

**SOLANO Propulsion Train Subcomponent
Replacement Project & Upgrades
(Project 160005)
RFP 17-021**

Request for Proposals
and Proposal Notices

Instructions to Offerers

31 July 2017

SAN FRANCISCO BAY AREA

**WATER EMERGENCY
TRANSPORTATION AUTHORITY**

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INSTRUCTIONS TO OFFERORS
NOTICE INVITING PROPOSALS
SECTION 00 01 00

NOTICE IS HEREBY GIVEN THAT PROPOSALS will be received by the San Francisco Bay Area Water Emergency Transportation Authority (hereinafter "WETA") at Pier 9, Suite 111, San Francisco, CA 94111, until **2:00 p.m. on September 8, 2017** for the following Project:

SAN FRANCISCO BAY AREA
WATER EMERGENCY TRANSPORTATION AUTHORITY
M/V SOLANO, RFP# 17-021

The Work consists of furnishing all engineering and design services, materials, labor, tools, supplies, equipment, transportation, and management necessary for the Work on the Ferry SOLANO as defined by drawings, specifications, and reference documents and materials.

The selection of the design/build Contractor will be made using a process in accordance with the American Bar Association's 2000 Model Procurement Code for State and Local Governments (R3-202.20) and the Federal Transit Administration's Best Practices Procurement Manual.

Proposals shall be submitted in accordance with the requirements of the Request for Proposal (RFP) Documents. Proposals shall be securely sealed in a suitable envelope marked with the name and address of the Offeror, and marked in capital letters on the front and back of the envelope, as follows:

SAN FRANCISCO BAY AREA
WATER EMERGENCY TRANSPORTATION AUTHORITY
SOLANO RFP# 17-021

(Name and Address of Offeror)

Whether mailed or personally delivered, all Proposals shall be addressed to WETA at Pier 9, Suite 111, San Francisco, CA 94111. Proposals must be received on or before the date and time specified above.

WETA intends to award the Contract to the Offeror whose Proposal provides the best value to WETA, based on the qualitative merits of the Technical Proposal, and the Price Proposal. WETA reserves the right, in its sole discretion, to reject any and all Proposals, waive any irregularities or informalities in the procurement process, waive deficiencies, informalities and irregularities in any Proposal and/or permit corrections to data submitted with any response to the RFP, cancel, modify or withdraw the RFP, terminate this procurement and commence a new procurement for part or all of the Project, modify the procurement process, and exercise any other right reserved or afforded to WETA under the RFP, WETA's procurement policies and applicable law. WETA specifically reserves the right to not Award the Contract after the submittal of Proposals.

Proposals will be examined and reported to WETA Board of Directors within ninety (90) days of the opening of the Proposals. Except as permitted by applicable law, no Offeror may withdraw its Proposal for a period set forth in the Instructions to Offerors ("ITO"). Each Offeror will be notified of any Award of the Contract by WETA as set forth in the ITO.

An **Offerors (Pre-Proposal) Conference** will be held prior to the deadline for Proposal submittals. Attendance by potential Offerors is **mandatory**. The conference will take place on **August 10, 2017, 1:00 p.m.** at **Pier 9, Suite 111, The Embarcadero, San Francisco, CA 94111**. Further information concerning

the Pre-Proposal conference can be found in the ITO "Offerors Pre-Proposal Conference," section of the RFP Documents. In connection with the performance of this Contract, full compliance with all applicable safety and health standards and with all applicable Governmental Rules.

WETA hereby notifies all Offerors that it is the policy of WETA to ensure non-discrimination on the basis of race, color, sex or national origin in the Award and administration of contracts that it Awards.

Pursuant to Public Contract Code Section 22300, the successful Offeror may submit certain securities in lieu of WETA withholding retention payments during the Project.

DBE/SBE Compliance and Documentation Forms – The Agreement awarded pursuant to this RFP, if any, will be assisted by funds from the U.S. Department of Transportation (U.S. DOT). WETA's proposed annual overall Disadvantaged Business Enterprise (DBE) goal for Federal Fiscal Year 2017/2018 is 1.78% for FTA-assisted contracts. WETA proposes to meet 100% of its goals using race-neutral methods. WETA's proposed annual overall Small Business Enterprise (SBE) goal for Federal Fiscal Year 2017/2018 is 5.04% for FTA-assisted contracts.

Consultants are strongly encouraged to obtain DBE and SBE participation on this Project, although there is no contract-specific DBE or SBE goal. Please document the process used to solicit and select subcontractors/sub-consultants/suppliers. Documentation must be submitted on the forms contained in Attachment B: (1) Prime Consultant and Subcontractors/Sub-consultants/Suppliers Report; and (2) Description of the Selection Process of Subcontractors/Sub-consultants/Suppliers. Please be sure to submit the Small Business Affidavit of Size for your firm, if applicable, and for any SBE subcontractors/subconsultants/suppliers proposed to perform the Services. Submittals that fail to document the solicitation of DBE or SBE participation will not be considered. For DBE questions or assistance, refer to the DBE Program, available at www.watertransit.org, and/or contact Lauren Gularte, DBE Program Administrator at (415) 364-3188 or by email at gularte@watertransit.org.

Attention is directed to the Contract Documents for complete details and Proposal requirements. Said documents, including but not limited to Instructions to Offerors and Appendices thereto Supplemental Agreements, the Design-Build and Deliver Contract and Contract Forms, Addenda and Change Orders, the General Provisions and any Supplemental Provisions, Technical Specifications, drawings, Proposal forms, bonds, and this Notice, shall all be considered Contract Documents and are a part of any Contract Awarded pursuant to this solicitation. The Contract Documents are available for download on WETA's website (<http://sanfranciscobayferry.com/weta/opportunities>).

Addenda, if issued, will also be made available to all interested parties on WETA's website at sanfranciscobayferry.com/weta/opportunities and can be downloaded at no cost. Each Offerer has an ongoing responsibility to check WETA's website for Addenda. Other than by posting Addenda on its web site, WETA has no obligation to provide any other notice of Addenda being issued.

All questions prior to Notice of Intent to Award shall be directed to the attention of the undersigned via email to Stahnke@watertransit.org. The deadline for submissions of questions and clarifications concerning the Contract Documents is **August 25, 2017**.

END OF SECTION

INSTRUCTIONS TO OFFERORS
PROPOSAL SUBMISSION REQUIREMENTS
SECTION 00 02 00

1. Introduction

A. TERMS

With regard to these instructions, where the term “technical” is used (i.e., Technical Proposal, technical merit, etc.), it shall be construed to encompass not only engineering and design, but also management, facilities, past performance, financial stability and other factors, other than price, that may influence the character and quality of the Work and for which the San Francisco Bay Area Water Emergency Transportation Authority (WETA) requests information.

All definitions and abbreviations provided in the General Provisions apply.

B. PURPOSE

The purpose of this procurement action is to select one marine repair firm to refurbish the vessel SOLANO, an aluminum catamaran passenger-only ferry in service on San Francisco Bay. The refurbishment will replace or renew major propulsion train subcomponents of the vessel and perform other upgrade work items. The project is partially funded by Federal Aid (FTA) and all terms and conditions imposed by the Federal Government as a result of this funding are incorporated into this RFP.

C. ENGINEER’S ESTIMATE

The Engineer’s Estimate for this project is ±\$700,000.

D. PROCUREMENT TYPE

The process will consist of an evaluation of the Technical Proposals responding to this solicitation to determine a ranking for all Offerors’ Technical Proposals in accordance with the provisions of this RFP, followed by Offerors in the competitive range will then have their Price Proposals opened. The evaluation of Technical Proposals may, at WETA’s sole discretion, include interviews with Offerors. The Contract will be Awarded to the Offeror whose Proposal provides the “best value” to WETA, price and other technical factors considered. WETA reserves the right to request clarifications, seek revised Proposals, and to negotiate with Offerors. WETA further reserves the right to require “Best and Final” Offer(s) (BAFOs) from Offerors as further described herein. WETA further reserves the right, in its sole discretion, to Award the Contract without negotiating or soliciting Best and Final Offers, so Offerors are encouraged to submit their best Proposals at the outset.

E. PROPOSAL EVALUATION COMMITTEE (PEC)

The PEC Committee is composed of WETA and consultant personnel responsible for the evaluation of the submittals.

F. PROCUREMENT SCHEDULE

Appendix A of the Instructions to Offerors provides a schedule of major procurement events. Dates may be adjusted and/or announced by issuing Addenda.

G. TECHNICAL AND PRICE PROPOSAL REQUIREMENTS

Appendix B describes the Technical and Price Proposal requirements.

2. RFP Provisions and Conditions

A. QUALIFICATION OF OFFERORS

The PEC will evaluate the Technical Proposals submitted in response to this RFP. The evaluation will be conducted in accordance with Sections 3 and 4 of these Instructions to Offerors.

The PEC will then open and evaluate the Price Proposals from those Offerors the PEC has determined are in the competitive range. The evaluation will be conducted in accordance with Sections 3 and 4 of these Instructions to Offerors.

Nothing contained in this section shall be construed as depriving WETA of or limiting its broadest discretion allowed by law in the matter of Awarding the Contract.

