



REQUEST FOR QUALIFICATIONS

Cover Sheet

General Information	
Project Name	Utah County Park & Ride Facilities Design
Project Description	Design services for the design and construction documents for new Park & Ride facilities with associated roadway and bus stop improvements in Eagle Mountain and Saratoga Springs, Utah.
Project Start Date	December 2023
Contract Type	Professional Services Agreement with fixed labor rates and NTEs.
UTA Project Manager	Travis Colledge
Funding Source	Local funds will be used for this phase of the Project; Federal & local funds are anticipated for the construction project.
DBE Participation Goal	0%
Procurement Process Information	
RFQu No.	23-03780VW
Contract Administrator	Vicki Woodward 669 West 200 South Salt Lake City, Utah 84101 (801) 287-3033 vwoodward@rideuta.com
Evaluation Criteria: Evaluation Selection Weighting: 100 Points Section 1 Team and Key Personnel Qualifications including an Organization Chart 25 Points Section 2 Project Understanding and Approach to the Work 50 Points Section 3 Experience and Quality of Similar Work 25 Points	This procurement will follow a qualifications-based selection process wherein the Proposer determined by the Selection Committee to be the most qualified, in the Selection Committee's sole discretion, will be invited to enter into negotiation of the design services contract. See Part 2 for more information on the proposal content and rating method.
RFQu Schedule:	
A) Issue Request for Qualifications	September 14, 2023
B) Deadline to submit questions to UTA	September 21, 2023

C) Last day for UTA to issue addenda and clarifications		September 28, 2023	
D) Deadline to submit Statement of Qualifications		October 5, 2023, 2:00 p.m. MST	
E) Presentations/Interviews (optional)		TBD if needed	
Included as part of this RFQu			
Part 1 – Project Information			
Part 2 – Procurement Process Information			
Part 3 – Standard Terms of Solicitation			
Part 4 – Sample Contract			
Part 5 – Forms including Appendices (include only those which are applicable)			
Appendix I - Federal Forms and Certifications (within document)			
Appendix II - Federal Clauses (within document)			
Appendix III – UTA’s Quality Management Plan			
Appendix IV – UTA’s Design Quality Procedures			
Appendix V – UTA’s Construction Safety and Security Program Manual			
Appendix VI –Project Design Needs (within document)			
Appendix VII – Saratoga Springs Northshore Traffic Impact Study, Addendum 1, and Addendum 2			
Appendix VIII – Cost Pricing Form			
RFQu Contents			
Page Limit *Cover Letter, section dividers, quality control plan, corporate safety plans, full page resumes, required Federal and UTA forms and other documents expressly stated herein do not count toward page limit.		3 Pages	1 page of the 3 may be 11” x 17”
Submittal Instructions			
One (1) electronic copy of the technical SOQ shall be uploaded to SciQuest on or before the deadline referenced above. See Part 3 of this RFQu for further instructions.			
Submission of Cost Proposals: Cost proposals should be prepared at the same time as the consultant prepares a response to this solicitation (Appendix VIII Cost Pricing Form). Respondents must not submit their cost proposal as part of their initial response. The most qualified consultant(s) will be notified and must submit their cost proposal upon the completion of the technical evaluation. Cost proposals must be submitted within 5 business day of such request. The failure to submit a cost proposal within 5 business day of request shall render a response to this solicitation as non-responsive.			
Attachments and Forms			
Required Forms To be considered responsive, SOQs must include those additional forms, declarations, and certifications listed below:			
Appendix I- Federal Attachments A. EEO Statement A-1. DBE Participation Form A-2. Letter of Intent to Subcontract with DBE Firms A-3. Good Faith Efforts Documentation Form A-4 Employment Practices/EEP Plan B. Buy America Certificate		Appendix II- UTA Forms A. SOQ Forms and Declarations (Part 5 Forms) B. Appendix VIII-Cost Pricing Form	

C. Debarment Certification D. Lobbying Certification E. Solicitation Statistics F. Requirement for Written Subcontracts and Flow down of Required Clauses	
A Respondent or potential Respondent shall not have any communications with any of the Project Team members concerning the Program or this RFQu after it is released, except for the submission of questions and requests for clarification in the manner provided in this RFQu through the UTA Contract Administrator.	



REQUEST FOR QUALIFICATIONS

Part 1 – Project Information

A. GENERAL OVERVIEW

Utah Transit Authority (UTA) requests Statements of Qualification (SOQs) from multi-disciplinary architectural and engineering design professionals (A/E) interested in performing design and construction phase services for the design of two new park & ride facilities in Utah County: one located in Eagle Mountain and the other located in Saratoga Springs. The proposed locations have been modified from the original locations shown along Pioneer Parkway. The work associated with the RFQu includes traffic signal design, roadway improvements, trail connections/improvements, and bus stop improvements. The selected firm will work with UTA's Service Planners and Bus Operations to create the facility designs and provide the necessary documents for the project. This includes completing required field studies needed for UTA to complete the CatEx and providing public involvement services. These improvements are being built in partnership with Utah County, Saratoga Springs, and Eagle Mountain.

The needs that the Project will address include:

1. Prepare alternatives for screening for pedestrian and bus stop enhancements along Pony Express Parkway near the proposed Eagle Mountain Park & Ride Facility and options for the Park & Ride Facility(ies) layout at this location.
2. Provide public outreach services during the environmental clearance, final design, and during construction.
3. Prepare plans and specifications for bidding and selecting a construction contractor to construct the new park & ride facility in Saratoga Springs within existing/dedicated public right-of-way, along with associated roadway improvements, trail improvements/connections, bus stops, and traffic signal design at 800 East and the new park & ride facility(ies), bus stops, and pedestrian improvements for the proposed Eagle Mountain Park and Ride facility(ies). The design should include one operator restroom facility design, with the location to be determined in design. See exhibits below for proposed park and ride locations.
4. Prepare any permit applications for submittal.
5. Provide exhibits as needed for any agreements needed between UTA and Eagle Mountain, Saratoga Springs, and Utah County.
6. Design support during construction installation. This will be negotiated prior to construction.



Proposed Saratoga Springs Park & Ride Facility



Proposed Eagle Mountain Park & Ride Facility(ies)

The Proposal shall include a proposed schedule for completing the work as outlined herein.

B. PROJECT GOALS

The overall goals of the Project are:

1. Develop alternatives for enhanced bus stops and pedestrian improvements along Pony Express Parkway with the design of a new park & ride facility(ies) in Eagle Mountain and design new park & ride facility, including roadway and trail connections/improvements, bus stops, and traffic

signal design compatible with the proposed development in Saratoga Springs. Also, provide design for one operator restroom, location to be determined. Coordinate with the UTA's Service Planners and Bus Operations Team, Cities, and County on the design. Final PS&E bid package to be completed and submitted to UTA by December 31, 2024.

2. Complete required field studies to address resources contained in the FTA CatEx Checklist.
3. Provide public outreach services for environmental, final design and construction phases.
4. Design the Project to ensure that the estimated construction cost provides the best value to UTA.

Over the course of the Project, the Designer will consider the following objectives:

1. Design to meet the available funding and physical needs of the Project.
2. Provide construction cost estimates at the preliminary design, design development, construction documents, and bidding phases identified for the Project.
3. Cultivation of a partnering attitude and effective cooperation among the design team, UTA, Utah County, Eagle Mountain, Saratoga Springs, and any selected Contractors.
4. Implementation of a Project that is cost-effective; meets the phasing and schedule milestones of UTA; and meets the quality and safety standards recognized by UTA is paramount to the successful completion of the Project.

C. PROJECT FUNDING

The design phase of the Project will be funded with local funds, with both federal and local funds anticipated for the construction project. Funding is constrained and limited for the Project, as such, strict budget control is critical to the success of the Project.

The scope of services and approach to the work proposed for the Project will be a key element in the determination of the capacity and capabilities of the Proposer in the qualifications-based selection of the successful Proposer. The Proposal shall include the services and deliverables for each phase of the Project and specifically for the construction documents phase. For the optional design support during construction phase services of the Project the Proposal should include a general description of the services and approach to the work.

D. DESIGN CONTRACT, SCHEDULE, AND PHASING

The design services are to be performed by the selected Proposer for the not-to-exceed price to be negotiated as noted herein for the agreed-upon design services. The final scope of services and approach to the work will be negotiated between UTA and the Proposer selected pursuant to this RFQ prior to execution of the design Contract. A notice to proceed will be issued promptly following execution of the design Contract. The optional construction services phase is dependent on the quality of the services provided on the design work and will be awarded at the sole discretion of UTA.

The Project is expected to have NTP in late 2023 to begin design services. The design shall be finished by December 31, 2024, with the project ready to be bid January 2025. Construction is expected to be completed by August 30, 2025.

E. PROJECT DESCRIPTION

The selected design firm will provide design and construction phase services for the two new park & ride facilities: one in Eagle Mountain and one in Saratoga Springs. The selected Consultant will work with UTA to determine the final size, including number of bus bays and parking spaces, and location of an operator restroom. The design shall be developed in accordance with UTA standards and specifications.

Final package and deliverables to be engineering drawings, engineering specifications and engineer's probable cost estimate.

F. SCOPE OF WORK

It is intended that Proposal, in response to this RFQu, will expand on the general scope of work outlined herein by providing a more detailed scope of work and approach to the Project including a detailed list of activities, deliverables, and a schedule to accomplish the Project outlined herein. The selected Consultant will assist UTA in developing the scope, schedule, and budget for the Project outlined herein and in their proposed scope of services included in their proposal to this RFQu.

The general scope of work for the design services includes, but is not limited to the following:

1. Preliminary design phase to assess the needs and identify the layout and primary design elements and provide screening alternatives for bus stops, pedestrian enhancements, operator restroom, and the park and ride facilities.
2. Field studies to address resources contained in the FTA CatEx Checklist.
3. Public Outreach services.
4. Design development phase to advance the design and provide a probable construction cost estimate.
5. Construction documents phase to include the required drawings, specifications, and detailed cost estimate to bid the project to prospective contractors.
6. Construction phase services to include attending construction meetings; making periodical visits to the site to observe the progress and quality of the work to determine if the work is proceeding in accordance with the Contract Documents; consulting with UTA and issuing all instructions to the contractor; reviewing or preparing change orders as required, responding to RFIs; checking and approving samples, shop drawings, review test results of material and equipment for compliance with the design concept; and preparation of as-built drawings and any other services identified by the selected Proposer to assist UTA in the construction of the Project. This work will be negotiated with the prior to the construction phase of the project.

Major work elements anticipated under this RFQu include the following items:

1. Project Management, Administration, and Coordination
2. Environmental Field Studies
3. Design/Engineering Services
4. Public Outreach and Agency Support

Project Management, Administration, and Coordination

The Project Manager shall be capable of and prepared to provide project management, administration, and coordination services as necessary to gather and direct a qualified team, conduct meetings, track and resolve issues, and conduct other supervisory services as needed to deliver the final bid package for UTA for the Project.

Deliverables: The design consultant will provide a design for the Eagle Mountain Park & Ride Facility(ies) and the Saratoga Springs Park & Ride Facility which will include the following:

- Preliminary Alternatives for bus stop/pedestrian enhancements along Pony Express Parkway for the Eagle Mountain Park & Ride
- Preliminary Alternatives for the Park & Ride layout with the potential for one park and ride location along the south side or a combination of one on the south side and north side of Pony Express Parkway for the bus stop/pedestrian improvements, trail improvements/connections, and roadway improvements including the traffic signal for the Saratoga Springs Park & Ride facility.
- Design for one operator restroom, location to be determined.
- Field Studies required to address resources contained in the FTA CatEx Checklist
- 30% design submittal, including:
 - 30% Design Drawings with utilities accurately plotted,
 - Engineer's Estimate in 49-division (CSI format) with contingency for construction, and
 - Stamped as "30% Design Development, Not for Bid".
- 60% design submittal, including
 - 60% Design Drawings with details of any required utility relocations,
 - Construction Specifications (Bid Schedule with Measurement & Payment and Special Provisions),
 - Engineer's Estimate in 49-division (CSI format) with a 10% contingency for construction, and
 - Stamped as "60% Design Development, Not for Bid".
- A final submittal of 100% Design Drawings, Construction Plans, Construction Specifications (Standard and Specials), and Bid Package with Engineer's Estimate Report.

Design/Engineering Services

The Designer shall prepare design in accordance with UTA standards and specifications and appropriate jurisdictional roadway design standards unless design waivers and deviations are approved. The Designer will be responsible for development of final engineering drawings.

It is anticipated that design will include but is not limited to:

- Civil and site development design
- Geotechnical analysis
- Structural design
- Traffic Signal Design
- Drainage design
- Utilities including coordination with third parties
- Survey and mapping

- Earthwork and Grading
- Landscaping, Lighting and Electrical
- Maintenance of Traffic
- Quantities and estimating

In addition to anticipated design disciplines listed above, the Designer shall consider and anticipate including the following elements in the completion of design:

- Schedule
- Quality Control
- Environmental Field Studies
- Specifications
- Environmental Permit Coordination
- Value Engineering
- As-Built Drawings
- Design Support During Construction (to be negotiated prior to construction)

Public Outreach and Agency Coordination Support

The Designer(s) shall support UTA with coordination with requisite stakeholders. The Designer(s) shall participate in stakeholder coordination meetings, as needed. Project stakeholders may include representatives from the Cities, Utah County, and other agencies to be determined, along with residents and businesses within the vicinity of the park and ride locations.



REQUEST FOR QUALIFICATIONS

Part 2 - Procurement Process Information

Statement Of Qualifications (SOQ) FORMAT

SOQs must adhere to the following format:

- SOQs should be formatted primarily to 8 ½ by 11 inches. One 11 by 17-inch page may be used.
- SOQs should use a minimum of 12-point font.
- If a SOQ is submitted in double-sided format, both sides of the page will be counted against the Page Limit.
- The SOQ must not exceed the Page Limit shown on the RFQu Cover Sheet. The Proposer shall not submit brochures or additional materials. At its discretion, UTA will not consider such additional materials in the selection of the successful Proposer.
- Maximum file upload size in Scquest is 50mb

Failure to follow the format described above may result in the SOQ being deemed non-responsive.

The SOQ information must be divided as follows:

- Cover Letter
- Section 1: Team and Key Personnel Qualifications
- Section 2: Project Understanding and Approach to the Work
- Section 3: Experience and Quality of Similar Work
- Section 4: Attachments & Forms

Headers separating the sections, the cover letter, resumes, the Respondent's general Quality Control and safety plans, federal attachments, UTA forms and the example contract objections sheet will not count as pages in the RFQu page count. Failure to follow the format described above may result in the SOQ being deemed non-responsive.

SOQ CONTENT

The SOQ should consist of the following sections which clearly identify, in the order listed below, the following information.

Cover Letter

Identify the Respondent's point of contact name, address, telephone, and e-mail address. The Cover Letter must be signed by a principal of the Firm or other person authorized to commit the Firm and its resources to this project.

Section 1: Team and Key Personnel Qualifications including an Organization Chart (25 Points)

In the SOQ, the Respondent shall provide an organizational chart showing its proposed team members, including any proposed subconsultants, and their duties and responsibilities for the Project. The Respondent shall also describe the experience for each Key Personnel identified in this Section. Respondents may provide descriptions of other staff identified in the Respondent's organizational chart, as Respondent deems proper, to highlight the capabilities of critical staff members and their proposed role in the Project and may include their resumes if relevant. At a minimum, the Key Personnel listed below must be proposed by each Respondent. Deletions from these Key Personnel will not be considered by UTA and may cause a SOQ to be deemed non-responsive.

