterprises (DBE's) full opportunity to respond and will not discriminate against any interested firm or person on the basis of race, color, sex, age, religion, or national origin in the review of qualifications or contract award.

The selected consultant and any subcontractors shall agree to ensure Disadvantaged Business Enterprises (DBE's) as defined in 49 CRF Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In the regard, the selected consultant and its sub-recipients, contractors, and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure DBEs have the maximum opportunity to compete for and perform contracts.

4. SELECTION CRITERIA

Utah Transit Authority, in evaluating the proposal data submitted for “**Decision Support Tool Software**”, will consider the following aspects of the data. The proposals considered responsive will be evaluated for the following areas of expertise and experience listed in **descending relevance of importance**:

1. Responses to the various RFP topics and requirements, including, but not limited to:
 - a. Fulfillment of project purposes,
 - b. Satisfaction of requirements,
 - c. Total cost of ownership (initial and ongoing maintenance cost)
 - d. Provisions, approach and demonstrated ability for Decision Support Tool development and implementation
2. Experience and qualifications, including references; and
3. What is determined by the selection committee to be the best value to the Utah Transit Authority.

Utah Transit Authority’s procedures for the evaluation and selection of Proposals are designed to provide a comprehensive evaluation of technical capability that, when combined with price (through tradeoffs) will result in the determination of Best Value. As proposals are considered by the Authority to be more equal in their technical merit, the evaluated cost or price becomes more important so that when technical proposals are evaluated as essentially equal, cost or price may be the deciding factor.

5. SELECTION PROCESS

Upon receipt of proposals, the Authority will evaluate and rank the submitted proposals, based upon the evaluation factors as outlined in section 4 above. Given the information submitted, the Authority may select a proposer(s) with whom to negotiate based on original proposals without further negotiation, may ask for more information and/or a site tour from the proposer(s), may conduct oral interviews, may decline to accept any proposal, may elect to re-advertise, or may elect to otherwise procure the needed services in accordance with its policies and procedures. Interviews with proposers prior to selection may be held at the discretion of the Authority but if, in the judgment of the Authority, there is a clear choice based upon ranking of the proposals alone, interviews will not be held.

The Authority reserves the right to award the contract to one or more contractors for each category outlined in the RFP. The Authority may assign projects to successful contractor(s) if and as needed depending upon funding, scope of project, and priorities of the Authority. Contractors that are selected and assigned projects are not guaranteed to receive additional work.

The successful contractor(s) shall perform the services as outlined in the scope of work provided in this RFP, or as may be amended. The Authority reserves the right to select the proposal(s) which in the sole judgment of the Authority meets the needs and requirements of the Authority and demonstrates the ability to effectively interface with the Authority’s organization as part of the contractor’s day to day operation.

The Authority reserves the right to negotiate with the preferred respondent(s) on a basis other than Price. Please refer to RFP Section 4.0 Selection Criteria.

Issuance of this RFP does not commit the Authority to award any contract, to pay any costs incurred in preparation of a proposal, or to procure or contract for services or supplies. The Authority reserves the right to waive any irregularities and informalities or to reject any or all proposals submitted, to re-advertise and to make contract awards in the best interest of the Authority.

6. PROPOSAL DUE DATE

Proposals marked “*Decision Support Tool Software*” should be sent to the attention of **Wes Jones**, Contracts Administrator, Utah Transit Authority, 3600 South 700 West, Salt Lake City, Utah, 84119 and be received **no later than 2:00 p.m. MDT on Tuesday, November 19, 2010**. Any proposals received thereafter may be considered non-responsive.

No oral, telephone, email, or facsimile responses or modifications will be considered. It is the responsibility of the respondent to assure that its proposal arrives at the designated location and person by the specified time. This is a Request for Proposals (RFP) and as such shall be opened and evaluated by a Selection Committee in private. The Authority reserves the right to make the selection on the basis of the original proposals without further negotiation or to conduct oral interviews with the highest scoring proposals.

7. UTA CONTACT PERSON

All communications regarding this RFP, including any questions or scope of service clarifications, should be submitted in writing and directed to: Wes Jones, UTA Contracts Administrator, 3600 South 700 West, Salt Lake City, Utah, 84119 or email to wjones@rideuta.com. Telephone requests for clarification are discouraged.

UTAH TRANSIT AUTHORITY

GENERAL TERMS AND CONDITIONS FOR PROPOSERS

These General Terms and Conditions apply to all bidding and/or proposing, except insofar as they may be modified by the specifications or bidding/proposing documents.

1. DEFINITION OF TERMS

Whenever in the bid/proposal or contract documents the following terms or pronouns in place of them or abbreviations are used, the intent and meaning shall be interpreted as follows:

"Utah Transit Authority", "Transit Authority", "Authority", or "UTA" means Utah Transit Authority, a public transit district, organized and existing under Utah Code Ann. §§17B-2a-801, et seq..

"Board," "Directors," or "Board of Directors" means Utah Transit Authority's Board of Directors or members thereof.

"General Manager" means general manager of the Utah Transit Authority.

"Contractor" means the successful bidder/proposer to whom a contract is awarded.

"Written Order" means a written order signed by the General Manager or designated properly authorized representative or agent, mailed to the contractor at the address designated in their bid/proposal or to such other address as may be designated in writing as their official place of business.

"Bid/Proposal Documents" means the Notice to Contractors, Notice to Bidders/Proposers, General Conditions and Instructions for Bidders/Proposers, Specifications, Bid/Proposal, Contract and Addenda, if any.

"Notice" means notice requesting bids/proposals published pursuant to appropriate law.

2. LATE BIDS/PROPOSALS

Bids/proposals received in the office designated by the Authority after the exact time set for opening are considered "late". Late bids/proposals will be considered **only if received before contract award, and**

1. it was sent by registered or certified mail to the person specified by the Authority not later than five (5) calendar days before the bid/proposal receipt date specified.
2. it was sent by mail not later than five (5) calendar days before the bid/proposal receipt date specified and to the person specified by the Authority **and** it is determined by the Authority that the late receipt was due **solely** to mishandling by the Authority after receipt at the Authority facility; or
3. it was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee or by UPS Overnight Next Day Delivery Services, or Federal Express Over Night Next Day Delivery Service not later than 5:00 PM at the place of mailing two (2) working days prior to the date specified for receipt of bids/proposals. The term "working days" excludes weekends and Authority holidays.

The Authority shall, when awarded, make award to the responsive and responsible bidder/proposer that receives the highest overall evaluation from the Authority for this RFP in relation to the evaluation factors as established.

3. REQUESTS FOR CLARIFICATION, CHANGES, AND/OR APPROVED EQUALS

Requests for clarification of specifications, approved equals, and changes or exceptions to the specifications must be clearly marked as such in the subject line of an electronic message (email) or on the outside of the envelope or package and be received by the Utah Transit Authority in writing not less than ten (10) working days before the date of the scheduled bid/proposal opening, which for this RFP shall be on or before **Tuesday, November 10 2010 at 2:00 p.m. MDT**. Any request for an approved equal or protest of the specifications must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal or better than the specification requirement and must be submitted to the Authority's Grants & Contracts Administrator, Wes Jones, by email at wjones@rideuta.com or delivered to him at 3600 South 700 West, Salt Lake City, Utah 84119.

If timely received, the Utah Transit Authority's replies to requests will be distributed at least five (5) working days before the date scheduled for bid/proposal opening and, if applicable, will be in the form of an addendum to the bidding/proposing documents.

Whenever a brand, manufacturer or product name is indicated in these specifications, they are included only for the purpose of establishing identification and a general description of the item. Wherever such names appear, the term "or approved equal" is considered to follow.

It should be understood that specifying a brand name, components and/or equipment in this specification shall not relieve the supplier from his responsibility to produce the product in accordance with the performance warranty and contractual requirements. The supplier is requested to notify the Authority of any inappropriate brand name, component and/or equipment that may be called for in the specifications and to propose a suitable substitute for consideration.

4. INTERPRETATION OF BIDDING/PROPOSAL DOCUMENTS

If any person submitting a bid/proposal is in doubt as to the true meaning of any part of the bid/proposal specifications or finds discrepancies in or omissions from the specifications, they may submit a request for interpretation or correction to the Authority. Requests must be clearly marked as such in the subject line of an electronic message (email) or on the outside of the envelope or package and be received by the Authority's Grants and Contracts Administrator in writing not less than ten (10) working days before the date of the scheduled bid/proposal opening, which for this RFP shall be on or before **Tuesday, November 10, 2010 at 2:00 p.m. MDT**.