B. EXAMINATION OF DOCUMENTS

Each Offeror shall be solely responsible for examining, with appropriate care and diligence, the RFP and Addenda, and any materials referenced therein, and for informing itself with respect to any and all conditions, which may in any way affect the amount or nature of its Proposal, or the performance of the Design-Builder's obligations under the Contract with WETA. Each Offeror is responsible for conducting such investigations, as it deems appropriate in connection with its Proposal, keeping in mind the provisions in the Contract regarding assumption of liability by Design-Builder. Submission of a Proposal shall constitute prima facie evidence that, if awarded the Contract, the Offeror has relied and is relying on its own examination of the character, quality and scope of the proposed Work, the quality and quantity of the materials to be furnished, and the requirements of the Contract Documents, including this RFP. No claim for additional compensation that is based upon a lack of knowledge of any Contract Documents will be allowed.

C. OFFERORS PRE-PROPOSAL CONFERENCE

As indicated in the procurement schedule, WETA will conduct a Pre-Proposal conference. Attendance by potential Offerors is **MANDATORY**. The purpose of the conference will be to answer questions about the Contract Documents and evaluation process.

Offerors are encouraged to submit questions in accordance with the subsection entitled "Questions Prior to Submittal of Proposals" below. Other than questions presented during the Pre-Proposal conference, questions requiring clarification or interpretation of the RFP must be submitted in writing (an attachment via email is acceptable). Addenda may be issued after the Pre-Proposal conference to address substantive questions raised during the Pre-Proposal conference and site visit. All statements and interpretations provided by WETA representatives at the Pre-Proposal conference are non-binding on WETA unless contained in a subsequent written Addendum.

The Pre-Proposal conference will take place on the date described in the above "Notice Inviting Proposals." Meals, lodging and travel expenses will be the responsibility of the Offerors and will not be reimbursed by WETA.

D. ADDENDA REQUIREMENTS

WETA reserves the right, in its sole discretion, to revise, modify or change the RFP and/or procurement process at any time before the deadline for submittal of Proposals. Any such revisions will be implemented through issuance of Addenda to the RFP. Addenda will be issued to potential Offerors as set forth in the Notice Inviting Proposals, above.

Each Addendum must be acknowledged individually by Offerors on the signature page of the response Proposal form (Form WETA-6) or (Form WETA-7). If no Addenda are received by the Offerors, the word "None" should be entered on the Proposal form. Addenda will be posted on WETA's web site and it is Offeror's responsibility to check the site periodically to determine whether Addenda have been issued. Failure of Offerors to acknowledge receipt of any Addenda may result in the rejection of their Proposals.

E. QUESTIONS / REQUESTS FOR APPROVED EQUALS PRIOR TO SUBMITTAL OF PROPOSALS

No oral representations or interpretations will be made to any Offeror as to the meaning of the Contract Documents, including this RFP. Except as otherwise provided herein, questions regarding the RFP and requests for interpretation of the Contract Documents must be made via e-mail to stahnke@watertransit.org. Questions and requests for interpretation of the RFP Documents must be received by WETA at least nine business days prior to the RFP submittal deadline to permit the issuance of Addenda to all Offerors, if necessary.

Requests to clarify the source of materials, equipment, Suppliers or any other such matter that does not modify, change, increase, or decrease the scope of Work or requirements of the Contract Documents requires no action by WETA other than a response to the Offeror requesting the clarification. Requests to clarify possibly ambiguous or incomplete statements or designs, or any other such clarification, which modifies, changes, increases or decreases the scope of Work, requires issuance of an Addendum by WETA for the interpretation to become effective.

Contract Clarifications. WETA intends to use the form of Contract included as Attachment 1 to the General Provisions of this RFP as the Contract resulting from this RFP. Questions or requests for modifications to the form of the Contract must be submitted in writing as set forth above and prior to the proposal submittal deadline. Changes to the form of the Contract may be considered and made by WETA in its sole discretion. Any changes to the Contract form will be made by Addendum and will be available to all Offerors.

F. INCURRED COSTS

No costs incurred by Offerors or their agents in preparing Proposals, including travel and personal expenses, may be charged as an expense of performing the Contract. Likewise, WETA assumes no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse any of the costs incurred by Offerors or their agents in preparing a Proposal or otherwise responding to this RFP.

G. JOINT VENTURES

Joint ventures are acceptable for performing this Contract. Joint venture Offerors shall identify the members of the Joint Venture and shall provide a copy of the joint venture agreement, with amendments, with the Proposal. Unless clear in such agreement, the Proposal must also include supporting documentation describing the key management personnel and proposed management structure of the joint venture. This information must include an explanation of how the companies will relate to each other and ensure a clear chain of command for this Contract.

All provisions of the Proposal are binding on each entity comprising the joint venture.

The joint venture agreement and supporting information will be subject to WETA review and approval. WETA reserves the right to reject any joint venture Proposal submitted without the joint venture agreement and supporting information.

H. CONFLICT OF INTEREST

An officer or employee of WETA may not seek to acquire, be a party to, or possess a financial interest in, the Contract if:

- a. The officer or employee is an officer or employee of the administrative unit that supervises the Award of the Contract; or
- b. The officer or employee has the power to take or withhold official action so as to affect the Award or execution of the Contract.

In addition, any consultant, including any design or engineering firm or individual retained by WETA to assist in the development of evaluation criteria or preparation of the RFP or the Contract Documents shall not be eligible to propose for or to participate as a Subcontractor or as a member of any team or joint venturer proposing on any part of the Work.

I. ASSIGNMENTS

Assignment of rights and duties under the Contract Documents is not permitted except by prior written consent of WETA or as otherwise provided in the Contract Documents. Offeror's attention is directed to General Provisions Section 108-1.01 for additional restrictions regarding assignment.

3. General Provisions

WETA's goal is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all applicable legal requirements governing this procurement.

A. REQUIREMENTS PRIOR TO SUBMITTING A PROPOSAL

Submission of a Proposal signifies careful examination of Contract Documents and complete understanding of the nature and extent of Work to be performed. Each submission of a Proposal shall constitute the Offeror's express representation to WETA that Offeror has fully examined, with appropriate care and diligence, the Contract Documents and such other matters necessary or advisable to submit a Proposal.

B. POSTPONEMENT OF OPENING

WETA reserves the right to postpone the date and time for receiving and/or opening of Proposals at any time prior to the dates and times established in the Request for Proposals ("RFP") for such actions.

Postponement notices, if any, will be issued as Addenda.

C. QUALIFICATIONS OF OFFEROR

To be awarded the Contract for this Project, minimum qualification requirements include having at least five (5) full years of experience in constructing or repairing similar vessels proven reliable in similar marine saltwater service applications (aluminum hulls, minimum 30 knot sustained speed, operating in in ferry-type service).

Each Proposal will be reviewed for (a) conformance to the RFP instructions regarding organization and format, and (b) the responsiveness of the Offeror to the requirements set forth in this RFP. Those Proposals not responsive to this RFP may be excluded from further consideration and the Offeror will be so advised. WETA may also exclude from consideration any Offeror whose Proposal contains a material misrepresentation. WETA reserves the right to waive minor informalities, irregularities and apparent clerical mistakes, which do not materially impact the substantive content of the Proposals.

Each Proposal will also be evaluated to determine whether the Offeror has demonstrated design and construction competence and experience. Only Proposals meeting this qualification will be evaluated further.

Price Proposals must demonstrate financial capacity to perform this Project, as demonstrated by a letter from a surety indicating that the Offeror will be able to obtain payment and performance bonds in the amounts required herein. Only Proposals meeting this qualification will be evaluated further.

D. RIGHT OF REJECTION / NON-RESPONSIVE PROPOSALS

Offerors that do not comply with all of the requirements of this RFP may be declared non-responsive and/or the Offeror may be determined to be not responsible and their Proposals may be rejected. WETA may reject Proposals if they are incomplete, fail to acknowledge Addenda, are improperly signed, are conditioned in any way, or do not comply with and address all terms and requirements of the Contract Documents, including this RFP. However, WETA reserves the right to waive any such irregularities when it is in WETA's interest to do so.

WETA reserves the right to modify or cancel in part or in its entirety this RFP.

WETA reserves the right to disqualify Offerors and reject their Proposals prior to the Award of the Contract for any reason, including, but not limited to, any of the following:

- a. If Offeror does not meet the qualifications of this RFP, including: i) design and construction competence and experience; and ii) financial capacity to perform this Project.
- b. If Offeror has significant uncompleted work under other contracts which, in the judgment of WETA, might hinder Offeror's ability to timely complete Work on this Project.
- c. Failure to pay, or satisfactorily settle, all bills due for labor and material on previous contracts in force at the time of issuance of Proposals.
- d. Failure to comply with any Proposal requirements in this RFP.
- e. Default under previous contracts, or fraud or dishonesty in the performance of previous contracts.
- f. Unsatisfactory performance record, judged from the standpoint of conduct of the Work, workmanship, or progress, as shown by past or current work.
- g. Failure to reimburse WETA for moneys owed to it on any previous contracts.
- h. Evidence of collusion among Offerors. Participants in such collusion will be disqualified from and ineligible to propose for or participate as a Subcontractor or member of a team in respect to any future work from WETA.
- i. Failure to properly complete and submit, in ink or type print, any and all required Proposal documents, including but not limited to the Proposal, non-collusion affidavit, and Proposal security.
- j. If there are unauthorized additions, conditional or alternative Technical and/or Price Proposals, or irregularities of any kind which may tend to make the Proposal incomplete, indefinite, or ambiguous as to its meaning.
- k. If Offeror adds any provisions conditioning its proposal or reserving the right to accept or reject any Award or if it fails to enter into a Contract pursuant to an Award within any required time period.
- l. If Offeror has not acknowledged receipt of each Addenda by its assigned number and date of issue.
- m. If the Proposal fails to include all information specified in Appendix B.
- n. If Offeror does not fully comply with all terms of the RFP.
- o. If a Proposal initially determined to be in the competitive range is subsequently determined to be non-competitive.
- p. If the Price Proposal is in a format that fails to comply with the RFP requirements.
- q. If WETA discovers substantive evidence that the Offeror does not have the financial capacity to perform this Contract.