Identify the following Key Personnel as needed for the project:

- A) **Project Manager**
- B) **Lead Designer**

In Section 1 of the SOQ, for each of the Key Personnel, describe his or her experience with projects similar to the work in this Project. Additionally, provide any unique/relevant qualifications that may set this team's members apart from other Respondents. In addition, provide references for each proposed Key Personnel. References must have been directly involved in work performed by the Key Personnel in the five years preceding the date on which this RFQu is issued. UTA reserves the right to contact the reference specifically named by the Respondent or any other additional references as deemed appropriate by UTA, including references suggested by the Respondent's named references or references known to UTA through its own knowledge of the industry.

In the qualifications specified below, the word "must" indicate a required minimum qualification. The words "should or shall" indicates UTA's preferred qualification, but such qualification is not a mandatory requirement. It is the responsibility of the Respondent to propose a team that it believes will meet the stated objectives of UTA. UTA understands that one of the major factors for success of a project is that the team is experienced in the work that it is performing. As such, UTA has stated the qualifications of each Key Personnel to provide the Respondent with the criteria that UTA will use to evaluate the team of Key Personnel proposed.

Key Personnel:

- A) Project Manager

The Project Manager (PM) must have a minimum of ten years of experience in design and should have five years of experience in management of design with an emphasis on projects that included work of a similar scope, nature, and complexity in this Project. The PM must have experience managing comparable projects and familiarity with local and city standards. The PM should have experience working with federal/local governments on similar types of projects, or comparable experience on projects that consisted of multiple components. The PM must have experience in the design of projects using methods other than low bid design-bid-build and should have experience in the design of projects making use of Best Value project delivery methods. The PM must have a Professional Engineer license issued by the State of Utah or be able to obtain a license prior to commencing any work on this Project. At least one reference for the PM should be from a municipality, city, county, local, transit or transportation agency.

- B) Lead Designer

The Lead Designer must have a minimum of seven years' experience in the design of similar facilities. The

Lead Designer should possess knowledge of relevant building codes and design standards and specifications. They must have demonstrated experience successfully designing and delivering plans, specifications & estimates packages for comparable projects and facilities. They must have a Professional Engineer license issued by the State of Utah or be able to obtain a license prior to commencing any work on this Project.

C) Organizational Chart

The organizational chart provided in response to this section shall count as a page for purposes of the page limit stated in the RFQu Cover Sheet. Narratives of Key Personnel experience and other team members shall also count as pages for purposes of the page limit. Additionally, identify any other subconsultants that the Respondent is committed to using on this Project.

The Respondent must seek and receive permission from UTA before removing or substituting any of the above Key Personnel from the Project prior to completion and must propose a substitute person meeting the above qualifications in connection with such request.

Section 2: Project Understanding and Approach to the Work (50 Points)

The Respondent shall describe its approach to completing the work. The Respondent is encouraged to describe its approach to technical and procedural elements it perceives to be significant to the success of the Project. The Respondent shall include the following:

A) A/E Design Services Approach to the Work & Project Schedule

Describe the detailed approach to completing the A/E programming, space planning, design, bidding, and construction phase services scope of work for this Project. Respondents shall also include a proposed bar scaled schedule of the proposed task activities for the relevant design, bidding, and construction phases for the project. The Scope of Services set forth in Part 1 of this RFQu is provided to give Respondents an understanding of the anticipated services that may be needed. Describe your approach to completing what your team determines are the most critical and challenging items listed to ensure the success of the Project as well as your approach to schedule and budget control. Describe the approach to applying innovative design solutions to challenging A/E or construction problems and the approach to analyzing and resolving any foreseen risks. Additionally, Respondents must describe their intended approach to controlling costs to ensure the Project does not exceed its budget from the available funds.

B) Quality Control Approach in A/E Services

In addition to providing a copy of its general corporate Quality Control Plan (which shall not count toward the page limit on the RFQu Cover Sheet and should be included at the end of Section 4), the Respondent shall provide a narrative of its QC approach to a similar Project and shall illustrate and describe the proposed QC organization. The Respondent shall show and describe how QC functions and organization are independent of production managers. The Respondent shall describe the QC reviews planned. The Respondent shall describe methods of corrective action and recovery techniques used to institutionally correct an issue or problem once issues or problems are identified. The QC plan should demonstrate the Respondent's familiarity with and commitment to adhere to UTA's Quality Management Plan and Design Quality Procedures (included in Part 5, Appendix III and IV of this RFQu).

C) Critical Issue and Risks Identification

The Respondent shall provide information regarding its perception of the critical issues and risks affecting each Initial Project design and construction. For each project, identify the risks, challenges, conflicts, impacts and critical issues and what the strategies are to mitigate the critical issues and risks. It is important to list risks based upon past similar project experience and how the Respondent addressed and solved those risks.

Section 3: Experience and Quality of Similar Work (25 Points)

In the SOQ, discuss past project work highlighting similar experience, expertise, and level of involvement on projects. Provide any unique project experience that may set this team apart from other Respondents. Respondents should identify how their experience, and lessons learned on prior similar projects will facilitate successful completion of this Project.

Describe past projects highlighting experience in the five years preceding the date on which this RFQu is issued that are relevant to the Project. Include information on project management methods used to meet project goals that are similar to those required for this Project, including projects where the budget and schedule were met and/or expectations were exceeded. Describe, to the extent possible, those projects having a scope comparable, or reasonably comparable, to that anticipated for this Project.

In addition to a description in the SOQ, provide named owner references for the projects identified. References must have been directly involved, as a representative of the owner, in the project work performed by the Respondent. UTA reserves the right to contact the reference specifically named by the Respondent or any other additional reference deemed appropriate by UTA, including references suggested by the Respondent's named references or references known to UTA through its own knowledge of the industry.

Further, the Respondent shall provide information outlining any fines, claims, dispute proceedings, litigation, and arbitration proceedings with an amount in controversy in excess of \$100,000. The Respondent shall additionally identify any fines assessed by OSHA, EPA, or a state agency with jurisdiction over workplace safety or environmental quality. Additionally, the Respondent must include information concerning any contract over \$100,000 that resulted in the assessment of penalties such as stipulated damages or liquidated damages against the Respondent or any identified subconsultants over the past five years, where the assessment was settled, damages were finalized, or a judgment was entered. Further, the Respondent shall describe any conditions surrounding any contract entered into by the Respondent or any identified subconsultant over the past five years that has been terminated for cause or default or which required performance by another party. In addition, the Respondent must indicate any disciplinary action taken against the Respondent or any identified subconsultants within the past five years by any governmental agency or licensing board. For purposes of responding to and providing this and other required information, if the Respondent is a newly formed entity for purposes of submitting this SOQ and performing work on this Project, the Respondent shall provide all required information for each of the constituent individuals or entities comprising the Respondent.

Section 4: Attachments and Forms (included in Part 5)

In Section 4, Respondent shall include the attachments and forms. The attachments and forms do not count against the page limit provided on the RFQu Cover Sheet.

Appendix I- Federal Attachments	Appendix II- UTA Forms
A: EEO Statement	A. SOQ Forms and Declarations (Part 5 Forms) B. Appendix VIII – Cost Pricing Form
A-1: DBE Participation Form	
A-2: Letter of Intent to Subcontract with DBE Firm	
A-3: Good Faith Efforts Documentation Form	
A-4: Employment Practices/EEP Plan	
B: Buy America Certification	
C: Debarment Certification	
D: Lobbying Certification	
E: Solicitation Statistics	
F: Requirement for Written Subcontracts and Flow Down of Required Clauses	

Weighting of Evaluation Criteria

The SOQ will be evaluated based on responses to the information requested herein. UTA may interview one or more firms as part of the evaluation process; however, a decision to award a contract may be based solely upon the submitted SOQ.

This is a best value procurement wherein the award will be made to the responsive and responsible respondent(s) whose SOQ is determined to be the most advantageous to UTA. In the evaluation, the factors shall be weighted as follows:

- Section 1- Team and Key Personnel qualifications including an Organization Chart (25 Points)
- Section 2- Project understanding and approach to the work (50 Points)
- Section 3- Experience and quality of similar work (25 Points)

Cost will not be considered in the evaluation of SOQs. **A cost proposal should not be submitted with the SOQs.** However, a cost proposal should be prepared using the format contained at Appendix VIII.

The cost proposal will be requested from the most qualified respondent and must be provided within 5 days of being requested. A fair and reasonable price will be determined based on the rates provided.



REQUEST FOR QUALIFICATIONS

Part 3 – Standard Terms of Solicitation

A. INSTRUCTIONS TO PROPOSERS

1. Submission of SOQs.

SOQs must be uploaded to SciQuest by the “Bid ends” date and time listed on SciQuest. SOQs uploaded after the deadline will be considered non-responsive. It is the responsibility of the Proposer to ensure that its SOQ is properly uploaded by the deadline.

Log onto SciQuest at <https://solutions.sciquest.com/apps/Router/SupplierLogin?CustOrg=StateOfUtah>; if you have already registered, login and search by Utah Transit Authority or the RFQu number.

If you need to create an account, please select “Create Account” and then you can search UTA, or the RFQu number identified on the Cover Page. If you need assistance, please email the Utah Supplier Portal Support at sciquestadmin@utah.gov. Instructions to proposers are included in the RFQu documents.

For ease of review, UTA may also request delivery of hard copies of SOQs (see RFQu Cover Sheet).

2. Federal Requirements.

If federal funds are being used to finance this project, the Consultant shall also comply with the additional applicable federal terms and conditions listed in Appendix II and submit all applicable certifications, forms and reports listed in Appendix I.

UTA eComply Solutions. In addition, where federal funds are being used, the Bidder/Proposer shall submit required labor and subconsultant information to UTA through following portal: <https://uta.ecomply.us>. The information provided shall include the following:

- Set up and maintain Consultant login for all persons inputting information in the system
- Description of payments received from UTA, and payments made to subconsultants of all tiers including amounts and confirmation of payment
- All certified payroll must be input into eComply Solutions which may be accomplished either through direct input or importation from the Consultant’s accounting system.
- All subcontract award amounts, date signed, and change orders
- Certified payroll information shall be uploaded on a weekly basis; all other information shall be uploaded or input no less than monthly.
- The Consultant shall include this clause in all subcontracts and manage and monitor compliance of all subconsultants within the UTA eComply system.

3. Minimum Standards.

This RFQu sets forth the minimum requirements that all SOQs must meet. Failure to submit SOQs in accordance with this RFQu may render the SOQ unacceptable or non-responsive. UTA may, in its sole discretion, waive minor irregularities in a SOQ that do not alter the quality or quantity of the information provided.

4. Confidential, Protected, and Public Information

In accordance with Utah Code Section 63G-2-305(6) of the Government Records Access and Management Act (GRAMA) and UTA's Procurement Standard Operating Procedures (SOPs), procurement information related to this procurement will not be made public until after execution of the Contract with the successful Proposer. Procurement information includes the SOQs submitted by Proposers in response to this RFQu and any accompanying documentation, as well as records maintained by UTA during the procurement process.

UTA will maintain a process to ensure confidentiality for the duration of this procurement. If the Proposer submits information in its SOQ that it believes is "trade secret," the Proposer must follow the procedure set forth in Section 63G-2-309 of GRAMA.

Additionally, for ease of SOQ evaluation, UTA requests that each Proposer also follow the steps identified below:

- a) Clearly mark all trade secret information as such in its SOQ at the time the SOQ is submitted and include a cover sheet stating, "DOCUMENT CONTAINS TRADE SECRET INFORMATION" and identifying each section and page which has been so marked;
- b) Include a statement with its SOQ justifying the Proposer's determination that certain records are trade secret information for each record so defined;
- c) In addition to the SOQ uploaded to SciQuest, upload a second copy of the SOQ (as an attachment) that has all the trade secret information deleted, and label such copy of the SOQ "Public Copy." If a Proposer uploads a SOQ containing no trade secret information, no "Public Copy" need be submitted. However, any Proposer that submits a SOQ containing no trade secret information must so certify in a cover letter to its SOQ; and
- d) Defend any action seeking release of the records it believes to be trade secret information and indemnify, defend, and hold harmless UTA and the State of Utah and its agents and employees from any judgments awarded against UTA and its agents and employees in favor of the party requesting the records, including any and all costs connected with that defense. This indemnification survives UTA's cancellation or termination of this procurement or award and subsequent execution of the Contract. In submitting a SOQ, the Proposer agrees that this indemnification survives as long as the trade secret information is in possession of UTA.

All records pertaining to this procurement will become public information after execution of the Contract unless such records are identified as trade secret information as specified above. No liability will attach to UTA for the errant release of trade secret information by UTA under any circumstances.

5. Submitting Questions to UTA

Questions and Requests for changes to the RFQu must be submitted via the SciQuest Q&A page before the end of the Question-and-Answer period. UTA's answers to timely questions will be posted on the SciQuest Q&A page. All communications regarding this RFQu should be addressed solely to the Contract Administrator whose name and contact information is listed on the Cover Page of the RFQu or IFB

6. Addenda to the Request for SOQs

UTA reserves the right to make changes to the RFQu, by issuing a written addendum to the RFQu which will be posted to SciQuest.

7. Withdrawal of SOQs

A Proposer may withdraw its SOQ from SciQuest before the SOQ due date without prejudice to itself.

8. Cost of SOQs

UTA is not liable for any costs incurred by Proposers in the preparation, presentation, or negotiation of SOQs submitted in response to this RFQu.

9. Examination of Request for SOQs

The submission of a SOQ constitutes an acknowledgment upon which UTA may rely that the Proposer: (i) has thoroughly examined and is familiar with the RFQu, including the contractual terms in Part 4, (ii) is familiar with any work site identified in the RFQu, and (iii) has reviewed and inspected all applicable statutes, regulations, ordinances, and resolutions addressing or relating to the goods and services to be provided hereunder. The failure or neglect of a Proposer to receive or examine such documents, work sites, statutes, regulations, ordinances, or resolutions will in no way relieve the Proposer from any obligations with respect to the Proposer's SOQ or to any contract awarded pursuant to this RFQu. No reduction or modification in the Proposer's obligations will be allowed based upon a lack of knowledge or misunderstanding of this RFQu, work sites, statutes, regulations, ordinances, or resolutions.

10. Negotiation of Firm Offer

Unless otherwise stated in this RFQu, submission of a SOQ constitutes a willingness to negotiate a fair and reasonable price for the services described in the RFQu.

B. SELECTION PROCESS

1. No Public Opening

This is an RFQu and, as such, the SOQs submitted in response to this RFQu will not be subject to a public opening.

2. UTA's Procurement Options

Based on submitted information, UTA may do or take any of the following actions, without limitation:

- select a Proposer based solely on the written SOQs, for further price negotiations;
- ask for more information or Clarifications before making a selection;
- use Presentations/Interviews/Problem-Solving Exercises before making a selection;
- under specific circumstances described in the Utah Procurement Code, determine a Competitive Range, conduct Discussions, and/or request Best and Final Offers (BAFO) before making a selection if a material error in the RFQu is discovered during the evaluation process, UTA may issue an addendum to all Proposers that have submitted SOQs requesting revised SOQs based upon the corrected RFQu.
- decline to accept any SOQ;
- re-advertise;

- cancel the procurement; or
- elect to otherwise procure the needed services in accordance with UTA policy and procedures.