5. WITHDRAWAL OF BIDS/PROPOSALS

A bidder/proposer may withdraw their bid/proposal before the expiration of the time during which bids/proposals may be submitted, without prejudice to themselves, by submitting a written request for its withdrawal to the Grants & Contracts Administrator.

6. ALTERNATIVE BID/PROPOSAL

Submission of alternative bids/proposals, except as specifically called for in the specifications or bid/proposal forms, will render it informal and may cause its rejection.

7. UNRESPONSIVE BIDS/PROPOSALS

The bidder/proposer understands that any condition stated above, clarification made to the above or information submitted, other than that requested, may render the bid/proposal unresponsive.

8. CONFIDENTIAL DOCUMENTS SUBMISSION REQUIREMENTS

Any documents that are required to be submitted with your proposal which may be considered confidential and may legally be classified as private, controlled or protected under the Utah Government Records Access Management Act (GRAMA) shall be submitted separately, with each document conspicuously identified as being either confidential and/or proprietary, and shall include a cover letter identifying which documents are being requested to be protected and a concise statement of the reasons supporting the claim of business confidentiality. No blanket or all-inclusive confidentiality statements will be accepted. All procurement documents will be administered by the Authority consistent with the requirements of GRAMA.

9. NON-COLLUSIVE AFFIDAVIT

The bidder/proposer shall represent and warrant that such bid/proposal is genuine and not a sham or collusive or made in the interest of or in behalf of any person not therein named and that the bidder/proposer has not, directly or indirectly, induced or solicited any other bidder/proposer to put in a sham bid/proposal or sought by collusion, to secure to the bidder/proposer, an advantage over any other bidder/proposer.

10. PENALTY FOR COLLUSION

If at any time it shall be found that a person, firm, or corporation to whom a contract has been awarded has in presenting any bid/proposal or bids/proposals colluded with any other party or parties, then the contract so awarded shall be null and void and the contractor shall be liable to the Authority for all loss or damage which the Authority may suffer thereby and the Board of Directors may advertise for a new contract for said labor, supplies, materials, or equipment.

Nothing in this section shall limit or restrict the provisions of the warranty of fitness as set forth in these general conditions and instruction for bidders/proposers.

11. ORGANIZATIONAL CONFLICTS OF INTEREST

An organizational conflict of interest means that because of other activities, relationships, or contracts, a bidder/proposer is unable, or potentially unable, to render impartial assistance or advice to UTA; a bidder/proposer's objectivity in performing the work identified in this RFP is or might be otherwise impaired; or a bidder/proposer has an unfair competitive advantage. If a bidder/proposer believes that it has, or may have a real or perceived organizational conflict of interest, it must disclose such real or perceived organizational conflict of interest in its Proposal. The UTA will review such information and, in its sole discretion, determine whether a real or perceived organizational conflict of interest exists and

the appropriate measures that will be taken in response to such determination, including a plan to mitigate the real or perceived organizational conflict of interest or disqualification of the bidder/proposer.

12. PROTESTS

Protests will be accepted only from Bidders/Proposers whose direct economic interest has been adversely affected by those alleged actions/omissions of UTA that form the basis of the protest. Protests will be determined in accordance with the laws of the State of Utah including, without limitation, the Utah Procurement Code, the Utah Government Records Access and Management Act, and with UTA's Procurement Standard Operating Procedures, as amended from time to time. All protests shall be in writing and shall be submitted to UTA as directed in these protest procedures. Protests that are not delivered to the appropriate persons or not delivered within the appropriate time limits (all as set forth in these procedures) shall be null and void and will not be considered by UTA. A protest shall be deemed to be delivered pursuant to these procedures when actually received by the designated UTA recipient by hand delivery, by recognized overnight courier service or by certified or registered mail. All protests shall include:

1. The name and address of the Bidder/Proposer;
2. The appropriate contact person for the Bidder/Proposer to whom all protest correspondence shall be addressed.
3. The solicitation or project number; and
4. A detailed statement as to the nature of the protest including, without limitation, the factual and legal basis for the protest.

13. PROTESTS PRIOR TO AWARD OF CONTRACT

All protests made prior to the opening of bids or proposals, including protests based upon alleged restrictive specifications or alleged improprieties in any type of solicitation, shall be delivered to UTA's Procurement Officer ("PO") not less than seven (7) calendar days prior to the date of the bid/proposal opening (as designated by this IFB or RFP, or any addendum hereto) as follows:

**Utah Transit Authority
3600 South 700 West
Salt Lake City, Utah 84119
Attn: Procurement Officer, Time Sensitive Protest Materials**

The PO, or an agent designated by the PO, will promptly make a determination in writing regarding the validity of the protest and whether or not the bid/proposal process should be delayed beyond the scheduled date for bid/proposal opening. If the PO determines that the scheduled date for bid/proposal opening should be delayed, all respondents to the solicitation who have furnished their name and address to UTA shall be notified (through an addendum to the IFB/RFP) of the delay and the reason for the delay. If the protest, or any portion thereof, is determined by the PO to have merit, the PO will take all necessary action to address each alleged restrictive specification, alleged impropriety or other meritorious objection in a manner consistent with applicable law and UTA policy and will provide notice of actions taken to all respondents to the solicitation who have furnished their name and address to UTA. In such cases, UTA shall not proceed with the bid/proposal process until it has remedied such issues to the satisfaction of the PO.

14. PROTESTS TO AWARD OF CONTRACT

All protests made to the award of the Contract pursuant to this IFB/RFP shall be delivered to the PO not more than five (5) calendar days after the protestor received notice of the award (unless the protestor can demonstrate that its protest is based on facts and circumstances that the protestor could not have reasonably been aware of on the date the notice of award was delivered, in which case the commencement of the five-day period shall be tolled until the date when the protestor was or should have been aware of the facts and circumstances upon which the protest is based). All protests made to the award of Contract shall be delivered as follows:

**Utah Transit Authority
3600 South 700 West
Salt Lake City, Utah 84119
Attn: Procurement Officer, Time Sensitive Protest Materials**

If the protest has been timely filed, the PO, or an agent designated by the PO, will promptly make a determination in writing regarding the validity of the protest and whether UTA's decision regarding the award should be reconsidered. UTA shall provide notice of the protest to all Bidders/Proposers who submitted a proposal pursuant to the IFB/RFP (except, in the case of a two-step procurement, UTA shall only provide notice of those Bidders/Proposers who were deemed qualified or were "short-listed" to submit a bid/proposal pursuant to the IFB/RFP). The PO, or his or her designee, will respond to the protestor in writing and address each material issue raised in the protest in a timely manner. If the protest, or any portion thereof, is determined by the PO to have merit, the PO will take all necessary action to address the protested issues in a manner consistent with applicable law and UTA policy including, without limitation: (1) canceling the procurement; (2) canceling the procurement and reissuing a new procurement; (3) rescinding the award and requesting "best and final offers" from all Bidders/Proposers; (4) determining that the objections, although meritorious, were immaterial to the decision to award; or (5) taking such other actions as may be appropriate under the circumstances. Once the PO becomes aware of a protest to the award, UTA will not take any further action to execute a Contract pursuant to the IFB/RFP until seven calendar days after the award is upheld by the PO (or the appeal committee, if the PO's determination is appealed as set forth in the following section), unless the PO shall make a written determination that proceeding with the bid/proposal process is necessary to protect a substantial interest of UTA.

15. APPEALS

In the event that a protestor receives an unfavorable decision from the PO to its protest of Contract award, the protestor shall have the right to appeal the PO's decision by submitting a written appeal to the President of the Board of Trustees of UTA, addressed as follows:

**President, UTA Board of Trustees
c/o Utah Transit Authority
3600 South 700 West
Salt Lake City, Utah 84119
Attn: Board Coordinator**

Any appeal must be delivered within five (5) days of the date of the PO's decision. The President of the Board of Trustees will appoint a committee (the "Protest Committee") of at least three (3) Board members to review the appeal and the decision of the PO. The President of the Board of Trustees will determine the specific procedures that will be followed by the Protest Committee, including the date of any hearing deemed necessary by the President. After considering the appeal, the Protest Committee will notify the

appellant and the PO in writing in a prompt manner of its decision regarding the appeal. The decision of the Protest Committee is a final administrative decision of UTA.