- r. If information from interviews or otherwise independently obtained by WETA demonstrates a lack of responsibility of the Offeror. Under applicable FTA Guidelines, WETA has an affirmative obligation to obtain and consider information from any source that may demonstrate a lack of responsibility on Offeror's part.

E. DISCLOSURE OF RESPONSE CONTENTS

All responses and other material submitted become the property of WETA and may be returned only at WETA's option. All response information, including detailed financial information, will be held in confidence prior to issuance of the Notice of Intent to Award. Once the Notice is issued, proposal information will become public information. If an Offeror believes that any portion of its proposal contains trade secrets or other proprietary information, the Offeror may request that WETA hold from disclosure the proprietary information by marking each page containing proprietary information as a confidential. Offeror may not designate its entire proposal as confidential, and the proposal forms, including the Price Proposal, may not be marked as confidential.

If WETA withholds from disclosure Offerors' pages marked confidential, Offeror will assume all responsibility for any challenges resulting there from and Offeror will indemnify, defend, and hold harmless WETA from and against all damages and liabilities (including but not limited to attorney's fees and costs that may be awarded to the party requesting the Offeror's proposal information) and will pay any and all costs and expenses incurred by WETA relating to or resulting from the withholding of the information.

F. CHOICE OF LAW, JURISDICTION AND VENUE

Any dispute arising out of or relating to the Contract Documents shall be resolved under the internal laws of the State of California. These laws will control as to procedure and provide the substantive rule of decision. Any appeal of an administrative order or ruling and any other action to enforce any provision of the Contract Documents or to obtain any relief from or remedy in connection with this procurement may be brought only in a state court located in the City and County of San Francisco, California.

4. Evaluation and Award Process

Appendix A to Instructions to Offerors provides a chronological overview of the proposal submittal, PEC review and selection processes for the Contract. The Contract will be awarded to the Offeror that submits the Proposal that provides the best value considering both the Technical Proposal and the Price Proposal.

A. EVALUATION OF TECHNICAL PROPOSALS

a. Submission

Offerors submit their Technical Proposal in accordance with the terms of the RFP, including any Addenda thereto.

b. Administrative Review

Each opened Technical Proposal will be reviewed for (a) conformance to the RFP instructions regarding organization and format and (b) the responsiveness of the Offeror to the requirements set forth in this RFP. This is a pass-fail only process. Only Proposals meeting this qualification will be evaluated further.

c. Interviews

The Proposal Evaluation Committee (PEC) may require that some or all Offerors attend an interview (may be in person or conducted via telephone per WETA's request) in order to answer questions and provide clarification regarding their Proposals. WETA also reserves the right to require that clarifications be made by Offerors in writing.

d. Evaluation of Technical Proposals

The PEC will evaluate the Technical Proposals. The evaluation will be based on information submitted in writing as part of the Proposal package, as well as any information obtained during the interview process or from references. The relative importance of the categories and the key factors within each category are set forth below.

FACTOR	CATEGORY	POSSIBLE POINTS
A	Technical Approach/ Management Plan	10
B	Team Qualifications	10
C	Propulsion Train Machinery Installation & Alignment Work Plan (MIAWP)	25
D	Experience / References	15
TOTAL POSSIBLE POINTS FOR TECHNICAL PROPOSAL		60

The PEC will then make a determination of the Technical Proposals that are within the competitive range. **All Offerors will be advised of their status.**

e. On-Site Quality Assessment

Offerors determined to be in the competitive range as a result of the Technical Proposal Evaluation shall make their facilities available for an On-Site Quality Assessment if the PEC so requires.

f. Debriefing

Offerors not in the competitive range may request an individual debriefing concerning their Proposals. Debriefings will be at a time and location to be determined by WETA. Debriefings will be scheduled after the Contract is Awarded.

B. PRICE PROPOSAL EVALUATION

a. Submission

Each opened Price Proposal will be reviewed for (a) conformance to the RFP instructions regarding organization and format. Only Proposals meeting this requirement will be evaluated further.

b. Price Ranking

The Price Proposals for Offerors in the competitive range will be evaluated on a 40 point scale, and ranked using the following scoring formula:

$$S = 40 \times (1 - (P - L) / L)$$

Where:

- S is the score
- P is the proposed Price being ranked
- L is the lowest Price proposed

WETA will determine the score for each Price Proposal based on the "TOTAL PRICE" amounts from the Price Proposals, and WETA reserves the right but shall not be obligated to reject any Proposals with a price higher than the Engineers Estimate.

C. Final Ranking

After ranking the Price Proposals, the Complete Technical Proposal and Step one Proposal point totals will be factored in to determine a final score for each Offeror out of a total possible 100 points. The highest point total will be deemed the "best value" Proposal for WETA.

CATEGORY	KEY FACTORS	POSSIBLE POINTS
Price Proposal	Score for Price Proposal (points Awarded in Price Proposal ranking)	40
Technical Proposal	Score for Technical Proposal	60
TOTAL POSSIBLE POINTS TECHNICAL AND PRICE PROPOSALS		100

D. BEST VALUE PROPOSAL

After having evaluated the Proposals, WETA may issue a Notice of Intent to Award to the Offeror determined to have submitted the "best value" Proposal for WETA as set forth above. WETA may proceed to issue the Notice of Intent to Award without further negotiations. However, WETA may also choose to negotiate with the Offeror whose Proposal was deemed to be the "best value."

E. NEGOTIATIONS

WETA expressly reserves the right to negotiate with any or all Offerors that have submitted opened Price Proposals.

F. REQUESTS FOR BEST AND FINAL OFFERS

WETA may, at any time after opening of Price Proposals and prior to Award of the Contract, determine that it is appropriate to request changes to the Price Proposals (Best and Final Offers). The request for Best and Final Offers may identify revisions (if any) to the RFP and will specify terms and conditions applicable to the Best and Final Offers, including identifying a time and date for delivery. Upon receipt of Best and Final Offers, WETA will re-evaluate the Price Proposals as revised, and will determine Proposal ratings as appropriate following the process described above.

If an Offeror does not respond to a request for Best and Final Offers, the most recent Price Proposal submitted will be considered to be the Offeror's Best and Final Offer. Best and Final Offers will be ranked in order of "best value" as in Step 4.C above. This cycle of BAFOs may be repeated until WETA determines that the Proposal most advantageous to WETA has been achieved. WETA will provide a report to WETA Board of Directors ranking all Proposals for Offerors in the competitive range. The report may include information supporting the ranking determination.

G. NOTICE OF INTENT TO AWARD

If the Contract is recommended to be Awarded, a Notice of Intent to Award will be posted on WETA's website. Each Offeror has an ongoing responsibility to check WETA's website for the Notice of Intent to Award. WETA has no obligation to provide any other notice of WETA's intent to Award the Contract.

H. PROPOSAL PROTESTS

Proposal protests shall be governed by the provisions of Article XII of Chapter 5 of the San Francisco Bay Area Water Emergency Transportation Authority Administrative Code. To the extent inconsistent with the foregoing, this Section 4 of the ITO shall supersede the procedures set forth in the Administrative Code:

Any Offeror that has timely submitted a Technical Proposal in response to this RFP may file a protest objecting to the Award of the Contract not later than three (3) business days after WETA Board action approving Award of the Contract.

I. PROTEST PROCEDURES

Consistent with the Provisions of Chapter 5, Article XII of the San Francisco Bay Area Water Emergency Transportation Authority Administrative Code, all protests are to be filed with the Executive Director of WETA in writing, during the scheduled protest periods and be delivered by hand to the location identified in the Notice to Offerors. Protests must include the following information:

- a. Name, address and telephone number of the protester;
- b. The signature of the protester or the protester's representative;
- c. Identification of the contracting agency and the RFP or contract at issue;
- d. Any protest shall contain a full and complete statement specifying in detail the grounds of the protest and the facts supporting the protest, including the specific recommended action or decision being protested and specify in detail the grounds of the protest, the facts supporting the protest and the status of the protester;
- e. Include all relevant supporting documentation with the protest at the time of submittal;
- f. The form of relief requested;

Offerors may file, by hand delivery to WETA, statements in support of or in opposition to the protest within five (5) calendar days of the filing of the detailed statement of protest described above.

Any evidentiary statements shall be submitted under penalty of perjury.

J. PRE-AWARD CONFERENCE

If deemed necessary in WETA's sole discretion, the apparent successful Offeror shall participate in a Pre-Award Conference conducted by WETA to clarify and discuss issues of concern and interest to both parties.

K. CONTRACT AWARD

The Contract will be Awarded, if at all, to the Offeror determined to have submitted the "best value" Proposal for WETA as set forth above.