UTA reserves the right to negotiate price, scope, schedule, and other contract terms with the preferred Proposer after a selection is made.

3. Responsibility

UTA will not select a Proposer who is deemed by UTA, in its sole discretion, to lack the ability or responsibility to perform successfully under the terms of the contract. Such determination of responsibility may encompass management, technical, legal, and financial matters.

4. Checking References

UTA reserves the right to contact any reference specifically named by the Proposer in its SOQ or any other additional references as deemed appropriate by UTA, including references suggested by the Proposer's named references or references known to UTA through its own knowledge of the transportation industry.

5. Requests for Clarification

The Proposer shall provide accurate and complete information to UTA. If information is incomplete, appears to include a clerical error, or is otherwise unclear, UTA may either (i) declare the SOQ non-responsive, (ii) evaluate the SOQ as submitted, or (iii) issue a Request for Clarifications to the Proposer stating the information needed and a date and time by which the information must be provided. If the Proposer does not respond to the Request for Clarifications in a timely manner, or if the Proposer's response is deemed to be insufficient by UTA, in its sole discretion, then UTA may declare the SOQ non-responsive.

All requests for Clarification will be in writing via SciQuest Q&A page, responses submitted as per the instructions contained in the request for Clarification. Responses must be limited to answering the specific information requested by UTA.

6. Presentations / Interviews / Problem-Solving Exercises

UTA may utilize presentations, interviews, and/or problem-solving exercises during this procurement if, at the sole discretion of UTA, it is considered to be in UTA's best interest. If UTA determines that presentations and/or interviews and/or problem-solving exercises are in its best interest, UTA will notify all or a short-list of the most highly qualified Proposers of the decision to utilize presentations and/or interviews and/or problem-solving exercises and schedule the presentations and/or interviews and/or problem-solving exercises in such a way as to not unduly delay the procurement process.

UTA reserves the right, in its sole discretion, to conduct multiple rounds of presentations and/or interviews and/or problem-solving exercises, if it deems necessary to do so, with one or more Proposers.

7. Price Negotiations

After selection but prior to award of the Contract, UTA will negotiate a fair and reasonable price with the successful Offeror.

If UTA and the selected Proposer are unable to reach a meeting of the minds on the scope, contractual terms, and/or price of the Contract, then UTA may, in its sole discretion, negotiate with the next most advantageous Proposer or choose to terminate the procurement in its entirety.

Once negotiations have been terminated with any Proposer, the negotiations may not be reopened with that Proposer under any circumstances.

If UTA receives only one responsive SOQ, UTA reserves the right to negotiate all elements of the SOQ and the Contract with the sole responsive Proposer, including, but not limited to, profit.

8. Notice to Unsuccessful Proposers

Following execution of the Contract between UTA and the successful Proposer, UTA will inform unsuccessful Proposers of the number of SOQs received by UTA and the name of the successful Proposer. UTA will attempt to give this notice promptly after the Contract execution. However, UTA's failure to give this notice will not be deemed to affect the validity of the Contract.

9. Debriefs

Upon request by an unsuccessful Proposer, UTA may, but is not required to, provide debriefing information for the sole purpose of discussing, in a limited way, the strengths and weaknesses of an unsuccessful SOQ.

10. Protests

Protests are governed by the Utah Procurement Code, Utah Code Ann. § 63G-6a-1601 *et seq.* To be valid, a protest must be in writing and be filed with UTA within the time frames set forth in Utah Code Ann. § 63G-6a-1602. A protest will be deemed to be filed pursuant to these procedures when actually received by the designated recipient by delivery via email to protests@rideuta.com.

All protests must include:

- The name and address, and email address of the protester;
- The appropriate contact person for the protester, to whom all protest correspondence shall be addressed;
- The solicitation or project number; and
- A detailed statement as to the nature of the protest including, without limitation: (i) the alleged facts and evidence giving rise to the protestor to claim that it has been aggrieved; (ii) the protestor's standing to protest; and (iii) the legal grounds upon which the protest is based.

The Procurement Officer shall make a written determination regarding the protest. An unfavorable determination of the UTA Procurement Officer is eligible for administrative reconsideration by a panel determined by the Chair of the UTA Board of Trustees. A notice of appeal must be delivered by the Protestor within five (5) calendar days of the date of the Procurement Officer's decision. A notice of appeal addressed as follows:

Chair, UTA Board of Trustees
c/o Utah Transit Authority
669 West 200 South
Salt Lake City, Utah 84101
Attn: Board Coordinator
CONTAINS TIME-SENSITIVE PROTEST MATERIALS

Any further appeal may only be made pursuant to Utah Code Ann. § 63G-6a-1801 *et seq.* A protesting entity must exhaust administrative appeals prior to filing a judicial appeal pursuant to Utah Code Ann. § 63G-6a-1801 *et seq.*



REQUEST FOR QUALIFICATIONS

Part 4 – Sample Contract

Professional Services Agreement

UTA CONTRACT #23-03780VW

Utah County Park & Ride Facilities Design Services

This Professional Services Agreement is entered into and made effective as of the date of last signature below (the “Effective Date”) by and between UTAH TRANSIT AUTHORITY, a public transit district organized under the laws of the State of Utah (“UTA”), and [INSERT NAME OF CONSULTANT], a [INSERT DESCRIPTION OF ENTITY TYPE] (“Consultant”).

RECITALS

WHEREAS, UTA desires to hire professional services for the engineering design services for the Utah County Park & Ride Facilities Project.

WHEREAS, On September 14, 2023, UTA issued Request for Proposal Package Number 23-03780VW (“RFQu”) encouraging interested parties to submit proposals to perform the services described in the RFQu.

WHEREAS, Upon evaluation of the proposals submitted in response to the RFQu, UTA selected Consultant as the preferred entity with whom to negotiate a contract to perform the Work.

WHEREAS, Consultant is qualified and willing to perform the Work as set forth in the Scope of Services.

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the parties to be derived here from, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

1. SERVICES TO BE PROVIDED

- a. Consultant shall perform all Work as set forth in the Scope of Services (Exhibit A). Except for items (if

any) which this Contract specifically states will be UTA-provided, Consultant shall furnish all the labor, material and incidentals necessary for the Work.

- b. Consultant shall perform all Work under this Contract in a professional manner, using at least that standard of care, skill and judgment which can reasonably be expected from similarly situated professionals.
- c. All Work shall conform to generally accepted standards in the transit industry. Consultant shall perform all Work in compliance with applicable laws, regulations, rules, ordinances, permit constraints and other legal requirements including, without limitation, those related to safety and environmental protection.
- d. Consultant shall furnish only qualified personnel and materials necessary for the performance of the Work.
- e. When performing Work on UTA property, Consultant shall comply with all UTA work site rules including, without limitation, those related to safety and environmental protection.

2. MANAGEMENT OF WORK

- a. Consultant's Project Manager will be the day-to-day contact person for Consultant and will be responsible for all Work, as well as the coordination of such Work with UTA.
- b. UTA's Project Manager will be the day-to-day contact person for UTA, and shall act as the liaison between UTA and Consultant with respect to the Work. UTA's Project Manager shall also coordinate any design reviews, approvals or other direction required from UTA with respect to the Work.

3. PROGRESS OF WORK

- a. Consultant shall prosecute the Work in a diligent and continuous manner and in accordance with all applicable notice to proceed, critical path schedule and guaranteed completion date requirements set forth in (or developed and agreed by the parties in accordance with) the Scope of Services.
- b. Consultant shall conduct regular meetings to update UTA's Project Manager regarding the progress of the Work including, but not limited to, any unusual conditions or critical path schedule items that could affect or delay the Work. Such meetings shall be held at intervals mutually agreed to between the parties.
- c. Consultant shall deliver monthly progress reports and provide all Contract submittals and other deliverables as specified in the Scope of Services.
- d. Any drawing or other submittal reviews to be performed by UTA in accordance with the Scope of Services are for the sole benefit of UTA, and shall not relieve Consultant of its responsibility to comply with the Contract requirements.
- e. UTA will have the right to inspect, monitor and review any Work performed by Consultant hereunder as deemed necessary by UTA to verify that such Work conforms to the Contract requirements. Any such

inspection, monitoring and review performed by UTA is for the sole benefit of UTA, and shall not relieve Consultant of its responsibility to comply with the Contract requirements.

- f. UTA shall have the right to reject Work which fails to conform to the requirements of this Contract. Upon receipt of notice of rejection from UTA, Consultant shall (at its sole expense and without entitlement to equitable schedule relief) promptly re-perform, replace or re-execute the Work so as to conform to the Contract requirements.
- g. If Consultant fails to promptly remedy rejected Work as provided in Section 3f, UTA may (without limiting or waiving any rights or remedies it may have) perform necessary corrective action using other Consultant or UTA's own forces. Any costs reasonably incurred by UTA in such corrective action shall be chargeable to Consultant.

4. PERIOD OF PERFORMANCE

This Contract shall commence as of the Effective Date. This Contract shall remain in full force and effect until all Work is completed in accordance with this Contract, as reasonably determined by UTA. The Consultant shall complete design package no later than December 31, 2024. The contract end date of December 31, 2025 will include design support including public outreach during construction and project close out. This guaranteed completion date may be extended if Consultant and UTA mutually agree to an extension evidenced by a written Change Order. The rights and obligations of UTA and Consultant under this Contract shall at all times be subject to and conditioned upon the provisions of this Contract.

5. COMPENSATION

- a. For the performance of the Work, UTA shall pay Consultant in accordance with the payments provisions described in Exhibit B. Payments shall be made in accordance with the milestones or other payment provisions detailed in Exhibit B. If Exhibit B does not specify any milestones or other payment provisions, then payment shall be made upon completion of all Work and final acceptance thereof by UTA.
- b. To the extent that Exhibit B or another provision of this Contract calls for any portion of the consideration to be paid on a cost-reimbursement basis, such costs shall only be reimbursable to the extent allowed under 2 CFR Part 200 Subpart E. Compliance with federal cost principles shall apply regardless of funding source for this Contract.
- c. To the extent that Exhibit B or another provision of this Contract calls for any portion of the consideration to be paid on a time and materials or labor hour basis, then Consultant must refer to the not-to-exceed amount, maximum Contract amount, Contract budget amount or similar designation (any of these generically referred to as the "Not to Exceed Amount") specified in Exhibit B (as applicable). Unless and until UTA has notified Consultant by written instrument designated or indicated to be a Change Order that the Not to Exceed Amount has been increased (which notice shall specify a revised Not to Exceed Amount): (i) Consultant shall not be obligated to perform services or incur costs which would cause its total compensation under this Contract to

exceed the Not to Exceed Amount; and (ii) UTA shall not be obligated to make payments which would cause the total compensation paid to Consultant to exceed the Not to Exceed Amount.

- d. UTA may withhold and/or offset from payment any amounts reasonably reflecting: (i) items of Work that have been rejected by UTA in accordance with this Contract; (ii) invoiced items that are not payable under this Contract; or (iii) amounts Consultant owes to UTA under this Contract.

6. INCORPORATED DOCUMENTS

- a. The following documents hereinafter listed in chronological order, with most recent document taking precedence over any conflicting provisions contained in prior documents (where applicable), are hereby incorporated into the Contract by reference and made a part hereof:
 - 1. The terms and conditions of this Professional Services Agreement (including any exhibits and attachments hereto).
 - 2. UTA's RFQu including, without limitation, all attached or incorporated terms, conditions, federal clauses (as applicable), drawings, plans, specifications and standards and other descriptions of the Professional Services;
 - 3. Consultant's Proposal including, without limitation, all federal certifications (as applicable).
- b. The above-referenced documents are made as fully a part of the Contract as if hereto

7. ORDER OF PRECEDENCE

The Order of Precedence for this contract is as follows:

- 1. UTA Contract including all attachments
- 2. UTA Terms and Conditions
- 3. UTA Solicitation Terms
- 4. Consultant's Bid or Proposal including proposed terms or conditions

Any Consultant /consultant proposed term or condition which is in conflict with a UTA contract or solicitation term or condition will be deemed null and void.

8. CHANGES

- a. UTA's Project Manager or designee may, at any time, by written order designated or indicated to be a Change Order, direct changes in the Work including, but not limited to, changes:
 - A. In the Scope of Services;
 - B. In the method or manner of performance of the Work; or

C. In the schedule or completion dates applicable to the Work.

To the extent that any change in Work directed by UTA causes an actual and demonstrable impact to: (i) Consultant's cost of performing the work; or (ii) the time required for the Work, then (in either case) the Change Order shall include an equitable adjustment to this Contract to make Consultant whole with respect to the impacts of such change.

- b. A change in the Work may only be directed by UTA through a written Change Order or (alternatively) UTA's expressed, written authorization directing Consultant to proceed pending negotiation of a Change Order. Any changes to this Contract undertaken by Consultant without such written authority shall be at Consultant's sole risk. Consultant shall not be entitled to rely on any other manner or method of direction.
- c. Consultant shall also be entitled to an equitable adjustment to address the actual and demonstrable impacts of "constructive" changes in the Work if: (i) subsequent to the Effective Date of this Contract, there is a material change with respect to any requirement set forth in this Contract; or (ii) other conditions exist or actions are taken by UTA which materially modify the magnitude, character or complexity of the Work from what should have been reasonably assumed by Consultant based on the information included in (or referenced by) this Contract. In order to be eligible for equitable relief for "constructive" changes in Work, Consultant must give UTA's Project Manager or designee written notice stating:
 - A. The date, circumstances, and source of the change; and
 - B. That Consultant regards the identified item as a change in Work giving rise to an adjustment in this Contract.

Consultant must provide notice of a "constructive" change and assert its right to an equitable adjustment under this Section within ten (10) days after Consultant becomes aware (or reasonably should have become aware) of the facts and circumstances giving rise to the "constructive" change. Consultant's failure to provide timely written notice as provided above shall constitute a waiver of Consultant's rights with respect to such claim.

- d. As soon as practicable, but in no event longer than 30 days after providing notice, Consultant must provide UTA with information and documentation reasonably demonstrating the actual cost and schedule impacts associated with any change in Work. Equitable adjustments will be made via Change Order. Any dispute regarding the Consultant's entitlement to an equitable adjustment (or the extent of any such equitable adjustment) shall be resolved in accordance with Article 23 of this Contract.

9. INVOICING PROCEDURES

- a. Consultant shall invoice UTA after achievement of contractual milestones or delivery of all Goods and satisfactory performance of all Services or in accordance with an approved progress or periodic billing schedule. Consultant shall submit invoices to UTA Project Manager Travis Colledge via email: tcolledge@rideuta.com and via Procore, for processing and payment.

In order to timely process invoices, Consultant shall include the following information on each invoice:

- i. Consultant Name
- ii. Unique Invoice Number
- iii. PO Number
- iv. Invoice Date
- v. Detailed Description of Charges
- vi. Total Dollar Amount Due

b. UTA shall have the right to disapprove (and withhold from payment) specific line items of each invoice to address non-conforming Software or Services. Approval by UTA shall not be unreasonably withheld. UTA shall also have the right to offset (against payments) amounts reasonably reflecting the value of any claim which UTA has against Consultant under the Contract. Payment for all invoice amounts not specifically disapproved or offset by UTA shall be provided to Consultant within thirty (30) calendar days of invoice submittal to UTA Project Manager Travis Colledge via email: tcolledge@rideuta.com . Invoices not submitted electronically will shall be paid thirty (30) calendar days from date of receipt by UTA's accounting department.

c. Invoices must include a unique invoice number, UTA's Purchase Order number, a description of the work completed, the percent completed by task, amount expended to date by task, total amount due, and must be submitted electronically to UTA Project Manager Travis Colledge via email: tcolledge@rideuta.com.

