



CONTRACTS & PROCUREMENT DEPARTMENT

REQUEST FOR PROPOSALS

RFP 09063

Data Center Configuration and Installation

TABLE OF CONTENTS

01	NOTICE TO OFFERORS	1
01.01	ESTIMATED PROPOSAL SCHEDULE	1
02	INFORMATION FOR OFFERORS.....	2
02.01	DEFINITION OF TERMS	2
02.02	CONTRACT AWARD.....	2
02.03	EEO	2
02.04	RFP FORM.....	3
02.05	OFFERORS INTERESTED IN MORE THAN ONE PROPOSAL	3
02.06	BASIS OF AWARD	3
02.07	AWARD OR REJECTION OF PROPOSALS	3
02.08	SITE INVESTIGATION	3
02.09	AWARD WITHOUT DISCUSSION.....	4
02.10	COMMENCEMENT OF THE CONTRACT SERVICES	4
02.11	WITHDRAWAL OF PROPOSALS	4
02.12	WITHDRAWAL OF PROPOSALS AFTER CLOSING.....	4
02.13	LATE PROPOSALS.....	4
02.14	NUMBER OF COPIES.....	4
02.15	INCURRED COST.....	4
02.16	PUBLIC RECORDS ACT/CONFIDENTIALITY OF PROPOSALS	4
02.17	FTA FUNDING.....	5
02.18	PROTEST PROCEDURES	5
03	GENERAL INSTRUCTIONS AND REQUIREMENTS	8
03.01	SCOPE OF SERVICES	8
03.02	PERIOD OF PERFORMANCE.....	8
03.03	CONTRACT ADMINISTRATION DATA.....	8
03.04	PRE-PROPOSAL QUESTIONS AND OTHER COMMUNICATIONS	8
03.05	CONTRACT DOCUMENTS	8
03.06	ENTIRE CONTRACT.....	8
03.07	SEVERABILITY OF CLAUSES	8
03.08	OWNERSHIP OF REPORTS AND DOCUMENTS.....	8
03.09	RELATIONSHIP OF PARTIES.....	9
03.10	ASSIGNMENT AND SUBCONSULTANTS/CONTRACTORS	9
03.11	PREVAILING PARTY	9
03.12	APPLICABLE LAWS AND REGULATION	9
03.13	GOVERNING LAW.....	9
03.14	CONTRACTOR'S LIABILITY; INDEMNITY	10
03.15	INTEREST OF MEMBERS OF CONGRESS	10
03.16	BUSINESS ETHICS EXPECTATIONS	10
03.17	PROHIBITED INTEREST	11
03.18	CONTINGENT FEES AND GRATUITIES.....	11
03.19	CONFLICT OF INTEREST	11
03.20	BONDING REQUIREMENTS	12
03.21	WARRANTY OF THE WORK AND MAINTENANCE BOND	12
03.22	HAZARDOUS MATERIALS/TRENCHES/EXCAVATIONS/REGIONAL NOTIFICATION	13
03.23	NOTICE, SUBMITTAL AND RESOLUTION OF EXTRAS AND CLAIMS.....	14
03.24	CONTINUING THE WORK DURING DISPUTES.....	18
03.25	INSURANCE	18
03.26	TERMINATION.....	20
04	CONTRACTOR'S RESPONSIBILITIES.....	23
04.01	CONTRACTOR'S LICENSE CLASSIFICATION:	23
04.02	CONTRACTOR'S RESPONSIBILITY FOR THE WORK AND MATERIALS:.....	23
04.03	EQUIPMENT AND/OR MATERIAL PURCHASES MADE ON BEHALF OF NCTD:	23
04.04	EQUIPMENT AND/OR MATERIAL PURCHASES MADE FOR THE BENEFIT OF THE CONTRACTOR: ...	23
04.05	RESPONSIBILITY OF CONTRACTOR TO PERFORM:	24
04.06	CONTRACTOR'S DAILY REPORTS:	24
04.07	SUPERVISION, SUPERINTENDENCE AND QUALITY	24
04.08	SUPERINTENDENT	24
04.09	LABOR.....	24
04.10	SUBCONTRACT LIMITATIONS.....	25
04.11	SUBCONTRACTORS/SUBCONTRACTING	25
04.12	SHOP DRAWINGS AND SAMPLES	25

TABLE OF CONTENTS

04.13	SUBMITTAL ACCEPTANCE.....	26
04.14	PERMITS AND INSPECTION COSTS.....	26
04.15	PROTECTION OF EXISTING IMPROVEMENTS.....	26
04.16	SITE ACCESS AND STORAGE.....	26
04.17	QUALITY OF MATERIALS/COMPLIANCE WITH INDUSTRIAL SAFETY CODES.....	27
04.18	DAMAGED MATERIALS OR EQUIPMENT.....	27
04.19	COOPERATION WITH NCTD, PUBLIC UTILITIES COMPANIES AND ANY OTHER CONTRACTORS.....	27
04.20	SAFETY LAWS AND REGULATIONS.....	29
04.21	HAZARDOUS COMMUNICATION PROGRAM.....	29
04.22	CHANGES AND EXTRA WORK.....	29
04.23	CHARGES TO CONTRACTOR.....	32
04.24	DELAYS.....	32
04.25	EXTENSION OF TIME.....	33
04.26	PROGRESS MEETINGS.....	33
04.27	PROGRESS SCHEDULE.....	34
04.28	USE OF FLOAT.....	34
04.29	EARLY COMPLETION.....	34
04.30	FLOAT SUPPRESSION.....	34
04.31	CONTRACT SCHEDULES - GENERAL CRITERIA.....	35
04.32	SCHEDULE UPDATE.....	35
04.33	WEEKLY ROLLING SCHEDULE.....	36
04.34	SUBMISSION AND APPROVAL OF CONTRACTOR'S CONSTRUCTION SCHEDULE.....	36
04.35	MONTHLY UPDATE OF THE CONTRACTOR'S CONSTRUCTION SCHEDULE.....	37
04.36	SCHEDULE STATUS SUBMITTALS.....	37
04.37	MONTHLY REVIEWS.....	37
04.38	SCHEDULE REVISIONS.....	37
04.39	SCHEDULE RECOVERY.....	37
04.40	RELIANCE ON SCHEDULE.....	38
04.41	SITE CONDITIONS.....	38
04.42	VALUE ENGINEERING CHANGE PROPOSALS (VECP).....	38
04.43	COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION.....	40
04.44	COMPLIANCE WITH STORM WATER POLLUTION PREVENTION PLAN.....	40
04.45	CALIFORNIA LABOR CODE REQUIREMENTS.....	40
04.46	RECORDS OF WAGES PAID.....	41
04.47	APPRENTICES.....	42
04.48	HOURS OF WORK.....	42
04.49	DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS.....	43
04.50	FABRICATION, INSPECTION AND TEST PLAN REQUIREMENTS.....	43
05	INVOICING.....	44
05.01	PROGRESS PAYMENTS/ PAYMENT SCHEDULE INVOICING/RETENTION.....	44
05.02	PAYMENT WITHHELD.....	44
05.03	RELEASE UPON PAYMENT/FINAL PAYMENT.....	45
05.04	SUBSTITUTION OF SECURITIES.....	45
05.05	INVOICE SUBMITTAL.....	46
06	FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES.....	47
06.01	FLY AMERICA REQUIREMENTS.....	48
06.02	BUY AMERICA REQUIREMENTS.....	48
06.03	CHARTER BUS REQUIREMENTS.....	49
06.04	CARGO PREFERENCE REQUIREMENTS.....	49
06.05	SEISMIC SAFETY REQUIREMENTS.....	50
06.06	ENERGY CONSERVATION REQUIREMENTS.....	50
06.07	CLEAN WATER REQUIREMENTS.....	50
06.08	BUS TESTING.....	50
06.09	PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS.....	51
06.10	LOBBYING.....	52
06.11	ACCESS TO RECORDS AND REPORTS.....	52
06.12	FEDERAL CHANGES.....	53
06.13	BONDING REQUIREMENTS.....	53
06.14	CLEAN AIR.....	53
06.15	RECYCLED PRODUCTS.....	54
06.16	DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS.....	54
06.17	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.....	59

TABLE OF CONTENTS

06.18	NO GOVERNMENT OBLIGATION TO THIRD PARTIES	59
06.19	PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS	60
06.20	TERMINATION.....	60
06.21	GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)	61
06.22	PRIVACY ACT	62
06.23	CIVIL RIGHTS REQUIREMENTS	62
06.24	BREACHES AND DISPUTE RESOLUTION	63
06.25	PATENT AND RIGHTS IN DATA	64
06.26	TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS.....	65
06.27	DISADVANTAGED BUSINESS ENTERPRISE (DBE)	66
06.28	INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS	66
06.29	DRUG AND ALCOHOL TESTING	67
06.30	TRANSIT VEHICLE MANUFACTURER (TVM) CERTIFICATIONS	67
06.31	METRIC REQUIREMENTS.....	67
06.32	NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS	67
06.33	BUS SEAT SPECIFICATIONS	67
07	SCOPE OF WORK	68
08	PROPOSAL, REQUIREMENTS, AND EVALUATION CRITERIA.....	72
08.01	PROPOSAL REQUIREMENTS AND ORGANIZATION	72
08.02	PROPOSAL EVALUATION PROCESS/FACTORS	72
08.03	EVALUATION CRITERIA	73
09	DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS/DBE OBLIGATION.....	74
10	EPRESENTATIONS AND CERTIFICATIONS OF BIDDERS	75
10.01	PROPOSAL DECLARATION FORM.....	76
10.02	CERTIFICATION OF NO EXCEPTIONS	77
10.03	OFFEROR'S QUESTIONNAIRE FORM.....	78
10.04	LIST OF SUBCONTRACTOR'S FORM.....	80
10.05	BUY AMERICA CERTIFICATE	82
10.06	CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS.....	83
10.07	CERTIFICATION OF RESTRICTIONS ON LOBBYING	84
10.08	ELIGIBILITY CERTIFICATION FOR FEDERALLY FUNDED CONTRACTS	85
10.09	EEO CERTIFICATE	86
10.10	WORKERS' COMPENSATION CERTIFICATE	87
10.11	DISADVANTAGE BUSINESS ENTERPRISE (DBE) INFORMATION – RFP 09063.....	88
10.12	GUARANTY	89
10.13	NON-COLLUSION AFFIDAVIT	90
10.14	FAITHFUL PERFORMANCE BOND.....	91
10.15	PAYMENT BOND.....	92
10.16	MAINTENANCE BOND	94
10.17	CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT.....	95
10.18	UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT	96
10.19	CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT.....	97
10.20	UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT	98
11	CONTRACT REQUIREMENTS FOR WORK AWARDED BY NCTD THAT IS PAID FOR BY A.R.R.A FUNDS.....	99

01 NOTICE TO OFFERORS

RFP 09063

DATA CENTER CONFIGURATION AND INSTALLATION PROJECT

Notice is hereby given that proposals will be received by the North County Transit District at NCTD, 810 Mission Avenue, Oceanside, CA 92054, up to 2:00pm, Tuesday, July 21, 2009 for the Data Center Configuration and Installation Project.

Project Description: NCTD seeks proposals from qualified firms (Contractor) to configure and install new systems to provide the District with a reliable, sustainable, and expandable Data Center.

RFP Documents: The RFP document is available at no charge upon email request to msmith@nctd.org or by fax request to 760-722-8087. Please include your company contact information (to include, name, address, phone, fax and email of the person responsible for receiving the RFP and any subsequent addenda) in your email request. The document will be provided in pdf format.

For individuals with sensory disabilities, this document is available in alternate formats. For information regarding alternate formats, call or e-mail the contact listed above or write Contracts & Procurement Department, 810 Mission Ave., Oceanside, CA 92054.

Pre-Proposal Conference and Site Visit: No pre-proposal conference is scheduled. Offerors are encouraged to make an appointment to visit, at their own expense, the project site.

01.01 ESTIMATED PROPOSAL SCHEDULE

ACTIVITY	DATE
Request For Proposals Opens	June 18, 2009
Deadline for Submission of Clarifications	NLT than 5 days prior to RFP due date
Proposal Due Date and Time	2:00 p.m., July 21, 2009

This timetable is subject to change if determined necessary by North County Transit District.

02 INFORMATION FOR OFFERORS

02.01 DEFINITION OF TERMS

Whenever the contract documents contain the following terms, or pronouns in place of them, or abbreviations, the intent and meaning shall be interpreted as follows:

“Board”, “Owner”, “Grantee”, “NCTD”, or “District” means North County Transit District or its authorized representative or agent.

“Consultant” or “Contractor” means the successful Offeror(s) to whom a contract is awarded.

“Contract Documents” means all of the contents of the RFP and associated addenda, attachments, reports, and documented agreements. Said documents shall be considered as part of any Agreement made pursuant to this solicitation.

“Days” means calendar days unless otherwise specified.

“Executive Director” or “Contract Officer” means the Chief Executive Officer of the Board or his properly authorized representative or agent.

“Hazardous Substances” and/or “Contaminated Materials” means any substance, waste, or material which is determined by any state, federal, or local governmental authority to be capable of posing a risk of injury to health, safety, and/or the environment, including, but not limited to, all substances, wastes, and materials designated or defined as hazardous, extremely hazardous, or toxic pursuant to Section 311 of the Clean Water Act, 33 USC Sections 1321, et seq., Section 1004 of the Resource and Conservation and Recovery Act, 42 USC Sections 6903, et seq., Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC Sections 9601, et seq.; Section 25141 of the Hazardous Waste Control Law, California Health and Safety Code Sections 25117, et seq.; Section 25316 of the Carpenter Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code Section 25316; Section 25501 of the Hazardous Materials Release Response Plans and Inventory Law, California Health and Safety Code Sections 25281, et seq., as may be hereinafter amended.

“Notice To Proceed (NTP)” is a written notice from the Board to a Contractor authorizing the Contractor to commence work and to start the performance period.

“Offeror” means the firm proposing the services described herein.

“SDNR” or “San Diego Northern Railroad”: SDNR is a paper entity created years ago to assist the District in matters that have been resolved. It does not have any employees, it is not party to any contracts, and does not maintain railroad tracks or the railroad.

“Written Order” means a written order signed by the Executive Director, or properly authorized representative or agent, mailed to the Contractor at the address designated in his proposal, or to such other address he may designate in writing as his official place of business.

02.02 CONTRACT AWARD

If the contract value exceeds \$100,000 in value the proposals will be evaluated and a report will be made to the Board at the first regularly scheduled meeting following the final evaluation of the proposals. The award of a contract will be made by the Board on the basis of the evaluation criteria of the RFP documents. If the value of the contract is \$100,000 or less, NCTD staff will make the determination to award based upon the evaluation criteria of the RFP.

02.03 EEO

Consultant/Contractor will be required to comply with all applicable Equal Employment Opportunity Laws and Regulations.

02.04 RFP FORM

All proposal forms provided must be submitted. Proposals that do not include all forms will be considered non-responsive and will be rejected. Proposals shall include the information and services requested. The proposal must be signed with the name and title of the person duly authorized to sign the offer.

Each proposal should be addressed to the Contract Administrator and shall be delivered to 810 Mission Avenue, Oceanside, CA 92054 on or before the day and hour set for the final acceptance of proposals. It is the sole responsibility of the Offeror to see that the proposal is received in the proper time.

No proposals received after the time fixed for receiving them will be considered. Late proposals will be returned to the Offeror unopened. Proposals will not be publicly opened and will be kept confidential.

Proposals are required for the entire scope of services described. Proposals that are not for the entire scope of services, or improperly written, may be considered non-responsive and rejected.

02.05 OFFERORS INTERESTED IN MORE THAN ONE PROPOSAL

No person, firm or corporation shall be allowed to make a file or be interested in, as a principal, more than one proposal for the same work unless alternate proposals are called for. A person, firm or corporation submitting a sub-proposal to an Offeror, or who has quoted prices on materials to an Offeror, is not thereby disqualified from submitting a sub-proposal or quoting prices to other Offerors or from being a principal Offeror for the same work.

02.06 BASIS OF AWARD

After the day and hour set for the final acceptance of proposals, an evaluation of all proposals received will be conducted. This evaluation will include review of all required forms and certifications and the Offeror's response to the evaluation criteria. Proposals that are incomplete, or improperly written, may be considered non-responsive and rejected. Firms that submit acceptable proposals may be scheduled for a presentation. If presentations are scheduled, this will be the final determining factor in the award of the contract.

02.07 AWARD OR REJECTION OF PROPOSALS

An award will be made or all proposals rejected by the Board (The North County Transit District) at the first regularly scheduled meeting of the Board following completion of proposal evaluations and selection of successful firm. The Manager of Contracts and Procurement reserves the right to reject any and all proposals, to waive any informality in the proposals received waive or correct any errors or discrepancies within a proposal.. If all proposals received are rejected by the Manager of Contracts and Procurement, NCTD reserves the right to resolicit the services by issuing a new RFP.

02.08 SITE INVESTIGATION

At its own expense and prior to submitting its bid, each Offeror shall visit the site of the proposed work and become fully acquainted with the conditions relating to the construction and labor involved in order to fully understand the facilities, difficulties, and restrictions related to the execution of the work under the contract. Each Offeror acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling and storage of materials; (2) the availability of labor, water, electric power, and roads, including prevailing wages and other relevant cost factors; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; (5) the character of equipment and facilities needed preliminary to and during work performance; and (6) all applicable federal, state, and local laws, statutes, ordinances, orders, permits, guidelines, rules, and regulations, including those pertaining to the removal, excavation, hauling, containment, transportation, disposal, recycling, or handling of "Hazardous Substances and/or Contaminated Materials." Each Offeror also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by NCTD as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to NCTD.

02.09 AWARD WITHOUT DISCUSSION

Offerors are cautioned that award hereunder may be affected without discussion. Initial proposals should consequently present the best offer to the Board.

02.10 COMMENCEMENT OF THE CONTRACT SERVICES

Following the execution by both parties of all contract documents and receipt of required insurance certificates, Consultant shall receive a Notice to Proceed with the work. Commencement of work by Contractor before receipt of the Notice to Proceed is at the sole risk and expense of the Consultant who shall be fully liable for any damage or injury sustained by the Board or third persons resulting therefrom.

The Consultant(s) shall begin work immediately upon receipt of the Notice to Proceed and shall complete all of the work as required by the RFP, upon assignment.

02.11 WITHDRAWAL OF PROPOSALS

Any Offeror may withdraw its proposal, either personally or by written request, at any time prior to the final acceptance time.

02.12 WITHDRAWAL OF PROPOSALS AFTER CLOSING

No Offeror may withdraw its proposal for a period of sixty (60) days after the date set for final acceptance of proposals. Proposals will be subject to acceptance by the Board during this sixty (60) day period.

02.13 LATE PROPOSALS

Proposals received by NCTD after the time fixed for receiving them will be considered late. Late proposals will be returned to the Offeror unopened.

02.14 NUMBER OF COPIES

Offerors responding to the RFP shall submit five (5) copies of their proposal. One copy shall contain all original signatures and shall be labeled **“ORIGINAL PROPOSAL”**.

02.15 INCURRED COST

Board will not reimburse the Offerors for costs incurred in the preparation of the proposal or after submittal of proposal, during any negotiation period that results in a contract award or cancellation of the procurement.

02.16 PUBLIC RECORDS ACT/CONFIDENTIALITY OF PROPOSALS

Access to government records is governed by the laws of the State of California under the California Public Records Act (Gov. Code 6250, et seq.) [Act]. Proposal price forms submitted to NCTD in response to this RFP are public records and may, therefore, be disclosed in accordance with the California Public Records Act. Except as otherwise required by the Act, the District will exempt from disclosure proprietary information, trade secrets and confidential commercial and financial information submitted in the proposal. Any such proprietary information, trade secrets or confidential commercial and financial information which an Offeror believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not assure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such.

The Offeror shall submit proprietary information, trade secrets or confidential commercial and financial information, which an Offeror believes should be exempted from disclosure, in a separate volume specifically identified and marked as such as an appendix to the proposal.

The following information is not required to be included in the Proposal, but the Offeror shall make it available for review by the District:

Upon a request for records from a third party regarding this proposal the District will notify in writing the party involved. The party involved must respond within twenty (20) calendar days with the identification of any and all “proprietary, trade secret, or confidential commercial or financial” information and the party involved shall indemnify the District’s defense costs associated with its refusal to produce such identified information; otherwise, the requested information may be released.

The District shall employ sound business practices no less diligent than those used for the District's own confidential information to protect the confidence of all licensed technology, software, documentation, drawings, schematics, manuals, data and other information and material provided by Offerors and the Contractor pursuant to the Contract which contain confidential commercial or financial information, trade secrets or proprietary information as defined in or pursuant to the Laws of the State of California against disclosure of such information and material to third parties except as permitted by the Contract.

The Contractor shall be responsible for ensuring that confidential commercial or financial information, trade secrets or proprietary information, with such determinations to be made by the District in its sole discretion, bears appropriate notices relating to its confidential character.

02.17 FTA FUNDING

Inasmuch as the items and services herein described are to be purchased with Federal assistance authorized by Federal transit laws codified at 49 USC §§ 5301 *et seq.*; or Title 23, United States Code (Highways); or the Transportation Equity Act for the 21st Century, Pub. L. 105-178, June 9, 1998, 23 USC § 101 note, as amended by the TEA-21 Restoration Act, Pub. L., 105-206, July 22, 1998, 23 USC § 101 note, and other further amendments (TEA-21), or other Federal enabling laws administered by FTA; the Contractor will be required to comply with all terms and conditions prescribed for third party contracts in a grant contract between the United States Department of Transportation and the purchaser.

02.18 PROTEST PROCEDURES

General Protest Procedures: Failure to strictly comply with the protest procedures delineated below with respect to timeliness or protest contents will render a protest untimely and/or inadequate and will result in rejection thereof by NCTD.

02.18.1 Protests During The Pre-Proposal Period:

A Pre-Proposal Protest is a protest received prior to the proposal opening on any matter relating to the Contract Documents, including but not limited to Approval Requests for Substitution of "Equals." Pre-Proposal Protests must be in writing, sent by certified mail and received by the NCTD Contract Administrator at 810 Mission Avenue, Oceanside, CA 92054 at least five (5) working days before the scheduled proposal opening date. Prospective Offerors will be notified, by issuance of an addendum or bulletin that a protest has been filed if scheduled dates have been postponed as a result of the Pre-Proposal Protest.

The Pre-Proposal protest shall include all of the following: the name of the protester, proposal/contract number or description and a detailed description of the specific grounds for protest, any supporting documentation, and the specific ruling or relief requested.

The Executive Director will respond to the substantive issue raised in the Pre-Proposal Protest in detail and will provide a final written determination via certified mail within ten (10) working days of receiving the Pre-Proposal Protest.