If the appeal committee upholds the decision of the PO, the protestor may continue its protest only by filing an action in the District Court of the State of Utah. In accordance with FTA policy, a protestor may not appeal to FTA unless the protestor claims that UTA has failed to follow these protest procedures. Any appeal to FTA alleging that UTA has failed to follow these procedures must be filed with FTA no later than five (5) federal government working days after the decision is rendered by the appointed Protest Committee.

16. COMPLETION OF CONTRACT

If bidder/proposer is notified of bid/proposal acceptance, it agrees to negotiate a contract for furnishing the above service or supplies for the final negotiated amount within ten (10) days after Notice of Award. Contractor agrees to guarantee completion of all phases of this project by the schedule as mutually agreed to in negotiations.

17. AGREEMENT

Agreement to be executed between Authority and successful bidder/proposer will be in the form of a formal contract for the services as approved by the Authority.

18. ASSIGNMENT OF CONTRACT

No assignment by the contractor of any contract to be entered into hereunder or any part thereof or of funds to be received hereunder by contractor will be recognized by the Authority unless such assignment has had prior approval of the Authority in writing.

19. CONTRACT CHANGES

Any proposed change in the contract must be submitted to the Authority for its prior approval and the Authority will make the change, if approved, by a contract modification.

20. TERMINATION OF CONTRACT

The Authority shall have the right to terminate the formal contract, with or without cause, at any time by giving written notice to contractor as provided in the contract terms and conditions. If the contract is terminated for any reason other than a default by contractor, the Authority shall pay to contractor all sums actually due and owing from the Authority for all services performed and expenses incurred up to the day written notice of termination is given, plus costs reasonably and necessarily incurred by contractor to effect such suspension or termination. If the contract is terminated for default, the Authority shall remit final payment to contractor in an amount to cover all services performed and expenses incurred in full accordance with the terms and conditions of this contract up to the effective date of termination.

21. PAYMENT

The Authority will make payment to the contractor within thirty (30) days after receipt and acceptance of a detailed Authority-approved invoice for services.

22. DEFECTIVE OR DAMAGED WORK

All loss or damage arising from any unforeseen obstruction or difficulties, either natural or artificial, which may be encountered in the prosecution of the work or the furnishing of the work or supplies, materials or equipment, or from any act or omission not authorized by these specifications on the part of the contractor or any agent or person employed by him, shall be sustained by the contractor.

Any material or equipment found to be damaged or defective at the time of delivery shall be repaired, replaced, or corrected by the contractor hereunder without additional cost to the Authority.

If the contractor shall fail to comply promptly with any order of the contract, the General Manager shall, upon written notice to the contractors, have the authority to deduct the cost thereof from any compensation due or to become due to the contractor.

23. CHANGES

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes--

1. In the specifications (including drawings and designs);
2. In the method or manner of performance of the work;
3. In the UTA-furnished facilities, equipment, materials, services, or site; or
4. Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; *provided*, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Authority is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of proposal, unless this period is extended by the Authority. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

24. APPROVAL BY THE GENERAL MANAGER

The work shall be executed under the direction and supervision of the General Manager or properly authorized designated agents on whose inspection all work shall be accepted or condemned. The General Manager or properly authorized designated agents shall have full power to reject or condemn any materials furnished or work performed under the contract which do not conform to the terms and conditions set forth in the contract documents or mutually agreed upon modifications thereto.

25. FAILURE TO COMPLETE CONTRACT

In case of failure on the part of the contractor to complete his contract within the specified time or within authorized extensions thereof, the contract may be terminated and the Authority shall in such event not thereafter pay or allow to the contractor any further compensation for any labor, supplies, or materials furnished by him/her under said contract; the Board may proceed to complete such contract either by re-letting or otherwise and the contractor shall be liable to the Authority for all loss or damage which it may suffer on account of the contractor's failure to complete his contract within such time.

26. PAYMENT OF TAXES

The bidder's/proposer's attention is directed to the fact that supplies, materials, or equipment called for under the specifications will be used by the Authority in the performance of a government function and are exempt from taxation by the United States Government. The Authority will, if requested, furnish a Tax Exemption Certificate, No. E34078, and any and all affidavits and documents that may be necessary to establish such exemption. The Authority is exempt from payment of Federal, State and local sales and use taxes, and such taxes must not be included in the bid/proposal. The Authority will furnish necessary exemption certificates.

27. SAFETY CLAUSE

The Contractor shall comply with all OSHA, EPA and all other State and Federal regulations, rules and guidelines pertaining to safety and will be solely responsible for any fines, citations or penalties it may receive while working on this project.

To the extent applicable, if the Contractor is required to perform services on the Authority's property, the Contractor shall have a representative that will be on site at all times when work is being performed designated as a safety officer. This person must have authority to enforce safety regulations. Failure to comply with regulations pertinent to the task being performed can result in work stoppage and/or revocation of contracts. If determined applicable for this project, the successful Contractor or contractor representative shall be required to attend an Authority-conducted Contractor's Safety Orientation Training and sign an acknowledgment as such prior to commencement of the project work. Training should be scheduled by contacting the Authority's Project Manager assigned to this project.

28. INSURANCE COVERAGE AND LIMITS

The successful Contractor shall be an independent contractor and shall be responsible to provide and pay the cost of all its employees' benefits. For the duration of the contract, Contractor shall maintain at its own expense, and provide proof of said insurance to the Authority, the following types of insurance:

I. To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions, and coverages of Insurance Service office (ISO) policies, forms, and

endorsements. UTA may waive this requirement for specific manuscript policies or forms that are reviewed and approved by UTA.

II. If the Contractor has any self-insured retentions or deductibles under any of the following minimum required coverages, the Contractor must identify on the certificate of insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles are the Contractor's sole responsibility.

III. The Contractor will maintain commercial general liability insurance covering all operations by or on behalf of the Contractor on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Such coverage will have these limits and coverage:

A. Minimum Limits:

- \$2,000,000 each occurrence
- \$5,000,000 general aggregate
- \$2,000,000 products and completed operations aggregate
- Coverages:
- 1986 or later ISO commercial general liability form
- Products and completed operations coverage maintained for at least 3 years
- Blanket contractual liability (included in 1986 ISO form)
- Broad form property damage (included in 1986 ISO form)
- Severability of interest (included in 1986 ISO form)
- Personal injury
- Specific waiver of subrogation
- Additional insured endorsement
- Employment related practices coverage
-

IV. The Contractor will maintain business auto liability covering liability arising out of any auto (including owned, hired and non-owned autos).

A. Minimum Limits:

- \$1,000,000 combined single limit each accident
- Coverages:
- Additional insured endorsement
- Specific waiver of subrogation
- Contractual liability
- Pollution liability coverage which includes vehicle overturn and collision

V. The Contractor will maintain worker's compensation and employer's liability insurance

A. Minimum Limits:

- Worker's Compensation - statutory limits

B. Employer's Liability

- \$500,000 bodily injury for each accident
- \$500,000 bodily injury by disease for each employee
- \$500,000 bodily injury disease aggregate

VI. Before starting any work, the Contractor will give the Authority a certificate of insurance completed by a duly authorized representative of their insurer certifying that at least the minimum coverages required here are in effect and specifying that the liability coverages are written on an occurrence form and that the coverages will not be canceled, non-renewed, or materially changed by endorsement or through issuance of other policies of insurance without 60 days advance written notice to the Authority.

All Certificates of Insurance shall be on ACORD™ forms. No other forms or customized certificates will be accepted. The Authority's contract number should be included on all Certificates of Insurance or other related proof of insurance documents sent to the Authority. All Certificates of Insurance or proof of insurance documents should be submitted to:

Utah Transit Authority
ATTN: Contracts Office Coordinator
P.O. Box 30810
Salt Lake City, UT 84130-0810

If Contractor is fully self-insured, or and any self-insured retentions under any of the minimum required coverages outlined in the contract, Contractor must provide the Authority with a letter, on an annual basis, providing current satisfactory evidence of financial responsibility for such obligations.

29. INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the Authority from and against all claims, damages, losses and expenses, including, but not limited to attorney's fees, arising out of or resulting from the performance of the work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including loss of use resulting therefrom.

This indemnity shall survive the termination of the contract or final payment for a period of up to one (1) year.

30. ENVIRONMENTAL MANAGEMENT SYSTEM

The Authority is ISO 14001 Environmental Management Systems (EMS) certified. Contractors who do business with the Authority must be aware that their activities, products, or services may affect the Authority's ability to maintain the obligations of the EMS. A partial list of these activities, products, or services is available at the UTA website, www.rideuta.com. If your business with the Authority has the potential to impact the environment, you may have to submit additional environmental documents addressing specific measures you will take to reduce environmental impacts and also to train your employees during the time that you are contracted to work for the Authority.