10. OWNERSHIP OF DESIGNS, DRAWINGS, AND WORK PRODUCT

Any deliverables prepared or developed pursuant to the Contract including without limitation drawings, specifications, manuals, calculations, maps, sketches, designs, tracings, notes, reports, data, computer programs, models and samples, shall become the property of UTA when prepared, and, together with any documents or information furnished to Consultant and its employees or agents by UTA hereunder, shall be delivered to UTA upon request, and, in any event, upon termination or final acceptance of the Professional Services. UTA shall have full rights and privileges to use and reproduce said items. To the extent that any deliverables include or incorporate preexisting intellectual property of Consultant, Consultant hereby grants UTA a fully paid, perpetual license to use such intellectual property for UTA's operation, maintenance, modification, improvement and replacement of UTA's assets. The scope of the license shall be to the fullest extent necessary to accomplish those purposes, including the right to share same with UTA's Contractors, agent, officers, directors, employees, joint owners, affiliates and contractors.

11. USE OF SUBCONSULTANTS

- a. Consultant shall give advance written notification to UTA of any proposed subcontract (not indicated in Consultant's Proposal) negotiated with respect to the Work. UTA shall have the right to approve all subconsultants, such approval not to be withheld unreasonably.
- b. No subsequent change, removal or substitution shall be made with respect to any such subconsultant without the prior written approval of UTA.
- c. Consultant shall be solely responsible for making payments to subconsultants, and such payments shall be made within thirty (30) days after Consultant receives corresponding payments from UTA.
- d. Consultant shall be responsible for and direct all Work performed by Subconsultants.
- e. Consultant agrees that no subcontracts shall provide for payment on a cost-plus-percentage-of-cost basis. Consultant further agrees that all subcontracts shall comply with all applicable laws.

12. KEY PERSONNEL

Consultant shall provide the key personnel as indicated in Consultant's Proposal (or other applicable provisions of this Contract), and shall not change any of said key personnel without the express written consent of UTA. The following individuals are concerned to be key personnel under this contract.

If the consultant changed key personnel without the express written permission of UTA, it shall be in default of the contract and liable for default damages.

13. SUSPENSION OF WORK

- a. UTA may, at any time, by written order to Consultant, require Consultant to suspend, delay, or interrupt all or any part of the Work called for by this Contract. Any such order shall be specifically identified as a "Suspension of Work Order" issued pursuant to this Article. Upon receipt of such an order, Consultant shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of further costs allocable to the Work covered by the order during the period of Work stoppage.
- b. If a Suspension of Work Order issued under this Article is canceled, Consultant shall resume Work as mutually agreed to in writing by the parties hereto.
- c. If a Suspension of Work Order is not canceled and the Work covered by such order is terminated for the convenience of UTA, reasonable costs incurred as a result of the Suspension of Work Order shall be considered in negotiating the termination settlement.
- d. If the Suspension of Work causes an increase in Consultant's cost or time to perform the Work, UTA's Project Manager or designee shall make an equitable adjustment to compensate Consultant for the additional costs or time, and modify this Contract by Change Order.

14. TERMINATION

a. FOR CONVENIENCE:

UTA shall have the right to terminate the Contract at any time by providing written notice to Consultant. If the Contract is terminated for convenience, UTA shall pay Consultant: (i) in full for Goods delivered and Services fully performed prior to the effective date of termination; and (ii) an equitable amount to reflect costs incurred (including Contract close-out and subconsultant termination costs that cannot be reasonably mitigated) and profit on work-in-progress as of to the effective date of the termination notice. UTA shall not be responsible for anticipated profits based on the terminated portion of the Contract. Consultant shall promptly submit a termination claim to UTA. If Consultant has any property in its possession belonging to UTA, Consultant will account for the same, and dispose of it in the manner UTA directs.

b. FOR DEFAULT:

If Consultant (a) becomes insolvent; (b) files a petition under any chapter of the bankruptcy laws or is the subject of an involuntary petition; (c) makes a general assignment for the benefit of its creditors; (d) has a receiver appointed; (e) should fail to make prompt payment to any Subconsultants or suppliers; or (f) fails to comply with any of its material obligations under the Contract, UTA may, in its discretion, after first giving Consultant seven (7) days written notice to cure such default:

1. Terminate the Contract (in whole or in part) for default and obtain the Professional Services using other Consultants or UTA's own forces, in which event Consultant shall be liable for all incremental costs so incurred by UTA;
2. Pursue other remedies available under the Contract (regardless of whether the termination remedy is invoked); and/or
3. Except to the extent limited by the Contract, pursue other remedies available at law.

CONSULTANT'S POST TERMINATION OBLIGATIONS:

Upon receipt of a termination notice as provided above, Consultant shall (i) immediately discontinue all work affected (unless the notice directs otherwise); and (ii) deliver to UTA all data, drawings and other deliverables, whether completed or in process. Consultant shall also remit a final invoice for all services performed and expenses incurred in full accordance with the terms and conditions of the Contract up to the effective date of termination. UTA shall calculate termination damages payable under the Contract, shall offset such damages against Consultant's final invoice, and shall invoice Consultant for any additional amounts payable by Consultant (to the extent

termination damages exceed the invoice). All rights and remedies provided in this Article are cumulative and not exclusive. If UTA terminates the Contract for any reason, Consultant shall remain available, for a period not exceeding 90 days, to UTA to respond to any questions or concerns that UTA may have regarding the Professional Services furnished by Consultant prior to termination.

15. INFORMATION, RECORDS and REPORTS; AUDIT RIGHTS

Consultant shall retain all books, papers, documents, accounting records and other evidence to support any cost-based billings allowable under Exhibit B (or any other provision of this Contract). Such records shall include, without limitation, time sheets and other cost documentation related to the performance of labor services, as well as subcontracts, purchase orders, other contract documents, invoices, receipts or other documentation supporting non-labor costs. Consultant shall also retain other books and records related to the performance, quality or management of this Contract and/or Consultant's compliance with this Contract. Records shall be retained by Consultant for a period of at least six (6) years after completion of the Work, or until any audit initiated within that six-year period has been completed (whichever is later). During this six-year period, such records shall be made available at all reasonable times for audit and inspection by UTA and other authorized auditing parties including, but not limited to, the Federal Transit Administration. Copies of requested records shall be furnished to UTA or designated audit parties upon request. Consultant agrees that it shall flow-down (as a matter of written contract) these records requirements to all Subconsultants utilized in the performance of the Work at any tier.

16. FINDINGS CONFIDENTIAL

Any documents, reports, information, or other data and materials delivered or made available to or prepared or assembled by Consultant or subconsultant under this Contract are considered confidential and shall not be made available to any person, organization, or entity by Consultant without consent in writing from UTA. If confidential information is released to any third party without UTA's written consent as described above, consultant shall notify UTA of the data breach within 10 days and provide its plan for immediate mitigation of the breach for review and approval by UTA.

- a. It is hereby agreed that the following information is not considered to be confidential:
 1. Information already in the public domain.
 2. Information disclosed to Consultant by a third party who is not under a confidentiality obligation.
 3. Information developed by or in the custody of Consultant before entering into this Contract.
 4. Information developed by Consultant through its work with other clients; and
 5. Information required to be disclosed by law or regulation including, but not limited to, subpoena, court order or administrative order.

17. **PUBLIC INFORMATION**

Consultant acknowledges that the Contract and related materials (invoices, orders, etc.) will be public documents under the Utah Government Records Access and Management Act (GRAMA). Consultant’s response to the solicitation for the Contract will also be a public document subject to GRAMA, except for legitimate trade secrets, so long as such trade secrets were properly designated in accordance with terms of the solicitation.

18. **GENERAL INDEMNIFICATION**

Consultant shall indemnify, hold harmless and defend UTA, its officers, trustees, agents, and employees (hereinafter collectively referred to as “Indemnitees”) from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys’ fees and costs (hereinafter referred to collectively as “claims”) related to bodily injury, including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the acts or omissions of Consultant or any of its owners, officers, directors, agents, employees or subconsultants. This indemnity includes any claim or amount arising out of the failure of such Consultant to conform to federal, state, and local laws and regulations. If an employee of Consultant, a subconsultant, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable brings a claim against UTA or another Indemnatee, Consultant’s indemnity obligation set forth above will not be limited by any limitation on the amount of damages, compensation or benefits payable under any employee benefit acts, including workers’ compensation or disability acts. The indemnity obligations of Consultant shall not apply to the extent that claims arise out of the sole negligence of UTA or the Indemnitees.

19. **INSURANCE REQUIREMENTS**

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The Utah Transit Authority in no way warrants that the minimum limits contained herein are sufficient to protect the Consultant from liabilities that might arise out of the performance of the work under this contract by the Consultant, his agents, representatives, employees or subconsultant and Consultant is free to purchase additional insurance as may be determined necessary.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Consultant shall provide coverage with limits of liability not less than those Stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$4,000,000
- Products – Completed Operations Aggregate \$1,000,000

- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$2,000,000
 - a. The policy shall be endorsed to include the following additional insured language: "The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Consultant".
 - b. The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO from CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Utah Transit Authority Property" as the Designated Job Site.

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$2,000,000
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- a. The policy shall be endorsed to include the following additional insured language: "The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Consultant, including automobiles owned, leased, hired or borrowed by the Consultant".

3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
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Employers' Liability

Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy shall contain a waiver of subrogation against the Utah Transit Authority.
- b. This requirement shall not apply when a Consultant or subconsultant is exempt under UCA, AND when such Consultant or subconsultant executes the appropriate waiver form.

4. Professional Liability (Errors and Omissions Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Consultant warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.

5. Railroad Protective Liability Insurance (RRPLI) –

During construction and maintenance within fifty (50) feet of an active railroad track, including but not limited to installation, repair or removal of facilities, equipment, services or materials, the Consultant must maintain “Railroad Protective Liability” insurance on behalf of UTA only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.

If the Consultant is not enrolling for this coverage under UTA’s blanket RRPLI program, the policy provided must have the definition of “JOB LOCATION” AND “WORK” on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this Agreement.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include the following provisions:

1. On insurance policies where the Utah Transit Authority is named as an additional insured, the Utah Transit Authority shall be an additional insured to the full limits of liability purchased by the Consultant. Insurance limits indicated in this agreement are minimum limits. Larger limits may be indicated after the Consultant’s assessment of the exposure for this contract; for their own protection and the protection of UTA.
2. The Consultant’s insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
3. Consultant and their insurers shall endorse the required insurance policy(ies) to waive their right of subrogation against UTA. Consultant’s insurance shall be primary with respect to any insurance carried by UTA. Consultant will furnish UTA at least thirty (30) days advance written notice of any cancellation or non-renewal of any required coverage that is not replaced.

C. NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, or canceled except after thirty (30) days prior written notice has been given to the Utah Transit Authority, except when cancellation is

for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to (Utah Transit Authority Agency Representative's Name & Address).

D. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the State and with an "A.M. Best" rating of not less than A-VII. The Utah Transit Authority in no way warrants that the above-required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.

E. VERIFICATION OF COVERAGE: Consultant shall furnish the Utah Transit Authority with certificates of insurance (on standard ACORD form) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be sent to utahta@ebix.com and received and approved by the Utah Transit Authority before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be emailed directly to Utah Transit Authority's insurance email address at utahta@ebix.com. The Utah Transit Authority project/contract number and project description shall be noted on the certificate of insurance. The Utah Transit Authority reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE UTAH TRANSIT AUTHORITY'S CLAIMS AND INSURANCE DEPARTMENT.

F. SUBCONSULTANTS: Consultants' certificate(s) shall include all subconsultants as additional insureds under its policies or subconsultants shall maintain separate insurance as determined by the Consultant, however, subconsultant's limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate. Subconsultants maintaining separate insurance shall name Utah Transit Authority as an additional insured on their policy. Blanket additional insured endorsements are not acceptable from subconsultants. Utah Transit Authority must be scheduled as an additional insured on any subconsultant policies.

G. APPROVAL: Any modification or variation from the insurance requirements in this Contract shall be made by Claims and Insurance Department or the Office of General Counsel, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

20. OTHER INDEMNITIES

a. Consultant shall protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all Claims of any kind or nature whatsoever on account of

infringement relating to Consultant's performance under this Contract. If notified promptly in writing and given authority, information and assistance, Consultant shall defend, or may settle at its expense, any suit or proceeding against UTA so far as based on a claimed infringement and Consultant shall pay all damages and costs awarded therein against UTA due to such breach. In case any portion of the Work is in such suit held to constitute such an infringement or an injunction is filed that interferes with UTA's rights under this Contract, Consultant shall, at its expense and through mutual agreement between the UTA and Consultant, either procure for UTA any necessary intellectual property rights, or modify Consultant's services or deliverables such that the claimed infringement is eliminated.

- b. Consultant shall: (i) protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all liens or Claims made or filed against UTA or upon the Work or the property on which the Work is located on account of any labor performed or labor, services, and equipment furnished by subconsultants of any tier; and (ii) keep the Work and said property free and clear of all liens or claims arising from the performance of any Work covered by this Contract by Consultant or its subconsultants of any tier. If any lien arising out of this Contract is filed, before or after Work is completed, Consultant, within ten (10) calendar days after receiving from UTA written notice of such lien, shall obtain a release of or otherwise satisfy such lien. If Consultant fails to do so, UTA may take such steps and make such expenditures as in its discretion it deems advisable to obtain a release of or otherwise satisfy any such lien or liens, and Consultant shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA in obtaining such release or satisfaction. If any non-payment claim is made directly against UTA arising out of non-payment to any subconsultant, Consultant shall assume the defense of such claim within ten (10) calendar days after receiving from UTA written notice of such claim. If Consultant fails to do so, Consultant shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA to satisfy such claim.

21. INDEPENDENT CONTRACTOR

Consultant is an independent contractor and agrees that its personnel will not represent themselves as, nor claim to be, an officer or employee of UTA by reason of this Contract. Consultant is responsible to provide and pay the cost of all its employees' benefits.

22. PROHIBITED INTEREST

No member, officer, agent, or employee of UTA during his or her tenure or for one year thereafter shall have any interest, direct or indirect, including prospective employment by Consultant in this Contract or the proceeds thereof without specific written authorization by UTA.

23. CLAIMS/DISPUTE RESOLUTION

- a. "Claim" means any disputes between UTA and the Consultant arising out of or relating to the Contract Documents including any disputed claims for Contract adjustments that cannot be resolved in accordance with the Change Order negotiation process set forth in Article 8. Claims must be made by written notice. The responsibility to substantiate claims rests with the party making the claim.
- b. Unless otherwise directed by UTA in writing, Consultant shall proceed diligently with performance of the Work pending final resolution of a Claim, including litigation. UTA shall continue to pay any undisputed payments related to such Claim.
- c. The parties shall attempt to informally resolve all claims, counterclaims and other disputes through the escalation process described below. No party may bring a legal action to enforce any term of this Contract without first having exhausted such process.
- d. The time schedule for escalation of disputes, including disputed requests for change order, shall be as follows:

Level of Authority	Time Limit
UTA's Project Manager/Consultant's Project Manager	Five calendar days
UTA's Director of Asset Management/Consultant's [SECOND LEVEL]	Five calendar days
UTA's Chief Financial Officer/Consultant's [THIRD LEVEL]	Five calendar days

Unless otherwise directed by UTA's Project Manager, Consultant shall diligently continue performance under this Contract while matters in dispute are being resolved.