If the WETA Board acts to approve Award of the Contract, the apparent successful Offeror will be required to execute certain additional documents (see Required Documents list in the Proposal Forms section of the RFP Documents). Within fourteen (14) calendar days after Board action taken to Award the Contract, and subject to the conditions and requirements below, the Offeror Awarded the Contract shall sign and deliver to WETA an executed Contract in the form attached in the Contract Documents together with all required documents, including but not limited to, the Contract Bonds and insurance certificates as required in the Contract Documents. The Contract will be executed by WETA only following receipt by WETA of all required documents properly executed, resolution, to WETA's satisfaction, of all issues raised during the Pre-Award Conference and resolution of any properly filed protest (WETA also reserves the right to execute the Contract subject to issuance of a Notice to Proceed following resolution of the protest.) Refer to the requirements of the "Authorized Signature" section of this RFP for related information regarding signature. Failure to supply all required documents and to meet any other requirements and conditions to execution by WETA, including a properly signed Contract from Offeror, within the specified time shall be just cause for WETA to rescind the Contract Award and consider the second ranked Offeror for Contract Award.

For purposes of the protest period after Contract Award detailed in Section 4H above and Chapter 5, Article XII of WETA Administrative Code, a favorable Board vote to Award the Contract as conditioned above shall constitute "Board action approving Award of a Contract. The Award shall be effective upon execution of the Contract by the WETA Contracting Officer."

WETA shall use its best efforts to maintain the Contract Award Schedule stated in Appendix A of these Instructions to Offerors, as it may be adjusted and/or modified through the issuance of Addenda. However, failure to do so will not affect WETA's rights under these Contract Documents to Award and enter into a Contract. WETA will use reasonable best efforts to Award the Contract, if the Contract is to be Awarded, within forty-five (45) calendar days after the date WETA issues the Notice of Intent to Award, or as soon as is practical thereafter. Proposals are binding on Offeror for 90 days from the Proposal due date.

L. EXECUTION OF CONTRACT

No Contract shall be effective until it has been fully executed by all of the parties thereto. WETA reserves the right, after approval of Contract Award, to not execute and to rescind the approval of Contract Award for any reason, including but not limited to, failure to supply all required documents within the time allotted or such purpose as set for in these ITO.

M. NOTICE TO PROCEED

Within thirty (30) calendar days after execution of the Contract by WETA, if at all, WETA intends to issue the Design Phase Notice to Proceed that will authorize the Design-Builder to begin Design Work chargeable against the Contract. Notwithstanding the foregoing, WETA shall not be required to issue any Notice to Proceed, and shall, in no event, issue such notice prior to all required documents having been provided, reviewed and found acceptable to WETA and WETA's execution of the Contract.

5. WETA Reserved Rights and Disclaimers

A. RESERVED RIGHTS

WETA may investigate the qualifications and Proposal of any Offeror under consideration, may require confirmation of information furnished by an Offeror, may require additional evidence of ability to perform Design-Builder's obligations under the Contract Documents and may obtain, consider and act in reliance on information from other sources relevant to the qualifications and responsibility of an Offeror. WETA reserves the right, in its sole discretion, to:

- a. Develop the Project in any manner that it, in its sole discretion, deems necessary;
- b. Reject any or all of the Proposals, at its discretion, including Proposals found to be conditional or incomplete, contain irregularities or found to be not responsive to this RFP;
- c. Modify any dates set or projected in the RFP;
- d. Cancel, modify or withdraw the RFP in whole or in part;
- e. Terminate this procurement and commence a new procurement for part or all of the Project;
- f. Terminate evaluations of Proposals received at any time;
- g. Suspend and terminate negotiations at any time, elect not to commence negotiations with any responding Offeror and engage in negotiations with other than the highest ranked Offeror;
- h. Modify the procurement process (with appropriate notice to Offerors);
- i. Waive irregularities or permit corrections to data submitted with any response to the RFP;
- j. Disclose information contained in a Proposal to the public as described herein;
- k. Permit submittal of additional information and supplements to data previously provided in a Proposal pursuant to a request for clarification issued by WETA;
- l. Appoint additional evaluation committees to review Proposals, make recommendations and seek the assistance of outside technical experts and consultants in Proposal evaluation;
- m. Approve or disapprove changes in Offeror's organization;
- n. Accept a Proposal other than that which requests the lowest amount of public funds from WETA;
- o. Waive deficiencies, informalities and irregularities in Proposals; accept and review a non-conforming Proposal or seek clarifications or modifications to a Proposal;

- p. Not issue a Notice to Proceed after execution of the Contract;
- q. Disqualify any Offeror in accordance with the instructions herein or applicable law; and
- r. Exercise any other right reserved or afforded to WETA under the RFP and applicable law.

B. DISCLAIMERS

The RFP does not commit WETA to enter into any Contract or issue a Notice to Proceed. Except as expressly set forth otherwise, WETA assumes no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to the RFP. All of such costs shall be borne solely by each Offeror.

In no event shall WETA be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the Contract Documents, in form and substance satisfactory to WETA, have been authorized and executed by WETA and, then, only to the extent set forth therein. In submitting a Proposal in response to the RFP, Offeror is specifically acknowledging these disclaimers.

6. Proposal Preparation Instructions – General

A. GENERAL SUBMISSION REQUIREMENTS

a. Proposal Deadlines

Technical and Price Proposals must be received no later than the time and date indicated in the Notice Inviting Proposals.

b. Late Responses

WETA will not consider any late Proposals. Proposals and/or revised or withdrawal requests received after the date and time set for their receipt will be returned to Offeror without consideration or evaluation.

c. Proposal Delivery

Offerors must mail or hand deliver **two (2) hard copies and one (1) disc or flash drive electronic copy** of their Proposals to WETA's offices. WETA will provide receipt of delivery of hand-delivered Proposals upon request. Whether the responses are mailed or hand-delivered, they must be in a sealed package clearly labeled and must be received by WETA by the Proposal submittal deadline.

Price Proposals must be submitted on the Form included in WETA Forms in a separate sealed envelope. Electronic submittals, including email, telegraphic or faxed Proposals will not be considered.

WETA assumes no responsibility or liability for incorrect addresses, and/or delivery of written correspondence or RFP packages by public or private carriers.

d. Authorized Signature

Proposals must be manually signed in ink by an individual authorized to bind the Offeror to its Proposal. All words in the Proposal must be typed or hand written in ink. If the Offeror is a corporation, the Proposals shall be signed by an individual having legal authority to sign the Contract and bind the Offeror. If the Offeror is a partnership or limited liability company, the Proposals shall be signed by any legally authorized member of the partnership or limited liability company. If the Offeror is a joint venture, the Proposals shall be signed by representatives legally authorized to bind the joint venture. If the Offeror is a sole proprietorship, the Proposals shall be signed by the sole proprietor.

e. Proposal Term

No Proposal may be withdrawn or, except as otherwise provided herein, modified, supplemented or amended, after the deadline for receipt of the Proposals. For the purpose of Contract Award, Proposals submitted in accordance with this RFP shall remain firm and valid for a period of 180 calendar days from the submission deadline set for the process.

f. Proposal Withdrawal and Revision

An Offeror may withdraw or revise its Proposal after it has been delivered to WETA, provided that the withdrawal is conducted or final revision is received by WETA on the forms and in the manner required for the submittal of Proposals, before the time and date set for opening/receipt of the Proposals. All requests for withdrawals must be made in writing. Any revisions shall conform in all respects to the requirements for submission of a Proposal. Revisions shall be clearly delineated as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the previous Proposal and all previous revisions, if any. The revision must contain complete Proposal sections, complete pages or complete forms as described in this RFP. Line item changes will not be accepted. No facsimile or other electronically transmitted modifications will be permitted.

B. PROPOSAL FORMAT REQUIREMENTS

a. General

All Proposals submitted in response to this RFP shall be in the required general format given herein. For the submittals, one (1) disc or flash drive electronic copy and four (4) hard copies of the Proposal are to be submitted in separate binders, and appropriately tabbed for ease of reference. Except as noted in the following sections, Proposal text and information (other than drawings, schedules and similar deliverables typically requiring larger format) shall be on 8-1/2" x 11" paper, be three-hole punched and bound, with the pages numbered. Print or typeface shall be an 11-font size at a minimum. All words in the Proposal must be typed or hand written in ink.

The Proposals must contain required information in sufficient detail to permit evaluation. WETA considers the quality of information to be more important than quantity.

Proposals that do not properly follow format requirements may, at WETA's sole discretion, be declared non responsive and rejected.

b. Proposals

Proposals shall be submitted per the format outlined in Appendix B. The Table of Contents shall provide inclusive page numbers to permit a completeness check prior to evaluation.

Offerors shall determine the number of volumes and binders needed to contain its Proposal, as well as a Proposal numbering, tabbing and detailed formatting scheme that facilitates orderly presentation of its material, consistent with the requirements of the RFP.

7. Technical Proposal Requirements

Offerors shall provide a Proposal composed of all deliverables and related information outlined in Appendix B.

8. Price Proposal

A. PRICE PROPOSAL SUBMISSION

The Price Proposal shall be submitted as set forth in Price Proposal Requirements of Appendix B to these ITO. The Price Proposal shall be submitted in a separate sealed envelope. This sealed envelope shall be labeled as required by the Request for Proposals and also have the following words on front and back of the envelope:

- **Price Proposal Information**
- **Project Vessel M/V SOLANO**

The completed Price Proposal Form (FORMS WETA-8) shall be compliant with the instructions included in Appendix B. Note that all form must be fully completely, unless otherwise provided.

B. PRICE PROPOSAL FORM

A revised Price Proposal Form may be required as requested by WETA for Best and Final Offers.

C. LIST OF SUBCONTRACTORS/VENDORS/SUPPLIERS

Offeror shall provide a list of all subcontractors, vendors or suppliers who will have a proposed subcontract value greater than 5% of the Contract value. The list shall include company name, craft/specialty and point of contact.