Pre-Proposal Protest Reconsideration Request: A request for protest reconsideration may be submitted if data becomes available that was not previously known or there has been an error of law or regulation. A written request for reconsideration shall be submitted to the Board of Directors at 810 Mission Avenue, Oceanside, CA 92054 and must be received by the Board's secretary within seven (7) working days from the postmark date of the reply from the Executive Director. The Board of Directors will send a final, written decision regarding the Pre-Proposal Protest Reconsideration Request within twenty-five (25) working days of the Board's secretary's receipt of the request for reconsideration.

02.18.2 Protest During The Pre-Award Period:

A Pre-Award Protest is a protest against making an award, received after receipt of proposals but before the award of contract. A Pre-Award Protest must be sent by certified mail and received by the NCTD Contract Administrator at 810 Mission Avenue, Oceanside, CA 92054 within five (5) working days after the protester knows or should have known of the facts and circumstances upon which the protest is based. Offerors will be notified, by issuance of

an addendum or bulletin that a protest has been filed if scheduled dates have been postponed as a result of the Pre-Proposal Protest.

The Pre-Award Protest shall include all of the following: the name of the protester, solicitation/contract number or description and a detailed description of the specific grounds for protest, any supporting documentation, and the specific ruling or relief requested.

The Executive Director will respond to the substantive issue raised in the Pre-Award Protest in detail and will provide a final written determination via certified mail within ten (10) working days of receiving the Pre-Award Protest.

Pre-Award Protest Reconsideration Request: A request for protest reconsideration may be submitted if data becomes available that was not previously known or there has been an error of law or regulation. A written request for reconsideration shall be submitted to the Board of Directors at 810 Mission Avenue, Oceanside, CA 92054 and must be received by the Board's secretary within seven (7) working days from the postmark date of the reply from the Executive Director. The Board of Directors will send a final, written decision regarding the Pre-Award Protest within twenty-five (25) working days of the Board's secretary's receipt of the request for reconsideration.

02.18.3 Protests During The Post-Award (Contract) Period:

A Post-Award Protest is a protest received after award of a contract. Post-Award Protests shall be in writing sent by certified mail and received by the NCTD Contract Administrator at 810 Mission Avenue, Oceanside, CA 92054 not more than five (5) working days after the date on which the NCTD awarded the contract. Offerors will be notified, by issuance of an addendum or bulletin that a protest has been filed if scheduled dates have been postponed as a result of the Pre-Proposal Protest.

The Post-Award Protest shall include all of the following: the name of the protester, solicitation/contract number or description and a detailed description of the specific grounds for protest.

The Executive Director will respond to each substantive issue raised in the Post-Award Protest and will provide a final determination in a written reply via certified mail within ten (10) working days of receiving the Post-Award Protest.

Post-Award Protest Reconsideration Request: A request for protest reconsideration may be submitted if data becomes available that was not previously known or there has been an error of law or regulation. A written request for reconsideration shall be submitted to the Board of Directors at 810 Mission Avenue, Oceanside, CA 92054 and must be received by the Board's secretary within seven (7) working days from the postmark date of the reply from the Executive Director. The Board of Directors will send a final, written decision regarding the Post-Award Protest Reconsideration Request within twenty-five (25) working days of the Board's secretary's receipt of the request for reconsideration.

02.18.4 Protests Provisions for Federal Transit Administration ("FTA") Funded Projects:

In addition to the above, the following protest procedures apply to any partially or fully funded FTA projects.

FTA Review of Protests:

The FTA will only entertain a protest that alleges NCTD failed to follow its protest procedures. Protests filed with the FTA must be filed in accordance with FTA Circular 4220.1E.

Protests Concerning Compliance with Disadvantaged Business Enterprises ("DBE") Requirements:

Pre-Award DBE Protest: Protesters filing timely Pre-Award Protests, in accordance with the above, regarding DBE compliance shall have the opportunity to meet in person with a reconsideration official not involved in the original determination that the protester failed to comply with the DBE requirements, prior to the issuance of the Executive Director's response. The Executive Director's response shall be in writing and shall explain the basis for finding that the protester did not meet the goal or make adequate good faith efforts to do so.

If the Executive Director's Response is an adverse decision and if the protester desires, a request for Pre-Award DBE Protest Reconsideration shall be submitted to the Board of Directors at 810 Mission Avenue, Oceanside, CA

92054 and must be received by the Board's secretary within seven (7) working days from the postmark date of the reply from the Executive Director. The Board of Directors decision regarding the Pre-Award Protest shall be final, in writing, and shall explain the basis for finding that the protester did not meet the goal or make adequate good faith efforts to do so.

Post-Award DBE Protest: Protesters filing timely Post-Award Protests, in accordance with the above, regarding DBE compliance shall have the opportunity to meet in person with a reconsideration official not involved in the original determination that the protester failed to comply with the DBE requirements, prior to the Executive Director's response. The Executive Director's response shall be in writing and shall explain the basis for finding that the protester did not meet the goal or make adequate good faith efforts to do so.

If the Executive Director's Response is an adverse decision and if the protester desires, a request for Post-Award DBE Protest Reconsideration shall be submitted to the Board of Directors at 810 Mission Avenue, Oceanside, CA 92054 and must be received by the Board's secretary within seven (7) working days from the postmark date of the reply from the Executive Director. The Board of Directors decision regarding the Post-Award Protest shall be final, in writing, and shall explain the basis for finding that the protester did not meet the goal or make adequate good faith efforts to do so.

03 GENERAL INSTRUCTIONS AND REQUIREMENTS

03.01 SCOPE OF SERVICES

NCTD seeks proposals from qualified firms (Contractor) to configure and install new systems to provide the District with a reliable, sustainable, and expandable Data Center.

Section 07 SCOPE OF SERVICES provides a detailed description of services required.

03.02 PERIOD OF PERFORMANCE

The Period of Performance for the configuration and installation portion of the contract resulting from this RFP shall be from the date of the NTP to February 28, 2010.

03.03 CONTRACT ADMINISTRATION DATA

Contract Administration responsibility for this contract has been assigned to:

Mindy Smith, Contracts Administrator
NORTH COUNTY TRANSIT DISTRICT
810 Mission Avenue
Oceanside, CA 92054
Telephone: (760) 967-2834 Fax: (760) 722-8087 E-mail: msmith@nctd.org

All communications and all questions shall be forwarded directly to the above named Administrator.

03.04 PRE-PROPOSAL QUESTIONS AND OTHER COMMUNICATIONS

All pre-proposal period questions and conversations concerning any matters relating to the proposal for this work (technical or non-technical subjects) shall be addressed only to the designated Contract Administrator for this RFP. All communications should be in writing. District responses which are changes to any part of the RFP or the technical specifications or requirements will be repeated in an addendum to all holders of the RFP documents. Offerors are cautioned regarding the non-binding nature of oral communications by the Board such as opinion, comments, explanations, response to questions, etc.

03.05 CONTRACT DOCUMENTS

All rights and obligations of the Board and Consultant are fully set forth and described in the Contract Documents. All parts of the Contract Documents are intended to be correlated so that any work called for in one part and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all said documents.

Wherever conflicting, contradictory, or redundant statements exist between the Specifications or Scope of Work and the RFP document, the RFP document shall take precedence.

03.06 ENTIRE CONTRACT

The contract documents represent the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements either written or oral.

03.07 SEVERABILITY OF CLAUSES

It is agreed that the illegality or invalidity of any term or clause of this Contract shall not affect the validity of the remainder of this Contract, and the Contract shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein.

03.08 OWNERSHIP OF REPORTS AND DOCUMENTS

Originals of all documents pertaining to the work performed under this Contract shall become the property of the District. Copies may be made for Offeror's records, but shall not be furnished to others without prior written authorization from the Board.

03.09 RELATIONSHIP OF PARTIES

Nothing contained herein shall be construed as creating the relationship of employer and employee between the District and Consultant or its agents and employees. The Consultant shall perform its services as an independent Consultant in accordance with its own methods, this contract, applicable laws and regulations. The Consultant shall have exclusive and complete control over its employees and subconsultants.

03.10 ASSIGNMENT AND SUBCONSULTANTS/CONTRACTORS

The Agreement resulting from this RFP between NCTD and the Consultant/Contractor would allow for the assignment of all or part of the specified deliverables or scope of work to the entities affected by CA SB 1703 legislation, that is San Diego Association of Governments (SANDAG), Metropolitan Transit Development Board (MTDB of San Diego), or NCTD. When services included in the scope of the Agreement resulting from this RFP are required by one of the transportation agencies in the region affected by SB 1703, the Agreement could be assigned to that agency upon mutual written agreement between NCTD (Assignor) the respective parties (Assignee), and the Consultant/Contractor.

Consultant/Contractor shall not assign, sublet, or transfer this agreement or any rights under or interest in this agreement without the written consent of NCTD, which may be withheld for any reason. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

Even though certain work may be purchased or contracted from an outside source under a subcontract, Consultant/Contractor shall assume full responsibility for all work and materials.

03.11 PREVAILING PARTY

In the event litigation is initiated to interpret or enforce the terms of this contract, the prevailing party shall be entitled to recover its attorneys' fees in addition to costs.

03.12 APPLICABLE LAWS AND REGULATION

All items prepared by Consultant shall conform to all laws, statutes and ordinance, zoning requirements, applicable rules and regulations and the methods and procedures of all local, state and federal; governmental boards, bureaus, or agencies having jurisdiction over the services.

03.13 GOVERNING LAW

The law of California shall govern the resolution of any issue arising in connection with this contract, including but not limited to, all questions concerning the validity of this contract; the authorities of the parties to enter herein; and modifications or amendment thereto; and the rights and obligations of the parties hereunder.

Consultant warrants that in the performance of this contract it shall comply with all applicable Federal, State and local laws and ordinances and all lawful orders, rules, and regulations thereunder.

Consultant agrees that the venue for any legal proceeding relating to or concerning this contract is San Diego County, California.

Compliance with Labor Code Requirements/Prevailing Wages: The services, or a portion of the services, required under this Agreement fall into the category of service deemed to be public works for Federal and State requirements. Since the Services are being performed as part of an applicable "public works" project, as defined by Federal and State Laws, and since the total compensation is \$1,000 or more as to State requirements, and \$2,000 or more as to Federal Requirements, Consultant, and its subconsultants, will be required to comply with all of the terms and conditions (including Federal and State General Prevailing Wage requirements) prescribed for the performance of public works as defined in applicable law to the extent applicable. In all instances where Federal and State Prevailing Wages for a given craft differ, the higher Prevailing Wage shall be paid. It shall be mandatory upon Consultant and all subconsultants to pay not less than the said specified rates to all workers employed by them in the performance under the Agreement to the extent required. Copies of the Prevailing Wage Rates are on file at the NCTD Contracts Department located at 810 Mission Avenue, Oceanside, CA and are available upon request. Requests must specifically state which prevailing wage rates are required. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the NCTD, its elected officials, officers, employees

and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

03.14 CONTRACTOR'S LIABILITY; INDEMNITY

The Contractor agrees to defend, keep and save harmless and indemnify NCTD and its agents, attorneys, representatives, employees, successors, and assigns (collectively "Indemnities"), and each of them, jointly and severally, from and against:

- (1) Any and all claims, demands, causes of action, damages, costs, expenses, lawsuits, and liabilities, at law or in equity, of every kind or nature whatsoever, including but not limited to, injury to or death of any person or persons (including employees of Board) and damage to or destruction of any property (including property of NCTD), threatened, brought or instituted, arising out of, allegedly caused by, or in any manner directly or indirectly connected with Contractor's, or its subcontractors' or agents' obligations under this contract, Contractor's or its subcontractors' or agents' errors, omissions, negligent acts, or failure to perform properly pursuant to the terms and conditions of this contract;
- (2) Any and all penalties, threatened, sought, or imposed on account of a violation by Contractor, or its subcontractors or agents, of any laws, statutes, regulations, or ordinances, pertaining to the removal, excavation, hauling, containment, transportation, disposal, recycling, or handling of Hazardous Substances and/or Contaminated Materials, or Contractor's or its subcontractors' or agents' failure to fully satisfy its obligations hereunder; and/or
- (3) Any and all reasonable contractor, attorney, laboratory, and/or engineering fees incurred by any indemnity in connection with enforcing or monitoring Contractor's obligations hereunder. Contractor hereby acknowledges that the indemnifications contained in this contract are intended, in part, to operate as indemnifications under Section 9607(e)(1) of the Comprehensive Environmental Responses, Compensation, and Liability Act (42 USC Section 9601, et seq.) as may be hereinafter amended.

It is understood, and agreed, that the indemnification provided above shall not apply in any instances of sole negligence or willful misconduct of NCTD, the NCTD Board of Directors, or its officers, employees or agents.

With the exception of hazardous substances and or contaminated materials brought on to the site by Contractor, or directly created by Contractor on site, the parties understand and acknowledge that the Contractor does not assume responsibility as the "owner" or "generator" for pre-existing hazardous substances and/or contaminated materials presently at the site.

Contractor shall, at its own expense, pay all charges of attorneys and all costs and other expenses arising from or incurred in connection with this section. If any judgment shall be rendered against NCTD in any action to which this section applies, the Contractor shall, at its own expense, satisfy and discharge the same. In any such action, NCTD shall have the right to be represented by counsel of its choice, at Contractor's expense, provided the rates charged shall be reasonable in comparison to the going rate at the time for similar legal services in San Diego County.

03.15 INTEREST OF MEMBERS OF CONGRESS

In accordance with 18 U.S.C. 431, no member of, or delegates to, the Congress of the United States shall be admitted to a share or part of this contract or to any benefit arising therefrom.

03.16 BUSINESS ETHICS EXPECTATIONS

During the performance of work under this agreement, Contractor agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the dealings with the District.

Contractor shall take reasonable actions to prevent any actions or conditions which could result in a conflict with the District's best interests. These obligations shall apply to the activities of contractor employees, agents, subcontractors, material suppliers (or their representatives) etc.

Contractor employees, agents, subcontractors, material suppliers (or their representatives) should not make or provide to be made any employment, gifts, entertainment (liquor, lodging, travel, food, and tickets to public functions (sports events, theater, etc.) , payments, loans, free work, substantially discounted work, or other considerations to District representatives, employees or their relatives. Similarly, Contractor employees, agents or

subcontractors (or their relatives) should not receive any commissions, gifts, entertainment, payment, loans, free work, substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with any work performed under this contract.

The only exceptions to the above are as follows:

1. **Gratuities:** Acceptance of customary and reasonable items during the major nationally recognized holiday seasons (i.e. Christmas, New Year, Rosh Hashanah, Ramadan, etc.)
2. **Business Related Functions:** Acceptance of an invitation to join a vendor in a function directly related to the business relationship is not prohibited. Included in this category are luncheon meetings, lunch's incidental to a business meeting held before or after the lunch period, and business-related dinners.
3. **Industry Meetings:** At the industry meetings, seminars, or other related functions, it is permissible to accept hospitality at activities which are provided for the benefit of all industry people and are commonly accepted as being a part of the group activities.

Contractor agrees to notify the District's Audit and Compliance Officer, within 48 hours of any instance where the Contractor becomes aware of a failure to comply with the provisions of this article.

Upon request by the District, Contractor agrees to provide a certified Management Representation Letter executed by selected Contractor representatives in a form agreeable to Owner stating that they are not aware of any situations violating the business ethics expectations outlined in this contract or any similar potential conflict of interest situations.

Contractor agrees to include this clause in all contracts with subcontractors and payees receiving more than \$10,000 in funds in connection with the work of the District.

Contractors shall permit interviews of employees, reviews and audits of accounting or other records by District representative (s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of Contractor's employees, agents, representatives, vendors, subcontractors, and other third parties paid by Contractor in their relations with District's current or former employees or employee relatives.

03.17 PROHIBITED INTEREST

No member, officer, or employee of the Board or of a local public body during their tenure or one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

To Consultant's knowledge, no Board member, officer or employee of NCTD has any interest, whether contractual, non-contractual, financial or otherwise in this transaction, if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other party.

03.18 CONTINGENT FEES AND GRATUITIES

The Consultant agrees as follows:

1. The Consultant warrants and covenants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach of violation of this warranty the Board shall have the right to annul this Agreement without liability or in its discretion to deduct from the total price or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
2. The Consultant warrants and covenants that no gratuities, in the form of entertainment, gifts or otherwise, have been or will be offered or given by the Consultant or any of its agents, employees or representatives to any official member or employee of the Board in an attempt to secure a contract or favorable treatment in awarding, amending or making any determination related to the performance of this work.

03.19 CONFLICT OF INTEREST

No employee, officer or agent of NCTD shall participate in selection, or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

1. The employee, officer or agent;

2. Any member of his or her immediate family;
3. His or her partner; or
4. An organization which employs, or is about to employ, has a financial or other interest in the firm selected for award. The grantee's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from Consultants, potential Consultants or parties of sub-agreements.

NCTD's officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from Consultants, potential Consultants, or parties to sub-agreements.

03.20 BONDING REQUIREMENTS

Bonds: The successful Offeror will be required to furnish NCTD with Faithful Performance and Payment (Labor and Material) Bonds in the amount equal to 100% of the successful bid as specified therein within five (5) calendar days from the date of receiving said Notice of Intent to Award Contract to the Offeror. All bonds are to be secured from a surety company that meets all of the State of California bonding requirements, as defined in California Code of Civil Procedure section 995.120, and is authorized by the State of California, and all documents required by California Code of Civil Procedure 995.660, to the extent required by law. In addition, the successful Offeror shall be required to obtain a Performance Bond from all subcontractors providing goods and services in excess of \$100,000.00. All prime contractors bidding on this Project must specify this requirement regarding subcontractor bonds in their written or published request for subcontractor bids. Such written or published requests must clearly designate the party that will bear the cost of the bonds. All subcontractor bonds are subject to the same requirements set forth in these Contract Documents regarding Contractor bonds.

03.21 WARRANTY OF THE WORK AND MAINTENANCE BOND

- 03.21.1 The Contractor warrants to NCTD, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by NCTD, free from faults and defects and in conformance with the Contract Documents. All materials and equipment not so conforming to these standards shall be considered defective. If required by NCTD's designated representative, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- 03.21.2 The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The Contractor hereby warrants the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by NCTD and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the warranty at no cost to NCTD or reimburse NCTD upon demand, for its expenses incurred in restoring said work to the condition contemplated in said Contract, including the cost of any such equipment or materials replaced and the cost of removing and replacing any other work necessary to make such replacement or repairs. The agency shall have the unqualified option to make any needed replacements or repairs itself or to have such replacements or repairs done by the Contractor. In the event NCTD elects to have said work performed by the Contractor, the Contractor agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within a reasonable time after the receipt of demand from NCTD. If the Contractor fails or refuses to comply with his obligations under this warranty, NCTD shall be entitled to all costs and expenses, including attorney's fees and expert costs reasonably incurred by reason of the said failure or refusal.
- 03.21.3 As additional security for these warranties, the Contractor shall, prior to the release of Final Payment as provided in the PAYMENTS clause of the RFP, furnish separate Maintenance Bonds in the form contained in this section to NCTD written ***by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract.*** These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

03.22 HAZARDOUS MATERIALS/TRENCHES/EXCAVATIONS/REGIONAL NOTIFICATION

03.22.1 Compliance With All Applicable Laws: All work performed by Contractor under this contract shall at all times be in compliance with all applicable federal, state, and local laws, statutes, ordinances, orders, guidelines, rules, and regulations pertaining to the excavation, removal, containment, hauling, transportation, disposal, recycling, or handling in any manner of Hazardous Substances and/or Contaminated Materials. During the term of this contract, Contractor shall acquire and maintain all permits required for the removal, excavation, hauling, containment, transportation, disposal, recycling, or handling of Hazardous Substances and/or Contaminated Materials by any and all applicable federal, state, and local laws, statutes, ordinances, orders, guidelines, rules, and regulations.

Contractor shall also comply with the following provisions related to excavations:

1. Trenches Five Feet or More in Depth. If the Contract Price exceeds \$25,000, the Contractor shall submit to NCTD, for acceptance, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five feet or more in depth. The plan shall be prepared by a registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with CAL-OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.
 - 1) All shoring submittal shall include surcharge loads from adjacent embankments, construction loads and spoil bank. Submittal shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.
 - 2) Nothing in this Article shall relieve Contractor of the full responsibility for providing shoring, bracing sloping, or other provisions adequate for worker protection. If such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer. No excavation of such trench or trenches shall be commenced until said plan has been accepted by NCTD or the person to whom authority to accept has been delegated by NCTD.
2. Excavations Deeper than Four Feet. If work under this contract involves digging trenches or other excavation that extends deeper than four feet below the surface, Contractor shall promptly, and before the following conditions are disturbed, notify the NCTD, in writing, of any:
 - 1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - 2) Subsurface or latent physical conditions at the site differing from those indicated.
 - 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

NCTD or NCTD's Representatives shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order under the procedures described in the contract.

In the event that a dispute arises between NCTD or NCTD's Representative and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

3. Regional Notification. Contractor, except in an emergency, shall contact the appropriate regional notification center at least two working days prior to commencing any excavation if the excavation

will be conducted in an area or in a private easement which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by NCTD, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any subcontractor of the Contractor and NCTD or NCTD's Representatives has been given the identification number by the Contractor.

- 1) Emergency shall be defined as a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage (Government Code Section 4216).
- 2) Subsurface installation means any underground pipeline, conduit, duct, wire, or other structure operated or maintained in or across a public street or public right of way (Government Code Section 4216).

03.23 NOTICE, SUBMITTAL AND RESOLUTION OF EXTRAS AND CLAIMS

- a. Notice Requirement. If the Contractor believes that any instruction, clarification, RFI response, directive, conflict, request, drawing, specification, error, omission, action, condition, default or other situation obligates NCTD to pay additional compensation to the Contractor or to grant an extension of time for the completion of the Project, or constitutes a waiver of any provision in the Contract Documents, Contractor shall notify NCTD, in writing, of such belief within seven (7) calendar days from the date Contractor has actual or constructive notice of the factual basis supporting the claim, or from the beginning of events arising to the contention. The Contractor acknowledges that failure to notify NCTD within the prescribed period would irreparably prejudice NCTD's rights to promptly address the matter, and such failure shall be deemed a waiver and relinquishment of any related claim against NCTD. If such notice is given within the specified time, the procedure for its consideration shall be as stated in the Contract Documents.

General Content Requirements for Claims and Requests for Contract Adjustments. Construction related claims or requests or proposals for Contract adjustment shall be in writing and shall include all analyses, narratives, schedules, photos, graphics and back-up documentation necessary to fully substantiate the entitlement, causation, and amount of the claim. Submittals shall include a discrete sequential number for tracking purposes. Claims/requests must include a detailed discussion of contractual entitlement, including citations of specific Contract or Contract Document clauses, drawing notes, specification sections, code sections, etc., setting forth the contractual provisions upon which the Contractor relies in seeking additional compensation or time. The claim/request must also establish causation, i.e., the link between the claimed event(s) and the claimed costs and/or time. Claims/requests for adjustments related to a delay or extension of time for any cause would require a CPM schedule analysis and an analysis of potential mitigation measures and costs submitted in accordance with the provisions of these Contract Documents and Division 1 of the Specifications. All claimed costs must also be properly calculated and fully documented, including back-up of all actual costs expended from Contractor's job cost accounting system, and an identification of any claimed costs which may be estimated costs. All of the above requirements are also applicable to any claims/requests made by subcontractors or suppliers and passed through by the Contractor.