If the dispute cannot be resolved informally in accordance with the escalation procedures set forth above, then either party may commence formal mediation under the Juris Arbitration and Mediation (JAMS) process using a mutually agreed upon JAMS mediator. If resolution does not occur through Mediation, then legal action may be commenced in accordance the venue and governing law provisions of this contract.

24. GOVERNING LAW

This Contract shall be interpreted in accordance with the substantive and procedural laws of the State of Utah. Any litigation between the parties arising out of or relating to this Contract will be conducted exclusively in federal or state courts in the State of Utah and Consultant consents to the jurisdiction of such courts.

25. ASSIGNMENT OF CONTRACT

Consultant shall not assign, sublet, sell, transfer, or otherwise dispose of any interest in this Contract without prior written approval of UTA, and any attempted transfer in violation of this restriction shall be void.

26. **NONWAIVER**

No failure or waiver or successive failures or waivers on the part of either party in the enforcement of any condition, covenant, or article of this Contract shall operate as a discharge of any such condition, covenant, or article nor render the same invalid, nor impair the right of either party to enforce the same in the event of any subsequent breaches by the other party.

27. **NOTICES OR DEMANDS**

- a. Any formal notice or demand to be given by one party to the other shall be given in writing by one of the following methods: (i) hand delivered; (ii) deposited in the mail, properly stamped with the required postage; (iii) sent via registered or certified mail; or (iv) sent via recognized overnight courier service. All such notices shall be addressed as follows:

<u>If to UTA:</u>	<u>with a required copy to:</u>
Utah Transit Authority	Utah Transit Authority
ATTN: Vicki Woodward	ATTN: Legal Counsel
669 West 200 South	669 West 200 South
Salt Lake City, UT 84101	Salt Lake City, UT 84101

If to Consultant:

XXXXXXXXXXXXXX

XXXXXXXXXXXXXX

- b. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice. Either party may change the address at which such party desires to receive written notice by providing written notice of such change to any other party.
- c. Notwithstanding Section 27, the parties may, through mutual agreement, develop alternative communication protocols to address change notices, requests for information and similar categories of communications. Communications provided pursuant to such agreed means shall be recognized as valid notices under this Contract.

28. **CONTRACT ADMINISTRATOR**

UTA’s Contract Administrator for this Contract is Vicki Woodward, or designee. All questions and correspondence relating to the contractual aspects of this Contract should be directed to said Contract Administrator, or designee.

29. **INSURANCE COVERAGE REQUIREMENTS FOR CONSULTANT EMPLOYEES AND SUBCONSULTANTS UNDER**

DESIGN AND CONSTRUCTION CONTRACTS

- a. The following requirements apply to the extent that the Consultant is providing design or construction services and (i) the initial value of this Contract is equal to or in excess of \$2 million; (ii) this Contract, with subsequent modifications, is reasonably anticipated to equal or exceed \$2 million; (iii) Consultant has a subcontract at any tier that involves a subconsultant that has an initial subcontract equal to or in excess of \$1 million; or (iv) any subcontract, with subsequent modifications, is reasonably anticipated to equal or exceed \$1 million:
- b. Consultant shall, prior to the effective date of this Contract, demonstrate to UTA that Consultant has and will maintain an offer of qualified health insurance coverage (as defined by Utah Code Ann. § 17B-2a-818.5) for the Consultant's employees and the employee's dependents during the duration of this Contract.
- c. Consultant shall also demonstrate to UTA that subconsultants meeting the above-described subcontract value threshold have and will maintain an offer of qualified health insurance coverage (as defined by Utah Code Ann. § 17B-2a-818.5 for the subconsultant's employees and the employee's dependents during the duration of the subcontract.

30. COSTS AND ATTORNEYS FEES

If any party to this Agreement brings an action to enforce or defend its rights or obligations hereunder, the prevailing party shall be entitled to recover its costs and expenses, including mediation, arbitration, litigation, court costs and attorneys' fees, if any, incurred in connection with such suit, including on appeal.

31. NO THIRD-PARTY BENEFICIARY

The parties enter into this Contract for the sole benefit of the parties, in exclusion of any third-party, and no third-party beneficiary is intended or created by the execution of this Contract.

32. FORCE MAJEURE

Neither party to the Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which are beyond that party's reasonable control. UTA may terminate the Contract after determining such delay or default will reasonably prevent successful performance of the Contract.

33. UTAH ANTI-BOYCOTT OF ISRAEL ACT

Consultant agrees it will not engage in a boycott of the State of Israel for the duration of this contract.

34. TRAVEL COSTS

Any travel costs charged against this contract and paid for with contract funds must be in compliance with UTA's Travel Policy (UTA .02.XX) and the U.S. General Services Administration (GSA) per diem rates.

35. SEVERABILITY

Any provision of this Contract prohibited or rendered unenforceable by operation of law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Contract.

36. ENTIRE AGREEMENT

This Contract shall constitute the entire agreement and understanding of the parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto. The terms of the Contract supersede any additional or conflicting terms or provisions that may be preprinted on Consultant's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of Consultant that may subsequently be used to implement, record, or invoice Goods and/or Services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of UTA. The terms of the Contract prevail in any dispute between the terms of the Contract and the terms printed on any such standard forms or documents, and such standard forms or documents will not be considered written amendments of the Contract.

37. AMENDMENTS

Any amendment to this Contract must be in writing and executed by the authorized representatives of each party.

38. COUNTERPARTS

This Contract may be executed in any number of counterparts and by each of the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of the Contract may be detached from any counterpart and reattached to any other counterpart hereof. The electronic transmission of a signed original of the Contract or any counterpart hereof and the electronic retransmission of any signed copy hereof shall be the same as delivery of an original.

39. SURVIVAL

Provisions of this Contract intended by their nature and content to survive termination of this Contract shall so survive including, but not limited to, Articles 5, 7, 8, 10, 14, 15, 16, 17, 18, 19, 20, 22, 23, 29 and 30.

IN WITNESS WHEREOF, the parties have made and executed this Contract as of the day, month and year of the last signature contained below.

UTAH TRANSIT AUTHORITY:

By_____

Name_____

Title_____

CONSULTANT:

By_____

Name_____

Title_____

Date_____

Date_____

By_____

Name_____

Title_____

Date_____

Approved as to Content and Form

By_____

Date_____

UTA Legal Counsel

Reviewed & Recommended

By_____

Date_____

UTA Project Manager



REQUEST FOR QUALIFICATIONS

Part 5 – Forms

SOQ FORMS AND DECLARATIONS

TO: Vicki Woodward, Procurement and Contracts Specialist
Utah Transit Authority
669 West 200 South
Salt Lake City, Utah 84101

Having examined all the documents, general conditions and instructions, and work scope entitled “Utah County Park & Ride Facilities Design”, dated September 14, 2023 the undersigned requests consideration to furnish the services required by said documents exclusive of all Federal excise taxes, local sales and use taxes for the sum as mutually agreed to in the final contract documents.

A) ADDENDA

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

Addendum No.____ Date_____ Addendum No.____ Date_____

Addendum No.____ Date_____ Addendum No.____ Date_____

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

B) Disclosure of Organizational Conflicts of Interest

An organizational conflict of interest means that because of other activities, relationships, or contracts, the Proposer is unable, or potentially unable, to render impartial assistance or advice to UTA; a Proposer’s objectivity in performing the work identified in this RFQ is or might be otherwise impaired; or a Proposer has an unfair competitive advantage. If a Proposer believes that it has, or may have, a real or perceived organizational conflict of interest, it must disclose such real or perceived organizational conflict of interest in its SOQ, and describe the measures taken by the Proposer to mitigate such conflict. UTA will review such information and, in its sole discretion, determine whether a real or perceived organizational conflict of interest exists, and whether such conflict warrants disqualification of the Proposer, or may be mitigated by taking further measures. By signing the Declaration contained below, Proposer certifies that it is unaware, to the best of its knowledge and belief, of any organizational conflict of interest.

C) No Collusion

By submitting a SOQ, the Proposer represents and warrants that its SOQ is genuine and not a sham, and that the Proposer has not colluded with any other parties regarding this procurement process. If UTA learns that the SOQ is not genuine, or that the Proposer did collude with other parties, or engaged in any anti-competitive or fraudulent

practices in connection with this procurement process, UTA may immediately terminate any resulting contract and seek any remedies available in equity or at law

D) E-VERIFY

Each Proposer and each person signing on behalf of any Proposer certifies as to its own entity, under penalty of perjury, that the named Proposer has registered and is participating in the Status Verification System to verify the work eligibility status of the Consultant's new employees that are employed in the State of Utah in accordance with applicable immigration laws including UCA Section 63G-12-302.

Signing the SOQ is deemed the Proposer's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including Utah Code Ann. § 63G-12-302.

The successful Proposer shall require that the following provision be placed in each subcontract at every tier: "The subconsultant shall certify to the main (prime or general) Consultant by affidavit that the subconsultant has verified through the Status Verification System the employment status of each new employee of the respective subconsultant, all in accordance with applicable immigration laws including Section 63G-12-302 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subconsultant to perform the work."

UTA will not consider a SOQ for award, nor will it make any award where there has not been compliance with this Section. Furthermore, non-compliance with this section is a material breach of the Contract.

E) SUBCONTRACTOR CAPABILITY

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

F) UTAH ANTIDISCRIMINATION ACT:

Offeror hereby declares that it is and will remain fully compliant with the provisions of the Utah Anti-discrimination Act (UTAH CODE §§ 34A-5-101 TO 34A-5-108) and the equivalent anti-discrimination laws of its State of incorporation and/or headquarters location. Under the Act, an employer may not refuse to hire, promote, discharge, demote, or terminate a person, or to retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against a person otherwise qualified, because of race, color, sex, pregnancy, childbirth, or pregnancy-related conditions; age, if the individual is 40 years of age or older; religion; national origin; disability; sexual orientation; or gender identity.

In addition to avoiding discriminatory employment practices as described above, Offeror also declares that all goods and services it provides to UTA are useable and accessible by individuals with disabilities as described in Title II of the American with Disabilities Act and also Section III (H) of UTA Policy 6.1.1 which states that programs, services, and facilities procured by UTA will be accessible to and useable by individuals with disabilities. Offeror further certifies that any digital software, tool, program or web application must meet the most recent version of the Web Content Accessibility Guidelines (WCAG) found at <https://www.w3.org/TR/WCAG21>. To the extent Offeror is providing transportation services, vehicles or facilities it also declares that it is in compliance with Department of Transportation (DOT) ADA standards found at 49 CFR Parts 27, 37, 38, and 39.

G) UTAH ANTI-BOYCOTT OF ISRAEL ACT:

Offeror certifies that it is not currently engaged in a boycott of the State of Israel; and agrees not to engage in a boycott of the State of Israel for the duration of this contract.

BID OR SOQ DECLARATION: The Offeror and its agents and representatives whose signature is affixed below certifies, to the best of its knowledge and belief, that it is in full faith and compliance with the declarations and certifications contained in this Part 5 of this RFQu or IFB,

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

Signature of Bidder/Proposer:

If an individual:

doing business as _____.

By _____

If a partnership:

By _____, General Partner

If a corporation:

a _____ corporation,

By _____, President

Attest: _____

Secretary

Address:

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

Area Code and Telephone Number of Bidder/Proposer

Appendices

Appendix I – Federal Forms and Certifications

Appendix II - Federal Transit Administration Required Clauses

Appendix III – UTA’s Quality Management Plan (attached)

Appendix IV – UTA’s Design Quality Procedures (attached)

Appendix V – UTA’s Construction Safety and Security Program (attached)

Appendix VI – Project Design Needs

Appendix VII – Saratoga Springs Northshore Traffic Impact Study, Addendum 1, and Addendum 2
(attached)

Appendix VIII – Cost Pricing Form (attached)

Appendix I - Federal Forms and Certifications

REQUIRED FEDERAL CERTIFICATES AND ASSURANCES

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REQUIRED BID/PROPOSAL DOCUMENTS

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DBE CONTRACT GOAL.....	3
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ATTACHMENT A: EQUAL EMPLOYMENT OPPORTUNITY AND DISADVANTAGED BUSINESS ENTERPRISE STATEMENT

ATTACHMENT A-1: DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FORM.....

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

ATTACHMENT A-3: GOOD FAITH EFFORTS DOCUMENTATION FORM

ATTACHMENT A-4: EMPLOYMENT PRACTICES / EEO PLAN.....

ATTACHMENT B: BUY AMERICA CERTIFICATE.....

ATTACHMENT C: ASSURANCE REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY OR EXCLUSION

ATTACHMENT D: CERTIFICATION OF RESTRICTIONS ON LOBBYING

ATTACHMENT E: SOLICITATION STATISTICS

ATTACHMENT F: REQUIREMENT FOR WRITTEN SUBCONTRACTS

Instructions to Bidders and Proposers

INSTRUCTIONS

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

Definition of Terms,
Disadvantaged Business Enterprise (DBE) Program,
Instructions to Bidders / Proposers,
Requirements, Terms and Conditions,
Instructions to Contractors,
Certifications and Assurances

- Equal Employment Opportunity and Disadvantaged Business Enterprise Statement
- Disadvantaged Business Enterprise Participation Form
- Sample Letter of Intent to Subcontract with DBE Firm
- Good Faith Efforts Documentation Form
- Buy America
- Debarment, Suspension and Other Ineligibility and Voluntary Exclusion From Transactions Financed In Part By The U.S. Government
- Restrictions on Lobbying
- Solicitation Statistics Form
- Requirement for Written Subcontracts

DEFINITION OF TERMS

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

Department of Transportation Disadvantaged Business Enterprise (DBE) Program in the State of Utah. Current DBE firms are found on the UUCP DBE directory, which is located at <http://www.udot.utah.gov/main/f?p=100:pg:883653018429668:::1:T,V:2252>.

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

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

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

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

INSTRUCTIONS TO BIDDERS/ PROPOSERS

Bidders/ Proposers are required to complete and return Attachments A, A-1, A-2, A-3, and A-4 which obligates the Bidders/ Proposers to assert a good faith effort to attain the specified goal for DBE participation. A Bidder may satisfy the requirements of this section by having DBE status, by subcontracting portions of the work to DBEs, by entering into a joint venture with DBEs, or by submitting adequate documentation that a good faith effort to meet the goal was explored.

The attachments are defined as follows.

- **Attachment A – Equal Employment Opportunity and Disadvantaged Business Enterprise Statement**
 - **Attachment A-1 – Disadvantaged Business Enterprise Participation Form**
 - **Attachment A-2 – Sample Letter of Intent to Subcontract with a DBE Firm**
 - **Attachment A-3 – Good Faith Efforts Documentation form - Note:** Good Faith Efforts Documentation Form is not required when a bidder / proposer certifies that there exists no opportunity for subcontracting, when a DBE is the prime contractor, or the procurement is race neutral
 - **Attachment A-4 – Employment Practices / Equal Employment Opportunity Plan**

DBE CONTRACT GOAL

As required by 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs", the Authority will annually adopt an overall DBE goal for goods and services procured under the Authority's federally assisted contracts. While the expected percentage of DBE

participation may vary from contract to contract, the Authority sets a goal that it believes the overall goal to be realistically obtainable over the year.