31. AFFIRMATIVE ACTION

The Authority shall not discriminate on the basis of race, color, national origin, age, religion, or sex in the award and performance of any contract. The Authority and contractor shall both adhere to all relevant federal and state regulations in fulfilling this Contract, including those promulgated by the U.S. Department of Justice and the U.S. Department of Transportation. Certain federal and state laws and regulations are described in this document. Absence of any specific regulatory reference, however, does not eliminate or reduce the contractor's responsibility to adhere to all pertinent laws and regulations. **(Complete and submit, Attachment A, Affirmative Action/DBE Statement with your bid/proposal).**

32. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

The following section contains documents that are **REQUIRED** with the submittal of the bid / proposal. Failure to complete and submit these forms may result in rejection of the bid/proposal as non-responsive. Please read the following information carefully and complete the documents as it applies to your bid / proposal. This section is divided into the following areas:

Definition of Terms,

Disadvantaged Business Enterprise (DBE) Program,

Instructions to Bidders / Proposers,

Requirements, Terms and Conditions,

Instructions to Contractors,

Certifications and Assurances

- Equal Employment Opportunity and Disadvantaged Business Enterprise Statement
- Disadvantaged Business Enterprise Participation Form
- Example of Letter to Subcontract with DBE firm
- Good Faith Efforts documentation form
- Buy America
- Debarment, Suspension and other Ineligibility Voluntary Exclusion
- Lobbying
- Cargo Preference – Use of United States Flag Vessels
- Solicitation Statistics form

A. DEFINITION OF TERMS

- **Bidder / Proposer** – identifies an entity that is responding to a bid or proposal.
- **Disadvantaged Business Enterprise (DBE)** – firms that meet the criteria specified in 49 CFR Part 26 and are certified by the Utah Uniform Certification Program (UUCP). Utah Transit Authority's DBE webpage is located at <http://www.rideuta.com/utaInfo/businessOpportunities/db/default.aspx>.
- **Good Faith Efforts** means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
- **Race conscious DBE participation** includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that carries a DBE goal.
- **Race neutral DBE participation** Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE participation, providing assistance in overcoming limitations such as inability to obtain bonding or financing, providing technical assistance and other services. The bidder / proposer will submit documentation it has performed good faith efforts to solicit DBE participation with its bid / proposal. A race neutral contract **DOES NOT** mean the contract goal is 0%.
- **UTA** - Utah Transit Authority.

- **UUCP** – Utah Uniform Certification Program. The UUCP is the only certifying entity for the U.S. Department of Transportation Disadvantaged Business Enterprise (DBE) Program in the State of Utah. Current DBE firms are found on the UUCP DBE directory, which is located at <http://www.rideuta.com/utaInfo/businessOpportunities/db/default.aspx>.

B. FEDERAL REGULATIONS TO IMPLEMENT THE DBE PROGRAM

Utah Transit Authority (Authority) shall not discriminate in the administration of its Disadvantaged Business Enterprise Program, or the requirements of 49 CFR Part 26. The Authority will take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Department of Transportation (DOT) assisted contracts. The Authority's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement.

It is the responsibility of each Bidder / Proposer to read, understand and comply with the Authority's DBE program and 49 CFR Part 26. The Authority's DBE Liaison Officer is available to help answer questions concerning the Authority's DBE program.

Implementation of the DBE program is a legal obligation and failure to carry out its terms will be treated as a violation of this agreement. Failure by the Authority to carry out the Authority's approved program may result in DOT-imposed sanctions as provided for under Part 26 and may, in appropriate cases, result in enforcement actions under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.) Bidders/ Proposers agree to indemnify the Authority for any such sanctions received as a result of the actions and omissions of Contractor or its subcontractors.

The Authority has established an overall DBE goal of 15.6% for FY2010.

C. INSTRUCTIONS TO BIDDERS/PROPOSERS

Bidders/ Proposers are required to complete and return Attachments A, A-1, A-2, A-3, and A-5 which obligates the Bidders/ Proposers to assert a good faith effort to attain the specified goal for DBE participation. A Bidder may satisfy the requirements of this section by having DBE status, by subcontracting portions of the work to DBEs, by entering into a joint venture with DBEs, or by submitting adequate documentation that a good faith effort to meet the goal was explored.

The attachments are defined as follows;

- **Attachment A – Affirmative Action and Disadvantaged Business Enterprise Statement**
 - o **Attachment A-1 – Disadvantaged Business Enterprise Participation Form**
 - o **Attachment A-2 – Sample Letter of Intent to Subcontract with a DBE Firm**
 - o **Attachment A-3 – Good Faith Effort Documentation form**
 - o **Attachment A-5 – Employment Practices / Equal Employment plan**
- **Attachment B - Buy America**
- **Attachment C - Debarment, Suspension and other Responsibility Matters**
- **Attachment D - Restrictions on Lobbying**
- **Attachment E - Cargo Preference – Use of Untied States Flag Vessels**
- **Attachment F - Solicitation Statistics form (Required statistical data)**

NOTE: The **Solicitation Statistics form** is a federal requirement (49 CFR 26.11) to collect statistical data of all bidders/proposers on federally assisted projects. This information is required with **ANY SUBCONTRACTOR** that is apart of your bid to UTA. Return the form from each proposer **with your bid package**.

Attachment A-3 – Good Faith Effort Documentation Form is not required when a bidder / proposer certifies that there exists no opportunity for subcontracting or when a DBE is the prime contractor.

D. DBE CONTRACT GOAL

As required by 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Programs”, the Authority will annually adopt an overall DBE goal for goods and services procured under the Authority’s federally-assisted contracts. While the expected percentage of DBE participation may vary from contract to contract, the Authority sets a goal that it believes the overall goal to be realistically obtainable over the year.

The Contract DBE GOAL for Decision Support Tool Software RFP is – Race Neutral

The amount of DBE participation will be determined by the dollar value of the work subcontracted to DBEs as compared to the total value of all work performed under this contract, and/or, by the percentage of the net profit which the parties agree will be shared by DBEs where a joint venture is entered into for the completion of the project.

E. COUNTING DBE PARTICIPATION TOWARD GOALS

When a DBE participates in a contract, the Authority will count only the value of the work actually performed by the DBE toward DBE goals. This information is documented on **ATTACHMENT A-1, DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FORM**. The Authority will include in this count the following:

1. The entire amount of that portion of a construction contract that is performed by the DBEs own forces. The cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate) is included in this amount.
2. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract provided the Authority determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services.
3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work, only if the DBEs subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
4. When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces, is counted toward DBE goals.
5. Expenditures to a DBE contractor is counted toward DBE goals, only if the DBE is performing a commercially useful function on that contract.

A DBE performs a commercially useful function when it is responsible for execution of the work

of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the DBE Liaison Officer will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the DBE Liaison Officer will examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Authority will presume that it is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided in this section, the DBE may present evidence to rebut this presumption. The Authority may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

F. REQUIREMENTS, TERMS, AND CONDITIONS

A Disadvantaged Business Enterprise is a firm that has been certified by the Utah Uniform Certification Program (UUCP) to meet the criteria in 49 CFR Part 26. Only firms certified by the UUCP can receive DBE credit on federally assisted projects in the State of Utah. Firms must be certified as a DBE prior to the contract award for UTA to receive credit for a DBE firm's participation on a contract.

1. Bidders/ Proposers who fail or refuse to complete and return the applicable certifications to this RFP shall be deemed non-responsive and will not be awarded a contract.
2. Where bidders/proposers intend to attain their goal for DBE participation by subcontracting or use of a joint venture, they must **complete and submit** the following certifications as applicable. **Attachments A, A-1, A-2, A-3, and A-5** with your bid.
3. All Bidders/ Proposers are required to submit written assurance of meeting contract goals in their bids/proposals and will submit: (1) names of DBE subcontractors; (2) a description of the work they are to perform; and (3) the dollar value of each proposed DBE subcontract. In order to be a responsive Bidder / Proposer, a Bidder/ Proposer must meet the specified DBE contract goal or demonstrate sufficient good faith efforts to do so. Meeting the contract goal or making sufficient good faith efforts to do so

is no less than meeting technical specifications or complying with bid or proposal procedures, is a necessary condition of responsiveness.