In addition to the above, the Contractor shall submit with each claim or request, an notarized affidavit certifying under penalty of perjury that a) The claim/request is made in good faith and is an accurate representation of all costs and delays associated with the claimed event; b) the Contractor has reviewed all data assembled to support the claim/request and certifies that the claim/request is legitimate and the costs were truly incurred and have been accurately entered on the Project's job cost records; c) a claim/request for an extension of Contract time has been based on a detailed CPM Schedule Analysis; and d) the claim/request complies in all aspects with the Federal Anti-Fraud and False Claims Acts referenced in this RFP as well as the California False Claims Act (Government Code section 12650-12655). The affidavit shall be executed by an officer, director or general partner of the Contractor. For purposes of the affidavit, the Contractor's certification also includes and certifies claims submitted by subcontractors or suppliers and passed through to NCTD by Contractor.

Deadline for Submitting Claims. Claims must be filed in full accordance with the Contract Documents requirements and before the date of final payment. Nothing in this Article is intended to extend the time limit or supersede any other notice requirements otherwise provided by contract for the submittal of claims or requests or proposals for Change Orders. Notwithstanding anything set forth herein, Contractor is alerted to the fact that the Federal Transit Administration review and concurrence may be required for change orders or claim settlements 1) that exceed \$100,000.00; 2) for claims for which insufficient funds remain in the approved Federal grant to cover the settlement; or 3) or where a special Federal interest is declared as delineated in FTA Circular 5010.1C, Chapter 1, Section 7b(4).

NCTD Response to Claims

1. For claims of less than fifty thousand dollars (\$50,000). NCTD shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims NCTD may have. If further additional information is thereafter required, it shall be requested and provided pursuant to this Article, upon mutual agreement of NCTD and the Contractor. NCTD's written response to the claim shall be submitted to the Contractor within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater. If the claim is found to have merit, settlement of the claim will be made pursuant to the Changes and Extra Work provisions of the Contract Documents. If the claim is not found to have merit, settlement of the claim will be made pursuant to the applicable provisions of this Article.
 2. For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000). NCTD shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims NCTD may have. If further additional information is thereafter required, it shall be requested and provided pursuant to this Article, upon mutual agreement of NCTD and the Contractor. NCTD's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater. If the claim is found to have merit, settlement of the claim will be made pursuant to the Changes and Extra Work provisions of the Contract Documents. If the claim is not found to have merit, settlement of the claim will be made pursuant to the applicable provisions of this Article.
 3. For claims in excess of three hundred thousand dollars (\$375,000.00). NCTD shall respond in writing to all written within 75 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims NCTD may have. If further additional information is thereafter required, it shall be requested and provided pursuant to this Article, upon mutual agreement of NCTD and the Contractor. NCTD's written response to the claim, as further documented, shall be submitted to the Contractor within 30 says after the receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater. If the claim is found to have merit, settlement of the claim will be made pursuant to the Changes and Extra Work provisions of the Contract Documents. If the claim is not found to have merit, settlement of the claim will be made pursuant to the applicable provisions of this Article.
- b. Informal Meet and Confer Conference. For all claims subject to this Article, if the Contractor disputes NCTD's written response, or NCTD fails to respond within the time prescribed, the Contractor may so notify NCTD in writing, either within 15 days of receipt of NCTD's response or within 15 days of NCTD's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, NCTD shall schedule, and shall endeavor to hold, a meet and confer conference within 30 days for settlement of the dispute.

c. Procedures for Civil Actions to Resolve Disputed Claims.

1. Procedures for Civil Actions to Resolve Disputed Claims less than or equal to three hundred seventy five thousand dollars (\$375,000.00)
 - i. Non-Binding Mediation. All claims equal to or less than three hundred seventy-five dollars (\$375,000.00) unresolved by the informal conference described above shall be resolved in a court of proper jurisdiction as follows: within 60 days, but no earlier than 30 days, following the filing of responsive pleading, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless that time requirement is extended by a good cause showing to the court. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.
 - ii. Judicial Arbitration. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and if possible with light rail systems design and construction, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.
 - iii. Any arbitration, mediation or other forms of alternative dispute resolution initiated by the parties under these Contract Documents shall be handled within the boundaries of NCTD unless otherwise mutually agreed.
2. Procedures for Civil Actions to Resolve Disputed Claims over three hundred seventy-five thousand dollars (\$375,000.00).
 - i. Procedures for Claims Over \$375,000.00. If a dispute in excess of a total value of \$375,000.00, arises out of or relates to this Contract, or the breach thereof, and if said dispute is unresolved by the informal conference as described above, and cannot be settled through normal contract negotiations, the parties agree that as a condition precedent to the initiation of litigation, the dispute shall first be submitted to mediation pursuant to this Article.
 - A. Mediation. The mediation is non-binding, and intended to provide an opportunity for the parties to evaluate each other's cases and arrive at a mutually agreeable resolution of the dispute.
 - (1) Either party may initiate mediation by notifying the other party or parties in writing. A Request for Mediation shall contain a brief statement of the nature of the dispute or claim, and the names, addresses, and phone numbers of all parties to the dispute or claim, and those, if any, who will represent them in the mediation.
 - (2) The mediation process set forth in this Article shall be administered by the American Arbitration Association (AAA) and governed by their

- Construction Arbitration rules in effect at the time of filing, or by any other neutral organization agreed to by the parties (hereinafter called "Administrator").
- (3) The costs for all mediation, including the administrative fees and mediator compensation, will be shared equally by all parties. Fees shall be jointly negotiated by all parties directly with the Administrator. If all parties agree, then the mediation costs may increase as required for resolution of the dispute. The expenses of witnesses for any party shall be paid by the party producing such witnesses.
 - (4) A single mediator, acceptable to all parties, shall be used to mediate the dispute. The mediator will be knowledgeable in construction matters, and, if possible, with light rail systems design and construction issues, and will be selected from lists furnished by the Administrator. The initial mediation session shall commence within thirty (30) days of filing, unless otherwise agreed by the parties, or at the direction of the mediator.
 - (5) At least then (10) days before the first scheduled mediation session, each party shall provide the mediator a brief memorandum setting forth its position with regard to the issues that need to be resolved. Such memoranda shall be mutually exchanged by the parties. At the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issues presented. The mediator may require each party to supplement such information.
 - (6) Mediation hearings will be conducted in an informal manner and discovery will not be allowed unless agreed to by all parties. All discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose as they relate to either party's legal position. There shall be no stenographic record of the mediation.
 - (7) Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator. The parties may have an attorney present and shall advise the other parties no less than five (5) working days before the mediation of their intent to have an attorney present, so that the other parties may also have their attorneys present.
 - (8) The mediator does not have authority to impose a settlement on the parties but will attempt to assist the parties in reaching a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the parties, as the mediator shall determine.
 - (9) The mediator is authorized to end the mediation whenever, in the mediator's judgment, further efforts at mediation would not contribute to a resolution of the dispute between the parties.
 - (10) Any resultant agreements from mediation shall be documented in writing, as agreed upon during the mediation, and may be used as the basis for a change order or other directive as appropriate. All oral and written statements, presentations, results, testimony and documentation shall be non-binding and inadmissible for any purpose in any legal proceedings, unless such admission is otherwise agreed in writing by all parties. Mediators shall not be subject to any subpoena or liability

and their actions shall not be subject to discovery in subsequent proceedings.

- (11) The mediation shall be terminated by the execution of a Settlement Agreement by the parties; by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

- d. Rights and Remedies. The duties and obligations imposed by this Contract and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by the Contract and amendments thereto and all of the rights and remedies available to the NCTD hereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.
- e. NCTD shall not fail to pay money as to any portion of a claim that is undisputed except as otherwise provided in the contract.
- f. NCTD shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

03.24 CONTINUING THE WORK DURING DISPUTES

The Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with NCTD over any Work scope, price, or time dispute. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the Contractor and NCTD may otherwise agree in writing.

03.25 INSURANCE

1. Commercial General Liability

- a) The Consultant shall take out and maintain, during the performance of all work under this agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to NCTD.
- b) Coverage for Commercial General Liability insurance shall be at least as broad as the following:
- i) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001)
- c) Commercial General Liability Insurance must include coverage for the following:
- i) Bodily Injury and Property Damage
- ii) Personal Injury/Advertising Injury
- iii) Premises/Operations Liability
- iv) Products/Completed Operations Liability
- v) Aggregate Limits that Apply per Project
- vi) Explosion, Collapse and Underground (UCX) exclusion deleted
- vii) Contractual Liability with respect to this Contract
- viii) Broad Form Property Damage
- ix) Independent Contractors Coverage
- x) Pollution/Legal Liability (including Sudden and Accidental Pollution Coverage)
- d) All such policies shall name the North County Transit District, the Board and each member of the Board, its officers, employees, agents and NCTD designated volunteers as Additional Insureds under the policy.
- e) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by NCTD.

2. Automobile Liability

- a) At all times during the performance of the work under this agreement the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to NCTD.
- b) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 000 1 (ed. 6/92) covering automobile liability, Code I (any auto).
- c) The automobile liability program may utilize deductibles, but not a self-insured retention, subject to written approval by NCTD.
- d) All such policies shall name the North County Transit District, the Board and each member of the Board, its officers, employees, agents and designated volunteers as Additional Insureds under the policies.

3. Workers' Compensation/Employer's Liability

- a) At all times during the performance of the work under this agreement and for 24 months following the date of Project completion and acceptance by NCTD, the Consultant shall maintain workers' compensation in compliance with applicable statutory requirements and Employer's Liability Coverage in amounts indicated herein.
- b) Such insurance shall include an insurer's Waiver of Subrogation in favor of NCTD and will be in a form and with insurance companies acceptable to NCTD.
- c) If insurance is maintained, the workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by NCTD.
- d) Before beginning work, the Consultant shall furnish to NCTD satisfactory proof that he/she has taken out for the period covered by the work under this agreement, full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof Consultant shall require all subconsultants to obtain and maintain, for the period covered by the work under this agreement, worker's compensation of the same type and limits as specified in this Section.

4. Minimum Policy Limits Required

- a) The following insurance limits are required for the Contract:

	<u>Combined Single Limit</u>
Commercial General Liability	\$2,000,000 per occurrence/\$4,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	\$2,000,000 per occurrence/\$4,000,000 aggregate for bodily injury and property damage
Workers' Compensation	Statutory Limits
Employer's Liability	\$2,000,000 per occurrence

6. Evidence Required

- a) Prior to execution of the agreement, the Consultant shall file with NCTD evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent). All evidence of insurance shall be signed by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional primary insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

7. Policy Provisions Required

- a) All policies shall contain a provision for 30 days advance written notice by the insurer(s) to NCTD of any cancellation. Statements that the carrier "will endeavor" and "that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives," will not be acceptable on certificates.
- b) All policies shall contain a provision stating that the Consultant's policies are primary insurance and that the insurance of NCTD or any named insureds shall not be called upon to contribute to any loss.

8. Qualifying Insurers

- a) All policies required shall be issued by acceptable insurance companies, as determined by NCTD, which satisfy the following minimum requirements:

Insurance carriers shall be licensed to do business in California and maintain an agent for process within the state. Such insurance carrier shall have not less than an "A-" policyholder's rating and a financial rating of not less than "Class VII" according to the latest Best Key Rating Guide.

9. Additional Insurance Provisions

- a) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by NCTD, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this agreement, including but not limited to, the provisions concerning indemnification.
- b) If at any time during the life of the agreement, the Consultant fails to maintain in full force any insurance required by the agreement documents NCTD may terminate the agreement.
- c) The Consultant shall include all subconsultants as insureds under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.
- d) NCTD may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.
- e) Neither NCTD, nor the board, nor any member of the board, nor any of the directors, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of the Contract.
- f) Certificates of insurance, in form and with insurers satisfactory to the District, evidencing all coverages required above shall be furnished to the Board prior to the execution of a contract and before commencing any operations under this contract, with complete copies of policies provided upon the District's request within three (3) calendar in order to issue a Notice to Proceed.
- g) Certificate(s) of insurance must be mailed to the commercial contact/contract administrator specified in the proposal document and proposal document number (RFP **09063**) must be referenced on the certificate(s).
- h) In the event the Contractor is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California.

03.26 TERMINATION

- 03.26.1 Termination for Cause. NCTD may, without prejudice to any other right or remedy, serve written notice upon Contractor and its Surety of its intention to terminate this Contract if the Contractor (i) refuses or fails to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the time specified or any extension thereof, or (ii) fails to complete said Work within such time, or (iii) if the Contractor should file a bankruptcy petition or be adjudged a bankrupt, or (iv) if the Contractor should make a general assignment for the benefit of its creditors, or (v) if a receiver should be appointed on account of its insolvency, or (vi) if it should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the work in time specified, or (vii) if it should

fail to make prompt payment to subcontractors or for material or labor, or (viii) persistently disregard laws, ordinances or instructions of the NCTD or those of NCTD's Representatives, or (ix) otherwise be guilty of a substantial violation of any provision of the Contract, or (x) if it or its subcontractors should violate any of the provisions of this contract.

The notice of intent to terminate shall contain the reasons for such intention to terminate. Unless within ten (10) calendar days after the service of such notice, such condition shall cease or such violation shall cease and satisfactory arrangements for the correction thereof be made, this contract shall, upon the expiration of said ten (10) calendar days, cease and terminate. In such case, Contractor shall not be entitled to receive any further payment until Work is finished. In event of any such termination, NCTD shall immediately serve written notice thereof upon surety and Contractor written notice of termination stating that the contract has ceased and is terminated. Surety shall have the right to investigate, take over and perform this contract, provided, however, that if Surety, within fifteen (15) calendar days after service upon it of said notice of termination, does not give NCTD written notice of its intention to take over and perform this contract and does not commence performance thereof within twenty (20) calendar days from the date of service upon it of such notice of termination, NCTD may take over the Work and prosecute same to completion by contract or by any other method it may deem advisable for the account and at the expense of Contractor. Contractor and its Surety shall be liable to NCTD for any excess cost or other damages occasioned NCTD thereby. If NCTD takes over the Work as hereinabove provided, NCTD may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the site of the Work and necessary therefore. If Surety does not perform the Work itself, the Surety shall consult with NCTD regarding its planned choice of a contractor or contractors to complete the Project, and upon request by NCTD, Surety shall provide NCTD evidence of responsibility of Surety's proposed contractor or contractors. NCTD shall be entitled to reject Surety's choice of contractor or contractors if NCTD determines in its sole discretion that the contractor or contractors are nonresponsible. If Surety provides NCTD written notice of its intention to take over and perform this Contract, within fifteen (15) calendar days of such written notice of intent to take over and perform, Surety or its chosen contractor or contractors (if such contractor or contractor's are approved by NCTD) shall provide NCTD a detailed Progress Schedule as specified in this RFP. Contractor and its Surety shall be liable to NCTD for any excess cost or other damages occasioned NCTD as a result of Surety or Surety's contractor or contractors takeover and performance.

If the unpaid balance of the contract price exceeds the expense of finishing work, including compensation for additional architectural, managerial, and administrative services, such excess shall be paid to Contractor. If such expense shall exceed such unpaid balance, Contractor shall pay the difference to NCTD. Expense incurred by NCTD as herein provided, and damage incurred through Contractor's default, shall be certified by the appropriate NCTD Representative.

Should NCTD determine that environmental considerations mandate that the underlying project should not go forward, NCTD may notify Contractor that this contract is terminated due to environmental considerations and NCTD shall only be obligated to pay Contractor for the Work that Contractor had performed at the time of notification of termination of this Contract for environmental considerations.

03.26.2 Termination For Convenience: NCTD may terminate performance of the Work called for by the Contract Documents in whole or, from time to time, in part, if NCTD determines that a termination is in NCTD's interest. The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience, the extent of termination, and the Effective Date of such termination. After receipt of Notice of Termination, and except as directed by NCTD, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

1. Stop Work as specified in the Notice.
2. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.

3. Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
 4. Terminate all subcontracts to the extent that they relate to the portions of the Work terminated.
 5. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.
 6. Submit to NCTD, within ten (10) calendar days from the Effective Date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of NCTD's exercise of its right to terminate this Contract pursuant to this clause, which costs the Contractor is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by NCTD no later than thirty (30) calendar days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs occasioned by NCTD's Termination for Convenience."
- 03.26.3 Termination of the Contract shall not relieve Surety of its obligation for any just claims arising out of or relating to the Work performed. In the event that NCTD exercises its right to terminate this Contract pursuant to this provision, NCTD shall pay the Contractor, upon the Contractor's submission of the documentation required by this clause and other applicable provisions of the Contract Documents, all actual reimbursable costs incurred according to the provisions of this Contract.
- 03.26.4 Termination of Contract by Contractor: The Contractor may terminate the Contract upon ten (10) calendar days written notice to NCTD, whenever: (1) the entire Work has been suspended for ninety (90) consecutive days through no fault or negligence of the Contractor, and notice to resume the Work or to terminate the Contract has not been received from NCTD within this time period; or (2) NCTD should fail to pay the Contractor any substantial sums due it in accordance with the terms of the Contract and within the time limits prescribed. In the event of such termination, the Contractor shall have no claims against NCTD except for Work performed as of the date of termination.
- 03.26.5 The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to NCTD.
- 03.26.6 Notwithstanding the foregoing provisions, this Contract may not be terminated or modified where a trustee-in-bankruptcy has assumed the Contract pursuant to 11 U.S.C. section 365 (Federal Bankruptcy Act).

04 CONTRACTOR'S RESPONSIBILITIES

04.01 CONTRACTOR'S LICENSE CLASSIFICATION:

The Contractor shall possess, and must maintain throughout the duration of the contract, a California Contractor's License, Classification A or B.

04.02 CONTRACTOR'S RESPONSIBILITY FOR THE WORK AND MATERIALS:

Until the final acceptance of all the contract work, the Contractor shall have the charge and care of the Work and of the materials to be used therein or materials which have been furnished by NCTD, and shall bear the risk of injury, loss or damage to any part thereof due to any cause, whether arising from the execution or from the non-execution of the work.

The Contractor shall rebuild, repair, restore and make good all injuries, losses or damages to any portion of the Work or the materials occasioned by any cause before its completion and acceptance and shall bear the full expense thereof. In the event Contractor fails with respect to its obligations under this section, NCTD may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor necessary and sufficient to repair and remedy said losses or damages pursuant to its rights under Payment Withheld Clause of the RFP. Where necessary to protect the Work or materials from damage, the Contractor shall, at his expense, provide suitable drainage and erect such temporary drainage. The suspension of the Work for any cause whatever shall not relieve the Contractor of his responsibility for the Work and materials as herein specified.

04.03 EQUIPMENT AND/OR MATERIAL PURCHASES MADE ON BEHALF OF NCTD:

In the event that written direction is given to the Contractor by NCTD to make any equipment or material purchases in excess of \$2,500.00 that are paid for in part or in full by NCTD and that were not included in the Contractors original quotation, proposal or bid, the Contractor is to provide evidence that a competitive procurement process was followed in accordance with all local, state and federal requirements that NCTD is subject to, prior to payment being made by the District to the Contractor or to a third party. At a minimum, two quotes, bids or proposals from two separate firms should be received in order to have a competitive procurement but more than two should be received if the value or circumstances warrant such. NCTD's sole source justification form signed by the District's Manager of Contracts and Procurement is required for all single source or sole source purchases that have not been competitively procured. This authorization must be dated prior to the commencement of the procurement action and is available upon request.

When the District uses federal funds to make payment to the Contractor, then the Contractor is to provide the District with a copy of the contract or purchase agreement used for equipment and material purchases directed by the District that shows that the current FTA clauses and required certifications are included. Original copies of the required certificates made out to the District must accompany the contract documents. The Contractor should contact the District's assigned Contracts Administrator named in the Agreement for guidance and provision of current federal clauses and certificates or other required forms or documents prior to undertaking any procurement that the District is required to pay for under this or another Agreement between the District and the Contractor.

04.04 EQUIPMENT AND/OR MATERIAL PURCHASES MADE FOR THE BENEFIT OF THE CONTRACTOR:

If the Contractor is given permission to purchase equipment or materials for use by the Contractor in the performance of the work, the Contractor shall maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of the Agreement. The inventory record of each piece of such equipment shall include the date acquired, total cost, serial number, model identification (on purchased equipment), and any other information or description necessary to identify said equipment. Non-expendable equipment so inventoried are those items of equipment that have a normal life expectancy of one (1) year or more and an approximate unit price of \$5,000 or more. In addition, theft-sensitive items of equipment costing less than \$5,000 or more shall be inventoried. A copy of the inventory record must be submitted to the District upon request.

At the conclusion of the Agreement or if the Agreement is terminated the Contractor may either keep the equipment and credit the District in an amount equal to its fair market value or sell such equipment at the best price obtainable, at a public or private sale and credit the District an amount equal to the sales price. If the Contractor elects to keep the equipment, fair market value shall be determined, at the Contractor's expense, on the basis of a competent,

independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to the District and the Contractor. If the Contractor then determines to sell the equipment or materials, the terms and conditions of such sale must be approved in advance by the District.

04.05 RESPONSIBILITY OF CONTRACTOR TO PERFORM:

Unless otherwise specified in the Contract Documents, the Contractor shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up, and completion of the work. Such support that may need to be provided after normal working hours will be provided by the Contractor at its expense.

04.06 CONTRACTOR'S DAILY REPORTS:

The Contractor shall complete a daily report indicating his total manpower for each construction trade, major equipment on site, each Subcontractor's manpower, weather conditions, and any other items required by NCTD. The daily report shall be completed on forms provided by NCTD, and shall be submitted to NCTD by 9:00 AM the following workday. The report should comment on the daily progress and status of the Work within each major component of the work. These components will be decided by NCTD. Submitting acceptable daily reports as required is a precondition to approval of the monthly progress payment.

04.07 SUPERVISION, SUPERINTENDENCE AND QUALITY

The Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the RFP. The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incidental thereto. The Contractor shall be responsible to see that the completed work complies accurately with the RFP. The Contractor is solely responsible for the quality of the work.