The Contract DBE GOAL for this procurement is – 0%

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

COUNTING DBE PARTICIPATION TOWARD GOALS

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

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

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

commensurate with the work it is actually performing, and the DBE credit claimed for its performance of the work, and other relevant factors.

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

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

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

REQUIREMENTS, TERMS, AND CONDITIONS

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

1. Bidders/ Proposers who fail or refuse to complete and return the applicable certifications to this RFQu shall be deemed non-responsive and will not be awarded a contract.
2. Where bidders/proposers intend to attain their goal for DBE participation by subcontracting or use of a joint venture, they must **complete and submit** the following certifications as applicable. **Attachments A, A-1, A-2, A-3, and A-4** with your bid.
3. All Bidders/ Proposers are required to submit written assurance of meeting contract goals in their bids/proposals and will submit: (1) names of DBE subcontractors; (2) a description of the work they are to perform; and (3) the dollar value of each proposed DBE subcontract. In order to be a responsive Bidder / Proposer, a Bidder/ Proposer must meet the specified DBE contract goal or demonstrate sufficient good faith efforts to do so. Meeting the contract goal or making sufficient good faith efforts to do so is no less than meeting technical specifications or complying with bid or proposal procedures, is a necessary condition of responsiveness.
4. The Bidder / Proposer expressed goal stated in the **ATTACHMENT A-1 – DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FORM**, shall express the commitment on part of Bidder/Proposer to the percentage of DBE utilization during the term of the contract.
5. The commitment of the Bidder/Proposer to a specific goal is to meet DBE objectives and is not intended to be used and shall not be used, to discriminate against any qualified company or group of companies.

6. The Bidders/ Proposers must actively and aggressively seek to meet the specific contract goal for the project or the overall goal if an individual contract goal has not been set. In determining whether a Bidder/ Proposer has made good faith efforts to ensure DBE participation if awarded the contract, the Authority may consider, and the Bidder/ Proposer must be able to provide, evidence regarding the good faith efforts. This information is provided on **ATTACHMENT A-3, GOOD FAITH EFFORTS DOCUMENTATION FORM**. Good Faith Efforts Documentation Form A-3 is not required when a bidder / proposer certifies that there exists no opportunity for subcontracting, when a DBE is the prime contractor, or the procurement is race neutral.

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

Documents that it has obtained enough DBE participation to meet the goal; or

Documents that it has made adequate good faith efforts to meet the goal, including assurances that the Bidder/ Proposer has done the following:

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

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

If the Authority determines that the apparent successful Bidder/ Proposer has failed to meet the foregoing requirements, before awarding the contract the Authority will provide the Bidder/ Proposer an opportunity for administrative reconsideration. As part of this reconsideration, the Bidder/ Proposer will have the opportunity to provide written documentation or argument concerning the

issue of whether it met the goal or made adequate good faith efforts to do so. The Authority's decision on reconsideration will be made by a DBE Administrative Hearing Officer. The Bidders/ Proposers will be given the opportunity to meet in person with the Authority's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Authority will send the Bidders/ Proposers a written decision on reconsideration, explaining the basis for finding that the Bidders/ Proposers did or did not meet the goal or make adequate good faith efforts to do so. The result of this reconsideration process is not administratively appealable to DOT.

INSTRUCTIONS TO ALL CONTRACTORS

1. Termination of DBE Subcontractors. No contractor may terminate for convenience a DBE subcontractor listed in response to this request (or an approved substitute DBE firm) and then perform the work of the terminated subcontractor with its own forces or those of an affiliate, without the Authority's prior written consent.

When a DBE subcontractor is terminated or fails to complete its work on the contract for any reason, the prime contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts must be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal the Authority established for the procurement.

The Authority reserves the right to order completion of the work (that was subcontracted to a DBE who is unable to perform successfully), by any of the following three methods:

- a) Modify or renegotiate the contract to compensate for reasonable extra costs or time necessary to obtain a DBE replacement.
- b) Modify or renegotiate the contract to provide for the completion of the work by the prime contractor.
- c) Order the work completed by the prime contractor to be reimbursed as provided for in subsection 00910, Force Account Work of the Standard Specifications.

Termination of a DBE subcontractor in contravention of these requirements will be a material breach of the contract and will result in forfeiture by the Contractor of the contract amounts that should have been accomplished by DBE participation.

This section will also apply to DBE Bidder / Proposer for prime contracts. In determining whether a DBE Bidder / Proposer for a prime contract has met the established contract goal, the Authority will count the work the DBE has committed to perform with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

2. Prompt payment mechanisms as an inducement for DBE participation. The Contractor will pay all subcontractors for satisfactory performance of their contracts no later than thirty (30) days from receipt of each payment the Authority makes to Contractor.
3. Contractor will return retainage payments to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed, unless Contractor has received its retention proceeds from the Authority, then the preceding paragraph will apply. The prime contractor cannot withhold retainage past 30 days. This clause applies to both DBE and non-DBE subcontracts.
4. Upon notification to the Authority that appropriate payments have not been made by Contractor to its subcontractors, the Authority will give written notice to Contractor that it has breached the contract. If Contractor fails to immediately correct the breach, the Authority may elect to withhold from future payments due Contractor monies sufficient to pay the outstanding amounts due subcontractors. Contractor will be responsible to pay interest at the statutory rate on the amounts it

owes subcontractors for amounts not paid when originally due. Repeated or continued failure by Contractor to make appropriate payments to subcontractors will be a material breach of the contract and may result in termination of the contract and denial of future opportunities to bid on the Authority's projects.

5. The Contractor will maintain those records and documents for three (3) years following performance of the contract which indicate compliance with these DBE requirements. These records and documents, or copies thereof, will be made available at reasonable times and places for inspection by any authorized representative of the Authority and will be submitted to the Authority upon request; together with any other compliance information which such representative may require.
6. Monitoring. The Authority's DBE Liaison Officer will monitor the work committed to DBEs under this contract to determine what work is actually performed by the DBEs. Contractor will provide all information requested by the DBE Liaison Officer to enable the Authority to keep a running tally of DBE attainments (e.g., payments actually made to DBE firms). The Authority will give credit for DBE participation toward overall or contract goals only when payments are actually made to DBE firms.
7. DBE Financial Institutions. The Authority continues to seek services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its geographic area. To date, no such financial institutions exist in the State of Utah. The Authority will encourage prime contractors to use such institutions as they are identified.

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

ATTACHMENT A: EQUAL EMPLOYMENT OPPORTUNITY AND DISADVANTAGED BUSINESS ENTERPRISE STATEMENT

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

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

- B. Bidder / Proposer designates --

Name _____

Title _____

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

- C. Bidder / Proposer will cooperate fully with UTA and ensure equal employment opportunity to the maximum extent possible during the term of this contract. Attachment A-4 must be completed and submitted. If the Bidder / Proposer employs 50 or more persons and or will be entering into a contract hereunder in an amount of \$50,000 or more, then an EEO Plan for employment of minorities and women must be submitted. UTA will further be kept fully informed of any refusals by unions or others to cooperate with UTA's and the Bidder / Proposer EEO and DBE requirements.
- D. Bidder / Proposer agrees to make every reasonably good faith effort to utilize DBEs in the performance of this contract. Bidder / Proposer will take affirmative steps to meet the DBE contract goal set for this bid.

Company Name: _____

Address: _____

Signed: _____

Title: _____

Phone Number: _____

ATTACHMENT A-1: DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FORM

DBE PROJECT GOAL: 0%

The Bidder / Proposer must check the appropriate box, provide the information requested, and sign this form certifying to the accuracy of the information provided, and submit this form with its bid. Failure to complete and submit this form may result in rejection of the bid/proposal as non-responsive. Race neutral procurements do not require good faith effort documentation.

- ☐ **Bidder / Proposer will meet or exceed the DBE goal for this contract.** If awarded this contract, Bidder / Proposer will subcontract with the DBEs listed below, which will be performing a total of _____ percent (_____%) of the total dollar amount of the contract work.

Bidders/Proposers shall submit and attach evidence with this form that the DBEs being submitted for work on this project are presently certified by the Utah Uniform Certification Program (UUCP). The DBE Letters of Intent (Attachment A-2) are included with this DBE Participation Form.

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

(Attach additional sheets if necessary)

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

ATTACHMENT A-1: DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION
FORM (continued)

Date: _____

Company Name: _____

Signature: _____

Printed Name: _____

Title: _____

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

(COMPANY LETTERHEAD)

(DATE)

(DBE)

(Name and Address)

Reference: *(Project Name and Bid/Proposal Number)*

(Appropriate Salutation)

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

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

DBE firm has read and certifies to the above:

Prime Contractor:

Signature

Signature

Printed Name

Printed Name

Title

Title

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

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

ATTACHMENT A-3: GOOD FAITH EFFORTS DOCUMENTATION FORM

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

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

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

Date: _____

Signature: _____

Printed Name: _____

Title: _____

ATTACHMENT A-4: EMPLOYMENT PRACTICES / EEO PLAN

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

Prepared By: _____
(Print name & title)

Solicitation No. 23-03780VW

Name of Project Utah County Park & Ride Facilities Design

Location of Workforce _____

Prime Contractor _____

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

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

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

Signature and Title of Company Official (Contractor)

ATTACHMENT B: BUY AMERICA CERTIFICATE

Solicitation No#23-03780VW

Exhibit ____

**UTAH TRANSIT AUTHORITY
BUY AMERICA CERTIFICATE
(Federally assisted Contract)**

SECTION (1); Certify only for IRON, STEEL MANUFACTURED PRODUCTS or CONSTRUCTION MATERIALS: (Mark One)

- ☐ **CERTIFICATE OF COMPLIANCE WITH SECTION 165(a).** The bidder or offeror hereby certifies that it *will comply* with the requirements of 49 USC 5323(j)(1) and the applicable 49 CFR part 661.

--OR--

- ☐ **CERTIFICATE FOR NON-COMPLIANCE WITH SECTION 165(a).** The offeror hereby certifies that it *cannot comply with* the requirements of 49 USC 5323(j), but it *may qualify for an exception* to the requirement pursuant to 49 USC 5323 (j)(2), t, as amended, and the applicable regulations in 49 CFR Part 661.7.

SECTION (2); Certify only for ROLLING STOCK and ASSOCIATED EQUIPMENT: (Mark One)

- ☐ **CERTIFICATE OF COMPLIANCE WITH SECTION 165(b) (3.).** The offeror hereby certifies that it *will comply with* the requirements of 49 USC 5223(j), as amended, and the applicable regulations of 49 CFR Part 661.11.

--OR-

- ☐ **CERTIFICATE FOR NON-COMPLIANCE WITH SECTION 165(b)(3).** The offeror hereby certifies that it *cannot comply with* the requirements of 49 USC 5323(j), as amended, but may *qualify for an exception* to the requirement consistent with 49 USC 5323(j)(2)(C), and, as amended, and the applicable regulations in 49 CFR Part 661.7.

SECTION (3); OFFEROR'S SIGNATURE: *(Sign, date and enter your title and the name of your company)*

Signature

Date

Title

Name of Company/Offeror

**ATTACHMENT C: ASSURANCE REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
OR EXCLUSION**

(For all contracts)

Bidder or Proposer hereby affirms that in accordance with 2 CFR Part 180, Subpart C and 2 CFR Part 1200, neither it, nor any of its principals, nor its lower tier subcontractors, nor their principals are currently debarred, suspended, or otherwise excluded from or ineligible to receive a contract financed by the U.S. Government.

Signature of the Bidder or Proposer Authorized Official

Name and Title of the Bidder or Proposer Authorized Official

Date

ATTACHMENT D: CERTIFICATION OF RESTRICTIONS ON LOBBYING

(For contracts exceeding \$100,000)

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

on behalf of _____ that:
(Name of Company)

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

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code.

Executed this _____ day of _____, 20____.

By _____
(Signature of Authorized Official)

(Title of Authorized Official)



ATTACHMENT E: SOLICITATION STATISTICS

Dear Subcontractor:

The Utah Transit Authority maintains bidding statistics, regarding **ALL** firms bidding on prime contracts and **subcontracts** on DOT-assisted projects in accordance with the federal regulation 49 CFR Part 26.11. Include copies of this form with your bid package to **ANY SUBCONTRACTORS**. Return the form from each proposer **with your bid package**, both Disadvantaged Business Enterprises' (DBE) and non-DBEs (A DBE is a firm that meets the criteria in 49 CFR 26). Thank you for your assistance with this request

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

Firm Name:

Firm Address: _____

Status: Non-DBE ____ DBE ____

Company's Type of Work: _____

Month/Year firm started: _____

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

Annual Gross Receipts of the Firm: (check one)

0 to \$500,000 _____

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

\$1 Million - \$5 Million _____

\$5 Million - \$10 Million _____

\$10 Million - \$16.7 Million _____

Above \$16.7 Million _____

Name of Solicitation: _____



ATTACHMENT F: Requirement for Written Subcontracts and Flow down of Required Clauses

(To be submitted with Bid or Proposal)

Bidder or Proposal hereby agrees that, should it receive the award of a contract under this procurement, it will establish written subcontracts for all contract work provided by subcontractors at any tier and that it will ensure that all applicable FTA requirements and clauses are flowed down to subcontractors at all tiers.

Company Name: _____

Signed by: _____

Title: _____

Date: _____

Appendix II – FTA Required Clauses

It is the responsibility of the consultant to ensure that all clauses applicable to the contracted effort are adhered to by the consultant and its subconsultants when applicable.

Sec.	Contract Clause	Applicability to Type of Contract
1	Fly America Requirements	When Transportation Paid by FTA Funds
2	Buy America Requirements	Value > 150K for Construction, Goods, Rolling Stock
3	Charter Bus Requirements	Operational Service
4	School Bus Requirements	Operational Service
5	Cargo Preference Requirements	Equipment/Material/Commodities Transported by Ocean
6	Seismic Safety Requirements	New Construction/Additions
7	Special Department of Labor (DOL) Equal Employment Clause	Value > 10K for Construction
8	Energy Conservation Requirements	All
9	Clean Water Requirements	Value > 100K
10	Bus Testing	Rolling Stock Acquisition
11	Pre-Award and Post Delivery Audit Requirements	Rolling Stock Acquisition
12	Lobbying	All (Certification required if > \$100K)
13	Access to Records and Reports	All
14	Federal Changes	All
15	Bonding Requirements	Construction > 100K
16	Clean Air	Value > 100K
17	Recycled Products	Value > 10K In Fiscal Year
18	Davis-Bacon and Copeland Anti-Kickback Acts	Construction > \$2000
19	Contract Work Hours and Safety Standards Act	Construction > \$2000, Rolling Stock, Operational > \$2,500
20	No Government Obligation to Third Parties	All
21	Program Fraud and False or Fraudulent Statements and Related Acts	All
22	Termination	Value > 10K
23	Government-Wide Debarment and Suspension (Non-procurement)	Value > 25K
24	Privacy Act	All
25	Civil Rights Requirements	All
26	ADA Access Requirements	All
27	Breaches and Dispute Resolution	Value > 100K
28	Patent and Rights in Data	Research Projects Only
29	Transit Employee Protective Agreements	Transit Operations

30	Disadvantaged Business Enterprise (DBE)	All
31	Incorporation of FTA Terms	All
32	Drug and Alcohol Testing	Operational Service/Safety Sensitive
33	Transit Vehicle Manufacturer (TVM) Certifications	Rolling Stock, All Vehicle Procurements
34	Metric Requirements	Sealed Bid Procurements, Rolling Stock, Construction
35	Conformance with National ITS Architecture	Contracts and Solicitations for ITS projects only
36	Corridor Preservation	Right of Way Development
37	Veterans Employment	Capital Projects
38	Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment	ALL
39	Notice to FTA and DOT	All Contracts over \$25,000

1. FLY AMERICA REQUIREMENTS

49 U.S.C. §40118

41 CFR Part 301-10.131 - 301-10.143

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 to first tier consultants, who are responsible for ensuring that lower tier consultants and sub-consultants are in compliance.