4. The Bidder / Proposer expressed goal stated in the **ATTACHMENT A-1 – DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FORM**, shall express the commitment on part of Bidder/Proposer to the percentage of DBE utilization during the term of the contract.

5. The commitment of the Bidder/Proposer to a specific goal is to meet DBE objectives and is not intended to be used and shall not be used, to discriminate against any qualified company or group of companies.

6. The Bidders/ Proposers must actively and aggressively seek to meet the specific contract goal for the project or the overall goal if an individual contract goal has not been set. In determining whether a Bidder/ Proposer has made good faith efforts to ensure DBE participation if awarded the contract, the Authority may consider, and the Bidder/ Proposer must be able to provide, evidence regarding the good faith efforts. This information is provided on **ATTACHMENT A-3, GOOD FAITH EFFORT DOCUMENTATION FORM**.

The Authority will award a contract only to a Bidder / Proposer who makes good faith efforts to meet the established goal. A Bidder / Proposer has made good faith efforts if the Bidder / Proposer does either of the following:

Documents that it has obtained enough DBE participation to meet the goal; or
Documents that it has made adequate good faith efforts to meet the goal, including assurances that the Bidder/ Proposer has done the following:

1. Attended any pre-solicitation or pre-bid meetings that were scheduled by the Authority to inform DBEs of contracting and subcontracting opportunities;
2. Advertised information concerning the subcontracting opportunities in general circulation, trade association, and minority-focused media;
3. Provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively;
4. Followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
5. Selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
6. Provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;
7. Negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;
8. Assisted interested DBEs in obtaining bonding, lines of credit, or insurance required by the Authority or the Bidders/ Proposers, and;
9. Used the services of available minority community organizations; minority contractor's

groups; local, state, and Federal minority business assistance offices and other organizations that provide assistance in the recruitment and placement of DBEs.

For further guidance and additional steps to take concerning good faith efforts, see 49 CFR Part 26. A copy is included in the Authority's DBE Plan. The Authority's DBE Plan is available from the Authority upon request.

If the Authority determines that the apparent successful Bidder/ Proposer has failed to meet the foregoing requirements, before awarding the contract the Authority will provide the Bidder/ Proposer an opportunity for administrative reconsideration. As part of this reconsideration, the Bidder/ Proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Authority's decision on reconsideration will be made by a DBE Administrative Hearing Officer. The Bidders/ Proposers will be given the opportunity to meet in person with the Authority's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Authority will send the Bidders/ Proposers a written decision on reconsideration, explaining the basis for finding that the Bidders/ Proposers did or did not meet the goal or make adequate good faith efforts to do so. The result of this reconsideration process is not administratively appealable to DOT.

G. INSTRUCTIONS TO ALL CONTRACTORS

1. Termination of DBE Subcontractors. No contractor may terminate for convenience a DBE subcontractor listed in response to this request (or an approved substitute DBE firm) and then perform the work of the terminated subcontractor with its own forces or those of an affiliate, without the Authority's prior written consent.
2. When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the prime contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts must be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal the Authority established for the procurement.
3. The Authority reserves the right to order completion of the work (that was subcontracted to a DBE who is unable to perform successfully), by any of the following three methods:
 - a. Modify or renegotiate the contract to compensate for reasonable extra costs or time necessary to obtain a DBE replacement.
 - b. Modify or renegotiate the contract to provide for the completion of the work by the prime contractor.
 - c. Order the work completed by the prime contractor to be reimbursed as provided for in subsection 109-5, Extra and Force Account Work of the Standard Specifications.
4. Termination of a DBE subcontractor in contravention of these requirements will be a material breach of the contract and will result in forfeiture by the Contractor of the

contract amounts that should have been accomplished by DBE participation.

5. This section will also apply to DBE Bidder / Proposer for prime contracts. In determining whether a DBE Bidder / Proposer for a prime contract has met the established contract goal, the Authority will count the work the DBE has committed to perform with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.
6. Prompt payment mechanisms as an inducement for DBE participation. The Contractor will pay all subcontractors for satisfactory performance of their contracts no later than thirty (30) days from receipt of each payment the Authority makes to Contractor.
7. Contractor will return retainage payments to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed, unless Contractor has received its retention proceeds from the Authority, then the preceding paragraph will apply. The prime contractor can not withhold retainage past 30 days. This clause applies to both DBE and non DBE subcontracts.
8. Upon notification to the Authority that appropriate payments have not been made by Contractor to its subcontractors, the Authority will give written notice to Contractor that it has breached the contract. If Contractor fails to immediately correct the breach, the Authority may elect to withhold from future payments due Contractor monies sufficient to pay the outstanding amounts due subcontractors. Contractor will be responsible to pay interest at the statutory rate on the amounts it owes subcontractors for amounts not paid when originally due. Repeated or continued failure by Contractor to make appropriate payments to subcontractors will be a material breach of the contract and may result in termination of the contract and denial of future opportunities to bid on the Authority's projects.
9. The Contractor will maintain those records and documents for three (3) years following performance of the contract which indicate compliance with these DBE requirements. These records and documents, or copies thereof, will be made available at reasonable times and places for inspection by any authorized representative of the Authority and will be submitted to the Authority upon request; together with any other compliance information which such representative may require.
10. Monitoring. The Authority's DBE Liaison Officer will monitor the work committed to DBEs under this contract to determine what work is actually performed by the DBEs. Contractor will provide all information requested by the DBE Liaison Officer to enable the Authority to keep a running tally of DBE attainments (e.g., payments actually made to DBE firms). The Authority will give credit for DBE participation toward overall or contract goals only when payments are actually made to DBE firms.
11. DBE Financial Institutions. The Authority continues to seek services offered by financial institutions owned and controlled by socially and economically

disadvantaged individuals in its geographic area. To date, no such financial institutions exist in the State of Utah. The Authority will encourage prime contractors to use such institutions as they are identified.

A hard copy of the directory is available upon request to the UTA DBE Liaison Officer, located in the Authority's Civil Rights Office.

33. BUY AMERICA CERTIFICATION

Funds for this contract may be provided from the Federal Transit Administration grant funds obligated after January 6, 1983. If applicable, bidder/proposer must comply with Section 165 of the Surface Transportation Assistance Act of 1982, Pub. L. 97-424 (Buy America Provision) and 49 CFR Part 661. Among the items listed, steel and manufactured products must be produced in the United States. **A copy of the certification is attached as Attachment B and must be included with proposal, if applicable.**

34. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

Instructions for Certification:

1. By signing and submitting this bid or proposal, the prospective contractor is providing the signed certification set out below:

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"

- A. The prospective contractor certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - B. When the prospective contractor is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Authority may pursue available remedies, including suspension and/or debarment.
 3. The prospective contractor shall provide immediate written notice to the Authority if at any time the prospective contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
 4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact the Authority for assistance in obtaining a copy of those regulations.
 5. The prospective contractor agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Authority.
 6. The prospective contractor further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the Authority may pursue available remedies including suspension and/or debarment. **A copy of the certification is attached as Attachment C and must be included with bid/proposal.**

35. RESTRICTIONS ON LOBBYING

The Contractor shall be required to certify to specific regulations regarding restrictions on lobbying required by the Department of Transportation. If applicable, Contractor shall also be required to obtain from its subcontractors, and forward a copy of their certification to the Authority. **A copy of the certification is attached as Attachment D and must be included with the bid/proposal.**

36. CARGO PREFERENCE - USE OF U.S. FLAG VESSELS

If any equipment, materials, or commodities are transported by ocean vessel, bidder/proposer agrees to utilize privately owned United States - flag commercial vessels to ship at least 50% of the gross tonnage involved, whenever shipping any equipment, materials, or commodities pursuant to this contract, to the extent that such vessels are available at fair and reasonable rates for United States - flag commercial vessels; to furnish within thirty days following the date of loading for shipments originating within the United States, or within thirty working days following the date of loading for shipment originating outside the United States, a legible copy of a rates, Aon-board@ commercial ocean bill-of-lading in English for each shipment of cargo to the Authority and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street S.W., Washington, D.C. 20590, marked with appropriate identification of this contract; and to insert the substance of the provisions of this paragraph in all subcontracts issued pursuant to this contract. **A copy of the certification is attached as Attachment E and must be included with bid/proposal, if applicable.**

37. FEDERAL CERTIFICATIONS

The following federal certifications, whose contents have been detailed above, shall be submitted with each bid/proposal as a complete set. All certifications should be fully executed, if applicable, as a condition of compliance to be considered a responsive, responsible, acceptable bid/proposal:

38. Equal Employment Opportunity and Disadvantaged Business Enterprise Statement;
39. Disadvantaged Business Enterprise Participation Form
40. *Sample* Letter of Intent To Subcontract with DBE Firm
41. Good Faith Efforts Documentation Form

42. Non-Discrimination Affidavit
43. Employment Practices / EEO Plan
7. Buy America Certification (if applicable)
8. Certification Regarding Debarment, Suspension, and Other Responsibility Matters
9. Certification of Restrictions on Lobbying
10. Cargo Preference – Use Of United States-Glad Vessels (if applicable)
11. Solicitation Statistics Survey
12. Declarations, Addenda Acknowledgement, Signature Certifications

38. CLARIFICATION - NEW EQUIPMENT

The materials, supplies, system, or equipment must be new and unused. Used, damaged, re-worked, obsolete, or demonstrator models of any equipment will not be acceptable. All equipment, parts, and components used for the same function or purpose shall be interchangeable and identical in construction.