04.08 SUPERINTENDENT

- 04.08.1 Written Designation of Superintendent: The Contractor shall designate in writing and keep on the Work site at all times during its progress a technically qualified, Superintendent, with sufficient written and oral communication skills to adequately serve as Contractor's representative, and an alternate who are employees of the Contractor and who shall not be replaced without written notice to NCTD. The Superintendent will be the Contractor's representative at the site and shall have authority to act on behalf of the Contractor. All communications given to the Superintendent shall be as binding as if given to the Contractor
- 04.08.2 Superintendent's Presence at Site: The Contractor's Superintendent or alternate shall be present at the site of the Work at all times while work is in progress, and shall be available by phone for emergencies 24 hours per day, 7 days per week. Failure to observe this requirement shall be considered suspension of the Work by the Contractor until such time as such the Superintendent is again present at the site.
- 04.08.3 Removal of the Superintendent: Upon written notice, NCTD may require replacement and removal from the Work of the Contractor's Superintendent with cause, in which case the Contractor shall submit a replacement Superintendent subject to approval by NCTD, at no increase in Contract Price or Contract Time. Repeated safety violations on the job site will be sufficient grounds for directing such replacement.

04.09 LABOR

- 04.09.1 The Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the RFP. Any person employed, who is found to be incompetent, intemperate, troublesome, disorderly or otherwise objectionable, or who fails or refuses to perform work properly, acceptably, and safely, shall be immediately removed from the Work by the Contractor and not be re-employed on the Work. The Contractor shall at all times maintain good discipline and order at the site.
- 04.09.2 Approval Required to Work Outside Normal Work Hours: Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise

indicated in the Contract Documents, all work at the site shall be performed during normal working hours, or 7:00am to 5:00pm, and the Contractor will not permit overtime work or the performance of work on Saturday, Sunday, or any NCTD observed holiday without NCTD's written consent. NCTD will coordinate inspection staff, to the extent possible, to accommodate Contractor inspection requirements during normal work hours. If, however, a Contractor request requires Work on Saturday, Sunday, an observed NCTD holiday or a second shift to observe progress or provide inspection, then Contractor will be charged the stipulated rate under the relevant Federal or State General Prevailing Wage determinations. The Contractor will be responsible for reimbursing NCTD for all costs to provide inspection services required to monitor Work outside of normal Work hours. The Contractor will be charged for this at the stipulated hourly rate, and a deductive change order will be issued to cover this expense.

04.10 SUBCONTRACT LIMITATIONS

The Contractor shall perform not less than thirty-five percent (35%) of the Work with its own forces without subcontracting. This requirement refers to the Work whose value will not be less than thirty-five percent (35%) of the Contract Price.

04.11 SUBCONTRACTORS/SUBCONTRACTING

04.11.1 Subcontractors. In compliance with the Subletting and Subcontracting Fair practices Act (Chapter 2 [commencing at Section 4100], Division 5, Title 1 of the Government Code of the State of California) and any amendments thereof, each Offeror shall complete all portions of the List of Subcontractors form attached hereto. The prime Contractor shall list only one subcontractor for each such portion as is defined by the prime Contractor in this bid.

If a prime Contractor fails to specify a subcontractor, he shall be deemed to have agreed that he is fully qualified to perform that portion himself, and that he shall perform that portion himself.

No prime Contractor whose bid is accepted shall (a) substitute any subcontractor, (b) permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, or (c) sublet or subcontract any portion of the work. Subletting or subcontracting of any portion of the Work in excess of one-half of one percent of the prime Contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of NCTD awarding this contract setting forth the facts constituting the emergency or necessity.

04.11.2 Subcontracting. Contractor agrees to bind every subcontractor the terms of the Contract as far as such terms are applicable to subcontractor's work. If Contractor subcontracts any part of this Contract, Contractor shall be as fully responsible to NCTD for the acts and omissions of its subcontractor and of persons either directly or indirectly employed by his subcontractor, as he is for acts and omissions of persons directly employed by himself. Nothing contained in these contract documents shall create any contractual relationship between any subcontractor and the NCTD. NCTD shall be deemed to be the third party beneficiary of the contract between the Contractor and the subcontractors. NCTD's consent to or the approval of any subcontractor under this Contract shall not in any way relieve Contractor of its obligations under this Contract and no such consent or approval shall be deemed to waive any provision of this Contract. Substitution or addition of subcontractors shall be permitted only as authorized in chapter 4 (commencing at section 4100), part 1, division 2 of the California Public Contract Code.

04.12 SHOP DRAWINGS AND SAMPLES

04.12.1 After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, the Contractor shall submit to NCTD for the Design Consultant's or NCTD's review all shop drawings.

04.12.2 Before submittal of each shop drawing or sample, the Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and reviewed or coordinated each shop drawing or sample with other shop drawings and samples and with the requirements of the Work and the RFP.

04.13 SUBMITTAL ACCEPTANCE

- 04.13.1 Design Consultant or NCTD Review Scope and Limitation: Design Consultant or NCTD will review and approve Shop Drawings and Samples. Design Consultant's or NCTD's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Design Consultant's or NCTD's review and approval will not extend to means, methods, techniques, sequences or procedures of construction except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Contractor shall make corrections required by Design Consultant or NCTD, and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Design Consultant or NCTD on previous submittals.
- 04.13.2 Contractor's Responsibility Not Relieved By Approval: NCTD or the Design Consultant's review and approval of Shop Drawings or Samples shall not relieve the Contractor from responsibility for any variation from the requirements of the Contract Documents unless the Contractor has in writing called the Design Consultant's or NCTD's attention to each such variation at the time of submission and the Design Consultant or NCTD has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by the Design Consultant or NCTD relieve the Contractor from responsibility for complying with the Contract Documents.

04.14 PERMITS AND INSPECTION COSTS

The Contractor shall obtain such permits as may be required by the ordinances and regulations of the public agencies having jurisdiction over the areas in which the Work is located, and the Contractor shall comply with all the terms and conditions thereof and with all lawful orders and regulations of each such public agency relating to construction operations under the jurisdiction of such agency. The Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the work, which are applicable at the time of opening of Bids. The Contractor shall pay all charges of utility owners for connection to the Work. The specific cost paid by the Contractor for permits, licenses and connection fees will be reimbursed at an amount equal to the exact cost, and paid as part of a progress payment. Any permit, license or utility costs shall be coordinated by the Contractor for payment by NCTD directly to the agency after submittal of documentation. Estimates or projections of these costs shall not be included in the bid.

04.15 PROTECTION OF EXISTING IMPROVEMENTS

- 04.15.1 The Contractor shall be responsible for the protection of any existing improvements and Public utilities within and adjacent to the job site and shall exercise due caution to avoid damage to such improvements.
- 04.15.2 Except as required in this Contract, the Contractor shall repair or replace all existing improvements and Public utilities damaged or removed as a result of this contract work. Repairs and replacements shall be at least equal to existing improvements and shall match them in finish and dimension. All costs for protecting, removing, restoring and replacing existing improvements shall be borne solely by the Contractor.

04.16 SITE ACCESS AND STORAGE

NCTD's facilities operate 24 hours/day, seven days a week. As such the Contractor shall not disrupt routine daily operations during the course of his work.

No driveway or existing access to existing facilities and parking area can be blocked or obstructed without approval from the facilities manager.

Any areas requiring trenching or open excavation within the boundaries of existing facilities shall be appropriately

covered at all times with trench plates or other devices so as to allow continuous passage by busses or other large vehicles.

Temporary Bridges: Wherever necessary, the Contractor shall provide suitable temporary bridges or steel plates over unfilled excavations, except in such cases as the Contractor shall secure the written consent of the individuals or authorities concerned to omit such temporary bridges or steel plates, which written consent shall be delivered to NCTD prior to excavation. All such bridges or steel plates shall be maintained in service until access is provided across the backfilled excavation. Temporary bridges or steel plates for street and highway crossing shall conform to the requirements of the authority having jurisdiction in each case, and the Contractor shall adopt designs furnished by said authority for such bridges or steel plates, or shall submit design to said authority for approval, as may be required.

Street Use: Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, alleyway, or parking area during the performance of the Work hereunder, and it shall so conduct its operations as not to interfere unnecessarily with the authorized work of utility companies or other agencies in such streets, alleyways, or parking areas. No street shall be closed to the public without first obtaining permission of NCTD and proper governmental authority. Where excavation is being performed in primary streets or highways, one lane in each direction shall be kept open to traffic at all times unless otherwise indicated. Toe boards shall be provided to retain excavated material if required by NCTD or the agency having jurisdiction over the street or highway. Fire hydrants on or adjacent to the Work shall be kept accessible to fire-fighting equipment at all times. Temporary provisions shall be made by the Contractor to assure the use of sidewalks and the proper functioning of all gutters, storm drain inlets, and other drainage facilities.

Traffic Control: For the protection of traffic in public or private streets and ways, the Contractor shall provide, place, and maintain all necessary barricades, traffic cones, warning signs, lights, and other safety devices in accordance with the requirements of the "Manual of Uniform Traffic Control Devices, Part VI- Traffic Controls for Street and Highway Construction and Maintenance Operations," published by U.S. Department of Transportation, Federal Highway Administration (ANSI D6.1).

The Contractor shall take all necessary precautions for the protection of the Work and the safety of the public. All barricades and obstructions shall be illuminated at night, and all lights shall be kept burning from sunset until sunrise. The Contractor shall station such guards or flaggers and shall conform to such special safety regulations relating to traffic control as may be required by the public authorities within their respective jurisdictions. All signs, signals, and barricades shall conform to the requirements of Cal-OSHA and Subpart G, Part 1926, of the OSHA Safety and Health Standards for construction, and other applicable state and federal laws, rules, and regulations.

In addition the Contractor shall request and arrange for a flag person when its personnel and equipment are within twenty (20) feet of the nearest rail.

04.17 QUALITY OF MATERIALS/COMPLIANCE WITH INDUSTRIAL SAFETY CODES

Even though certain parts, materials and work are purchased or contracted for, by the Contractor, from an outside source under a subcontract, or separate purchase, the Contractor shall assume full responsibility for the quality and suitability of all items. All equipment shall be in complete compliance with all requirements of the Laws of the State of California and the County of San Diego, as well as all applicable Federal Laws and Regulations at date of installation.

04.18 DAMAGED MATERIALS OR EQUIPMENT

Any materials or equipment found to be damaged or defective at the time of delivery and are the Contractor's responsibility shall be repaired, replaced or corrected by the Contractor hereunder without additional cost to NCTD. If the Contractor shall fail to comply within a reasonable time with any order of the Executive Director to repair/replace or correct damaged or defective work, then the Executive Director shall, upon written notice to the Contractor, have the authority to deduct the reasonable cost thereof from any compensation due to the Contractor.

04.19 COOPERATION WITH NCTD, PUBLIC UTILITIES COMPANIES AND ANY OTHER CONTRACTORS

Contractor will coordinate and cooperate with any other contractors to ensure timely access to the site for all personnel and equipment involved in this work and the Work of any related contracts.

04.19.1 Removal or relocation of main or trunkline utility facilities: NCTD may have endeavored to determine the existence of utilities at the site of the Work from the records of the owners of known utilities in the vicinity of the work, and may have shown the positions of these utilities as derived from such records on the plans. However, no excavations were made to verify the locations shown for underground utilities. The service connections to these utilities are not shown on the plans. It shall be the responsibility of the Contractor to determine the exact location of all service connections. The Contractor shall make his own investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing work which could result in damage to such utilities. The Contractor shall immediately notify NCTD's Representative as to any utility discovered by him in a different position than shown on the plans or which is not shown on the plans.

1. Main Or Trunkline Facilities:

- a. Notwithstanding the above, pursuant to Section 4215 of the Government Code, as it may be amended from time to time, NCTD has the responsibility to identify, with reasonable accuracy, main or trunkline facilities on the plans and specifications. In the event that main or trunkline utility facilities are not identified with reasonable accuracy in the plans and specifications made a part of the Request for Proposals, NCTD shall assume the responsibility for their timely removal, relocation, or protection.
- b. The Contractor shall be compensated by NCTD for the costs of locating and repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing, relocating, protecting or temporarily maintaining such main or trunkline utility facilities not indicated with reasonable accuracy in the plans and specifications, and for equipment in the Project necessarily idled during such work. In this regard, Contractor will be required to do such work in accordance with **Article 49** herein.
- c. Alternatively, NCTD may make changes in the alignment and grade of the Work to obviate the necessity to remove, relocate, or temporarily maintain the utility, in accordance with **Article 49** or NCTD may make arrangements with the owner of the utility for such work to be done at no cost to the Contractor.
- d. The Contractor shall not be assessed a forfeiture for delay in completion of the Project when such delay is caused by the failure of NCTD or the owner of the utility to provide for the removal, relocation, protection or temporary maintenance of all such main or trunkline facilities not indicated with reasonable accuracy.
- e. Nothing herein shall preclude NCTD from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility.
- f. Nothing herein shall be construed to relieve the utility from any obligation as required either by law or by contract to pay the cost of removal or relocation of existing utility facilities.
- g. If the Contractor while performing the Contract discovers utility facilities not identified by NCTD in the Contract plans or specifications, he shall immediately notify NCTD and utility in writing.
- h. The owner of the public utility shall have the sole discretion to perform repairs or relocation work or hire the Contractor to do such repairs or relocation work at a reasonable price.

2. Other Utilities:

In case it should be necessary to remove, relocate, or temporarily maintain a utility because of interference with the work, the Work on the utility shall be performed and paid for as follows:

- a. When it is necessary to remove, relocate or temporarily maintain a service connection, the cost of which is not required to be borne by the owner thereof, the Contractor shall bear all expenses incidental to the Work on the service connection. The work on the service connection shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the service connection has the option of doing such work with his own forces or permitting the Work to be done by the Contractor.

- b. When it is necessary to remove, relocate, or temporarily maintain a utility which is in the position shown on the plans, the cost of which is not required to be borne by the owner thereof, the Contractor shall bear all expenses incidental to the Work on the utility. The work on the utility shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the utility has the option of doing such work with his own forces or permitting the Work to be done by the Contractor.
- c. When it is necessary to remove, relocate, or temporarily maintain a utility which is not shown on the plans or is in a position different from that shown on the plans and were it in the position shown on the plans would not need to be removed, relocated, or temporarily maintained, and the cost of which is not required to be borne by the owner thereof, NCTD will make arrangements with the owner of the utility for such work to be done at no cost to the Contractor, or will require the Contractor to do such work in accordance with **Article 49** or will make changes in the alignment and grade of the Work to obviate the necessity to remove, relocate, or temporarily maintain the utility. Changes in alignment and grade will be ordered in accordance with **Article 49** herein.
- d. No representations are made that the obligations to move or temporarily maintain any utility and to pay the cost thereof is or is not required to be borne by the owner of such utility, and it shall be the responsibility of the Contractor to investigate to find out whether or not said cost is required to be borne by the owner of the utility.
- e. The right is reserved to governmental agencies and to owners of utilities to enter at any time upon any street, alley, right-of-way, or easement for the purpose of making changes in their property made necessary by the Work and for the purpose of maintaining and making repairs to their property.

04.20 SAFETY LAWS AND REGULATIONS

The Contractor shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and of underground facilities and utilities when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

Safety Orders: The Contractor shall have at the Work site as applicable, copies of: Construction Safety Orders, Tunnel Safety Orders, and General Industry Safety Orders issued by the State Division of Industrial Safety. The Contractor shall comply with provisions of these and all other applicable laws, ordinances, and regulations.

Trench Shoring Plan: Before excavating any trench 5 feet or more in depth, the Contractor shall comply with the provisions of Section 03.23.

04.21 HAZARDOUS COMMUNICATION PROGRAM

Notification to employees is required when materials that contain hazardous substances or mixtures are required on the Work. A Material Safety Data Sheet as described in Section 5194 of the California Code of Regulations shall be requested by the Contractor from the manufacturer of any hazardous product used.

Material usage shall be accomplished with strict adherence to California Division of Industrial Safety requirements and all manufacturer's warnings and application instructions listed on the Material Safety Data Sheet and on the product container label.

Safety Measures In Bid: Payment for performing all work necessary to provide safety measures shall be included in the prices bid for other items of work except where separate bid items for excavation safety are provided.

04.22 CHANGES AND EXTRA WORK

- 04.22.1 Change in Work: NCTD may without affecting the validity of this contract and without notice to sureties, order changes, modifications, deletions and extra work by issuance of written change orders. Contractor shall not be entitled to extra time or compensation for any extra work performed unless NCTD has issued a Field Work Directive prior to start of extra work, designating the extra work and

providing an estimate for the amount of compensation for the work. If a change order deletes any work, the contract price shall be reduced by a fair and reasonable amount.

If the Contractor should claim that any instruction, request, drawings, specification, action, condition, omission, default, or other situation obligates NCTD to pay additional compensation to the Contractor or to grant an extension of time for the completion of the contract, or constitutes a waiver of any provision in the contract, he/she shall notify NCTD, in writing, of such claim within the ten (10) days from the date he/she has actual or constructive notice of the factual basis supporting the claim. The Contractor's failure to notify NCTD within such ten (10) day period shall be deemed a waiver and relinquishment of the claim against NCTD. If such notice be given within the specified time, the procedure for its consideration shall be as stated in this contract.

Any claim for extension of time caused thereby shall be adjusted as described under "EXTENSION OF TIME."

All compensation changes authorized by NCTD will be based upon the submittal of itemized and detailed statements. Work shall be changed and the contract price and completion date shall be modified only as set out in the written change orders.

Failure to agree on an adjustment of the contract price or extension of time for performance of the contract shall not excuse Contractor from proceeding with prosecution of the Work as changed.

04.22.2 Payment for Extra Work: Value and payment of any such extra work change, or deduction shall be determined at the discretion of NCTD in one or more of the following ways:

1. Unit prices contained in Contractor's original bid and incorporated in Contract Documents, unit prices contained in bid documents, or fixed by subsequent agreement between NCTD and Contractor. If Contractor and NCTD are unable to reach agreement based on unit prices, value and payment of work shall be determined by (b);
2. Acceptable lump sum bid from Contractor. If Contractor and NCTD are unable to reach agreement on lump sum price, value and payment of work shall be determined by (c);
3. On a time and expense basis as described below:

04.22.3 Lump Sum Change Orders: Changes in contract price resulting from extra work may be determined by a mutually agreed upon lump sum price. The Contractor's bid shall include a detailed breakdown of all labor and materials to be performed by his forces or the forces of his subcontractors or material supplier. The breakdown shall include labor surcharge and sales tax cost. Whenever NCTD requests that the Contractor prepare a lump sum price in connection with the change order, the Contractor shall be entitled to all costs incurred in the preparation of that price. Such costs will be incorporated in the lump sum amount regardless of whether or not the lump sum amount is finally accepted by NCTD. NCTD shall determine sufficiency of cost breakdown.

If the change involves extra work to be performed entirely by the Contractor, compensations for such extra work shall be based on all direct costs* as listed in the detailed bid plus fifteen percent (15%) of such direct costs for overhead and profit, and one percent (1%) of such direct costs for bond. **Direct costs are defined as: Direct Hourly Rate Paid, Federal Unemployment Tax, Employers Medicare contribution, Employers Social Security contribution, State Employment Training Tax, State Unemployment Tax.* When the extra work involves subcontractors and material suppliers, compensation for such work shall be based on all direct costs as listed by the subcontractor or material supplier plus fifteen percent (15%) of such costs for the subcontractor's or supplier's overhead and profit. The Contractor may add five percent (5%) to the subcontractor or material supplier's bid for overhead and profit, and one percent (1%) for bond. The above allowances for overhead and profit shall include full compensation for any and all items, all overhead including superintendence, insurance premiums, taxes, field office expenses, extended overhead, home office overhead, and profit.

04.22.4 Subcontractor Mark Up: It is understood that labor, materials, and equipment may be furnished by the Contractor or by the Subcontractor on behalf of the Contractor. When all or any part of the extra work is performed by a subcontractor, the allowance specified herein shall be applied to the labor, materials, and equipment costs of the subcontractor, to which the Contractor may add five percent (5%) of the

subcontractor's total cost for the extra work. Regardless of the number of hierarchical tiers of the Subcontractors, the five percent (5%) increase above the performing Subcontractor's total cost which includes the allowances for overhead and profit may be applied one time only.

04.22.5 Deductive Change Orders: When the change order involves work omitted, the reduction of the contract price shall be based on all direct costs as listed in the detailed bid or escrow bid documents submitted by the Contractor. An additional reduced overhead costs attributable to the Work omitted. No reduction will be made for profit originally attributable to the omitted work.

04.22.6 Time and Expense Change Orders: To obtain payment for a time and expense change order, the Contractor shall submit a daily report to NCTD's Representative on forms approved by NCTD. Included are applicable delivery tickets, listing all labor, materials, and equipment involved for that day, and other services and expenditures when authorized. Failure to submit the daily report by the close of the next working day may waive any rights for that day. An attempt shall be made to reconcile the report daily, and it shall be signed by NCTD's Representative and the Contractor. In the event of disagreement, pertinent notes shall be entered by each party to explain points which cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by subcontractors or others shall be submitted through the Contractor.

The report shall:

- Show names of workers, classifications, and hours worked.
- Describe and list quantities of materials used.
- Show type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable.
- Describe other services and expenditures in such detail as the Agency may require.

Payment to the Contractor for extra work performed on a time and expense basis shall consist of the actual necessary expense for doing the extra work, plus an allowance of NOT TO EXCEED fifteen percent (15%) of labor, material and equipment rental for overhead, and profits (based on risk) plus one percent (1%) for bond. This basis of payment applies to work done directly by the Contractor and to work done by a subcontractor, except the one percent (1%) allowance for bond shall not apply to work performed by a subcontractor. When the Work is done by a subcontractor, the Contractor may add NOT TO EXCEED five percent (5%) to the subcontractor's charges to cover overhead and profit (based on risk) and one percent (1%) for bond. Provisions for subcontractor mark-up shall be the same as those detailed under "Lump Sum Change Orders" above. Non-direct labor costs, including superintendence, shall be considered part of the allowances for overhead and profit.

In determining time and expense compensation, the term "actual necessary expense" shall mean the sum of, 1) labor, 2) materials, 3) equipment, 4) professional services, and 5) other costs. Charges for such items shall mean the actual cost whether incurred by the Contractor, a subcontractor or others. Vendors' invoices for material, equipment rental and other expenditures must be submitted with the request for payment. No payment shall be made without said documentation. The items making up "actual necessary expense" are defined as follows:

Labor: The costs of labor will be the actual cost for wages of workers performing the extra work at the time the extra work is done, plus employer payments of payroll taxes, workers' compensation insurance, liability insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs, resulting from Federal, State, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements.

The use of a labor classification which would increase the extra work cost will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. The labor cost for foreman shall be proportioned to all of their assigned work and only that applicable to extra work will be paid.

Materials: The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available and delivered to the job site in the quantities involved, plus sales tax, freight and delivery.

The Agency reserves the right to approve materials and sources of supply, or to supply materials to the Contractor if necessary for the progress of the work. No mark-up shall be applied to any material provided by the Agency.

Tools and Equipment: No payment will be made for the use of tools which have a replacement value of \$200 or less.

Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the Work is performed.

The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals. Necessary loading and transportation costs for equipment used on the extra work shall be included. When equipment is used on the extra work for more than four (4) days, weekly rates shall be used. When equipment is used on extra work for more than one month, monthly rates shall be used.