Fly America - The Consultant 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 301-10.131 - 301-10.143, which provide that recipients and sub-recipients of Federal funds and their consultants 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 Consultant 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 Consultant agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 U.S.C. 5323(h)

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 \$150,000).

Flow down Requirements: The Buy America requirements flow down to first tier Consultant, who are responsible for ensuring that lower tier consultants and sub-consultants are in compliance.

Buy America - The Consultant agrees to comply with 49 U.S.C. 5323(j) as amended by MAP-21, 49 U.S.C. 5323(h), 49 CFR Part 661, and FAST Act (Pub. L. 114-94) which provide that Federal fund 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 was amended by Section 3011 of the FAST Act (Pub. L. 114-94). 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 sixty percent (60%) domestic content for FY16 & FY17; sixty-five percent (65%) domestic content for FY18 & FY19; and seventy percent (70%) domestic content for FY20 & beyond.

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless: (1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project. The requirement excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

Definitions:

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of: • non-ferrous metals; • plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); • glass (including optic glass); • lumber; or • drywall.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

General waivers for small purchases do not apply to Consultant’s equipment purchases when Consultant’s contract value exceeds \$150,000 in value. Consultant must submit to UTA 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 sub-consultants.

3. 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 UTA to first tier service Consultants.

Charter Service Operations - The consultant agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub-recipients 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.

4. 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 UTA to first tier service consultants.

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 sub-recipients may not use federally funded equipment, vehicles, or facilities.

5. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 55305

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 Requirements: 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 consultant 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 the FTA recipient (through the consultant in the case of a subconsultant'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.

Cargoes Procured, Furnished, or Financed by the United States Government - (a) Definition. - In this section, the term "privately-owned commercial vessel of the United States" does not include a vessel that, after September 21, 1961, was built or rebuilt outside the United States or documented under the laws of a foreign country, until the vessel has been documented under the laws of the United States for at least three (3) years.

(b) Minimum Tonnage.-When the United States Government procures, contracts for, or otherwise obtains for its own account, or furnishes to or for the account of a foreign country, organization, or persons without provision for reimbursement, any equipment, materials, or commodities, or provides financing in any way with Federal funds for the account of any persons unless otherwise exempted, within or without the United States, or advances funds or credits, or guarantees the convertibility of foreign currencies in connection with the furnishing or obtaining of the equipment, materials, or commodities, the appropriate agencies shall take steps necessary and practicable to ensure that at least fifty percent (50%) of the gross tonnage of the equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) which may be transported on ocean vessels is transported on privately-owned commercial vessels of the United States, to the extent those vessels are available at fair and reasonable rates for commercial vessels of the United States, in a manner that will ensure a fair and reasonable participation of commercial vessels of the United States in those cargoes by geographic areas.

(c) Waivers. -The President, the Secretary of Defense, or Congress (by concurrent resolution or otherwise) may waive this section temporarily by-

- (1) Declaring the existence of an emergency justifying a waiver; and
- (2) Notifying the appropriate agencies of the waiver.

(d) Programs of Other Agencies. -

(1) Each department or agency that has responsibility for a program under this section shall administer that program with respect to this section under regulations and guidance issued by the Secretary of Transportation. The Secretary, after consulting with the department or agency or organization or person involved, shall have the sole responsibility for determining if a program is subject to the requirements of this section.

(2) The Secretary-

(A) shall conduct an annual review of the administration of programs determined pursuant to paragraph (1) as subject to the requirements of this section;

(B) may direct agencies to require the transportation on United States-flagged vessels of cargo shipments not otherwise subject to this section in equivalent amounts to cargo determined to have been shipped on foreign carriers in violation of this section;

(C) may impose on any person that violates this section, or a regulation prescribed under this section, a civil penalty of not more than \$25,000 for each violation willfully and knowingly committed, with each day of a continuing violation following the date of shipment to be a separate violation; and

(D) may take other measures as appropriate under the Federal Acquisition Regulations issued pursuant to section 25(c)(1) 1 of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1) 2 or contract with respect to each violation.

(e) Security of Government-Impelled Cargo. -

(1) In order to ensure the safety of vessels and crewmembers transporting equipment, materials, or commodities under this section, the Secretary of Transportation shall direct each department or agency (except the Department of Defense), when responsible for the carriage of such equipment, materials, or commodities, to provide armed personnel aboard vessels of the United States carrying such equipment, materials, or commodities if the vessels are transiting high-risk waters.

(2) The Secretary of Transportation shall direct each department or agency responsible to provide armed personnel under paragraph (1) to reimburse, subject to the availability of appropriations, the owners or operators of applicable vessels for the cost of providing armed personnel.

(3) In this subsection, the term “high-risk waters” means waters so designated by the Commandant of the Coast Guard in the Port Security Advisory in effect on the date on which an applicable voyage begins. (Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1642; Pub. L. 110–417, div. C, title XXXV, §3511(a), (b), Oct. 14, 2008, 122 Stat. 4769; Pub. L. 112–213, title V, §503, Dec. 20, 2012, 126 Stat. 1575.)

6. 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 Requirements: The Seismic Safety requirements flow down from UTA to first tier consultants to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all sub-consultants.

Seismic Safety - The consultant 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 consultant also agrees to ensure that all work performed under this contract including work performed by a sub-consultant is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project. The consultant will facilitate and follow Executive Order No. 12699, “Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction,” 42 U.S.C. 7704 note, except as the Federal Government determines otherwise in writing.

7. SPECIAL DOL EQUAL EMPLOYMENT CLAUSE

41 CFR Part 60

See Section 25 – Contract Clause Civil Rights Requirements

8. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 622

Applicability to Contracts: The Energy Conservation requirements are applicable to all contracts.

Flow down Requirements: The Energy Conservation requirements extend to all third-party consultants and their contracts at every tier and, sub-recipients and their sub-agreements at every tier.

Energy Conservation - The Consultant 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. The consultant agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, "Requirements for Energy Assessments," 49 CFR part 622, subpart C.

9. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251 - 1377

Applicability to Contracts: The Clean Water requirements apply to each contract and subcontract which exceeds \$150,000.

Flow down Requirements: The Clean Water Act requirements flow down to UTA third party consultants and their contracts at every tier, and sub-recipients and their sub-agreements at every tier.

Clean Water - (a) The consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. 1251 – 1377 et seq.

(b) The consultant agrees to report each violation to UTA and understands and agrees that UTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office in compliance with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368

(c) The consultant agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f – 300j-6.

(d) The consultant also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

10. BUS TESTING

49 U.S.C. 5318(e)

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 Requirements: The Bus Testing requirements should not flow down, except to the turnkey consultant as stated in the most current FTA Master Agreement.

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

- a) 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.
- b) 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.
- c) 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.

- d) 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.

11. PRE-AWARD AND POST-DELIVERY AUDITS REQUIREMENTS

49 U.S.C. 5323

49 C.F.R. 661.12

49 CFR Part 663

Applicability to Contracts: These requirements apply only to the acquisition of Rolling Stock/Turnkey. **Flow down Requirements:** These requirements should not flow down, except to the turnkey consultant as stated in Master Agreement

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

A Buy America certification under this part shall be issued in addition to any certification which may be required by part 661 of this title. Nothing in this part precludes FTA from conducting a Buy America investigation under part 661 of this title "**Pre-Award and Post-Delivery Audit Requirements**" - The Consultant agrees to comply with "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 Consultant 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 Consultant shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Firm 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; 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 Consultant shall submit evidence that it will be capable of meeting the bid specifications.
- (3) Federal Motor Vehicle Safety Standards (FMVSS): The Consultant shall submit a) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or b) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

12. 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 Requirements 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.] - Consultants 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 a federal 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 certifies to the tier above that it will not and has not taken any action involving the Project or the Underlying Agreement for the Project, including any award, extension, or modification. 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 UTA.

13. 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 Requirements 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 Consultant agrees to provide UTA, 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 Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Consultant access to Consultant's

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services

<u>Non-State Grantees</u>	Yes ¹		Yes	Yes	Yes	Yes
a. Contracts below SAT (\$250,000)	Yes ¹	Those imposed on nonstate Grantee pass thru to Consultant	Yes	Yes	Yes	Yes
b. Contracts above \$250,000/ Capital Projects						

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 UTA or a sub-grantee of UTA 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 Consultant shall make available records related to the contract to UTA, 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 Consultant 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 Consultant agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) 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 Consultant agrees to maintain same until UTA, 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 Sources of Authority: ¹ 18 CFR 18.36 (i)

14. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts: The Federal Changes requirement applies to all contracts.

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

Federal Changes - Consultant 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 UTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of this contract.

15. BONDING REQUIREMENTS

This section applies only to construction or facility improvement contracts exceeding \$100,000.

16. CLEAN AIR

42 U.S.C. 7401 – 7601(q)

40 CFR 15.61

49 CFR Part 18

Applicability to Contracts: The Clean Air requirements apply to all contracts exceeding \$150,000, including indefinite quantities where the amount is expected to exceed \$150,000 in any year.

Flow down Requirements: The Clean Air requirements flow down to all subcontracts which exceed \$150,000.

Clean Air - (1) The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7601(q) et seq. The Consultant agrees to report each violation to UTA and understands and agrees that UTA, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Consultant also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

17. 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 Consultant procures \$10,000 or more of one (1) 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 Requirements: These requirements flow down to all consultant and sub-consultant tiers.

Recovered Materials - The consultant 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. The consultant agrees to comply with the U.S. Environmental Protection Agency (US EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR part 247.

18. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

49 U.S.C. 5333

40 U.S.C. 3141 – 3144

40 U.S.C. 3146 – 3147

18 U.S.C. 874

40 U.S.C. 3145

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 FR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

Flow down Requirements: Applies to third party consultants and sub-consultants

(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 consultant 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 Monthly) 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 (1) 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 consultant and its sub-consultants 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 consultant 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 thirty (30) days of receipt and shall advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.

(C) In the event the consultant, 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 thirty (30) days of receipt and shall advise the Contracting Officer or will notify the Contracting Officer within the thirty (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 consultant 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 consultant does not make payments to a trustee or other third person, the consultant 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 consultant, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the consultant to set aside in a separate account asset 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 consultant 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 thirty (30) days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.

(C) In the event the consultant, 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 with thirty (30) days of receipt and shall advise the Contracting Officer or will notify the Contracting Officer within the thirty (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** - UTA 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 consultant under this contract or any other Federal contract with the same prime consultant, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime consultant, 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 consultant or any sub-consultant 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, UTA may, after written notice to the consultant, 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 consultant during the course of the work and preserved for a period of three (3) 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 consultant 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. Consultants 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 consultant shall submit weekly for each week in which any contract work is performed a copy of all payrolls to UTA 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 WH347 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 consultant is responsible for the submission of copies of payrolls by all sub-consultants.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the consultant or sub-consultant 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 consultant or sub-consultant to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The consultant or sub-consultant 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 consultant or sub-consultant fails to submit the required records or to make them available, the Federal agency may, after written notice to the consultant, 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 ninety (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 consultant 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 consultant 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 Consultant's or Sub-consultant'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 consultant 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 consultant 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 consultant shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract. Consultant is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

(6) Subcontracts - The consultant or sub-consultant 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 sub-consultants to include these clauses in any lower tier subcontracts. The prime consultant shall be responsible for the compliance by any subconsultant or lower tier sub-consultant 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 consultant and a sub-consultant as provided in 29 CFR 5.12.

(7) 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.

(8) 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 consultant (or any of its subconsultants) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(9) Certification of eligibility - (i) By entering into this contract, the consultant certifies that neither it (nor he or she) nor any person or Consultant who has an interest in the consultant's Consultant is a person or Consultant 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 Consultant 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.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5(a) or §4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No consultant or sub-consultant 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 (1.5) times the basic rate of pay for all hours worked in excess of forty (40) 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 (b)(1) of this section the consultant and any sub-consultant responsible therefor shall be liable for the unpaid wages. In addition, such consultant and sub-consultant shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(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 (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) 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 consultant or sub-consultant under any such contract or any other Federal contract with the same prime consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime consultant, such sums as may be determined to be necessary to satisfy any liabilities of such consultant or sub-consultant for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

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

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the consultant or sub-

consultant shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the consultant or sub-consultant for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the consultant or sub-consultant will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

OMB Control Number
(a)(1)(ii)(B) 1215-0140
(a)(1)(ii)(C) 1215-0140
(a)(1)(iv) 1215-0140
(a)(3)(i) 1215-0140,
1215-0017
(a)(3)(ii)(A) 1215-0149
(c) 1215-0140,
1215-0017

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008]

Effective Date Note: At 58 FR 58955, Nov. 5, 1993, §5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.

19. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

29 CFR Part 5 40 U.S.C. 3701 et seq. 40 U.S.C. 3702

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 Requirements:** Applies to third party consultants and sub-consultants.

(1) **Overtime requirements** - No consultant or sub-consultant 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 (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not

less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) 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 consultant and any sub-consultant responsible therefor shall be liable for the unpaid wages. In addition, such consultant and sub-consultant 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 (40) 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** - UTA 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 consultant or sub-consultant under any such contract or any other Federal contract with the same prime consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime consultant, such sums as may be determined to be necessary to satisfy any liabilities of such consultant or sub-consultant for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

20. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts: Applicable to all contracts.

Flow down Requirements: 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) UTA and the Consultant 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 UTA, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Consultant 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 sub-consultant who will be subject to its provisions.

21. 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 Requirements: These requirements flow down to consultants and sub-consultants who make, present, or submit covered claims and statements.

Program Fraud and False or Fraudulent Statements or Related Acts

- (1) The Consultant 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 Consultant certifies 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 Consultant 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 Consultant to the extent the Federal Government deems appropriate.
- (2) The Consultant 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 Consultant, to the extent the Federal Government deems appropriate.
- (3) The Consultant agrees to include the above two (2) clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the sub-consultant who will be subject to the provisions.

22. TERMINATION

49 CFR Part 18 FTA Circular 4220.1F

Applicability to Contracts: These requirements are applicable to all contracts over \$100,000.

Flow down Requirements: These requirements flow down to consultants and sub-consultants over \$100,000.

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

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

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

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

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

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

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

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

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

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

23. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

49 CFR 18

2 CFR 1200

2 CFR 180

Executive Orders 12549 and 12689

Background and Applicability: In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a consultant, subconsultant, supplier, Consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered non-procurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation non-procurement suspension and debarment requirements to all lower tiers of subcontracts under covered non-procurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180). 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).