9. Contract

Within fourteen calendar (14) days after Board action approving Contract Award by WETA, the apparent successful Offeror shall submit a signed design build Contract in the form provided in the RFP, along with required bonds and evidence of insurance. Information shall be entered in the appropriate places, including but not limited to Price and time to complete the Work.

10. Proposal Price Preparation Documents

A. INTRODUCTION

The successful Offeror shall maintain, from the Proposal due date until four years following completion and Final Acceptance of the Vessels, a copy of all documentary information generated in preparing the Technical and Price Proposals for this Project ("Proposal Documents"). The successful Offeror agrees, as a condition of Contract Award, that the Proposal Documents constitute all information used in establishing its proposed technical approach and prices, and that no other Proposal preparation information shall be considered in resolving disputes or claims. The successful Offeror also agrees that nothing in the Proposal Documents shall change or modify the terms and conditions of the Contract Documents.

B. PURPOSE

Proposal Documents may be referred to in the negotiation of price adjustments and Change Orders and in the settlement of disputes and claims. Proposal Documents for Proposal evaluation or approval of the Design-Builder's anticipated methods of construction or to assess the Design-Builder's qualification for performing the Work.

C. EXAMINATION

After the Contract is fully executed by both parties, the Proposal Documents may be examined, by both WETA and the Design-Builder, at any time deemed necessary by either party during the negotiation of price adjustments and Change Orders or during the settlement of disputes and claims. Only those parts of the Proposal Documents pertinent to settling the issue under negotiation or dispute may be reviewed. Each of WETA and Design-Builder shall be authorized to submit Proposal Documents to agents and entities involved in resolution of price adjustments and Change Orders and in the settlement of disputes and claims, without requiring the consent of the other party.

To the extent permitted under applicable law, Proposal Documents and information received through the Offeror's explanation of the documents will be treated as proprietary and confidential trade secrets and will not be revealed by WETA to third parties except agents and entities involved in resolution of Price adjustments and Change Orders and in the settlement of disputes and claims. Except as required by applicable law, these Proposal Documents shall not be made available to any person or persons not herein designated without the specific written consent of the Design-Builder.

WETA and the Design-Builder shall each designate, in writing to the other party and within 10 calendar days after execution of the Contract, their representatives authorized to examine the Proposal Documents.

END OF PROPOSAL SUBMISSION REQUIREMENTS

**SAN FRANCISCO BAY AREA
WATER EMERGENCY TRANSPORTATION AUTHORITY (WETA)
SOLANO Propulsion Train Subcomponent Replacement Project & Upgrades
RFP 17-021**

**APPENDIX A
CONTRACT AWARD SCHEDULE
SELECTION SCHEDULE OF EVENTS**

WETA shall make best efforts to maintain the Contract Award Schedule contained herein, as may be adjusted and/or modified by issuance of Addenda. However, failure to do so will not affect WETA's rights under these Contract Documents.

Event	Estimated Completion
WETA Issues Request for Proposals	31 July 2017
Offerer's Mandatory Pre-Proposal Conference	10 August 2017
Last Day to Submit Questions (regarding the Contract Documents)	25 August 2017
RFP Proposal Due Date	8 September 2017
WETA Convenes PEC for Proposal Evaluation & Scoring	11 September 2017
Interviews (if necessary)	19 September 2017
Notice of Intent to Award Issued	27 September 2017
Contract Award – WETA Board Meeting	5 October 2017
Last Day for Protest Based on Contract Award	10 October 2017
Issuance of Notice to Proceed by WETA	13 October 2017
Vessel Released for Contract Work	6 November 2017
Vessel Ready for Service	30 November 2017
Contract Work Complete	8 December 2017

NOTE: Changes in scheduled dates for events will be announced by e-mail to Offerers from the WETA Manager, Operations.

END OF APPENDIX

**SAN FRANCISCO BAY AREA
WATER EMERGENCY TRANSPORTATION AUTHORITY (WETA)
SOLANO RFP 17-021**

**APPENDIX B
TECHNICAL PROPOSAL REQUIREMENTS**

I. Proposal Elements

The Proposal should consist of the following elements:

TECHNICAL PROPOSAL

1. Cover Letter (maximum 1 page)
2. Table of Contents (maximum 1 page)
3. Executive Summary (maximum 2 pages)
4. Technical Proposal
 - a. Technical Approach/Management Plan (maximum 3 pages)
 - b. Team Identification, Qualifications and Experience (maximum 2 pages)
 - c. Propulsion Train Installation & Alignment Plan
 - d. Experience and References
5. Letter from surety verifying bonding capacity in amounts equal to required percentages, 25% of the Engineers Estimate
6. Levine Act Disclosure Letter
7. Required Forms (Appendix C)

II. Explanation of Technical Proposal Elements

1. PROPOSAL COVER LETTER

Provide a short cover letter on the Offerer's letterhead, summarizing the Offerer's interest in the Project, identifying the enclosed documents, and any other information of interest. Identify the legal name and entity type of the Offerer and the state of its organization. If the name is a DBA, identify underlying names. Indicate the ownership and legal status of Offerer (corporation, partnership, sole proprietorship, joint venture, etc.). Indicate company headquarters and any local office responsible for the work. Identify a sole point of contact and include the following information: name, title, address, telephone and fax numbers and electronic mail address.

For equity member of the Offerer, identify the entity's role and the entity's legal nature and state of organization.

2. TABLE OF CONTENTS

Provide a table of contents for all documents enclosed. Offerers are encouraged to organize the Technical Proposal clearly and logically in conjunction with the information requested in these Contract Documents. Offerers are also encouraged to bind the Proposals, and to use tabbed dividers.

3. EXECUTIVE SUMMARY

Provide a brief summary of the important elements of the Offerer's qualifications and proposed Technical approach. The summary should include any feature(s) that may differentiate this team from others. Describe the Offerer's understanding of the project and the objectives for the Vessel.

Identify each equity member of Offerer's team and each other member of Offerer's team, (a) with primary responsibility for design; (b) with primary responsibility for construction; or (c) a Subcontractor with a proposed subcontract value greater than 15% of the anticipated Contract value (collectively "Major Participants").

The Executive Summary shall be written in a non-technical style and shall contain sufficient information for reviewers with both Technical and non-Technical backgrounds to become familiar with Offerer's Proposal and Offerer's ability to satisfy the Technical and financial requirements of the Project. The Executive Summary shall, at a minimum, include the following:

- A summary of Offerer's organization and team structure, including an identification of Major Participants.
- A summary of the proposed management, decision making and day-to-day operation structure of Offerer.
- A summary of the Technical Proposal.

4. TECHNICAL PROPOSAL

The Technical Proposal shall describe the Offerer's understanding of the project and the objectives for the Vessel. Include a discussion of the technical issues involved and the methods, procedures and equipment to be used in both the design and construction phases of the Project. Project schedule must have a completion date of February 24, 2017, with vessel in Vallejo and ready for passenger service.

a. Technical Approach & Management Plan

The Technical Approach should include a description of the Offerer's:

- Design and engineering approach including the selection of Major Participants and the division of engineering tasks between internal and external resources
- Proposed work approach and strategy
- Work plan including workflow
- Test and Trials plan execution

The Management plan shall include a description of:

- The roles and responsibilities of the Offerer and Major Participants and how the Offerer, Major Participants, Subcontractors, Vendors and Suppliers will be coordinated and managed during the Project
- How the Project will be staffed, dealing with unanticipated staffing shortfalls

- How that staff will be managed
- How Subcontractors will be managed, the plan should include contingencies for difficulties with Subcontractors
- Systems used to organize, allocate resources and schedule design, construction and testing activities
- How work is monitored and how adjustments in production are made
- Quality control, quality assurance and internal testing programs
- How the USCG inspection and testing program will be structured and managed
- How the Offerer intends to interface with WETA during final engineering, design, construction and post-construction, and how the review process will be structured and managed with WETA
- How complying with Buy America requirements will be accomplished

Provide a Preliminary Schedule, identifying each major element of and proposed timeline for the completion of key events. The Date of completion required is February 24, 2017 at which point Vessel shall be ready for service with Work complete. The period between issuance of preliminary Notice to Proceed (NTP) and the date of completion will be treated as the Contract Time. The Contract Time will be a factor in the evaluation of the Proposal.

b. Team Qualifications

Team Identification and Roles; Major Participants:

Provide an organization chart showing the reporting structure of the Project team noting the location of key personnel within the organization that would have a lead role in the Project (Major Participant). At a minimum, key personnel should include the Project Manager and/or senior Project Representatives for the Offerer and Major Participants but may include any other team members that the Offerer wishes to identify. Provide a responsibility matrix covering the responsibilities and scope of work for key positions. Designate the Propulsion System Integrator.

c. Propulsion Train Machinery Installation & Alignment Work Plan (MIAWP)

Provide a comprehensive and complete work plan describing methods and means by which the OFFERER will properly install and align main propulsion train machinery to OEM specifications. Refer to Section 233 and 835 of the OR-VTS for detailed requirements regarding this submittal. Designate the Propulsion System Integrator.

d. Experience and References, Aluminum Vessel Construction & Repair

Identify and describe the aluminum Vessel construction/repair experience of the Offerer and each Major Participant. List experience of Offerer and Major Participants on not less than three (3) similar projects (do not include WETA projects) over the last five (5) years. The projects should demonstrate the Offerer's capability and expertise with similar Vessel construction/repair.

Reference requirements: Provide contact information for the listed similar projects of at least three (3) organizations that can report on Offerer performance.