If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the Agency than holding it at the Work site, it shall be returned unless the Contractor elects to keep it at the Work site, at no expense to the Agency.

All equipment shall be acceptable to the NCTD Representative, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and approved modifications shall be used to classify equipment and it shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

The reported rental time for equipment already at the Work site shall be the duration of its use on the extra work. This time begins when equipment is first put into actual operation on the extra work, plus the time required to move it from its previous site and back or to a closer site.

Professional Services: Professional services may be included as an "actual necessary expense" when NCTD has determined that such services are necessary and the provision of such services has been authorized in writing by the NCTD Representative.

Other Costs: Charges for items not included in 1 through 4 above may be included as "actual necessary expense" if such additional items are authorized in advance and in writing by the NCTD Representative.

04.23 CHARGES TO CONTRACTOR

Everything charged to the Contractor under the terms of this contract shall be paid by the Contractor to NCTD on demand. Such charges may be deducted by NCTD from any money due or to become due to the Contractor under the contract. NCTD may recover such charges from the Contractor or from his/her surety.

04.24 DELAYS

04.24.1 Avoidable Delays: Avoidable delays in the prosecution of the Work shall include all delays which could have been avoided by the exercise of care, prudence, foresight and diligence on the part of the Contractor or his subcontractors. Avoidable delays include:

- Delays which may in themselves be unavoidable but which affect only a portion of the Work and do not necessarily prevent or delay the prosecution of other parts of the Work nor the completion of the whole work within the contract time.
- Time associated with the reasonable interference of other Contractors employed by NCTD which do not necessarily prevent the completion of the whole work within the contract time.

04.24.2 Unavoidable Delays: Unavoidable delays in the prosecution or completion of the Work shall include all delays which result from causes beyond the control of the Contractor and which could not have been avoided by the exercise of care, prudence, foresight and diligence on the part of the Contractor or

his subcontractors. Delays due to normal weather conditions shall not be regarded as unavoidable as the Contractor agrees to plan his work with prudent allowances for interference by normal weather conditions. Delays caused by acts of God, fire, unusual storms, floods, tidal waves, earthquakes, strikes, labor disputes, freight embargoes and shortages of materials shall be considered unavoidable delays.

04.24.3 Extension of Time Due to Weather Delays: The construction schedule shall be based upon the inclusion of ten (10) days of inclement weather delays. An inclement weather delay is defined as a delay caused by inclement weather which prevents the Contractor from working on the controlling item in the Contractor's construction schedule (i.e. Current critical path item). Should the Contractor experience weather delays over the course of the contract duration in excess of ten (10) days, the Contractor shall be granted a time extension for an equal number of days, pursuant to the provisions outlined herein under unavoidable delays.

04.24.4 Notice of Delays: Whenever the Contractor foresees any delay in the prosecution of the Work and in any event, immediately upon the occurrence of any delay which the Contractor regards as unavoidable, he/she shall notify NCTD's Representative in writing of the probability of the occurrence of such delay and its cause. The Contractor shall take immediate steps to prevent, if possible, the occurrence or continuance of the delay. The Contractor agrees that no claim shall be made for delays which are not called to the attention of the NCTD's Representative at the time of their occurrence.

04.25 EXTENSION OF TIME

The contract time may only be changed by a change order. Any request by the Contractor for an extension of the contract time shall be based on a written notice within seven (7) calendar days after the occurrence of the event giving rise to the request, and stating the general nature of the request. Notice of the extent of the request with supporting data shall be delivered within fourteen (14) calendar days after such occurrence, and shall be accompanied by the Contractor's written statement that the adjustment requested is the entire time adjustment to which the Contractor has reason to believe it is entitled as a result of the occurrence of said event. An increase in time does not mean that the Contractor is entitled to an increase in contract price.

An extension in contract time will not be granted unless the Contractor can demonstrate through an analysis of the CPM progress schedule critical path that the increases in time to perform or complete the Work in question, or specified part of the work, beyond the corresponding contract time(s) arise from unforeseeable causes beyond the control of the Contractor and his Subcontractors, suppliers or other persons or organizations, and that such causes in fact lead to performance or completion of the Work, or specified part in question, beyond the corresponding contract time, despite the Contractor's reasonable and diligent actions to guard against those effects.

Avoidable Delays: In case the Work is not completed in the time specified, including extension of time as may have been granted for unavoidable delays, the Contractor will be assessed liquidated damages for those costs incurred by NCTD which are attributable to the fact that the Work was not completed on schedule. NCTD may grant an extension of time for avoidable delay if he deems it in his best interest. If NCTD grants an extension of time for avoidable delay, the Contractor agrees to pay all charges for engineering inspection and administration during the extension. In this event, NCTD agrees that he will not assess damages to the Contractor.

Unavoidable Delays: For delays which the Contractor considers to be unavoidable, it shall submit to the NCTD Representative complete information demonstrating the effect of the delay on the critical path of the CPM construction schedule, pursuant to the method described above. During such extension of time, neither extra compensation or engineering inspection and administration nor damages for delay will be charged to the Contractor. It is understood and agreed by the Contractor and NCTD that time extensions due to unavoidable delays will be granted only if such unavoidable delay involve critical path activities which would prevent completion of the whole Work within the specified contract time.

04.26 PROGRESS MEETINGS

The Contractor shall schedule and hold regular on-site progress meetings at least weekly, and at other times as required by the Work. The Contractor and NCTD shall attend. The Contractor may also bring representatives of its suppliers, manufacturers and subcontractors.

The Contractor shall preside at the meetings, and will arrange for keeping and distributing the minutes. The purpose of the meeting will be to review the progress of the work, maintain coordination efforts, discuss changes in

scheduling, and resolve other problems which may develop. During each meeting, the Contractor is required to present any issues which may impact his work with a view to resolve these issues expeditiously.

04.27 PROGRESS SCHEDULE

The Contractor shall adhere to the progress schedule established in accordance with the following requirements, as it may be adjusted from time to time as provided below:

- 04.27.1 **Non-Impacting Adjustments:** Contractor shall submit to NCTD for acceptance proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.
- 04.27.2 **Revisions To Contract Times (or Milestones):** Proposed revisions in the progress schedule that will change the Contract Times (or Milestones) shall be submitted to NCTD for approval. Such adjustments may only be made by a Change Order in accordance with the General Conditions.
- 04.27.3 **Recovery Schedule:** The Contractor shall submit an Impact Analysis and Recovery Schedule to address any schedule impacting events. Failure to make this Impact Analysis and Recovery Schedule available within 14 days of the occurrence of the impacting event will be considered a concurrent delay event attributable to the Contractor, and the Contractor will only be entitled to non-compensable time. If the Contractor is responsible for the delay, this provision will not limit or affect their liability.
- 04.27.4 **Requirements Overview:** The Contractor's planning, scheduling and execution of the contract work shall be presented to NCTD by submission of the progress schedule information and data specified in this Section.

The Work under this contract will be planned, scheduled, executed, and reported by the Contractor using a cost-loaded CPM schedule within a Work Breakdown Structure specified by NCTD. The Contractor will adhere to established technical standards for CPM scheduling using a computerized precedence diagram method. The Contractor is required to provide baseline and status data using a hard copy and disk format specified by NCTD.

- 04.27.5 All schedules shall be in accordance with the requirements of the Contract. NCTD's review or acceptance of any schedule shall not relieve the Contractor from responsibility for complying with the Contract requirements, adhering to those sequences of work indicated in or required by the contract documents, or from completing any work omitted from the schedule within the Contract Time.
- 04.27.6 **Other schedule requirements:** Contractor's schedule shall also comply with the provisions set forth in this RFP.

04.28 USE OF FLOAT

Total Float is the number of days by which a part of the Work in the Construction Schedule may be delayed from its early dates without necessarily extending the Contract Time. Contract Float is the number of days between the Contractor's anticipated date for early completion of the Work, or specified part, and the corresponding Contract Time. Total float and contract float belong to the project and are not for the exclusive benefit of any party. They shall be available to NCTD, NCTD, their consultants, or the Contractor, to accommodate changes in the Work, or to mitigate the effect of events which may delay performance or completion. NCTD will monitor and optimize the use of float for the benefit of the Program.

04.29 EARLY COMPLETION

An early completion schedule is one which anticipates completion of all or specified part of the Work ahead of the corresponding Contract Time. Since Contract float belongs to the project, the Contractor shall not be entitled to any extension in Contract Time, or recovery for any delay incurred because of extensions in an early completion date, until all Contract Float is used or consumed and performance or completion of the Work extends beyond the corresponding Contract Time.

04.30 FLOAT SUPPRESSION

Float suppression techniques are prohibited. The Contractor shall remove any float suppression techniques, e.g., preferential sequencing (crew movements, equipment use, for reuse, etc.), extended durations, imposed dates,

scheduling of non-critical work, artificial logic.

04.31 CONTRACT SCHEDULES - GENERAL CRITERIA

Contract schedules include the Contractor's Mobilization Schedule, all versions of the Contractor's Construction Schedule including baselines, monthly updated schedules, revised schedules, and recovery schedules, and weekly rolling schedules. All Contract Schedules are prepared by the Contractor and reflect the Contractor's plans for and status of the Work. The Contractor shall provide seven (7) copies of all Contract Schedules, except for weekly rolling schedules of which the Contractor shall provide enough copies for distribution at weekly Progress and Coordination meetings.

The Contract Schedules shall show the breakdown of work into activities and relationships only to the extent required to effectively manage the work. The Contract Schedules shall show the division of the Work into activities and specify the progression from the Notice to Proceed to the completion of the Work. Each construction activity shown on the Contract Schedules will have a respective budget value, a portion of the Contract Price. The Contract Schedule shall include appropriate time allowances for submittals, items of interface with work performed by others, and specified Construction, unless authorized by NCTD, a site-related activity shall span work ten (10) work days or less, and have a value not exceeding \$10,000. All activity durations shall be in work days.

The Contractor's Construction Schedule shall include all procurement related activities which lead to the delivery of permanent materials to the site. Procurement activities include but may not be limited to preparation of shop drawings, review and acceptance of shop drawings, materials fabrication, and materials delivery. Upon written approval by NCTD, these activities may be displayed or reported as a separate Off-Site Activities Schedule, properly correlated to the Contractor's Construction Schedule.

The Contractor shall schedule those requisite duties and responsibilities of NCTD. The Contract Schedules shall incorporate appropriate activities and sequences based on the information given in the Contract Documents, and if not given, as indicated by NCTD in writing.

The Contractor shall prepare a Summary of Values which lists all Contract activities and their respective budget values that were developed in the cost loading process. The budgets shown in the Summary of Values will be the basis for determining the values earned as the Work is accomplished, e.g., physical percent complete times the activity budget.

The Contractor's Construction Schedule shall consist of a tabular logic report sorted by Activity ID including activity description, total duration, early start and finish dates, late start and finish dates, free float, total float, percent complete, remaining duration and detailed predecessor and successor information for each activity, including any lag.

A time scaled CPM Plot on D-size paper sorted by area, total float, early start and early finish. The plot must clearly and legibly show all activities and logical ties and shall display each activities title, original duration, remaining duration and total float value. The plot must also show the critical path for completion of the Work.

When the Contractor's Construction Schedule is reviewed and accepted it becomes the baseline Contractor's Construction Schedule. From then on, all activities and their relationships may not be changed, added, or deleted without the consent of NCTD.

04.32 SCHEDULE UPDATE

Updating the Contractor's Construction Schedule and scheduling of changes and other events affecting the schedule is the responsibility of the Contractor. Contract Time (including all contracted milestones) shall not be changed without a formal Change Order approved by NCTD.

The Contractor shall update the Contractor's Construction Schedule each month. Updating the schedule shall consist of the following:

Updating Activity Status: Each month the Contractor shall enter percent complete, remaining duration, actual start, and actual completion dates into the schedule and recalculate the schedule based on the payment cutoff date for that month. Percent complete shall be the percent agreed to by NCTD at the monthly schedule meeting. Remaining duration shall be the Contractor's best estimate of the time required to complete activities which have started but not yet complete. Percent complete and remaining duration shall be arrived at independently for each activity. The remaining duration shall not be automatically calculated by the scheduling software based on the percent complete.

The retained logic method of schedule calculation shall be used to calculate the schedule unless otherwise approved by NCTD.

04.33 WEEKLY ROLLING SCHEDULE

Weekly the Contractor shall submit a bar chart schedule which shows at a level of detail satisfactory to NCTD the Work planned and accomplished during that week, and the Work planned for the next three weeks. The look behind portion shall serve to document when activities from the previous week actually took place.

Next to each activity on the Weekly Rolling Schedule the Contractor shall list the activity number from the Contractor's Construction Schedule to which the activity on the rolling schedule corresponds.

The Contractor shall bring copies of the rolling schedule to each Progress and Coordination meeting in sufficient quantities for all attendees.

The Schedule Narrative accompanying the initial submittal of the Contractor's Construction Schedule shall describe the general sequence of the work, the critical path, any long lead equipment, any physical constraints to completing the Work and any assumptions made in developing the schedule.

The Schedule Narrative accompanying each update to the Contractor's Construction Schedule and shall, at a minimum, address the following:

1. Milestones Completed
2. A descriptive summary of each revision incorporated into the schedule since the last update and it's affect on the schedule.
3. Any change to the critical path.
4. Any actual or anticipated problems with delivery of materials or equipment.
5. Any problems with submittal approval.
6. Any corrective action undertaken by the Contractor to address schedule problems.
7. Anything impacting critical path, milestones and contractual completion.

04.34 SUBMISSION AND APPROVAL OF CONTRACTOR'S CONSTRUCTION SCHEDULE

The Contractor shall submit the Contractor's Construction Schedule within fourteen (14) calendar days after the date of the Notice To Proceed. This schedule shall reflect the entire scope of the Contract Work as awarded.

The Contractor's Construction Schedule shall bear the Contractor's stamp of approval signed by the Contractor. The Contractor's stamp of approval shall constitute a representation to NCTD that the Contractor verified all data in the Contractor's Construction Schedule and assumes full responsibility for doing so, and that the Contractor has reviewed and coordinated all activities and logic in the Contractor's Construction Schedule with the requirements of the Work.

NCTD will review and return written comments on the Contractor's Construction Schedule to the Contractor within thirty (30) calendar days.

If revisions are required, the Contractor shall make appropriate adjustments or corrections and shall deliver to NCTD the revised Contractor's Construction Schedule directing specific attention, in writing, to adjustments or corrections made other than those made in response to NCTD's comments on the previous submittal. NCTD will review and return written comments on of the revised Contractor's Construction Schedule within fifteen (15) calendar days. This step shall be repeated until the schedule is accepted. Acceptance of the Contractor's Construction Schedule by NCTD shall be a CONDITION PRECEDENT to processing any Application for Payment, after the first full month.

NCTD's review and comments will be for conformance with the Contract Time and those sequences of work indicated in or required by the Contract Documents, to record dates for milestones, and for conformance with the requirements of this Section and other information given in the Contract Documents which may have a bearing on the schedule. NCTD's review will also be for reasonableness and consistency in the cost loading of the schedule activities. NCTD's review shall not extend to the Contractor's means, methods, or techniques, the correctness of which shall remain the sole responsibility of the Contractor.

Once the Contractor's Construction Schedule is accepted by NCTD it becomes the baseline Contractor's Construction Schedule for the Work, and is the basis for (a) the monitoring of the Contractor's progress against milestones and Contract Time, and (b) the evaluation and reconciliation of extensions in Contract Time.

04.35 MONTHLY UPDATE OF THE CONTRACTOR'S CONSTRUCTION SCHEDULE

The cutoff date for the payment application and schedule update shall be determined by NCTD.

04.36 SCHEDULE STATUS SUBMITTALS

An update of the Contractor's Construction Schedule is due monthly, with (attached to) each Application for Payment. Receipt by NCTD of the update of the Contractor's Construction Schedule will be a CONDITION PRECEDENT to processing each Application for Payment.

Neither the updating of the Contractor's Construction Schedule nor the updating of any report or schedule submitted to NCTD by the Contractor under this Section shall have the effect of amending or modifying, in any way, the Contract Time, Contract Completion Date, or Contract Milestone Dates.

04.37 MONTHLY REVIEWS

Monthly review meetings between NCTD and the Contractor will be held within seven (7) calendar days prior to the payment cutoff date. The purpose of this meeting is to finalize the percent to be paid for activities completed or in progress, and to review and discuss any required corrections and proposed revisions to the schedule.

Prior to the monthly review meeting, the Contractor will update the status of each activity in progress or completed with actual or estimated actual start and finish dates, physical percent complete and remaining duration for activities started but not completed and calculate the CPM Network through payment cut off date. The Contractor shall provide an electronic copy of the updated schedule to NCTD three workdays prior to the schedule review meeting. Contractor will provide appropriate reports as defined by NCTD at the monthly review meeting.

After the meeting, the Contractor shall make revisions to the status of activities as directed by NCTD and submit the payment application along with the final update of the Contractor's Construction Schedule within seven calendar days.

04.38 SCHEDULE REVISIONS

The Contractor's Construction Schedule must be revised when it is no longer useful as a status and control mechanism as determined by NCTD or when a change or delay impacts the Contractor's timing and sequence of the Work. Contract Time (including all contracted milestones) cannot be changed without a formal Change Order approved by NCTD.

All schedule revisions must be presented at the monthly review meeting for NCTD's coordination and acceptance. The Contractor shall provide a separate sub-network schedule for each proposed revision showing the revised activities and how he proposes to tie them into the Contractor's Construction Schedule.

04.39 SCHEDULE RECOVERY

Within five days after a schedule problem is recognized and documented, the Contractor shall submit to NCTD a recovery schedule which shall consist of proposed revisions to the Contractor's Construction Schedule demonstrating how the Contractor intends to achieve all contractual milestones including contract completion within the allotted contract time. The accompanying narrative should describe the cause of the problems and the actions planned by the Contractor to recover the schedule. The Contractor shall promptly undertake appropriate action at no additional cost to NCTD to recover the schedule whenever the current schedule shows that the Contractor did not or will not achieve a milestone established in the Contractor's Construction Schedule.

Appropriate recovery actions may include, but not be limited to, assignment of additional labor, and/or equipment, shift or overtime work, expediting of submittals or deliveries, overlapping of activities or sequencing changes to increase activity concurrence.

Lack of Action: The Contractor's refusal, failure or neglect to take appropriate recovery action or to submit a recovery schedule shall constitute reasonable evidence that the Contractor is not prosecuting the Work, or separable part, with the diligence that will ensure its completion within the applicable Contract Time. Such lack of action shall constitute sufficient basis for NCTD to recommend the withholding of some or all of any payment due, and shall be considered grounds for termination by NCTD.

04.40 RELIANCE ON SCHEDULE

Should any activity fail to be completed within fifteen (15) days after indicated schedule date, expedite completion of activity by whatever means NCTD deems appropriate and necessary without additional compensation.

Should any activity be thirty (30) or more days behind schedule, NCTD shall have right to perform activity or have activity performed by whatever method NCTD may deem appropriate. Costs incurred by NCTD in activity shall be deducted from Contract Price.

Failure by NCTD to exercise option to expedite activity shall not be construed as precedent for other activities, or as waiver of NCTD's rights to exercise NCTD's rights on subsequent occasions.

NCTD will rely on Contractor's CPM schedule to provide NCTD furnished labor, material or equipment, and/or coordinate work with other agencies and utilities, and/or provide responses to request for information so as not to delay activities on the critical path.

Nothing in these requirements shall be deemed to be usurpation of Contractor's authority and responsibility to plan and schedule work as required, subject to requirements of Contract Documents.

04.41 SITE CONDITIONS

Drawings show existing conditions as determined by the NCTD Representative to exist, on the basis of a complete site examination and a thorough review of all applicable public documents, records and drawings. This is not, however, a warranty as to the exact dimensional preciseness of locations, sizes, depths, etc.

In the event of differing site conditions between that indicated on the Contract Documents and actual conditions revealed during progress of the work, the following requirements are applicable:

- The Contractor shall promptly, and before such conditions are disturbed, notify NCTD Executive Director in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this Contract; or, (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this Contract. NCTD Executive Director shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractors cost of, or the time required for, performance of any part of the Work under this contract, whether changed as a result of such conditions, an equitable adjustment shall be made according to the provisions in this contract for payment for extra work and the contract shall be modified in writing accordingly.
- No claim of the Contractor under this clause shall be allowed unless the Contractor has given notice required in (1) above; provided, however, the time prescribed therefore may be extended by NCTD.
- No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

In any case, where the Contractor believes extra compensations are required for work and services not covered by this Contract, the Contractor shall promptly notify NCTD in writing of the intention to make a claim for such extra compensation before commencing the work. After notification is given, Contractor shall proceed without delay in accordance with Board's direction. If such notification is not given, no claim for such extra compensation will be considered. Such notice, when given, shall not be construed as providing the validity of the claim.

04.42 VALUE ENGINEERING CHANGE PROPOSALS (VECP)

04.42.1 NCTD encourages the Contractor to submit VECs whenever Contractor identifies areas and/or instances in which improvements can be made, in order to avail NCTD of potential cost savings. The Contractor and NCTD will share equally any savings in the manner described below.

04.42.2 This subsection applies to a Contractor-developed and documented VECF that:

- a) Requires a change to the Contract Documents;
- b) Reduces the Contract Price without impairing essential functions or characteristics of the Work, providing that it is not based solely upon a change in specified quantities; and

04.42.3 At a minimum, the following information shall be submitted by the Contractor with each VECP:

- a) A description of the existing Contract Document requirements that are involved in the proposed change;
- b) A description of the proposed change;
- c) A discussion of the differences between the existing requirements and the proposed change, together with advantages and disadvantages of each changed item;
- d) An itemization of the Contract requirements that must be changed if the VECP is accepted (e.g., drawing numbers and specifications);
- e) A justification for changes in function or characteristics of each affected item, and the effect of the change on the performance of the end item;
- f) A date or time by which a change order adopting the VECP must be issued in order to obtain the maximum cost reduction, noting any effect on Contract completion time or delivers, schedule; and
- g) A cost estimate for existing Contract requirements correlated to the Contractor's unit price or lump sum breakdown and the proposed changes in those requirements, including costs of development and implementation by the Contractor.

04.42.4 The Contractor shall submit VECPs to NCTD. NCTD will process proposals expeditiously, but shall not be liable for any delay in acting upon any proposal submitted pursuant to this subsection. The Contractor may withdraw all or part of any VECP at any time prior to acceptance by NCTD, but shall be liable for costs incurred by NCTD in reviewing the proposal.

04.42.5 At its sole discretion, NCTD may accept, in whole or in part and by change order any VECP submitted pursuant to this Section. Designs for accepted VECPs will be prepared by NCTD for incorporation into the drawings and specifications. Until a change order is issued on a VECP, the Contractor shall remain obligated to perform in accordance with the Contract Documents. The decision of NCTD as to the rejection or acceptance of any VECP shall be at the sole discretion of NCTD and is final.