These provisions apply to all UTA 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. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, consultants, and sub-consultants (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 (EPLS), (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. Grantees, consultants, and sub-consultants who enter into covered transactions also must require the entities they contract with to comply 2 CFR 180 and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Flow down Requirements: These requirements flow down to consultants and sub-consultants at all levels.

Suspension and Debarment: This contract is a covered transaction for purposes of 49 CFR Part 18. As such, the consultant is required to verify that none of the consultant, its principals, are excluded or disqualified as defined under Executive Orders Nos. 12549 and 12689.

The consultant is required to comply with 2 CFR 1200 and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by UTA. If it is later determined that the Firm knowingly rendered an erroneous certification, in addition to remedies available to UTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Firm agrees to comply with the requirements 2 CFR 180 while this

offer is valid and throughout the period of any contract that may arise from this offer. The Firm further agrees to include a provision requiring such compliance in its lower tier covered transactions.

24. PRIVACY ACT

5 U.S.C. 552

Applicability to Contracts: When UTA 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 Requirements: The Federal Privacy Act requirements flow down to each third-party consultant and their contracts at every tier.

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

(1) The Consultant 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 Consultant agrees to obtain the express consent of the Federal Government before the Consultant, or its employees operate a system of records on behalf of the Federal Government. The Consultant 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.

25. 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.

1. The Consultant will be required to comply with these applicable civil rights, nondiscrimination, and equal employment opportunity laws and regulations:
 - i. 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 26, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, et seq., 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6101 – 6107, 42 U.S.C. § 12101, et seq., 42 U.S.C. § 12132, 49 U.S.C. § 5307 (c)(1)(D)(ii), 49 U.S.C. § 5332, 29 CFR Part 1630, 41 CFR Part 60, 29 U.S.C. § 623, 42 U.S.C. § 2000e, 42 U.S.C. § 12112, 49 U.S.C. § 5325 (k). Fixing America's Surface Transportation (FAST) Act, Public Law No: 114-94, as may be amended.
2. The Civil Rights requirements flow down to all third-party sub-consultants and their subcontracts at every tier.
3. The following requirements apply to a contract awarded as a result of this solicitation:
 - i. **Nondiscrimination** - In accordance with U.S. Department of Transportation (DOT) regulations at 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, the Rehabilitation Act of 1973, as amended, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended,

42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6102, 42 U.S.C. § 6101 – 6107, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, 42 U.S.C. § 12132, Federal transit law 49 U.S.C § 5307 (c)(1)(D)(ii), Federal transit law 49 U.S.C. § 5332, FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients.”, DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations, Executive Order No. 13166 and DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (70 FR 74087, Dec. 14, 2005), the Consultant agrees that it will comply with the identified Federal laws and regulations, pertaining to UTA programs and activities, to ensure that no person will be denied the benefits of, or otherwise be subjected to, discrimination (particularly in the level and quality of transportation services and transportation-related benefits) on the bases of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, marital status, genetic information, medical condition, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations, other implementing requirements that DOT or FTA may issue, and any other applicable Federal and State of Utah statutes and/or regulations that may be signed into law or promulgated.

- ii. Equal Employment Opportunity - The following equal employment opportunity requirements apply to a contract awarded as a result of this solicitation:
 - a) Race, Color, Ancestry, Marital Status, Medical Condition, Genetic Information, Religion, National Origin, Sex, Sexual Orientation, Gender Identity, Gender Expression - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 49 U.S.C. § 5332, FTA Circular 4704.1, “Equal Employment Program Guidelines for Grant Recipients”, and , the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, including "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), Fair Employment and Housing Act, and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect Bidder agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, ancestry, religion, marital status, medical condition, genetic information, national origin, sex, sexual orientation, gender identity, gender expression, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements that DOT, or FTA may issue, and any other applicable Federal statutes that may be signed into law or Federal regulations that may be promulgated.
 - b) Sex – The Consultant agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1975, as amended, 20 U.S.C. § 1681, and 49 CFR part 25. In addition, the Consultant agrees to comply with any implementing requirements that DOT, or FTA may issue.
 - c) Age - The Consultant agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, 45 CFR part 90, the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, and Equal Employment Opportunity Commission (EEOC) implementing regulations 29 CFR part 1625. In addition, the Consultant agrees to comply with any implementing requirements that DOT, or FTA may issue.
 - d) Disabilities - The Consultant agrees to comply with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(d), 36 CFR part 1194, the Americans with Disabilities Act of

1990, as amended, 42 U.S.C. § 12101, 49 CFR parts 27, 37, 38, and 39, and FTA Circular 4710.1, “Americans with Disabilities Act: Guidance”. In addition, the Consultant agrees to comply with any implementing requirements that DOT, or FTA may issue.

4. The Consultant 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.

26. ADA ACCESS REQUIREMENTS

49 U.S.C. § 5301, 29 U.S.C. § 794, 42 U.S.C. § 12101

Applicability to Contracts: The Consultant shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Consultant shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

27. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18 FTA Circular 4220.1F

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 consultants 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 Requirements: 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 UTA. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Consultant mails or otherwise furnishes a written appeal to the UTA. In connection with any such appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of UTA shall be binding upon the Consultant and the Consultant shall abide by the decision.

Performance During Dispute - Unless otherwise directed by UTA, Consultant 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 AUTHORITY and the CONSULTANT arising out of or

relating to this agreement or its breach will be decided by mediation under the auspices of a JAMS mediator. (<https://www.jamsadr.com>). If JAMS mediation is unsuccessful in resolving the dispute, either party may bring the matter to a court of competent jurisdiction within the State of Utah.

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 the AUTHORITY or CONSULTANT 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.

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 UTA or Consultant 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.

28. 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 Requirements: The Patent and Rights in Data requirements apply to all consultants and their contracts at every tier.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. **Rights in Data** - The 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, UTA or Consultant may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may UTA or Consultant 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 UTA or Consultant 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, UTA and the Consultant 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 UTA or Consultant'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, UTA and the Consultant 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 UTA or Consultant 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 UTA nor the Consultant 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 UTA or Consultant 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 UTA or Consultant identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Consultant 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 Consultant's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), UTA and the Consultant 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 Consultants under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Consultant 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 - The 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, UTA and Consultant 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 Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), UTA and the Consultant 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 Consultants Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Consultant 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.

29. 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 Consultant 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 Requirements: 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 Consultant 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 UTA's project from which Federal assistance is provided to support work on the underlying contract. The Consultant 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 non-urbanized 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 sub-recipient for which work is performed on the underlying contract, the Consultant 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 Consultant 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 Consultant agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized 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 Consultant 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.

30. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Section 1101(b) of MAP-21 (23 U.S.C. § 101 note)

1. UTA encourages DBE participation in this solicitation. In order to qualify as a DBE, a Consultant, or a Consultant's sub-consultant, must be certified as a DBE under 49 CFR Part 26. As a recipient of Federal funds, UTA must comply, and ensure that its Consultant(s) comply with 49 CFR Part 26 and Section 1101(b) of the Fixing America's Surface Transportation Act (FAST Act).
2. DBE Requirements/DBE Obligation:
 - i. The Contract to be awarded may be funded in part by the U.S. Department of Transportation (DOT) FTA. As a condition of financial assistance agreements between UTA and the U.S. DOT, UTA has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
 - ii. The Contract to be awarded may be funded in part by the U.S. DOT FTA. As a condition of financial assistance agreements between UTA and the U.S. DOT, UTA has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
 - iii. Pursuant to Race-Neutral DBE policy directive issued by the U.S. DOT, UTA will strictly utilize race-neutral measures to meet its overall DBE goals and objectives. Consultants are encouraged to afford small businesses, including DBEs, an equitable opportunity to compete for and perform on a contract resulting from this solicitation.
 - iv. The Consultant, and any of its sub-consultants, are to ensure that DBE as defined in 49 CFR Part 26 have equal opportunities to participate in the performance of UTA contracts. In this regard, the Consultant shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the equal opportunities 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 of 49 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Each subcontract the Consultant signs with a sub-consultant must include the assurance in this paragraph (see 49 CFR 26.13(b)).

- v. 1101(b) of the FAST Act extends the Federal statutory requirement that FTA make available at least 10 percent (10%) of its funding under that Act for contracts with small business concerns owned and controlled by socially and economically disadvantaged people. UTA and subrecipients (Consultant and its sub-consultants) of FTA-funding assists FTA in meeting this national goal. To receive FTA assistance, UTA and sub-recipients (Consultant and its sub-consultants) of FTA funding must comply with applicable requirements of DOT regulations 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs".

3. DBE Financial Institutions

- i. The Consultant is to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage sub-consultants to make use of these institutions also.
- ii. A list of Minority Owned Banks is on the Federal Reserve website at <http://federalreserve.gov/releases/mob/current/default.htm>. The Federal Reserve website is updated periodically.
- iii. The Consultant is encouraged to use the services offered by banks in the community which are owned and controlled by minorities or women when feasible and beneficial.

4. DBE Reporting and Certification

- i. Monthly reporting requires the submittal of a "Monthly Sub-consultant Payment Report", which is used by UTA to verify payments to DBE and non-DBE sub-consultants. When completing this form, the Consultant must designate DBE sub-consultants by placing an asterisk in front of their name. As Federal law requires that UTA have proof of payment to a DBE sub-consultant, the subconsultant must initial the form and verify payment received. Failure to submit a properly executed form will result in delayed payment. Failure to submit these reports in a timely manner may result in a penalty of \$10 per day, per report.
- ii. In order for the Consultant to submit a properly executed "Monthly Sub-consultant Payment Report," the Consultant must verify that Sub-consultants DBE certification is current at time of payment.
- iii. Certified Consultants can be found at the UTAH UNIFIED CERTIFICATION PROGRAM (UUCP) DISADVANTAGED BUSINESS ENTERPRISE (dbe) DIRECTORY:
<https://drive.google.com/file/d/1r6n4o9F14jFEqtiNICrFxrfiAs9948ho/view>

5. DBE Contract Assurance (49 CFR 26.13)

- i. UTA does not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. UTA takes all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT assisted contracts. UTA's DBE Program as required by 49 CFR Part 26 and as approved by U.S. DOT will be incorporated by reference into the contract resulting from this solicitation.
- ii. 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 of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
 - a. Withholding monthly progress payments;
 - b. Assessing sanctions;

- c. Liquidated damages; and/or
- d. Disqualifying the Consultant from future bidding as non-responsible.

6. DBE Prompt Payment (49 CFR 26.29)

- i. Not later than ten (10) days after receipt of each progress payment from UTA, the successful Offeror shall pay to any sub-Consultant performing any work, the respective amounts allowed to

the successful Offeror for work performed by the sub-Consultant, to the extent of each subconsultant's interest therein, unless otherwise agreed to in writing. In addition, for projects that invoice only at the completion of the project, within seven (7) days of the successful Offerors receipt of released retention from UTA upon completion of the project the successful Offeror shall pay each of its sub-Consultants from whom retention has been withheld, each sub-Consultants share of the retention received., For projects that issue progress payment invoices, upon incremental acceptance of any portion of the work by UTA, the successful Offeror shall pay each of its sub-Consultants from whom retention has been withheld, each subconsultant shares of the retention received.
- ii. Failure to comply with these provisions or delay in payment without prior written approval from UTA will constitute noncompliance, which will result in appropriate administrative sanctions, including, but not limited to a penalty of 2% of the amount due per month for every month that payment is not made.

31. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS FTA

Circular 4220.1F

Applicability to Contracts: The incorporation of FTA terms applies to all contracts and subcontracts at every tier.

Flow Down Requirements 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 the most current FTA Circular 4220, 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 Consultant shall not perform any act, fail to perform any act, or refuse to comply with any UTA requests which would cause UTA to be in violation of the FTA terms and conditions.

32. DRUG AND ALCOHOL TESTING

49 U.S.C. §5331
49 CFR Part 655
49 CFR Part 382

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 as amended by MAP-21, 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 sub-consultants. **Drug and Alcohol Testing:** The Consultant 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 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 UTA. 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.

33. TRANSIT VEHICLE MANUFACTURER (TVM) CERTIFICATIONS

49 CFR Part 26

49 CFR §26.49 Consultant must submit to UTA a certification from each transit vehicle manufactures those desires to bid or propose upon a DOT-assisted transit vehicle procurement that it has complied with the requirements of 49 CFR §26.49. UTA 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 goalsetting procedures.

34. METRIC REQUIREMENTS

15 U.S.C. §§205 2007-Pub. L. 110-69

As required by U.S. DOT or FTA, UTA 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 UTA agrees to accept products and services with dimensions expressed in the metric system of measurement.

35. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS 23 U.S.C. Section 517(d)

23 U.S.C. §502

Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 *et seq.*, January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

36. CORRIDOR PRESERVATION

49 U.S.C. 5323(q)

The Recipient agrees not to develop right-of way acquired under 49 U.S.C. § 5323(q), as amended by MAP-21, in anticipation of its Project until all required environmental reviews for that Project have been completed.

37. VETERANS EMPLOYMENT

49 U.S.C. 5325 (k)

Veterans Employment. As provided by 49 U.S.C. § 5325(k):

- a. To the extent practicable, Consultant agrees that it:
 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third-party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and
- b. Consultant also assures that its sub-consultant will:
 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third-party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

38. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

In accordance with 2 CFR 200.216, consultant and its subconsultants are prohibited from expending funds under this contract for the procurement of equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

“Covered telecommunications equipment or services” is telecommunications or video surveillance equipment or services produced by:

- a. Huawei Technologies Company
- b. ZTE Corporation
- c. Hytera Communications Corporation
- d. Hangzhou Hikvision Digital Technology Company
- e. Dahua Technology Company
- f. Any subsidiary of the above listed entities.

39. NOTIFICATION TO FTA and DOT

If a current or prospective legal matter that may affect the Federal Government emerges, the Consultant must promptly notify UTA so that UTA may promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Consultant or Recipient is located. The Consultant must include a similar notification requirement in subcontracts at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Consultant must promptly notice UTA and UTA must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region 8, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a consultant or person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subconsultants at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

Appendix III

UTA's Quality Management Plan

(see attached PDF)

Appendix IV

UTA's Design Quality Procedures

(see attached PDF)

Appendix V

UTA's Construction Safety and Security Program Manual

(see attached PDF)

Appendix VI

Project Design Needs

This project includes the following general elements: Design of a new Park & Ride Facility in Eagle Mountain and a new Park & Ride Facility in Saratoga Springs, Utah County. Services for the design would include, but are not limited to:

- Survey
- Right of Way documents
- Civil and Site Development Design
- Public Outreach
- Support drawings for environmental documentation
- Environmental technical studies
- Environmental Permitting
- Roadway, curb, gutter and sidewalk
- Drainage Design
- Park & Ride facilities, bus stops & pedestrian improvements
- Structures (retaining walls, operator facility restroom, etc.)
- Trail improvements
- Traffic Signal Design
- Landscaping, Lighting and Electrical Design
- Utility Coordination and Design
- County and City Coordination
- Traffic Control/Maintenance of Traffic
- Geotechnical Analysis

Final package and deliverable to be engineering drawings, engineering specifications and engineer's probable cost estimate.

Appendix VII

Saratoga Springs Northshore Traffic Impact Study,
Addendum 1, and Addendum 2
(see attached)

Appendix VIII

Cost Pricing Form
(see attached)