5. LETTER FROM SURETY

Provide a letter from a California admitted surety, verifying that the Offerer will be able to obtain a Performance Bond and a Payment Bond each in an amount of the Price Proposal. Letters indicating "unlimited bonding capability" are not acceptable. The surety providing such letter must be rated in one of the top two categories by two nationally recognized rating agencies or rated at

least A minus (A-) or better or Class VIII or better by “AM Best & Company,” and must indicate the relevant rating in the letter. The letter must specifically state that the surety has read the RFP and evaluated the Offerer’s backlog and work-in-progress in determining its bonding capacity. If an Offerer is a joint venture, partnership, limited liability company or other association, separate letters for one or more of the individual equity participants of the Offerer are acceptable, as is a single letter covering all equity participants.

In the alternative, as a written assurance from an authorized representative of the Offerer provide a statement regarding the Offerer's ability to provide, at the time of Contract execution, an Irrevocable Standby Letter of Credit (LOC) equal to 25% of the proposed construction costs.

Failure to provide this written assurance with will indicate that the Offerer is not qualified to perform this Project and the Offerer will be rejected.

6. PROPOSAL FORMS

Offerers must fully complete and submit all forms identified in Appendix C.

7. LEVINE ACT DISCLOSURE LETTER

Offerers are advised that California Government Code 84308(d) provides in relevant part as follows:

(d) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars (\$250) to any officer of that agency during the proceeding and for three months following the date a final decision is rendered by the agency in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.

The Offerer is responsible for determining whether disclosure is required. Offerer shall submit, with its Technical Proposal, a letter to WETA’s Executive Director, identifying all officers (i.e. Board members and alternates) who received contributions subject to paragraph (d), or stating that no contributions were made that require disclosure. The letter shall include as attachments a separate sheet for each officer who received contributions, listing the name of the contributor and amount and date of each contribution. Offerer is encouraged to identify any contributions by any persons who are considered “participants” under Section 84308. Offerer is responsible for delivering an updated letter to the Secretary to the Board prior to any proceeding of the Board or committee of the Board concerning the Contract.

APPENDIX B PRICE PROPOSAL REQUIREMENTS

Explanation of Price Proposal Elements

1. PRICE PROPOSAL LETTER

Provide a short cover letter on the Offerer's letterhead, summarizing the Offerer's identity, the enclosed documents, and any other information of interest.

2. PRICE PROPOSAL

Offerers are directed to submit firm unit and lump sum Prices for all Work set forth in the Contract Documents on the form entitled "Form WETA-8 Price Proposal."

Unit Prices and lump sum Prices must be entered in the appropriate spaces provided. Unit Prices shall be multiplied by the quantities shown, and the total shall be inserted in the TOTAL PRICE AMOUNT column (the "Total Price"). All spaces MUST be filled out and all information provided in the detail and breakdown as shown on these forms. In the event of any error or discrepancy between the Unit Price and the calculated Total Price, the Unit Price shall govern. Owner may correct any mathematical errors apparent on the face of the Proposal.

The amounts shown in the Price Amount (Column 6) must be added together in arriving at the Total Price (Row 5, Column 6).

The Prices included within the Price Proposal Form include all costs for labor, materials, tools, equipment, services, Subcontractors, Suppliers, taxes, insurance, shipment, delivery, overhead, profit and all other costs necessary to perform the Work in accordance with the Contract Documents.

3. UNBALANCED PRICE PROPOSALS

- A. All Prices provided for each item shall be inclusive of all direct costs of the covered work (including all direct costs of Subcontractors, Suppliers, and materialmen), plus a proportionate share of the costs for general requirements, overhead, insurance, applicable taxes, and any other indirect costs and profit.
- B. Offerers are strongly discouraged from submitting unbalanced Price Proposals. As used herein, "Unbalanced Price Proposal" means any Price Proposal that does not include a reasonable proportionate allocation of indirect costs and profit to each item indicated in the form.

4. PRELIMINARY SCHEDULE OF VALUES

Offerers shall prepare and submit with their proposals a Schedule of Values on the form provided (Form WETA-22). Activities in the Schedule of Values shall correspond to activities in the Project Schedule. Instructions for the Schedule of Values are included on the form and in General Provisions Section 109-1.05. Offerers shall provide a cash flow projection covering all pay periods through redelivery of the Vessel.

5. PROPOSAL GUARANTEE

Offeror shall submit a Proposal Guarantee in an amount equal to 5% of the Price Proposal and on WETA Form-9. The Proposal Guarantee will be submitted with the Offeror's Price Proposal. The Proposal Guarantee may be in the form of a bond or deposit in the required amount. See WETA Form-9 for more information.

END OF APPENDIX

**SAN FRANCISCO BAY AREA
WATER EMERGENCY TRANSPORTATION AUTHORITY (WETA)
SOLANO RFP 17-021**

**APPENDIX C
REQUIRED DOCUMENTS
FEDERAL-AID (FTA) CONTRACT**

Letter of Intent to Offer (see Instructions to Offerers)

Required Documents for Proposal

Proposals will not be considered if the following documents are not completely filled out and submitted at the time of each Proposal opening for each step of the process as set forth in the RFP:

TECHNICAL:

1. Proposal Form Form WETA-6
2. Complete Technical Proposal (see Instructions to Offerers)
3. Ability to Bond (see Instructions to Offerers)
4. Levine Act Disclosure (see Instructions to Offerers)
5. Subcontractor List..... Form WETA-14
6. Fly America Certification Form WETA-15
7. EEO-1 Certification Form WETA-16
8. FTA Buy USA Certification..... Form WETA-17
9. Cargo Preference Certification Form WETA-18
10. DBE/SBE Documentation Forms WETA-19, 20, 21
11. Debarment and Suspension..... Form WETA-23
12. Lobbying Certification Form-WETA-24
13. Acknowledgement of Insurance Requirements Form-WETA-25

PRICE PROPOSAL:

1. Price Proposal Form WETA-8
2. Schedule of Values Form WETA-22

Required Documents for Award of Contract and Notice to Proceed

The successful Offerer is required to complete and submit the following documents before WETA will execute the Notice to Proceed. These documents must be received no later than 30 calendar days after Contract Award.

1. Design/Build and Deliver Contract Form WETA-10
2. Payment Bond Form WETA-11
3. Performance Bond..... Form WETA-12
4. Warranty Bond..... Form WETA-13
5. Certificates of Insurance
6. Evidence of all licenses necessary to perform the Work

END OF APPENDIX

**SAN FRANCISCO BAY AREA
WATER EMERGENCY TRANSPORTATION AUTHORITY (WETA)**

**APPENDIX D
DBE/SBE PROGRAM INFORMATION**

- Form WETA-19 Prime Consultant and Subcontractors/Subconsultants/Suppliers Report. Your submittal will not be considered if this form is not completely filled out. Please carefully read instructions starting on page 3 of the form. Form WETA-19 is located in Forms Section.
- Form WETA-21 Small Business Enterprise Affidavit of Size, if applicable. Form WETA-21 is located in Forms Section.
- Form WETA-20 Description of the Selection Process of Subcontractors/Subconsultants/Suppliers. Your submittal may not be considered if this form is not completely filled out. Form WETA-20 is located in Forms Section.
- WETA's Diversity Program for Contracts (DBE) Program Information
- WETA's Small Business Program Eligibility
- Forms required during the duration of the Contract. These forms are provided for your information only. Do not fill out or submit with proposal.
 - SBE Form 6 – Progress Payment Report
 - SBE Form 7 – Subcontractor Payment Declaration
 - SBE Final Expenditure Report

WETA DIVERSITY PROGRAM FOR CONTRACTS DIVERSITY PROGRAM INFORMATION

DBE ELIGIBILITY

A small business concern must be certified as a DBE by any recipient of U.S. DOT funds acceptable to WETA in accordance with 49 CFR Part 26. It is Bidder's responsibility to verify that DBEs are certified.

- 1. Disadvantaged Business Enterprise (DBE).** A DBE is a for-profit, small business concern; 1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals; and 2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- 2. Small Business Concern.** With respect to firms participating as DBEs in U.S. DOT assisted contracts, a small business concern is an existing small business, as defined by Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121), whose average annual gross receipts for the previous three (3) years does not exceed \$23.98 million (or as adjusted for inflation by the Secretary of U.S. DOT) pursuant to 49 CFR § 26.65(b).
- 3. Socially and Economically Disadvantaged Individuals.** Socially and economically disadvantaged individual means any individual who is a citizen (or a lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

There is a rebuttable presumption that an individual is both socially and economically disadvantaged if s/he is a citizen or lawfully admitted permanent resident of the United States and is:

1. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
2. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
3. "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

4. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
5. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
6. Women;
7. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Additionally, any individual can demonstrate, by a preponderance of evidence, that he or she is socially and economically disadvantaged on a case-by-case basis. The AUTHORITY will follow the guidelines in 49 CFR Part 26, Appendix E for this determination.

An individual cannot be presumed or determined on a case-by-case basis to be economically disadvantaged if he or she has a personal net worth exceeding \$1.32 Million (excluding the individual's ownership interests in the small business concern and his or her primary residence) or are able to accumulate substantial wealth as defined in 49 CFR §26.67.