04.42.6 If a VECP submitted by the Contractor pursuant to this subsection is accepted, the Contract Price shall be adjusted based upon an equal sharing (50%/50%) of the Net Savings (NS) by the Contractor and NCTD expressed by the following formula:

- a) NS is defined as gross savings (GS) less the Contractor's Costs (CC) and less NCTD's Costs (NC); $NS = (GS - CC - NC)$.
- b) GS to the Contractor means the difference between the cost of performing the Work according to the existing requirement and the cost to perform the Work according to the proposed change. In each instance, the Contractor's profit shall not be considered part of the cost.
- c) CC Means reasonable Costs incurred by the Contractor in preparing the VECP and making the change, such as cancellation or restocking charges.
- d) NCTD's costs means reasonable costs incurred by NCTD for evaluating and implementing the VECP, such as testing, redesign, and effect on other contracts.
- e) The Contractor is not entitled to share in either collateral or concurrent future Contract savings. Collateral savings are the measurable net reductions in NCTD's costs of operation that result from the VECP including maintenance, logistics, and NCTD-furnished property. Concurrent Contract savings cover the reductions in the cost of performance of other Contracts the Contractor is participating in for essentially the same item resulting from a VECP submitted by the Contractor.
- f) The Contractor's profit shall not be reduced by application of the VECP.

04.42.7 The Contractor shall include appropriate VECP provisions in all subcontracts of twenty-five thousand dollars (\$25,000) or greater, and may include those provisions in any subcontract. Subcontracts shall state that any benefits accruing to the Contractor as a result of an accepted VECP initiated by a subcontractor shall be shared by the Contractor and the subcontractor in a manner specified in the

contract between them. Concurrent contract savings on other NCTD contracts where the subcontractor is participating are not allowable.

- 04.42.8 Subject to the provisions of the California Public Records Act, the Contractor may restrict NCTD's right to use any sheet of a VECP or the supporting data thereof in accordance with the terms of the following legend, if the legend is marked on the sheet:

“Data supplied pursuant to the subsection entitled VALUE ENGINEERING CHANGE PROPOSAL (VECP) herein for the Contract shall not be disclosed to any outside person and/or agency, and /or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a VECP submitted under said subsection. This restriction does not limit NCTD's right to use information contained in this VECP if it is or has been obtained, or is otherwise available, from the Contractor or from another source without limitations. If a VECP is accepted by NCTD after the use of the data in an evaluation, NCTD may duplicate, use, and/or disclose any data reasonably necessary to the full utilization of the VECP, as accepted, in any manner and for any purpose whatsoever, NCTD may allow others to do so as well.”

04.43 COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION

- 04.43.1 If applicable, Contractor shall be required to comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (Permit) for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. In bidding on this Contract, it shall be Contractor's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP. Contractor shall comply with all requirements of the State Water Resources Control Board. Contractor shall include all costs of compliance with specified requirements in the contract amount.
- 04.43.2 Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by Permit. Contractor shall provide copies of all reports and monitoring information to NCTD's Representative.

04.44 COMPLIANCE WITH STORM WATER POLLUTION PREVENTION PLAN

At a minimum, the Contractor's SWPPP shall address the control measures as found in the Handbook.

All work involved in developing, preparing, obtaining acceptance of, revising and amending the SWPPP and for furnishing all labor, materials, tools, equipment and incidentals, and for doing all work involved in installing, construction, maintaining, removing and disposing of control measures as specified in these special provisions shall be included in the Bid Price Form.

04.45 CALIFORNIA LABOR CODE REQUIREMENTS

In the event Federal Labor Code provisions apply to this contract, it is the responsibility of the Contractor to ensure that it complies with both Federal and State labor laws, to the extent applicable. The Contractor shall defend, indemnify and hold NCTD harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Contractor or its subcontractors to comply with the applicable Federal and/or State labor laws, to the extent applicable. To the extent that Federal General Prevailing Wage Rates and other Federal labor requirements are inapplicable to this contract, Contractor shall be required to comply with the following California Labor Code requirements related to the payment of prevailing wages, employment of apprentices, hours of labor, retention of payroll records and debarment of contractors and subcontractors.

- 04.45.1 State Prevailing Wages. Pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the Labor Code of California, the governing body of NCTD has ascertained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification, or type of workmen needed to execute the contract.

- a) Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided in Labor Code Section 1773.1 apprenticeship or other training programs authorized by Labor Code Section 3093, and similar purposes when the term "per diem wages" is used herein.
- b) Holiday and overtime work when permitted by law shall be paid for at a rate of at least one and one-half times the above specified rate of per them wages, unless otherwise specified.
- c) There shall be paid each worker of the Contractor or any of his subcontractors engaged in work on the Project not less than the prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractors and such workers.
- d) The Contractor shall, as a penalty to NCTD, forfeit an amount as determined by the Labor Commissioner pursuant to Labor Code Section 1775 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for such work or draft in which such worker is employed for any public work done under the contract by him or by any subcontractor under him. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.
- e) Copies of the determined prevailing wage rates are on file and available upon request at NCTD's office. Contractor shall post, at appropriate conspicuous points on the site of the Project, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.
- f) Any worker employed to perform work on the Project which is not covered by any classification available in NCTD office, shall be paid not less than the minimum rate of wages specified for the classification which most nearly corresponds with work to be performed by him, and that minimum wage rate shall be retroactive to the time of initial employment of the person in the classification.
- g) A certified copy of all payroll records shall be submitted to the District's Representative no later than the tenth (10th) day of each month for the immediately preceding month. This submission shall be a condition precedent for payment to the Contractor. Failure to submit payroll records shall be grounds for withholding of payment to Contractor until such submission is made.

04.46 RECORDS OF WAGES PAID

04.46.1 Pursuant to Labor Code Section 1776, Contractor stipulates to the following:

- a) Each Contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the work under this Contract. Such records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information of such forms.
- b) The payroll records enumerated under subdivision (i), above, shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
- c) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employees or his or her authorized representative on request.
- d) A certified copy of all payroll records enumerated in subdivision (i), above, shall be made available for inspection or furnished upon request to a representative of NCTD, the Division of Labor Standards Enforcement and Division of Apprenticeship Standards of the Department of Industrial Relations.
- e) A certified copy of all payroll records enumerated in subdivision (i), above, shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either NCTD, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the

costs of preparation by the Contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.

- f) Contractor shall file a certified copy of the records enumerated in subdivision (i), above, with the entity that requested such records within ten (10) days after receipt of the written request.
- g) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, NCTD, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the contract or performing the contract shall not be marked or obliterated.
- h) Contractor shall inform NCTD of the location of the records enumerated under subdivision (i), including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
- i) In the event of noncompliance with the requirements of this section, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of Twenty-five Dollars (\$25.00) to NCTD for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.
- j) The responsibility for compliance with this section shall rest upon the Contractor.

04.47 APPRENTICES

Contractor and any subcontractor under them shall comply with the requirement of Sections 1777.5 and 1777.6 of the Labor Code in the employment of apprentices.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

Knowing violations of Section 1777.5 will result in forfeiture not to exceed \$100 for each calendar day of non-compliance pursuant to Section 1777.7.

04.48 HOURS OF WORK

- 04.48.1 As provided in Article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code, Contractor stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this contract upon the work or upon any part of the work contemplated by this contract is limited and restricted to eight (8) hours during any one-calendar day and forty (40) hours during any one-calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.
- 04.48.2 The Contractor and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the work or any part of the work contemplated by this contract. The record shall be kept open at all reasonable hours to the inspection of NCTD and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.
- 04.48.3 The Contractor shall pay to NCTD a penalty of twenty-five dollars (\$25) for each worker employed in the execution of this contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and

forty (40) hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code.

04.48.4 Any work necessary to be performed after regular working hours, or on Saturdays and Sundays or other holidays, shall be performed without additional expense to NCTD.

04.49 DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

Contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the Project shall be returned to NCTD. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

04.50 FABRICATION, INSPECTION AND TEST PLAN REQUIREMENTS

Each Proposer or Bidder must submit within three days of the District's request, its proposed Fabrication, Inspection and Test (FIT) Plan, as defined below. The Plan must present the Proposer's/Bidder's steps for controlling and performing the work to verify its achievement of the quality requirements of a contract resulting from the Request for Proposal (RFP) or Invitation for Bid (IFB). The adequacy of the FIT Plan will be evaluated a part of the Proposal/Bid analysis; clarification may be required.

No later than two weeks after the issuance of a Notice to Proceed (NTP), the Contractor must submit, for approval, its revised FIT plan that incorporates NCTD comments that may have been provided and changes, if any, in the Contractors planning. Contractor shall comply, as a minimum, with the approved Plan; this compliance is subject to on-site surveillance. Contractors proposed changes in the controls defined in the approved Plan shall be submitted for NCTD approval as a revision to the Plan before the changes is implemented.

NCTD approval of the Contractors above described minimum FIT Plan does not reduce the Contractors responsibility to perform inspections, tests and controls necessary to provide equipment, material or services which fully meet the requirements of the contract.

Definition

A Fabrication, Inspection and Test (FIT) Plan is a Contractor prepared flow chart with accompanying narrative, that describes its planned, operationally-sequential steps for material control, fabrication, repair, assembly, quality control and testing of the items of NCTD's RFP or IFB. The plan must identify the specific types of inspections, non-destructive examinations, check-outs and tests at the various steps that provide both the Contractor and NCTD with the assurance and **evidence** that the items fully comply with their requirements. It must also encompass the Contractors controls on the quality of buy-out items and materials.

An adequate FIT Plan illustrates the depth to which the Contractor has pre-planned its work and that it controls its work so that quality is assured. The FIT Plan should be revised when the Contractor plans change in its control activities. The FIT Plan may also serve as a base for incorporating NCTD's hold and witness points and for surveillance of Contractor's quality related activities.

05 INVOICING

05.01 PROGRESS PAYMENTS/ PAYMENT SCHEDULE INVOICING/RETENTION

Immediately upon a contract being fully executed, Contractor shall prepare and submit to the NCTD Representative a Schedule of Values allocated to the various portions of the Work. This Schedule of Values, when approved by NCTD shall be used as the basis for the Contractor's Application for Payment. Each percentage (%) completion figure on the progress payment applications shall be confirmed by signatures of the NCTD Representative and NCTD Board Project Manager designated for the contract. Payment Applications shall not be submitted more often than monthly. Contractor shall not be paid if certified payrolls for each week of work being invoiced have not been submitted in accordance with the RFP. After the receipt of such a request NCTD shall confirm the percentage (%) completion values. Schedule of Values must be prepared in accordance with the RFP.

Each month within thirty (30) calendar days after receipt of an undisputed and properly submitted Application for Payment to the NCTD Representative, there shall be paid to Contractor a sum equal to ninety percent (90%) of the value of work performed up to the last day of the previous month, less the aggregate of previous payments. Each Schedule of Value line item shall be inclusive of the Contractor's overhead and profit and any applicable taxes or any other charges. The sum of all values listed in the Schedule shall equal the total Contract Price. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release Contractor or any bondsman from damages arising from such work or from enforcing each and every provision of this contract and NCTD shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning work, or any portion thereof given by NCTD or any NCTD Representative shall remain uncomplished with.

If the performance duration of the contract configuration, installation and acceptance work continues beyond the contract schedule as a result of delays by the Contractor, then this delay shall be assessed Liquidated Damages as described in Section 03. All delays caused by no fault of the Contractor must be documented and submitted to NCTD as soon as these delays are anticipated.

Whenever any part of the work is in a condition suitable for use, and the best interest of NCTD requires such use, NCTD may take possession of, connect to, open for public use, or use a part thereof. When so used, maintenance and repairs due to ordinary wear and tear or vandalism will be made at NCTD's expense. The use by NCTD as contemplated in this section shall in no case be construed as constituting acceptance of the work or any part thereof. Such use shall neither relieve the Contractor of any of his responsibilities under the Contract nor act as a waiver by NCTD of any of the conditions thereof. Contractor shall continue to maintain all insurance required hereunder on the Project.

05.02 PAYMENT WITHHELD

In addition to amount which NCTD may retain under paragraph entitled "RETENTION," NCTD may withhold a sufficient amount or amounts of any payment of payments otherwise due to Contractor, as in his judgment may be necessary to cover:

- a) Payments which may be past due and payable for just claims against Contractor or any subcontractors for labor or materials furnished in and about the performance of work on the project under this contract.
- b) Costs of investigation and/or repair of any defects and/or damages to any portion of the work required under this contract not remedied by Contractor.
- c) Failure of Contractor to make proper payment to his subcontractor or for material or labor.
- d) Completion of contract if there exists a reasonable doubt that contract can be complete for balance then unpaid.
- e) Damage to another Contractor.

- f) Re-testing of non-passing tests.
- g) Retention will not be paid until all O & M manuals, as-built drawings, or other required deliverable are received and approved.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

NCTD may apply such withheld amount or amounts to payment of such claims of obligations at his discretion. In so doing, NCTD shall be deemed the agent of Contractor and any payment so made by NCTD shall be considered as a payment made under contract by NCTD to Contractor and NCTD shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. NCTD will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.

05.03 RELEASE UPON PAYMENT/FINAL PAYMENT

05.03.1 Release and Final Payment. NCTD shall, after the satisfactory completion of the work, make a final estimate of the amount of Work done thereunder and the value of said work, and NCTD shall pay the entire sum so found to be due after deduction therefrom all previous payments and all amounts to be retained under the provisions of the Contract Documents, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code Section 3262. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

The final payment of ten percent (10%) of the value of work done under this contract, if unencumbered, shall be made within sixty (60) calendar days after the date of completion of the work, provided however, that in the event of a dispute between NCTD and the Contractor, NCTD may withhold from the final payment an amount not to exceed one hundred and fifty percent (150%) of the disputed amount. Completion means any of the following as provided by Public Contract Code section 7107:

- a) The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.
- b) The acceptance by the public agency, or its agent, or the work of improvement.
- c) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 calendar days or more, due to factors beyond the control of the Contractor.
- d) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 calendar days or more, if the public agency files for record a notice of cessation or a notice of completion.

This contract is subject to the provisions of Public Contract Code section 7107.

For purposes of this contract, the acceptance by NCTD means acceptance made only by an action of the NCTD Board of Directors in session, unless such approval has been delegated by the NCTD Board of Directors to the Executive Director. Acceptance by Contractor of said final payment shall constitute a waiver of all claims against NCTD arising from this contract. At any time after fifty percent (50%) of the work has been completed, if NCTD, by action of the NCTD Board of Directors, finds that satisfactory progress is being made, NCTD may make any of the remaining payments in full for actual work completed or may withhold any amount up to ten percent (10%) thereof as NCTD may find appropriate based on the Contractor's progress.

05.04 SUBSTITUTION OF SECURITIES

Pursuant to the provisions of California Public Contract Code Section 22300, at the request and expense of the successful Offeror, NCTD will pay the amounts retained as security for the completion of the Project pursuant to the Contract Documents, into an escrow account..

The Contractor has the option of selecting the method of retention payment, either by wire transfer or mailing of a check to the Contractors banking institution. If the wire transfer method is selected by the Contractor, the cost for such service will be deducted from the amount of retention transferred to the Contractors banking institution as allowed by California Public Contract Code Section 22300.

05.05 INVOICE SUBMITTAL

- 05.05.1 Monthly invoices are to be mailed or delivered to 810 Mission Avenue, Oceanside, CA 92054, Attn: Accounts Payable only.
- 05.05.2 If certified payrolls are not received on a monthly basis to the attention of the Contract Administrator, invoices may be held for payment until submittals are received.
- 05.05.3 All invoices must reference the RFP number and the purchase order number and its applicable line items number assigned at time of Notice to Proceed. Line item numbers of the PO will correspond to the schedule of values that shows the breakout of the total contract value of the prime contractor and subcontractor(s) costs.

06 FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES

RFP 09063

It is the responsibility of the Offeror to ensure that all clauses applicable to the work of a contract resultant from this RFP are adhered to by the Contractor and its Subcontractors when applicable.

Sec.	Contract Clause	Applicability to Type of Contract
06.01	Fly America Requirements	When Transportation Paid By FTA Funds
06.02	Buy America Requirements	Value > 100K for Construction, Goods, Rolling Stock
06.03	Charter Bus and School Bus Requirements	Operational Service
06.04	Cargo Preference Requirements	Equipment/Material/Commodities Transported By Ocean
06.05	Seismic Safety Requirements	New Construction/Additions
06.06	Energy Conservation Requirements	All
06.07	Clean Water Requirements	Value > 100K
06.08	Bus Testing	Rolling Stock Acquisition
06.09	Pre-Award and Post Delivery Audit Requirements	Rolling Stock Acquisition
06.10	Lobbying	Construction, A/E, Services, Rolling Stock
06.11	Access to Records and Reports	Construction, A/E, Services, Rolling Stock
06.12	Federal Changes	All
06.13	Bonding Requirements	Construction > 100K
06.14	Clean Air	Value > 100K
06.15	Recycled Products	Value > 10K In Fiscal Year
06.16	Davis-Bacon and Copeland Anti-Kickback Acts	Value > \$100,000
06.17	Contract Work Hours and Safety Standards Act	Construction > \$2000, Rolling Stock, Operational > \$2,500
06.19	No Government Obligation to Third Parties	All
06.20	Program Fraud and False or Fraudulent Statements and Related Acts	All
06.21	Termination	Value > 10K
06.22	Government-Wide Debarment and Suspension (Nonprocurement)	Value > 100K
06.23	Privacy Act	All
06.24	Civil Rights Requirements	All
06.25	Breaches and Dispute Resolution	Value > 100K
06.26	Patent and Rights in Data	Research Projects Only
06.27	Transit Employee Protective Agreements	Transit Operations
06.29	Disadvantaged Business Enterprise (DBE)	All
06.30	Incorporation of Federal Transit Administration (FTA) Terms	All
06.31	Drug and Alcohol Testing	Operational Service/Safety Sensitive
06.32	Transit Vehicle Manufacturer (TVM) Certifications	Rolling Stock, All Vehicle Procurements
06.33	Metric Requirements	Sealed Bid Procurements, Rolling Stock, Construction
04.34	Conformance with National ITS Architecture	Contracts and Solicitations for ITS projects only
04.35	Bus Seat Specifications	Bus Seat Acquisitions

06.01 FLY AMERICA REQUIREMENTS

49 U.S.C. §40118
41 CFR Part 301-10

Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number.

Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Flow Down Requirements

The Fly America requirements flow down from NCTD to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

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

06.02 BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)
49 CFR Part 661

Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

Flow Down

The Buy America requirements flow down from NCTD to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Buy America – The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. 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 Grantee (NCTD) small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 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.

Note: General waivers for small purchases do not apply to Contractor equipment purchases when Contractor's contract value exceeds \$100,000 in value.

A bidder or offeror must submit to NCTD the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

06.03 CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d)
49 CFR Part 604

Applicability to Contracts

The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements

The Charter Bus requirements flow down from NCTD to first tier service contractors.

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

3. SCHOOL BUS REQUIREMENTS

49 U.S.C. 5323(F)
49 CFR Part 605

Applicability to Contracts

The School Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements

The School Bus requirements flow down from NCTD to first tier service contractors.

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

06.04 CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241
46 CFR Part 381

Applicability to Contracts

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Flow Down

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

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

06.05 SEISMIC SAFETY REQUIREMENTS

**42 U.S.C. 7701 et seq. 49
CFR Part 41**

Applicability to Contracts

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Flow Down

The Seismic Safety requirements flow down from NCTD to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

Seismic Safety - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

06.06 ENERGY CONSERVATION REQUIREMENTS

**42 U.S.C. 6321 et seq.
49 CFR Part 18**

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

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

06.07 CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down

The Clean Water requirements flow down to NCTD at every tier.

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. . The Contractor agrees to report each violation to NCTD and understands and agrees that NCTD will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

06.08 BUS TESTING

**49 U.S.C. 5323(c)
49 CFR Part 665**

Applicability to Contracts

The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

Flow Down

The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in [Master Agreement](#).

Bus Testing - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTAs implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

06.09 PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

**49 U.S.C. 5323
49 CFR Part 663**

Applicability to Contracts

These requirements apply only to the acquisition of Rolling Stock/Turnkey.

Flow Down

These requirements should not flow down, except to the turnkey contractor.

- Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.

-- Specific language for the Buy America certification is mandated by FTA regulation,

"Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended,"

49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

- (1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- (2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
- (3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

06.10 LOBBYING

31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

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 NCTD.

06.11 ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325
18 CFR 18.36 (i)
49 CFR 633.17

Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts", Item 6 of this Section.

Flow Down

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

Access to Records - The following access to records requirements apply to this Contract:

1. The Contractor agrees to provide NCTD, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where NCTD or a subgrantee of NCTD in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to NCTD, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
3. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
4. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until NCTD, the FTA Administrator, the Comptroller General, or any of their duly authorized

representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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

6. Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>Non State Grantees</u>	Yes ¹	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
a. Contracts below SAT (\$100,000)	Yes ¹		Yes	Yes	Yes	Yes
b. Contracts above \$100,000/ Capital Projects						

Sources of Authority:

¹ 18 CFR 18.36 (i)

06.12 FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

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

06.13 BONDING REQUIREMENTS

This section applies only to construction or facility improvement contracts exceeding \$100,000 (see Section 0 of this RFP).

06.14 CLEAN AIR

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to

NCTD and understands and agrees that NCTD, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

06.15 RECYCLED PRODUCTS

**42 U.S.C. 6962
40 CFR Part 247
Executive Order 12873**

Applicability to Contracts

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the Contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds.

Flow Down

These requirements flow down to all to all contractor and subcontractor tiers.

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.

06.16 DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Applicability to Contracts

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

Flow Down

Applies to third party contractors and subcontractors

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place

where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - NCTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, NCTD may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all

payrolls to NCTD for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level

of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

06.17 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT **29 CFR 5.5(b)**

Applicability to Contracts

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work” with a value greater than \$100,000. These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12).

Flow Down

Applies to third party contractors and subcontractors.

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - NCTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

06.18 NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Flow Down

This concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

No Obligation by the Federal Government.

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

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

06.19 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

**31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307**

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

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

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

06.20 TERMINATION

**49 U.S.C. Part 18
FTA Circular 4220.1E
(See Section 03 of the RFP)**

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher

education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Termination Language

See Termination Clause in the RFP.

06.21 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Flow Down

These requirements flow down to contractors and subcontractors at all levels.

Suspension and Debarment

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

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

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

The certification in this clause is a material representation of fact relied upon by NCTD. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to NCTD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

06.22 PRIVACY ACT

5 U.S.C. 552

Applicability to Contracts

When NCTD maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

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.

06.23 CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Civil Rights - The following requirements apply to the underlying contract:

Civil Rights - The following requirements apply to the underlying contract:

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

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

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action

shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

06.24 BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18 FTA Circular 4220.1E

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

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 NCTD. 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 NCTD. 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 NCTD shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by NCTD, 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 a 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 NCTD 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 NCTD 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 law. No action or failure to act by NCTD 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.