39. DISPUTES

(a) The contract awarded is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim", as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Authority against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification that-

- (i) The claim is made in good faith;
- (ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and
- (iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Authority is liable.

(3)(i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by--

(A) A senior company official in charge at the Contractor's plant or location involved; or

(B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) At the time a claim by the Contractor is submitted to the Contracting Officer or a claim by the Authority is presented to the Contractor, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternative dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph (d)(2) of this clause, and executed in accordance with paragraph (d)(3) of this clause.

(h) The Authority shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

40. RESPONSIBLENESS

In order for the Authority to evaluate this requirement, consideration will be given to such matters as a bidder's/proposer's integrity, compliance with public policy, record of past performance and financial and technical resources.

Bidders/proposers shall supply adequate information for all of the above including references so that a determination of responsibleness can be made. If a bidder/proposer does not include this information, their bid/proposal may not be considered further.

41. DISQUALIFICATION OF A BIDDER/PROPOSER

The Authority reserves the right to reject any and all proposals if it is determined to be in the best interest of the Authority.

The Authority may disqualify a bidder/proposer for any of the following reasons:

1. if the bidder/proposer, while working as a contractor in a prior Authority-issued contract, failed to remain in compliance with the Authority's Disadvantaged Business Enterprise Program, including, but not limited to, realization of the established overall or contract goal, or adequate demonstration of good faith efforts on the part of the Contractor; or
2. if the bidder/proposer does not have sufficient financial ability to perform the Contract; or

3. if the bidder/proposer does not have sufficient, relevant experience in performing similar contract work; or
4. if the bidder/proposer does not have equipment available to perform the Contract; or
5. if bidder/proposer does not have key personnel available of sufficient experience to perform the Contract; or
6. if the bidder/proposer has repeatedly breached contractual obligations to public or private contracting agencies; or
7. if the bidder/proposer lacks, or is unable to obtain, the necessary organization, experience, operational controls, and technical skills to perform the Contract; or
8. if the bidder/proposer fails to promptly supply information requested by the Authority for the purposes of determining the bidder's/proposer's qualifications; or
9. if the bidder/proposer misrepresents or fails to disclose required and/or pertinent information in their bid/proposal; or
10. if the bid/proposal does not conform to the law or bid/proposal requirements; or
11. if the bid/proposal is incomplete; or
12. if the bidder/proposer has a history of filing unreasonable and/or excessive claims against public or private contracting agencies; or
13. if the bidder/proposer has failed to evidence adequate DBE participation to meet the established goal, or failed to evidence good faith efforts in trying to meet this goal. (See section on good faith efforts concerning administrative reconsideration); or
14. if the bidder/proposer has failed as a contractor or subcontractor on a prior contract to comply with the Authority's DBE, EEO or other federally-mandated programs; or
15. if there is any other information indicating or suggesting the bidder/proposer does not have the necessary experience, level of expertise, and/or ability to successfully meet the terms and conditions of the contract.

42. PROCEDURE WHERE ONLY ONE RESPONSIVE BID/PROPOSAL IS RECEIVED

If the Authority receives only one responsive bid/proposal, the Authority reserves the right to negotiate this contract with the sole responsive bidder/proposer.

As a condition of the Authority's entering into negotiations with the bidder/proposer, and as a matter of continuing responsiveness to this solicitation, the bidder/proposer shall submit detailed cost and price data to the Authority, and shall allow the Authority to verify the data.

If the bidder/proposer certifies in writing that the cost and price data is confidential and privileged, the Authority will not disclose it to any third party except the Federal Transportation Administration (FTA), or pursuant to a lawful order of a court of competent jurisdiction, or pursuant to requirements of Utah State law.

The Authority will use the cost and price data to determine whether the bid/proposal price is fair and reasonable. The Authority will not award the contract to the bidder/proposer if the Authority determines that the price is not fair and reasonable, unless the Authority and the bidder/proposer negotiate a price that is fair and reasonable.

43. NO PARTNERSHIP INTENDED

Nothing in this Agreement is intended to create, and nothing herein shall be construed as creating any partnership, joint venture or agency relationship between the Authority and the contractor.

44. EMPLOYEE BACK GROUND CHECK

Any employee of the selected contractor who is required to perform services pursuant to this RFP which requires regular access to the Authority's premises for longer than one month shall be required to undergo a BCI background check and based on the results of the background check, be approved by the Authority to work on-site. The Authority shall perform the BCI background check at its own expense.

45. CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM"

A. Each proposer and each person signing on behalf of any proposer certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the State of Utah in accordance with UCA Section 63G-11-103.

B. The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with Section 63G-11-103 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."

C. The Authority will not consider a proposal for award, nor will it make any award where there has not been compliance with this article.

D. Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA Section 63G-11-103.

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION**

The following clauses are requirements from the Federal Transit Administration (FTA) to Utah Transit Authority (UTA), and as such, to the extent applicable, are required as pass through requirements to all of UTA Contractors and Subcontractors. These requirements will be incorporated by reference in the contract to be awarded.

ACCESS TO RECORDS AND REPORTS

The Contractor agrees to provide the Authority, 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. The Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any project management oversight auditor access to the Contractor's records and construction sites pertaining to a major capital project (defined at 49 USC §5302(a)(1)), which is receiving federal financial assistance through the programs described at 49 USC §§5307, 5309 or 5311. The Contractor further agrees to include in all of its subcontracts and purchase orders under the Contract a provision to the effect that the Subcontractor or Supplier agrees that the Authority, the United States Department of Transportation and the Comptroller General of the United States, the project management oversight auditor, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the Subcontractor or Supplier.

INCORPORATION OF FTA TERMS

All contractual provisions required by the United States Department of Transportation, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are incorporated by reference into the Contract Documents. All FTA mandated terms shall take precedence over other conflicting terms, if any in the Contract Documents. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests that would cause the Authority to be in violation of any FTA terms and conditions.

FEDERAL CHANGES

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

ENERGY CONSERVATION REQUIREMENTS

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

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, the Contractor or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the Contract. The Contractor agrees to include the above clause in each subcontract or purchase order financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor or Supplier who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §3801, et seq. and United States Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to the Contract. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which the Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 USC §5307, the federal government reserves the right to impose the penalties of 18 USC §1001 and 49 USC §5307(n)(1) on the Contractor, to the extent the federal government deems appropriate. The Contractor agrees to include the above two clauses in each subcontract or purchase order financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor or Supplier who will be subject to the provisions.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

The Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals (as defined at 49 CFR 29.995) or affiliates (as defined at 49 CFR 29.905) are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any subcontract or purchase order that it enters into. *(A certification is to be submitted with each bid or offer of \$25,000 or more.)*

FLY AMERICA REQUIREMENTS

The Contractor agrees to comply with 49 USC §40118 and 41 CFR Part 301-10, which provide that contractors are required to use United States -Flag air carriers for federally 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 49 USC §40118 and CFR Part 301-10.

CLEAN WATER REQUIREMENTS

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §1251, et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate Regional Office of the United States Environmental Protection Agency. The Contractor also agrees to include these requirements in each subcontract or purchase order exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

CLEAN AIR REQUIREMENTS

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

LOBBYING

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal

contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

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

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

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____. Signature of Contractor's Authorized Official

_____. Name and Title of Contractor's Authorized Official

_____. Date

CIVIL RIGHTS REQUIREMENTS

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

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

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

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

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

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties

DISADVANTAGED BUSINESS ENTERPRISE

The Contractor and any Subcontractor or Supplier shall not discriminate on the basis of race, color, national origin or sex in the performance of the Contract. The requirements of 49 CFR Part 26.49, Transit Vehicle Manufacturer's Certification of Compliance with DBE Regulations are incorporated into the

Contract by reference. Failure by the Contractor to carry out these requirements is a material breach of the Contract which may result in the termination of the Contract or such other remedy as the Authority deems appropriate.