DBE PARTICIPATION GOAL

1. **Overall and Project Goals for DBE Participation.** The overall goal for DBE participation in Authority FTA-Assisted contracts is established by the Authority's Board of Directors on a triennial basis. This goal reflects the availability of ready, willing, and able DBEs that would be expected to participate in Authority contracts absent the effects of discrimination. The overall goal is calculated as a percentage of the total amount of FTA funds that the Authority expects to expend on contracts that will be awarded during the fiscal year or for an entire project. The Authority intends to meet the overall goal through a combination of measures including, but not limited to, implementing procedures in the bidding and award process to remove barriers to DBE participation, providing outreach to DBEs, providing technical assistance and, in some cases, establishing project-specific DBE goals to the extent permitted by applicable law and the Authority's policies and procedures.
2. **DBE Participation Goal for the Performance of this Contract.** Bidders are strongly encouraged to obtain DBE participation on this Project, although there is no contract-specific DBE goal.

As further described below, Bidders are required to document their activities in the solicitation and selection of subcontractors to ensure that this process is carried out in a nondiscriminatory manner.

- 3. Available DBE Resources.** Listings of certified DBEs are available from the California Unified Certification Program DBE Directory, which may be obtained by visiting the California Department of Transportation website at:

www.dot.ca.gov/hq/bep/find_certified.htm

Or by contacting WETA's DBE Administrator at (415) 364-3188.

The DBE Directory does not in any way prequalify the certified firms with respect to licensing, bondability, competence, or financial responsibility. The DBE Administrator also maintains a DBE resource list of organizations that promote DBE participation in contracts, which will be provided upon request.

Bidders are encouraged to use services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals. To obtain a list of these financial institutions, please refer to WETA's DBE Program available at <http://sanfranciscobayferry.com/weta/> under Opportunities or contact the DBE Administrator.

BIDDER DOCUMENTATION FOR SUBCONTRACTORS AND SUPPLIERS

Each Bidder must document the process it used throughout the bid preparation period for soliciting and selecting subbids. The following documentation must be submitted with the Bid.

- 1. Subbid Documentation.** Bidders must submit the Prime Contractor and Subcontractor/ Subconsultant/Supplier Report in a form provided by WETA, identifying all subbids received, including rejected and accepted subbids.

Bidders are cautioned that, where applicable, the California Fair Subletting and Subcontracting Act, Public Contract Code 4100, generally prohibits substitution of subcontractors or adding subcontractors after bid opening.

- 2. Description of Selection Process of Subcontractors and Suppliers.** Each Bidder shall provide a description of the process that was followed to select the subcontractors and suppliers proposed to be included in this Work and the steps taken to obtain small business and DBE participation, if any. A Bidder must submit the Description of Selection Process of Subcontractors/Subconsultants/ Suppliers in a form provided by WETA.
- 3. Proof of DBE Certification.** Bidder must provide the certification number and agency for itself, if applicable, and any DBE subcontractor listed on the Prime Contractor and Subcontractor/Subconsultant /Supplier Report.

DETERMINING THE AMOUNT OF DBE PARTICIPATION

Pursuant to 49 CFR §26.55, DBE participation includes that portion of the Contract Work actually performed by a certified DBE with its own forces. A DBE may participate as a prime contractor, subcontractor, joint venture partner, or vendor or supplier of materials or services required by Contract.

A DBE's participation can only be counted if it performs a commercially useful function on Contract as defined in 49 CFR §26.55(c). 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. There is a rebuttable presumption that if the DBE is not responsible for at least thirty percent (30%) of the Work with its own forces, or subcontracts a greater portion of the Work than the normal industry standard, it is not performing a commercially useful function.

Contractor shall determine the amount of DBE participation for each DBE performing work on Contract in terms of the percentage of the total Contract bid amount. Contractor shall also determine the total amount of DBE participation for entire Contract. Contractor shall count DBE participation according to the following guidelines and in accordance with 49 CFR §26.55:

- a. DBE Prime Contractor. Count the entire dollar amount of the Work performed or services provided by the DBE's own forces, including the cost of materials and supplies obtained for the Work and the reasonable fees and commissions charged for the services. Do not count any work subcontracted to another firm as DBE participation by the DBE Prime Contractor.
- b. DBE Subcontractor. Count the entire amount of the Work performed or services provided by the DBE's own forces, including the cost of materials and supplies obtained for the Work, except for materials and supplies purchased or leased from the Prime Contractor, and reasonable fees and commissions charged for the services. Do not count any Work subcontracted by a DBE subcontractor to a non-DBE. If the Work has been subcontracted to another DBE, it will be counted as DBE participation for that other DBE.
- c. DBE Joint Venture Partner. Count a 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 toward DBE goals.
- d. DBE Manufacturer. Count one hundred percent (100%) of the costs of materials and supplies obtained from a DBE manufacturer that operates or maintains a factory that produces the materials and supplies on the premises. This applies whether the DBE is a prime contractor or subcontractor.
- e. DBE Regular Dealer. Count sixty percent (60%) of the costs of materials and supplies obtained from a DBE regular dealer that owns, operates or maintains a store, warehouse or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under contract are brought, kept in stock and regularly sold or leased to the public in the usual course of business, except regular dealers of bulk items such as petroleum, cement and gravel, who own and operate distribution equipment in lieu of maintaining a place of business. This applies whether a DBE is a prime contractor or subcontractor.
- f. Other DBEs. Count the entire amount of fees or commissions charged for assistance in procuring or delivering materials and supplies when purchased from a DBE that is not a manufacturer or regular dealer, provided the fees are reasonable and not excessive

when compared to fees charged for similar services. Do not count the cost of the materials and supplies.

- g. DBE Trucking Company. Count the entire amount of the transportation services provided by a DBE trucking company that performs the Work using trucks it owns, insures, and operates with its own employees on Contract. There cannot be a contrived arrangement for the purpose of meeting DBE goals.

The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.

A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

RECOMMENDATION FOR AWARD OF CONTRACT

1. **Evaluation of Bids.** WETA's DBE Administrator shall review all the information submitted by Bidders in accordance with Contract Documents to determine a recommendation regarding compliance with the DBE program requirements for award of contract to the lowest responsible Bidder or the most highly ranked Offerer. Bidder shall cooperate with WETA if a request for additional information is made during this evaluation process.
2. **Bidder's Right to Reconsideration.** In the event that WETA procures a contract that includes a contract goal and in the event that the Administrator determines that the apparent low bidder or the most highly ranked Offerer has not complied with the DBE requirements, the Administrator will notify the bidder in writing. The notification shall include the reasons for the determination and that the bidder has the right to submit further written documentation or appear before the Review Committee for reconsideration prior to the time that a recommendation for award of contract is presented to the Board of Directors or the Executive Director, depending on the size of the contract. The Review Committee shall provide the bidder with a written decision on reconsideration, explaining the basis for its determination.

In the event that the Review Committee finds that the bidder has not met the contract goal or demonstrated good faith efforts, the Administrator will deem said bidder not responsive and evaluate the bidder submitting the next lowest bid or next highest ranked proposal.

CONTRACT COMPLIANCE

1. **Substitution of Subcontractors/Suppliers.** A DBE subcontractor may not be terminated (or an approved substitute DBE firm) without prior written AUTHORITY consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. For contracts with DBE contract goals, the AUTHORITY will consent to the termination of a DBE subcontractor only for good cause, which includes, but is not limited to, the circumstances listed in 49 C.F.R 26.53(f)(3).
2. **DBE Certification Status.** If a DBE subcontractor is decertified during the life of the Project, the decertified subcontractor shall notify Contractor in writing of the date of decertification. If a subcontractor becomes a certified DBE during the life of the Project, the subcontractor shall notify Contractor in writing of the date of certification. Contractor shall furnish the written documentation to WETA's project or construction manager.
3. **Prompt Payment to Subcontractors.** WETA will hold retainage from the prime contractors and provide for prompt and regular incremental acceptances of portions of the contract, pay retainage to prime contractors based on the acceptances, and include a contract clause obligating the prime contractor and subcontractors to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after payment to the prime contractor.
4. **Reporting Requirements.** Contractor shall maintain records of all DBE participation in the performance of the Contract for three (3) years following the performance of the contract, including subcontracts entered into with certified DBEs and all materials purchased from certified DBEs.

Contractor shall complete WETA DBE Form 6 Progress Payment Report with each progress payment request/invoice. Payments to Subcontractors shall be made within 30 working days of receipt of payment from WETA. Contractor shall submit WETA DBE Form 7 Subcontractor Payment Declaration within 10 working days following actual payment to Subcontractors.

Upon completion of the Contract, Contractor shall submit a Final Expenditure Report—Utilization of Disadvantaged Business Enterprises (DBE), in a form to be provided by WETA. Final payment will not be processed until this form is submitted and approved by WETA.

If WETA procures a contract with a contract goal, and if, at contract completion, Contractor was not able to achieve the DBE participation committed to in the proposal, Contractor will be required to submit Good Faith Efforts Documentation in a form to be provided by WETA detailing the process that was followed to obtain the DBE participation committed at contract award.

5. **Administrative Remedies.** In the event Contractor fails to comply with any applicable DBE requirements of this Contract in any way, WETA reserves the right to implement administrative remedies that may include, but are not limited to, withholding of progress payments and contract retentions, imposition of liquidated damages, and termination of Contract in whole or in part

WETA'S SMALL BUSINESS ENTERPRISE ELEMENT (SECTION 26.39)

WETA has established a Small Business Enterprise element (SBE Program) as one of its race-neutral methods of achieving small business participation, including disadvantaged business participation, on particular contracts with subcontracting opportunities. This SBE element applies to all federally funded AUTHORITY contracts where race-neutral and gender-neutral methods are employed. WETA will take all reasonable steps to eliminate obstacles for SBEs to participate as prime contractors or subcontractors in WETA's procurement activities.