06.25 PATENT AND RIGHTS IN DATA

37 CFR Part 401 49 CFR Parts 18 and 19

Applicability to Contracts

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

Flow Down

The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. Rights in Data - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, NCTD or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may NCTD or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by NCTD or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, NCTD and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for NCTD or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, NCTD and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by NCTD or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither NCTD nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by NCTD or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that NCTD or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), NCTD and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - This following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, NCTD and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), NCTD and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

06.26 TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333 29 CFR Part 215

Applicability to Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Flow Down

These provisions are applicable to all contracts and subcontracts at every tier.

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to NCTD's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

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

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

06.27 DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26

Compliance with 49 CFR Part 26 is required.

06.28 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS FTA Circular 4220.1E

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NCTD requests which would cause NCTD to be in violation of the FTA terms and conditions.

06.29 DRUG AND ALCOHOL TESTING

49 U.S.C. §5331

49 CFR Part 655

Applicability to Contracts

The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Flow Down Requirements

Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 655, with certain exceptions for contracts involving maintenance services. Maintenance Consultants for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subconsultants.

Drug and Alcohol Testing

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or NCTD, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The Consultant agrees further to certify annually its compliance with Part 655 before June 30 and to submit the Management Information System (MIS) reports before January 15 to NCTD. To certify compliance the Consultant shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

06.30 TRANSIT VEHICLE MANUFACTURER (TVM) CERTIFICATIONS

49 CFR Part 26

(See DBE Section of IFB or RFP)

49 CFR §26.49 Contractor must submit to NCTD a certification from each transit vehicle manufacture that desires to bid or propose upon a DOT-assisted transit vehicle procurement that it has complied with the requirements of 49 CFR §26.49. NCTD may, however, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the overall goal-setting procedures.

06.31 METRIC REQUIREMENTS

15 U.S.C. §§205a et seq.

As required by U.S. DOT or FTA, NCTD agrees to use the metric system of measurement in its Project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, the NCTD agrees to accept products and services with dimensions expressed in the metric system of measurement.

06.32 NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS

23 U.S.C. §502

NCTD agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other subsequent Federal directives that may be issued.

06.33 BUS SEAT SPECIFICATIONS

49 U.S.C. § 5323(e)

NCTD may use specifications conforming to the requirements of 49 U.S.C. §5323(e) to acquire bus seats.

07 SCOPE OF WORK

RFP 09063

BACKGROUND

The NCTD was awarded stimulus funds from the American Recovery and Reinvestment Act (ARRA) to invest in capital improvements at the District that will lead to more effective, efficient, and reliable transit service.

In the last 10 years, the District has begun to depend more heavily on technology systems to support operations – from voice over internet protocol systems, to radio, computer aided dispatch, automated vehicle location, automated fare collection, etc. As a result, the number of network attached devices has grown exponentially, the type of systems implemented at the District has changed, and maintaining a high-availability environment has become imperative.

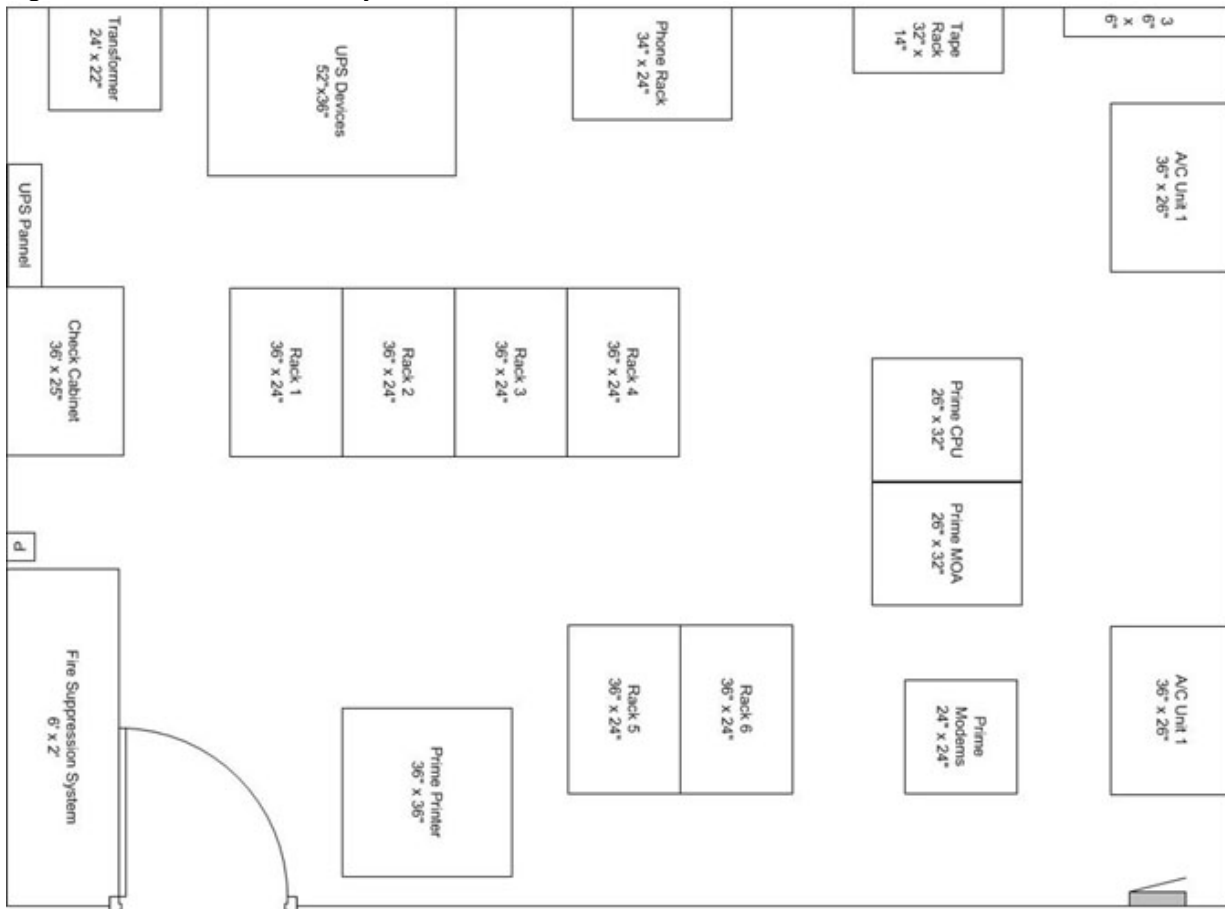
As a result, the District chose to invest a portion of the ARRA funds to retrofit the existing main data center to accommodate a growing number of systems and a different type of system.

The original design of the data center is now antiquated. The uninterruptable power supply (UPS) has reached end-of-life, the density of systems within the racks has taxed and now exceeded the capability of the air handling systems, and the size and layout of the facility is not conducive to continuing to grow and sustain technology at NCTD. Therefore, the District is issuing this RFP to configure and install new systems to provide the District with a reliable, sustainable, and expandable Data Center.

Current Environment

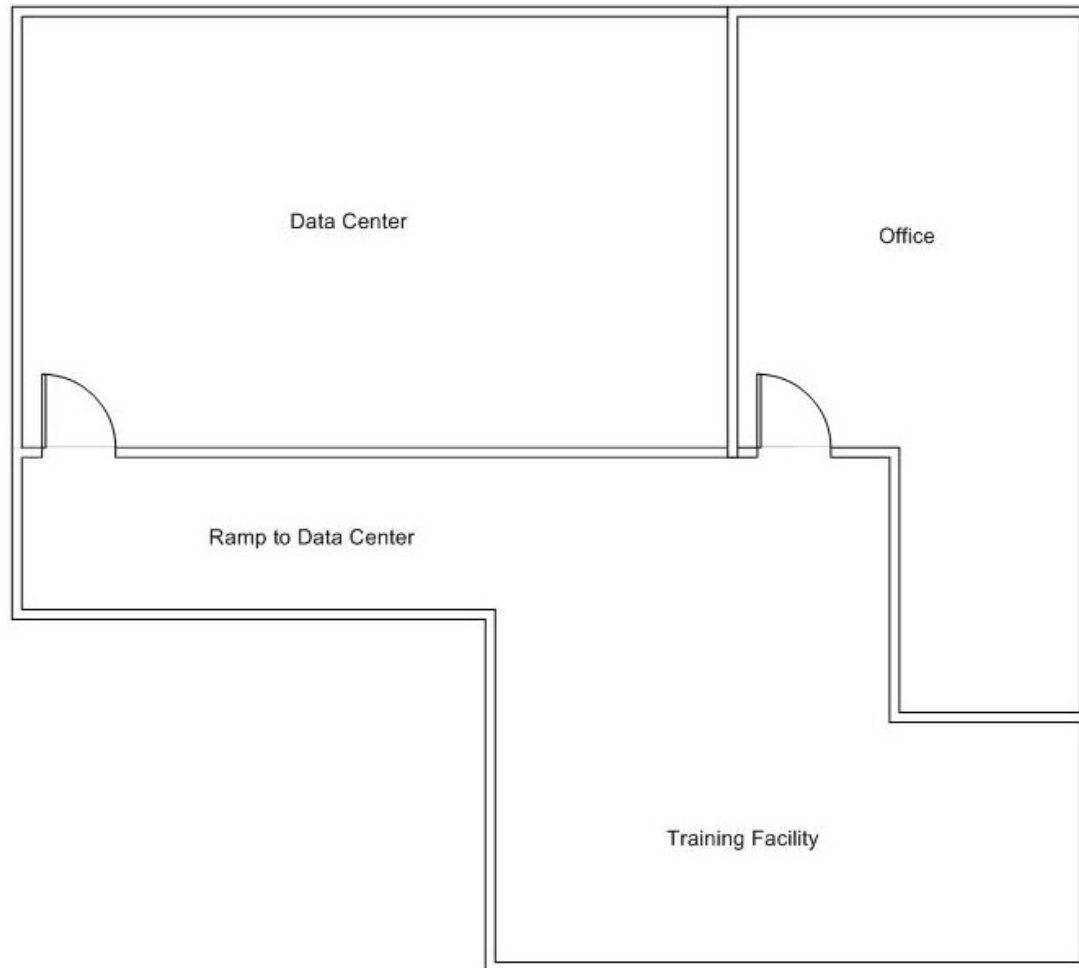
The current data center covers approximately 16' x 21'. It houses 6 existing server racks, 2 tape racks, the fire suppression system, a Prime minicomputer, modems, a Prime printer, the UPS, and 2 air conditioning units.

Figure 1: Current Data Center Layout



The Data Center is located within a larger room that also houses an office for system administrators and a training/work area. NCTD believes that there may be a more efficient and effective configuration of the space than is afforded by the current footprint and would consider a reconfiguration of the overall space.

Figure 2: Current Information Technology Workspace



The current data center has a Mitsubishi UPS 3 phase, 208/120 volt system. This unit has been under maintenance for over 10 years with routine service and battery replacement. However, the load and the expected life time of the unit have been exceeded. The District has been implementing virtualization technologies for the server environment and expects that the density and power consumption will continue to grow within the facility. Therefore the District desires to replace the existing UPS with a newer unit. This unit should provide the ability to interface with SNMP monitoring tools and to be remotely monitored and managed through network connections. In addition, the current server room electric panel is now out of space to expand for additional power into the room. Therefore, NCTD would like to add a 240-amp panel to the room to allow for installation of additional servers in the facility and to handle the load necessary to support the new UPS.

There are currently 6 racks located in the data center, although the District intends to allow for future growth of the rack space over the next 10 years. The Prime minicomputer, which today occupies approximately 20% of the usable floor space in the data center will be retired as of February 2010.

The Data Center currently relies upon 2 Carrier 5-ton air conditioners for maintaining temperature in the server room. These units have return flows at the bottom and vent air externally through one common air duct. The units were intended to provide failover, however instead both units run almost 100% of the time. The units are not

precision controlled and are not appropriate for a data center environment. Therefore, the District intends to replace these units with a more appropriate air handling system for the new data center design.

Today the data center does not have backup power generation capabilities. The facility does have a location for allowing a portable generator to 'tap-in' to the power input. However, as part of the design the District desires to ensure an appropriate future solution to backup power generation.

Constraints

The District faces a variety of constraints in implementing this project. The first is that the building where the data center is located is an older facility and therefore lacks some of the innovations implemented in facility design in the last 30 years. Additionally, the facility is a former bank building, meaning that walls surrounding the data center are 4-foot thick masonry walls designed to hold the weight of vaults on the first and second floors. The data center is located in the basement of the building and cannot be relocated to a different site within the building at this time.

The District is conducting a migration project for our Prime Minicomputer, and therefore the installation service cannot occur before January 1, 2010. Additionally, because the District is now so dependent on the technology systems for operations, the implementation and configuration service must result in as little downtime for the systems as possible.

Desired Configuration Outcomes

The District is issuing this RFP with the desire to obtain a comprehensive configuration and installation proposal for an upgraded data center. The configuration needs to address all of the District's concerns, including:

- Replacement of the existing UPS with a more sustainable unit
- Replacement of the air handling system with more energy-efficient and appropriate data center cooling devices
- Assessment of current and future power demand and scaling of power to handle needed loads
- Potential inclusion of a rooftop solar system to offset power draw of data center
- Assessment of existing fire suppression system to determine long term lifetime and capabilities of unit
- Design and configuration of facility to handle 10-year estimated growth
- Assessment of whether raised floor is necessary moving forward
- Assessment of configuration of overall IT space for most effective design
- Design and configuration of space
- Procurement of equipment against design
- Configuration of facility to address all design concerns
- Installation and configuration of all equipment to meet design concerns
- Installation and configuration of electrical equipment to handle anticipated 10-year forecasted demand
- Procurement, installation, and configuration of equipment in compliance with the principles of energy-efficiency and green computing
- Procurement, installation and configuration of new solution with as little downtime as possible.

Evaluation Criteria

This RFP requires a service to configure, procure, and install equipment for a new data center for the NCTD. The District will be evaluating the responses to this RFP against a variety of evaluation criteria:

- Company experience in configuration of data centers
- Reference of previous data center configuration customers
- Comprehensiveness of data center design approach
- Timeframe for proposed assessment
- Experience considering newer technologies (including virtualization) in data center configuration
- Experience in configuration solutions that consider energy efficiency and reduced energy consumption
- Expertise in all configuration considerations, including air handling, fire suppression, power demands, venting, cabling, flooring, etc.

- Ability of the firm to configure a solution that addresses all power concerns, including potential solar installation and backup generation

08 PROPOSAL, REQUIREMENTS, AND EVALUATION CRITERIA

RFP 09063

The contract resulting from this RFP will be awarded to the responsive and responsible Offeror(s) whose proposal, conforming to the requirements of the RFP, is determined to be the most advantageous to the Board, based on the Evaluation Criteria.

08.01 PROPOSAL REQUIREMENTS AND ORGANIZATION

Consultants shall review and base their proposals on the Scope of Work of RFP Section 07. Strict conformance to the specified proposal format and completeness of required content are essential. Lack of any listed item may disqualify proposal, at NCTD's discretion. Five (5) copies shall be submitted in an envelope marked with the following information: proposing firm's name and "DATA CENTER CONTRACTOR PROPOSAL". One copy shall contain all original signatures and be marked "ORIGINAL COPY". Manufacturers' cut sheets may be submitted as part of the technical proposal. However, all required information must be submitted and each element of the technical proposal must be labeled as indicated herein.

Each section of the proposal shall be tabbed in accordance with the numbering system shown below, to aid in expedient location of information

1. **Cover Letter**: Identify the name, address, telephone number, facsimile number, and e-mail address of the prime consultant and the principal who will represent the prime consultant. Identify any proposed sub-consultants, by discipline, and the principal who will represent each sub-consultant.
2. **Relevant Experience**. Describe the experience of the project team members with each of the seven tasks of the SOW.
3. **References**: Provide specific examples of similar projects that demonstrate the experience of the project team members and describe precisely the duties that the project team member performed on that project. Provide the name, address, and telephone number of a client representative for each project. Provide resumes of each person on the project team as an appendix.
4. **Work Plan**. Describe the actions that the project team would take to accomplish the tasks identified in this RFQ. Provide a proposed project time-line indicating the expected duration of each task for the initial scope of work identified. Include time for review by NCTD staff.
5. **Cost Proposal**. Provide cost breakdown for configuration and installation components and include a budget figure for each task of the SOW. Submit cost proposal and rates in a separate envelope for each firm identified in the proposal.
6. **RFP Forms and Certifications**. Each proposal shall contain all required forms and certifications of the RFP signed by an individual with authority to bind the company.

08.02 PROPOSAL EVALUATION PROCESS/FACTORS

Evaluation Procedures

A Consultant selection committee ("COMMITTEE") will be established for this project and will include representatives from NCTD, and when deemed in NCTD's best interest, representatives from other agencies, the general public, or individuals with experience and expertise in the related discipline.

After the initial review of the proposals submitted, the COMMITTEE may select a short-list of qualified firms that submitted an acceptable proposal. The COMMITTEE may interview the short-listed firms. NCTD reserves the right to make final Consultant selection based solely upon evaluation of the written proposals, without short-listing firms or conducting oral interviews, should it find it to be in its best interest to do so.

Based upon the proposal and interview (if conducted), the COMMITTEE will rank the proposals and determine the acceptability of each proposal. The COMMITTEE may ask each firm that submitted an acceptable proposal for a Best and Final proposal.

NCTD's Contracts Department will establish a negotiating team and enter into negotiation with the highest rated firm submitting an acceptable proposal. The negotiations will cover: scope of work, contract schedule, contract terms and conditions, technical specifications, and price. If the negotiating team is unable to reach an acceptable agreement with the highest rated firm, that negotiation will be terminated and negotiations with the second ranked firm be initiated. NCTD has final authority to terminate negotiations and move to the next ranked firm submitting an acceptable proposal.

After negotiating a proposed agreement that is fair and reasonable, the COMMITTEE will recommend to the Board of Directors that NCTD enter into the proposed agreement. Final authority to approve the agreement rests with the Board of Directors.

08.03 EVALUATION CRITERIA

NCTD will make the award to the responsible Proposer whose proposal is most advantageous to NCTD. Accordingly, NCTD may not necessarily make an award to the Proposer with the highest technical ranking nor award to the Proposer with the lowest Price Proposal if doing so would not be in the overall best interest of NCTD.

The overall criteria listed below are listed in relative order of importance. As proposals are considered by NCTD 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.

1. Company background and experience (20 points)
2. Proposed solution (35 points).
3. Timeframe and methodology (25 points)
4. Cost (20 points)
TOTAL: 100 points

The following guidelines and sample adjectives will be used for scoring of the proposals by the evaluation committee:

- **Most Advantages/Exceptional** Fully compliant with the RFP requirements and with the most desirable strengths and/or betterments, has no errors, or risks, or weaknesses, or omissions. (Excellent significantly exceeds in all aspects of the RFP requirements; extremely high probability of success; no significant weaknesses).
- **Good to Superior** Compliant with RFP requirements with no errors, or risks, or weaknesses, or omissions. (Very good substantial response; meets all aspects of the RFP requirements and in some cases exceeds; high probability of success; no significant weaknesses).
- **Adequate** Minimally compliant with the RFP requirements has errors, or risks, or weaknesses, or omissions, but can be easily be corrected and made acceptable. (Good generally meets minimum or critical RFP requirements; good probability of success; weaknesses can be readily corrected).
- **Poor to Deficient** Non-compliant with the RFP requirements has errors, or risks, or weaknesses, or omissions, and will be difficult to correct and make acceptable; requires major revision. (Marginal, lacking essential information; barely meets minimal requirements; significant weaknesses, but correctable; low probability of success).

09 DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS/DBE OBLIGATION

- a. The Contract to be awarded is funded in part by the U.S. Department of Transportation Federal Transit Administration. As a condition of financial assistance agreements between the District and the U.S DOT, the District has established a Disadvantaged Business Enterprise (DBE) Program and overall annual DBE goal in accordance with Title 49 CFR, Part 26.
- b. Pursuant to Race-Neutral DBE policy directives issued by the U.S. COT in response to the Ninth Circuit U.S. court of Appeals decision in *Western States Paving Co. v. Washington State Department of Transportation* and the FTA's Guidance (Docket No. FTA-2006-24063; dated March 23, 2006), the District will strictly utilize race-neutral measures to meet its overall DBEs, an equitable opportunity to compete for and perform on this DOT-assisted project.
- c. The Consultant is to ensure that the disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, the consultants shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and are awarded contracts. The Consultant shall not discriminate on the basis of race, color national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements fo 49 CFR Part 26 in the award and administration of the DOT-assisted contract. Failure by the Consultant to carry out these requirements is material breach of this contract, which may result in the termination of this contract or such other remedy as NCTD deems appropriate. Each subcontract the Consultant signs with a subcontractor/subconsultant must include the assurance in this paragraph (see 49 CFR26.13(b)).

10 REPRESENTATIONS AND CERTIFICATIONS OF BIDDERS
RFP 09063

As indicated below, the documents of this part of the RFP must be completed by the Bidder and submitted with the bid. If they are not submitted or are not complete, the bid may be classified as non-responsive and will not be considered further. The following check-off list is provided to assist in assuring a complete submission:

1. ☐ PROPOSAL DECLARATION FORM
2. ☐ CERTIFICATION OF NO EXCEPTIONS
3. ☐ OFFEROR'S QUESTIONNAIRE FORM
4. ☐ COST PROPOSAL (Original signed hardcopy with the Bidder's bid.)
5. ☐ LIST OF SUBCONTRACTORS
6. ☐ BUY AMERICA CERTIFICATE
7. ☐ CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION
AND OTHER RESPONSIBILITY MATTERS
8. ☐ CERTIFICATION OF RESTRICTIONS ON LOBBYING
9. ☐ ELIGIBILITY CERTIFICATION FOR FEDERALLY FUNDED CONTRACTS
10. ☐ EEO CERTIFICATE
11. ☐ WORKER'S COMPENSATION CERTIFICATE
12. ☐ DISADVANTAGED BUSINESS ENTERPRISE INFORMATION
13. ☐ GUARANTY
14. ☐ NON-COLLUSION AFFIDAVIT

UNLESS OTHERWISE NOTED, THE FOLLOWING ITEMS SHALL BE SUBMITTED BY THE SUCCESSFUL CONTRACTOR WITHIN THREE (3) DAYS OF THE DISTRICT'S REQUEST AND ARE REQUIRED IN ORDER TO ISSUE A NTP.

1. ☐ SIGNED AGREEMENT
2. ☐ FAITHFUL PERFORMANCE BOND
3. ☐ PAYMENT BOND
4. ☐ MAINTENANCE BOND
5. ☐ INSURANCE CERTIFICATES
6. ☐ CCR NUMBER REQUIRED FOR ARRA FUNDED WORK

10.01 PROPOSAL DECLARATION FORM

RFP 09063

NORTH COUNTY TRANSIT DISTRICT
810 Mission Avenue
Oceanside, CA 92054

Gentlemen:

Having carefully and completely inspected the location of the proposed work and examined all parts of RFP **09063** including Contract Drawings and Technical Specifications, the undersigned proposes to complete the total requirements according to these documents for a Grand Total Bid Price of \$ _____.