BREACHES AND DISPUTE RESOLUTION

Disputes – Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of The Authority. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the authorized Authority Representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized Authority Representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute – Unless otherwise directed by The Authority, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

Remedies – Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Authority and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which The Authority is located.

Rights and Remedies – The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by laws. No action or failure to act by The Authority or Authority's authorized representative or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

TERMINATION

a. Termination for Convenience (General Provision) The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies

delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

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

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

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

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

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its

agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

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

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

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

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

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

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

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

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

PRIVACY ACT

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

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

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

ADA ACCESS

The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C.

§ 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with 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 individuals with disabilities; with 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 individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are: (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. EEOC, “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; (9) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194; (10) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609; and (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

BUY AMERICA REQUIREMENTS

The Contractor agrees to comply with 49 USC §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. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 USC §5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content. The Contractor agrees to include these requirements in each subcontract or purchase order financed in whole or in part with federal assistance provided by the Authority.

CARGO PREFERENCES

The Contractor agrees. to: (a) use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading 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 to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a Subcontractor's or Supplier's bill-of-lading.); and (c) include these requirements in all subcontracts and purchase orders issued pursuant to the Contract Documents when the subcontract may involve the transport of equipment, material or commodities by ocean vessel. *(A certification is to be submitted with each bid or offer exceeding \$500,000 if shipping is applicable.)*

RECYCLED PRODUCTS

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

BID FORMS AND DECLARATIONS

TO: Wes Jones, Grants & Contracts Administrator
Utah Transit Authority
3600 South 700 West
Salt Lake City, Utah 84119

Having examined all the documents, general conditions and instructions, and work scope entitled "Decision Support Tool Software", dated November 3, 2010 the undersigned requests consideration to furnish the services required by said documents exclusive of all Federal excise taxes, local sales and use taxes for the sum as mutually agreed to in the final contract documents.

a. JOINT VENTURE

The undersigned bidder/proposer is a joint venture which is comprised of the following persons, firms, or corporations. Enclosed is a copy of the Joint Venture Agreement entered into between the parties. Disadvantaged owned companies must be indicated in the column marked by a "D" below:

<u>% of Contract</u>	<u>"D"</u>	<u>Firm</u>	<u>Address</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

If there are no such persons, firms, or corporations, please so state in the following space:

b. SUBCONTRACTORS:

The undersigned bidder/proposer proposes to have the following work performed by subcontractors. Disadvantaged-owned companies must be indicated in the column marked by a "D".

LIST OF SUBCONTRACTORS				
<u>Item of Work</u>	<u>% of Contract</u>	<u>"D"</u>	<u>Proposed Subcontractor</u>	<u>Address</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

If there are no such persons, firms, or corporations, please so state in the following space:

The participation of disadvantaged-owned companies as shown above will be incorporated into any contract awarded as a result of this invitation or request.

The undersigned bidder/proposer does hereby certify that the above listed subcontractors have full knowledge that their names have been offered as subcontractors for the work, and the bidder/proposer further certifies that these subcontractors have consented to listing their names herein.

c. ADDENDA

The undersigned bidder/proposer acknowledges receipt of the following addenda:

Addendum No.____ Date_____

Addendum No.____ Date_____

Addendum No.____ Date_____

Addendum No.____ Date_____

Failure to acknowledge receipt of all addenda may cause the bid/proposal to be rejected as non-responsive.

d. SIGNATURE

The undersigned bidder/proposer certifies that it and each of its subcontractors possess an adequate supply of workers qualified to perform the work specified herein; that there is no existing or impending dispute between it and any labor organization; and that it is prepared to comply fully with prevailing wage requirements, minimum wages, maximum hours of work, and equal opportunity provisions contained in the general conditions of the contract.

This bid/proposal is submitted upon the declaration that neither I (we) nor, to the best of my (our) knowledge, none of the members of my (our) firm or company have either directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding/proposing in connection with this bid/proposal.

Dated at _____, this ____ day of _____, 20____.

Signature of Bidder/Proposer:

If an individual:

doing business as _____.

By _____

If a partnership:

By _____, General Partner

If a corporation: _____.

a _____ corporation,

By _____, President

Attest: _____
Secretary

If a joint venture:

A joint venture comprised of:

Name

By

and

Name

By

Business Address of Bidder/Proposer:

Address

City, State, Zip Code (or Province and Country)

Area Code and Telephone Number of Bidder/Proposer

ATTACHMENT A
EQUAL EMPLOYMENT OPPORTUNITY AND DISADVANTAGED BUSINESS
ENTERPRISE STATEMENT

The undersigned states on behalf of the Bidder / Proposer _____.

- A. The Bidder / Proposer has given or will give, prior to the commencement of an approved UTA project, notice to all pertinent personnel, i.e., managers, supervisors, employees, unions, subcontractors, etc. of the Bidder / Proposer EEO and DBE policies and procedures and its intent and effort to realize such procedures in connection with the EEO and DBE requirements that UTA is required to follow as a Federal Transit Administration Grantee.

B. Bidder / Proposer designates --

Name _____

Title _____

as the person assigned the responsibility for securing compliance with and reporting progress to the Bidders/Proposers and UTA's Civil Rights Office on all EEO efforts initiated and taken.

- C. Bidder / Proposer will cooperate fully with UTA and ensure equal employment opportunity to the maximum extent possible during the term of this contract. Attachment A-5 must be completed and submitted. If the Bidder / Proposer employs 50 or more persons and, or will be entering into a contract hereunder in an amount of \$50,000 or more, then an EEO Plan for employment of minorities and women must be submitted. UTA will further be kept fully informed of any refusals by unions or others to cooperate with UTA's and the Bidder / Proposer EEO and DBE requirements.
- D. Bidder / Proposer agrees to make every reasonable good faith effort to utilize disadvantaged and women business enterprises in the performance of this contract. Bidder / Proposer will take affirmative steps to meet the DBE contract goal set for this bid.

Company Name: _____

Address: _____

Signed: _____

Title: _____

Phone Number: _____

ATTACHMENT A-1
DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FORM

DBE PROJECT GOAL: Race Neutral

The Bidder / Proposer must check the appropriate box, provide the information requested, and sign this form certifying to the accuracy of the information provided, and submit this form with its bid. Failure to complete and submit this form may result in rejection of the bid/proposal as non-responsive.

- ☐ **Bidder / Proposer will meet or exceed the DBE goal for this contract.** If awarded this contract, Bidder / Proposer will subcontract with the DBEs listed below, which will be performing a total of _____ percent (_____%) of the total dollar amount of the contract work. The information below should be treated as confidential information. **THIS ATTACHMENT MUST BE SUBMITTED IN THE SEALED PRICE PROPOSAL.**

Bidders/Proposers shall submit and attach evidence with this form that the DBEs being submitted for work on this project are presently certified by the Utah Uniform Certification Program (UUCP).

<u>DBE Name & Address</u>	<u>Description of Work</u>	<u>\$ Amount of Participation</u>	<u>% of Total Price</u>
_____	_____	\$ _____	_____%
_____	_____	\$ _____	_____%
_____	_____	\$ _____	_____%
_____	_____	\$ _____	_____%

(Attach additional sheets if necessary)

- ☐ Bidder / Proposer ***does not*** meet the DBE goal for this contract. **Bidder / Proposer certifies that it has made good faith efforts** in accordance with the bid/proposal instructions to meet the DBE goal, but, despite those efforts, has been unable to meet the goal. **The Good Faith Efforts Documentation Form (Attachment A-3) is attached to this DBE Participation Form.**
- ☐ Bidder / Proposer ***does not*** meet the DBE goal for this contract. **Bidder / Proposer certifies that there exists no opportunity for subcontracting as part of this project.** It is the general practice of Bidder / Proposer's firm to perform all work of this nature solely with its own work force and to do otherwise would constitute a violation of industry standards. Attachment A-3, Good Faith Effort Documentation Form, is not required under this selection.