If written notice of the acceptance of this bid is mailed or delivered personally to the undersigned within sixty (60) days after the date set for the opening of this bid, or at any time thereafter before it is withdrawn, the undersigned Bidder shall execute Contract Documents with NCTD, in accordance with this bid as accepted.

The undersigned agrees to provide all necessary machinery, tools, apparatus and other means of construction and to do all the work and furnish all the materials for the work specified in the RFP and any resulting contract, and will construct the work exactly as described in the Contract Documents, unless otherwise authorized by written Change Order, and that the work will be completed within the time priority requirements of RFP **09063** and the undersigned will comply with the Guaranty Requirements of the RFP.

Receipt is acknowledged during the bidding period of the following addenda, number(s) _____ (if none were received, the Bidder is to state "none.")

The Breakdown of the Total Bid Price is provided by Bidder on the Bid Price Form included herein.

Official, legal name of bidding firm or individual (Type or Print)

Signed by: _____ Date: _____

Type or Print Name and Title

10.02 CERTIFICATION OF NO EXCEPTIONS

RFP 09063

The Offeror hereby certifies that it takes no exception(s) to this RFP.

Official, legal name of firm or individual (Type or Print) offering the proposal

Signed by: _____ Date: _____

Type or Print Name

Type or Print Title

If the proposer does take exception(s) to any portion of the RFP, the specific portion of the RFP or the Contract to which exception(s) is taken shall be submitted to NCTD prior to bid opening in accordance with the PRE-PROPOSAL QUESTIONS AND OTHER COMMUNICATIONS clause of the RFP.

10.03 OFFEROR'S QUESTIONNAIRE FORM

RFP 09063

1. Name of Firm: _____
Address: _____
Contact Name: _____
Contact Information: Phone: _____ Fax: _____ Email: _____

2. Provide the client names and addresses (with contacts and phone numbers) for three clients for which Bidder has performed similar work within the past five years:

TO BE SUPPLIED UNDER SECTION 08 "PROPOSAL REQUIREMENTS AND EVALUATION CRITERIA".

3. Name your principal financial institution for financial responsibility reference.

Name of Bank: _____
Street Address: _____
City and State: _____ Telephone: (____) - _____
Officer Familiar with Bidder's Account: _____

4. Name the surety company from which you have previously obtained Performance Bonds.

Name of Surety Company: _____
Local Street Address: _____
City and State: _____ Telephone: (____) - _____
Person Familiar with Bidder's Account: _____

5. State your firm's average receipts in each of the past 3 fiscal years:

\$ _____ \$ _____ \$ _____

6. Contractor's State License No. _____

Original Date Issued _____ Expiration Date _____

Note: The above representations regarding the Contractor's license are made under penalty of perjury.

Signed _____ Date _____

7. The following are the names, titles, addresses, and phone numbers of all individuals, firm members, partners, joint ventures, and/or corporate officers having a principal interest in this bid:

8. The date of any voluntary or involuntary bankruptcy judgments against any principal having an interest in this bid are as follows:

9. All current and prior DBAs, alias, and/or fictitious business names for any principal having an interest in this bid are as follows:

10. Has Bidder ever failed to complete any work awarded to it? If so, when, where and why?

11. Corporation organized under the laws of the State of _____

Official, legal name of bidding firm or individual (Type or Print)

Signed by: _____ Date: _____

Type or Print Name and Title

10.04 LIST OF SUBCONTRACTOR'S FORM

RFP 09063

In compliance with the Subletting and Subcontracting Fair practices Act (Chapter 2 [commencing at Section 4100], Division 5, Title 1 of the Government Code of the State of California) and any amendments thereof, each Bidder shall complete all portions of the List of Subcontractors form attached hereto. The prime Contractor shall list only one subcontractor for each such portion as is defined by the prime Contractor in this bid.

If a prime Contractor fails to specify a subcontractor, he shall be deemed to have agreed that he is fully qualified to perform that portion himself, and that he shall perform that portion himself.

No prime Contractor whose bid is accepted shall (a) substitute any subcontractor, (b) permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, or (c) sublet or subcontract any portion of the work. Subletting or subcontracting of any portion of the work in excess of one-half of one percent of the prime Contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of NCTD awarding this contract setting forth the facts constituting the emergency or necessity.

LIST OF SUBCONTRACTORS
RFP 09063

Name Under Which Subcontractor is Licensed	State Contractor's License Number/Expiration Date	Address and Phone Number	Value of Sub Contract and Percent of Total Contract	Specific Description of Subcontract	CALTRANS Certified DBE (Yes/No)

1. Do not list alternative subcontractors for the same work.
2. Use additional sheets as necessary.
3. The Bidder will not substitute any person, firm, or corporate organization as subcontractor in place of the subcontractors designated in the original bid without the written consent of the NCTD Board of Directors.
4. Subcontract name, value of subcontract, percent of total and specific description of subcontract contract must be presented at time of bid.
5. Phone number, address, license number and license expiration date of each subcontractor listed in a Bidder's bid within twenty-four (24) hours of bid submittal deadline or up to 3:00 pm on the first business day following the bid submittal deadline if the prescribed hour deadline falls on a weekend or legal holiday.

10.05 BUY AMERICA CERTIFICATE

RFP 09063

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The Bidder or Offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) or 5323(j)(2)(C) and the applicable regulations in 49 CFR Part 661.

Official, legal name of bidding firm or individual (Type or Print)

Signed by: _____ Date: _____

Type or Print Name

Type or Print Title

or

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) or 5323(j)(2)(C) as applicable, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Official, legal name of bidding firm or individual (Type or Print)

Signed by: _____ Date: _____

Type or Print Name

Type or Print Title

NOTE: Any steel, cement, lumber and all manufactured products used in the contract and for the contract projects supported by Federal funds (FTA) must be produced in the United States of America.

This contract is an FTA funded project and the Contractor must keep all product manufacture locations on file and must present on demand. Furthermore, these files will be turned over to NCTD upon Contract completion.

**10.06 CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION,
AND OTHER RESPONSIBILITY MATTERS**

RFP 09063

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential Contractor for a major third party contract), certifies to the best of its knowledge and belief, that it and its principals:

Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

Have not within a three-year period preceding this bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

Have not within a three-year period preceding this application/bid had one or more public transactions (Federal, State or local) terminated for cause or default.

[If the primary participant (applicant for an FTA grant, or cooperative agreement, or potential third party Contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.]

THE PRIMARY PARTICIPANT (APPLICANT FOR AN FTA GRANT OR COOPERATIVE AGREEMENT, OR POTENTIAL CONTRACTOR FOR A MAJOR THIRD PARTY CONTRACT), _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

NOTE: Lower-tier Participants in this Contract (subcontractors, suppliers) are required to complete and submit identical certifications as the above to NCTD prior to award.

10.07 CERTIFICATION OF RESTRICTIONS ON LOBBYING
RFP 09063

I, _____, hereby certify on behalf of
(name and title of company official)

_____ 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, subgrants, 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__.

Signed by: _____

Type or Print Name

Type or Print Title

10.08 ELIGIBILITY CERTIFICATION FOR FEDERALLY FUNDED CONTRACTS

RFP 09063

The award of this contract is subject to a financial assistance contract between the North County Transit District and the U.S. Department of Transportation. Any name appearing on the Comptroller General's list of ineligible Contractors for federally financed or assisted contracts is not eligible for this contract.

The Bidder/Offeror hereby certifies that neither the Bidder/Offeror nor any of its officers or holders of a controlling interest are on the U.S. Comptroller General's list of ineligible Contractors for federally funded and assisted contracts. In the event any of the above persons or parties become included on such a list during the performance of this project, NCTD shall be promptly informed of this fact.

Official, legal name of bidding firm or individual (Type or Print)

Signed by: _____ Date: _____

Type or Print Name

Type or Print Title

10.09 EEO CERTIFICATE

RFP 09063

The Bidder hereby certifies that the company has ☐ has not ☐ been found, adjudicated, or determined to have violated any laws of Executive Orders relating to employment discrimination or affirmative action including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d); Executive Order 10925, 11114, or 11246; or the California Fair Employment and Housing Act (Government Code 12460 et seq.); by any federal or California court or agency, including but not limited to the Equal Employment Opportunity Commission, the Office of Federal Contract compliance Programs, and the California Fair Employment and Housing Commission.

If yes, please explain the circumstance.

Official, legal name of bidding firm or individual (Type or Print)

Signed by: _____ Date: _____

Type or Print Name

Type or Print Title

10.10 WORKERS' COMPENSATION CERTIFICATE
RFP 09063

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code and I will comply with such provisions before commencing the performance of the work of this contract.

Official, legal name of bidding firm or individual (Type or Print)

Signed by: _____ Date: _____

Type or Print Name

Type or Print Title

10.11 DISADVANTAGE BUSINESS ENTERPRISE (DBE) INFORMATION – RFP 09063

This form must be completed for the Prime Contractor submitting the Bid, Proposal or Quotation and each subcontractor listed in the Bid, Proposal or Quotation who will be performing work under any subsequent contract.

A. A Disadvantaged Business Enterprise is defined as follows:

A for-profit small business concern that is:

1. at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of corporation, in which 51-percent of the stock is owned by one or more such individual; and
2. whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR 26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who meets the criteria set forth in 49 CFR 26.5.

The entity must be certified as socially and economically disadvantaged under the Uniform Certification Programs (UCPs) established pursuant to the provisions of 49CFR26.81.

If your firm is a DBE, as defined above, please indicate below.

_____ Yes, my firm does qualify as a Disadvantaged Business Enterprise.

_____ No, my firm is not a Disadvantaged Business Enterprise.

If you answered “yes” above, please attach your DBE Certification to this page. NCTD accepts certification from only the agencies listed at http://www.dot.ca.gov/hq/bep/Roster_of_Certifying_Agencies_09-16-03.doc

10.12 GUARANTY

RFP 09063

To the North County Transit District, as Agency.

The undersigned guarantees the construction and installation of the Work included in this project.

Should any of the materials or equipment prove defective or should the Work as a whole or in part prove defective, due to faulty workmanship, material furnished or methods of installation, or should the Work or any part thereof fail to operate properly as originally intended and in accordance with the Plans and Specifications, due to any of the above causes, all within 12 months after the date on which this contract is completed and accepted by the Agency, or the date of recordation of Notice of Completion, whichever is the later, the undersigned agrees to reimburse the Agency upon demand, for its expenses incurred in restoring said work to the condition contemplated in said project, including the cost of any such equipment or materials replaced and the cost of removing and replacing any other work necessary to make such replacement or repairs, or upon demand by the Agency, to replace any such material and to repair said work completely without cost to the Agency so that said work will function successfully as originally contemplated.

The Agency shall have the unqualified option to make any needed replacements or repairs itself or to have such replacements or repairs done by the undersigned. In the event the Agency elects to have said work performed by the undersigned, the undersigned agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within a reasonable time after the receipt of demand from NCTD. If the undersigned shall fail or refuse to comply with his obligations under this guaranty, the Agency shall be entitled to all costs and expenses, including attorneys' fees, reasonably incurred by reason of the said failure or refusal.

Official, legal name of bidding firm or individual (Type or Print)

Signed by: _____ Date: _____

Type or Print Name

Type or Print Title

10.13 NON-COLLUSION AFFIDAVIT

RFP 09063

State of California)
) ss.
County of _____)

I, _____, being first duly sworn, deposes and says that he or she is _____ of _____ the party making the attached bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of _____, 200_ at _____
California.

Signature of Bidder _____

Print Name and Title _____

Print Name of Company _____

Subscribed and sworn to before me this . day of _____, 200_

Notary Public in and for said County and State

10.14 FAITHFUL PERFORMANCE BOND

(100% of Contract Price)

RFP 09063

KNOW ALL MEN BY THESE PRESENTS:

That we, _____ hereinafter referred to as "Contractor," as principal, and _____ as Surety, are held and firmly bound unto the North County Transit District, State of California, in the sum of _____ dollars (\$_____), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

WHEREAS, said Contractor has been awarded and is about to enter into contract with the North County Transit District for: _____, according to RFP **09063** at _____, _____, and is required under the terms of the Contract to give this bond in connection with the execution of said contract.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the above bounded Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform, the covenants, conditions, and agreements in the said contract and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the North County Transit District, its officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise, It shall be and remain in full force and virtue. And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in anywise affect Its obligation on this bond, it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract, or to the work, or to the specifications. In the event suit is brought upon this bond by the North County Transit District and judgment is recovered, the Surety shall pay all litigation expenses incurred by the North County Transit District in such suit, including attorneys' fees, court costs, expert witness fees and investigation expenses.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Contractor, as principal, and Surety above named, on the _____ day of _____, 200_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

WITNESS our hands this _____ day of _____, 20____. (Seal)

Official, legal name of bidding firm or individual Surety
(Type or Print)

Signed by: _____ Signed by: _____

Type or Print Name Type or Print Name and Title

Type or Print Title Approved

*NOTE: Appropriate Notarial Acknowledgements of Execution by Contractor and Surety must be completed and attached. The Surety's Power of Attorney must also be attached.

10.15 PAYMENT BOND

(100% of Configuration and Installation Contract Price)

RFP 09063

KNOW ALL MEN BY THESE PRESENTS:

That we, _____ hereinafter referred to as "Contractor," as principal, and _____ as Surety, are held and firmly bound unto the North County Transit District, State of California, in the sum of _____ dollars (\$ _____), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

WHEREAS, said Contractor has been awarded and is about to enter into contract with said North County Transit District for _____ according to RFP 09063 in _____, _____, and is required under the terms of the Contract to give this bond in connection with the execution of said contract providing that if said Contractor or any of his or its subcontractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the provisions of 3248 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Contractor, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 3181 of the California Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the California Revenue and Taxation Code, with respect to such work and labor the surety or sureties will pay for the same, in an amount not exceeding the sum hereinabove specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the North County Transit District in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 3181 of the California Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement hereinabove described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement hereinabove described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the North County Transit District and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110 or 3112 of the California Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed unoriginal thereof, have been duly executed by the Contractor, as principal, and Surety above named, on the _____ day of _____ 20__ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

WITNESS our hands this _____ day of _____, 20____. (Seal)

Official, legal name of bidding firm or individual
(Type or Print)

Surety

Signed by:

Signed by:

Type or Print Name

Type or Print Name and Title

Type or Print Title

Approved

*NOTE: Appropriate Notarial Acknowledgements of Execution by Contractor and Surety must be completed and attached. The Surety's Power of Attorney must also be attached.

10.16 MAINTENANCE BOND

**(100% of Contract Price)
RFP 09063**

BOND NUMBER_____

KNOW ALL MEN BY THESE PRESENTS, That we,

(hereinafter called the Principal), and _____ (hereinafter called the Surety),
are held and firmly bound unto _____

(hereinafter called the Obligee), in the full and just sum of _____ Dollars,
lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our
heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Principal has entered into a certain contract with the Obligee dated _____
_____ which contract has
been or is about to be completed and accepted.

AND WHEREAS, specifications and contract provided that _____ should warranty the project free
from defects caused by faulty workmanship, materials and/or equipment, in whole or in part, general wear and tear
excepted, for a period of 1 year after final payment by North County Transit District,

NOW THEREFORE, if the said project shall be free from defects of workmanship, materials and/or equipment, in
whole or in part, general wear and tear excepted, for a period of 1 year after final payment by North San Diego
Transit Development Board, then this obligation shall be null and void; otherwise to remain in full force and effect.

PROVIDED, that any alterations in the Work to be done, or the material to be furnished, which may be made
pursuant to the terms of said contract, shall not in any way release either the Contractor or the Surety thereunder,
nor shall any extensions of time to be granted under the provisions of said contract release either the Contractor or
the Surety, and notice of such alterations or extensions of the contract is hereby waived by the Surety.

Signed, sealed and delivered _____

Witness as to _____ (Seal)

Principal _____ (Seal)

_____ (Seal)

Attorney-in-fact

10.17 CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

RFP 09063

Where the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:

Upon receipt by the undersigned of a check from (Maker of check) in the sum of \$_____ (Amount of Check) payable to (Payee or Payees of Check) _____ and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of North County Transit District located at (Job Description) _____ to the following extent. This release covers a progress payment for labor, services, equipment, or material furnished to (Your Customer) _____ through (Date) _____ only and does not cover any retentions retained before or after the release date, extras furnished before the release date for which payment has not been received; extras or items furnished after the release date.

Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release.

This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

Dated: _____

(Company Name)

By: _____

(Name and Title)

10.18 UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

RFP 09063

Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant asserts in the waiver it has, in fact, been paid the progress payment, the waiver and release shall follow substantially the following form:

The undersigned has been paid and has received a progress payment in the sum of \$_____ (Amount of Check) for labor, services, equipment, or material furnished to (Your Customer) _____ on the job of North County Transit District located at (Job Description) _____ and does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to (Your Customer) _____ through (Date) _____ only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date.

Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release.

This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment or material was not compensated by the progress payment.

Dated: _____

(Company Name)

By: _____

(Name and Title)

Each unconditional waiver in this provision shall contain the following language, in at least as large a type as the largest type otherwise on the document:

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

10.19 CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Where the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:

Upon receipt by the undersigned of a check from (Maker of Check) _____ in the sum of \$_____ (Amount of Check) payable to (Payee or Payees of Check) _____ and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of the North County Transit District located at (Job Description)_____.

This release covers the final payment to the undersigned for all labor, services, equipment, or material furnished on the job, except for disputed claims for additional work in the amount of \$_____ (Amount of Check). Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

Dated: _____

(Company Name)

By: _____

(Name and Title)

10.20 UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver it has, in fact, been paid the final payment, the waiver and release shall follow substantially the following form:

The undersigned has been paid in full for all labor, services, equipment or material furnished to (Your Customer) _____ on the job of the North County Transit District located at (Job Description) _____ and does hereby waive and release any right to a mechanic's lien, stop notice, or any right against a labor and material bond on the job, except for disputed claims for extra work in the amount of \$ _____ (Insert Amount).

Dated: _____

(Company Name)

By: _____

(Name and Title)

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



11 CONTRACT REQUIREMENTS FOR WORK AWARDED BY NCTD THAT IS PAID FOR BY A.R.R.A FUNDS

As of May 29, 2009

The North County Transit District is a recipient of funding from the American Recovery and Reinvestment Act of 2009 (Recovery Act) authorized under Pub. L. 111-5, February 17, 2009, referred to throughout this document, as ARRA.

Contractors and their sub-contractors or sub-suppliers (hereinafter referred to by the letters CSCSS's) must comply with special provisions and reporting requirements for projects financed under ARRA as mandated by the U.S House of Representatives Committee on Transportation and Infrastructure.

This document is composed of two sections. One lists the special provisions and one lists the monthly reporting requirements that you are required to comply with.

Section 1: Special Provisions

1. All CSCSS's must have a Dun and Bradstreet Universal Numbering System (DUNS) number. Acquisition of a DUNS number is free and can be obtained at <http://www.dnb.com>. For expedited service call 800-333-0505.
2. All CSCSS's must have a current registration in the Central Contractor Registration system (a CCR number) at all times during which they have active awards of work funded by ARRA. Registration can be obtained at <http://www.ccr.gov>.
3. The District will issue a Purchase Order with the suffix "OZ" when authorizing work funded by ARRA. The Purchase Order will either be a task order commitment against an existing contract or a commitment for new work, confirming to an RFQ, RFP or IFB for goods, materials or services. No ARRA work may be performed without such a Purchase Order document. No oral direction by a District employee is to be accepted by any CSCSS as the Purchase Order transmittal is the authorization document.
4. Prior to award of a contract or purchase order from the District, the entity receiving the award must submit its DUNS number and CCR number to the District for itself and any other sub contractors or sub suppliers that will be paid under the awarded document as proof of compliance with items 1 and 2, above.
5. When appropriate, signs, materials and documents used when expending ARRA funds are to display both the Recovery.gov and TIGER logos (shown at the top of this page). Such use includes, but is not limited to; jobsite signs, bid documents and website posting of contract awards. Logos may be found at http://www.fta.dot.gov/index_9440_9482.html and if used, instructions at this website must be followed.
6. Compliance with Wage Rate Requirements under Section 1606 of the Recovery Act is required. Statutory provisions of 49 U.S. C. Chapter 53 impose Wage Rate requirements involving

construction, alteration, maintenance or repair sufficient for compliance with Section 1606 of the Recovery Act.

7. Compliance with the reporting of violations of the law is required. Violations shall be reported to the U.S. DOT Inspector General if any credible evidence exists that a principal, employee, agent or other person associated with a prime contractor, consultant, sub-contractor or equipment/material supplier has submitted a false claim under the False Claims Act, 31 U.S.C. 3729, et seq., or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving Recovery Act funds.
8. Compliance with the submittal of information with each invoice is required so that NCTD can report data in compliance with Section 1512(c) of the ARRA. Reporting instructions and data elements are found at <http://www.federalreporting.gov> and currently apply to NCTD only. Reporting to NCTD as described in Section II, item 1, below, is required. Contractor may be required in the future to directly report required information to the Federal government via their website. All data submitted will be accurate, objective and of the highest integrity.
9. Acceptance of any work funded by ARRA obligates the contractor to comply with applicable future Federal requirements that may be imposed on the use of ARRA funds. The District will notify the contractor of these requirements as soon as they are made known to NCTD by the Federal government.

Section II: Reporting Requirements

1. As a requirement of submitting an invoice, the following information must be included or an invoice cannot be paid. This applies to a single invoice or multiple progress payment or milestone achievement invoices:
 - a. The number of direct on project jobs created or sustained by ARRA funds (i.e., the number of employees created or sustained by ARRA funds, including CSCSS employees.)
 - b. The total job hours created or sustained by ARRA funds (i.e., the total job hours for employees cited in above item a.)
 - c. The total payroll of job hours created or sustained by ARRA funds. (i.e., the total dollar amount of wages paid for job hours created or sustained by ARRA funds.)
2. Information required by item 1 is to be submitted in Excel format
3. In addition to a delay in payment until information required in item 1, above is submitted, Liquidated Damages (LD's) of \$100.00 per day will apply beginning on the fourth day after the invoice should have been received or on the forth day after an incorrect invoice was received and continuing for a maximum of ten days.
4. Invoices are to be addressed and/or delivered only to the Accounts Payable Department and clearly identified by the NCTD OZ Purchase Order number and the letter designation "ARRA" so that the invoice may be date and time stamped. Failure to make such a notation on the invoice may result in the maximum Liquidated Damages being imposed by the District in the event that information of item 1, above, is not submitted with the invoice.
5. Invoice for work previously performed is to be received at the District no later than 9:00 a.m. on the third calendar day of the month following the performance of the work. Work that cannot be included in the invoice under these circumstances is to be invoiced the following month.