Date: _____

Company Name: _____

Signature: _____

Printed Name: _____

Title: _____

ATTACHMENT A-2
SAMPLE LETTER OF INTENT TO SUBCONTRACT WITH DBE FIRM

(COMPANY LETTERHEAD)

(DATE)

(DBE)
(Name and Address)

Reference: (Project Name and Bid/Proposal Number)

(Appropriate Salutation)

Our firm is submitting a bid/proposal with the intent to be awarded a contract with the Utah Transit Authority for the performance of the above-referenced project and if our firm is awarded the contract, shall as act as prime contractor for this project.

Please sign this "Letter of Intent to Subcontract" to verify that you are willing to participate and enter into a subcontract with our firm to provide (specify equipment, materials, supplies, services, etc.) in the amount of \$_____, if our firm is awarded the contract with Utah Transit Authority. **A DBE company has to be certified in the State of Utah and current in its DBE certification. Please attach a copy of a recent certification letter / annual update that states your firm is presently certified as a DBE by the Utah Uniform Certification Program (UUCP).**

DBE firm has read and certifies to the above:

Prime Contractor:

Signature

Signature

Printed Name

Printed Name

Title

Title

NOTE: Submit this letter with specific information and it signed by the proposed DBE company. All equipment, materials, supplies, and services to be provided by the DBE subcontractor must be listed, and all amounts to be paid to the DBE subcontractor must be specified.

THIS ATTACHMENT MUST BE SUBMITTED IN THE SEALED PRICE PROPOSAL.

THE SUCCESSFUL BIDDERS/ PROPOSERS SHALL REQUIRE ALL SUBCONTRACTORS TO COMPLETE AND SUBMIT THE FEDERAL CERTIFICATION ATTACHMENTS A, A-1, A-2, A-3, A-4, A-5, B, C, D, AND E, IF APPLICABLE.

ATTACHMENT A-3
GOOD FAITH EFFORTS DOCUMENTATION FORM

Whether a Bidder / Proposer meets or does not meet the DBE goal, the Bidder / Proposer must submit this form with its DBE Participation Form (Attachment A-1). In the case of a race neutral project, the Bidder / Proposer must submit their good faith efforts to contact DBE companies. The Bidder / Proposer must submit a copy of the document(s) sent to DBE's. Failure to submit this form with its bid/proposal and requested additional documentation may render the bid/proposal non-responsive. UTA's DBE Liaison Officer may require that the Bidder / Proposer provide additional substantiation of good faith efforts.

Firm Name	Contact Person	Area of Expertise	Date	Response
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

By submitting and signing this form, including any continuation form(s), the Bidder / Proposer certifies that it has contacted the identified DBE firms in good faith (per 49 CFR 26 Appendix A or see DBE Requirements, Terms and Conditions) to discuss contracting opportunities.

Date:_____

Signature:_____

Printed Name:_____

Title:_____

ATTACHMENT A-5
EMPLOYMENT PRACTICES / EEO PLAN

A) Contractors that have less than 50 employees or have a contract for less than \$50,000 yet more than \$10,000 are responsible to complete the following information outlining their employment goals on this UTA project.

Prepared By: _____
(Print name & title)

Solicitation No. _____

Name of Project _____

Location of Workforce _____

Prime Contractor _____

In keeping with UTA policy of nondiscrimination in employment practices, the _____ (Name of Company) has set as a project goal for the utilization of minorities, which is _____ %. Minority goals are formulated in terms of craft work hours performed in a specific Standard Metropolitan Statistical Area (SMSA). (Name of Company) has set as a project goal for the utilization of females, which is 6.9%. The _____ (Company name), by its _____ (Title of Company Representative) assures to the UTA that good faith efforts will be used to achieve said goals. The good faith efforts proposed are described in the attached narrative.

B) Requirements Concerning The Submission Of An EEO Plan (For all construction and non-construction contractors)

If the contractor has 50 or more employees **and** a contract of \$50,000 or more is contemplated, an EEO Plan should be submitted **in lieu** of this form per the specifications noted in the instruction to offerors.

Signature and Title of Company Official (Contractor)

ATTACHMENT B
BUY AMERICA PROVISION

This procurement is subject to the Federal Transit Administration Buy America Requirements in 49 CFR Part 661.

A Buy America Certificate, as per attached format, must be completed and submitted with the submittal. A submittal which does not include the certificate will be considered non-responsive.

A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this procurement be investigated, the successful Bidder / Proposer has the burden of proof to establish that it is in compliance.

A waiver from the Buy America Provision may be sought by UTA if grounds for the waiver exist.

Section 165(a) of the Surface Transportation Assistance Act of 1982 permits FTA participation on this contract only if steel and manufactured products used in the contract are produced in the United States.

BUY AMERICA CERTIFICATE

The Bidder'/Proposer hereby certifies that it will comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982 and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Title _____

or

The Bidder / Proposer hereby certifies that it cannot comply with the requirements of Section 165(a) of the Surface Transportation Act of 1982, but may qualify for an exception to the requirement pursuant to Section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act and regulations in 49 CFR 661.7.

Date _____

Signature _____

Title _____

ATTACHMENT C
CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, _____, hereby certifies
(Name and Title of Company Official)

on behalf of _____ that:
(Name of Company)

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

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

Executed this _____ day of _____, 20____.

By _____
(Signature of Authorized Official)

(Title of Authorized Official)

ATTACHMENT D
CARGO PREFERENCE -- USE OF UNITED STATES-FLAG VESSELS

Pursuant to Maritime Administration regulations, "Cargo Preference -- U.S.-Flag Vessels", 46 C.F.R. Part 381, the Contractor shall insert the following clauses in contracts it awards in which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

AS REQUIRED BY 46 C.F.R. PART 381, THE CONTRACTOR AGREES --

(1) TO UTILIZE 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, MATERIALS, OR COMMODITIES PURSUANT TO THIS CONTRACT TO THE EXTENT SUCH VESSELS ARE AVAILABLE AT FAIR AND REASONABLE RATES FOR UNITED STATES-FLAG COMMERCIAL VESSELS.

(2) TO FURNISH WITHIN 20 DAYS FOLLOWING THE DATE OF LOADING FOR SHIPMENTS ORIGINATING WITHIN THE UNITED STATES, OR WITHIN 30 WORKING DAYS FOLLOWING THE DATE OF LOADING FOR SHIPMENT 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 PARAGRAPH (1) ABOVE TO THE AUTHORITY (THROUGH THE PRIME CONTRACTOR IN THE CASE OF SUBCONTRACTOR BILLS-OF-LADING) AND TO THE DIVISION OF NATIONAL CARGO, OFFICE OF MARKET DEVELOPMENT, MARITIME ADMINISTRATION, 400 SEVENTH STREET, S.W., WASHINGTON, D.C. 20590, MARKED WITH APPROPRIATE IDENTIFICATION OF THE PROJECT.

(3) TO INSERT THE SUBSTANCE OF THE PROVISIONS OF THIS CLAUSE IN ALL SUBCONTRACTS ISSUED PURSUANT TO THIS CONTRACT.

Date _____

Signature _____

Title _____

ATTACHMENT E
SOLICITATION STATISTICS

Dear Subcontractor:

The Utah Transit Authority maintains bidding statistics, regarding **ALL** firms bidding on prime contracts and **subcontracts** on DOT-assisted projects in accordance to the federal regulation 49 CFR Part 26.11. Include copies of this form with your bid package to **ANY SUBCONTRACTORS**. Return the form from each proposer **with your bid package**, both Disadvantaged Business Enterprises (DBE) and non-DBEs (A DBE is a firm that meets the criteria in 49 CFR 26). Thank you for your assistance with this request. If you have any questions, comments or suggestions, please contact Raymond Christy, UTA's DBE Liaison Officer (801) 262-5626 extension 3537.

This information will only be used for statistical purposes as allowed under 49 CFR Part 26.

Firm Name: _____

Firm Address: _____

Status: Non-DBE ____ DBE ____

Company's Type of Work: _____

Month/Year firm started: _____

<u>Company Owner(s) Ethnic Background (optional)</u>		
____ African American	____ Asian	____ Male
____ Hispanic	____ Native American	____ Female
____ Polynesian	____ Caucasian	____ Other _____

Annual Gross Receipts of the Firm: (check one)

0 to \$500,000 _____ \$500,000 - \$1,000,000 _____

\$1 Million - \$5 Million _____ \$5 Million - \$10 Million _____

\$10 Million - \$16.7 Million _____ Above \$16.7 Million _____

Name of Solicitation: _____