A. Definition of Small Business Enterprise

To participate as an eligible small business in programs administered by WETA, a firm must meet both of the following requirements:

1. A firm (including affiliates) must be an existing small business as defined by Small Business Administration (SBA) regulations, 13 CFR Part 121, for the appropriate type(s) of work that a firm performs. The firm must hold one of the acceptable certifications listed in Section B below.
2. Even if a firm meets the above requirement, the firm's (including affiliates') average annual gross receipts over the previous three years cannot exceed a maximum cap of \$23.98 million (or as adjusted for inflation by the Secretary of U.S. DOT). SBA size standards vary by industry, and for certain industries may be higher than the \$23.98 million cap. For example, the SBA size standard for a general construction contractor is \$36.5 million. If a general construction contractor's average annual gross receipts over the previous three years is \$25 million, while it is below \$36.5 million and meets the SBA size standard, it would be ineligible to participate as a small business for AUTHORITY purposes as it exceeds \$23.98 million.

For information on SBA size standards, visit:

<http://www.sba.gov/content/determining-size-standards>. Affiliates are defined in SBA regulations at 13 CFR Part 121.103.

B. Acceptable Comparable Small Business Enterprise Certifications

WETA will accept the small business enterprise certifications performed by other agencies, provided that the size standards described in Section A1 and A2 above are met. If a firm is certified in one or more of the following programs, and meets AUTHORITY size standards, the firm is automatically deemed a small business for AUTHORITY purposes. The term "SBE" will be used collectively for qualified SBEs, WBEs, MBES and other approved certifications. As indicated below, WETA may require an affidavit of size for each SBE prime contractor or subcontractor. Certifications from self-certification programs are not acceptable. Firms must be certified as of the time of bid submittal. WETA may request and review financial information provided by SBE firms if necessary to confirm eligibility.

1. **Disadvantaged Business Enterprise (DBE) certification** pursuant to U.S. Department of Transportation regulations, 49 CFR Part 26. This includes DBE certifications performed by the California Unified Certification Program or by the Unified Certification Program of any other state.

2. **State Minority Business Enterprise (SMBE) State Women Business Enterprise (SWBE) certification by the State of California** or by any other state provided that their certification complies with Section A1 and A2 above. In addition to copies of SMBE/SWBE certifications, bidders certified out-of-state must submit an affidavit of size for each SMBE/SWBE prime contractor or SMBE/SWBE subcontractor at the time of bid submittal.
3. **Small Business (SB) certification by the California Department of General Services (DGS)** provided that their certification complies with Section A1 and A2 above. In addition to copies of SB certifications, bidders must submit an affidavit of size for each SB prime contractor or subcontractor at the time of bid submittal.
4. **Microbusiness (MB) certification by the California Department of General Services for ALL industries.**
5. **SBA 8(a) by the Small Business Administration** provided that their certification complies with Section A1 and A2 above. In addition to copies of SBA 8(a) certifications, bidders must submit an affidavit of size for each SBA 8(a) prime contractor or SBA 8(a) subcontractor at the time of bid submittal.
6. **SBE/MBE/WBE certification from other state, county, or local government-certifying agency** provided that their certification complies with Section A1 and A2 above. In addition to copies of certifications, bidders must submit an affidavit of size for each certified prime contractor or subcontractor at the time of bid submittal.

C. Race-Neutral SBE Measures

WETA will continue its efforts to enhance small business participation through outreach and other community programs, training and business development programs, restructuring contracting opportunities, simplifying bonding, surety and insurance requirements or other race-neutral means.

WETA will establish an overall SBE goal on a triennial basis for participation by Small Business Enterprises in all federally funded contracts WETA expects to award during the triennial goal period. WETA will set its overall SBE goal on the same three year cycle as the overall DBE goal. The overall SBE goal will be determined based on the number and type of contracts WETA expects to let in the reporting period, as well as the availability of and prior AUTHORITY utilization of Small Businesses in federally funded contracts.

The award of contracts included in WETA's SBE Program will be evaluated based, in part, on the level of SBE utilization and WETA's ability to meet its overall SBE goal. Submittals that fail to document the solicitation of SBE participation, or good faith efforts to do so, will not be considered.

D. Determining and Adopting the Overall SBE Goal

WETA will establish an overall SBE goal on a triennial basis for participation by Small Business Enterprises in all federally funded contracts WETA expects to award during the triennial goal period. WETA will set its overall SBE goal on the same three year cycle as the overall DBE goal. The overall SBE goal will be determined based on an analysis of the number and type of

federally funded contracting opportunities the WETA expects to release in the next three year reporting period, the WETA's history of attracting SBEs, as well as the availability of SBEs in the types of work involved in upcoming opportunities. As part of this analysis staff will consult the California Unified Certification Program (http://www.dot.ca.gov/hq/bep/find_certified.htm) and Department of General Services databases for information on the availability of SBEs for various types of work. The overall SBE goal will be expressed as a percentage of the total amount of U.S. DOT funds the WETA anticipates expending in the three forthcoming fiscal years.

The overall SBE goal will be published in solicitations for federally funded contracts (that are not excluded from the WETA's SBE Program) and will also be published on the WETA's website.

WETA may choose to exclude certain eligible contracts from WETA's SBE Program after consideration of the following factors:

1. The full range of activities in the proposed contract
2. The availability of SBEs as prime contractors or subcontractors in the types of work involved in the performance of the proposed contract;
3. The unique conditions of the project that might affect the ability of the prime contractor to coordinate, utilize, or incorporate subcontractors or suppliers into the project. (Projects consisting of only one or two sub-trades may not be appropriate for inclusion in WETA's SBE program.)
4. The effect that SBE participation may have on timing for the completion of the contract.
5. Any other relevant criteria.

E. Achieving The Overall SBE Goal

WETA will seek to achieve the overall SBE goal for each year in the three year reporting period. Although WETA will not set contract specific goals, submitters are strongly encouraged to obtain SBE participation, including DBEs, in their bid or proposal. The bidder or proposer is required to provide a commitment of SBE achievement on a form provided by WETA in their submittal notifying WETA of the bidder's or proposer's SBE goal commitment for that contract. The Administrator shall review the SBE goal commitment and will confirm each SBE firm's certification status. If a firm receives SBE status during the completion of the contract, the WETA may include the firms' participation in its SBE program achievement. Acceptable comparable Small Business Enterprise certifications are listed in Section B of this document. Certain certifications require completion of a SBE Affidavit Form in a form designated by the WETA, and submitted at the time of bid opening.

Submittals that fail to document the solicitation of SBE participation may not be considered. The Administrator shall determine whether the bidder/proposer has performed the quality, quantity and intensity of efforts that demonstrates a reasonably active and aggressive attempt to attain SBE participation. All bidders/proposers must submit a description of the process that was followed to select the subcontractors and suppliers proposed to be included in this work and the steps taken to obtain small business participation. WETA will consider SBE utilization, and WETA's ability to meet its overall SBE goal in the evaluation of submittals of federally funded contracts included in the WETA's SBE Program.

Work that a SBE subcontracts to a non-SBE firm does not count toward the overall SBE achievement. Expenditures may only be counted if the SBE is performing a commercially useful function. Only the work actually performed by a SBE will be counted toward the WETA's overall SBE achievement. The cost of supplies and materials obtained by the SBE or equipment leased (except from the prime contractor or its affiliate) may also be counted. The Administrator will not count that portion of a SBE's participation that is achieved after the certification of the SBE had been removed during the performance of a contract.

If the amount of SBE participation at the end of any federal fiscal year is less than the overall SBE goal, the Administrator will analyze the reasons for the difference between the goal and actual participation in contract awards and commitments and take reasonable steps to increase SBE participation.

WETA DBE FORM NO. 6
PROGRESS PAYMENT REPORT

Do not fill out this form as part of Submittal

To be completed by Contractor and submitted to Lauren Gularte with a copy to the Project Manager.

TRANSMITTAL TO: Lauren Gularte (Gularte@watertransit.org) **COPY TO:** Project Manager

FROM: Contractor _____ **Date Transmitted:** _____

PART 1: Fill in all blanks and check the box below.	
Contract Number:	Contract Title:
Reporting Period (Month and Year):	
Corresponding Progress Payment No.:	
Note: The information submitted on Parts 1 and 2 of this form is accurate for the progress payment period immediately preceding that of the current payment application attached herewith.	
2. Amount of Change Orders, Amendments and Modifications to Date	\$
3. Total Contract to Date including Change Orders, Amendments and Modifications (Line 1 + Line 2)	\$
4. Amount Invoiced this Reporting Period	\$
5. Total Amount Paid to Date including Retention (excluding Line 4)	\$
6. Amount of Progress Payment Requested to Date (Line 4 + Line 5)	\$
7. Percent Complete (Line 6 ÷ Line 3)	
8. Reporting Period - From (date):	To (date):

Contractor, including each joint venture partner, must execute this form.

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name & Title (please print) Date

Name & Title (please print) Date

Firm Name

Firm Name

(_____) _____
Telephone

(_____) _____
Telephone

PART 2: Provide complete information in the following table for Contractor, each DBE joint venture partner and all subcontractors. Make copies of this sheet as needed. Attach copies of all invoices from subcontractors supporting the information tabulated on this form and Contractor's invoice and Contract Payment Authorization for the immediately preceding progress payment period.

Note: Failure to submit all required information may lead to partial withholding of progress payments. See 49 CFR Sections 26.29, 26.37.

A Name of Firm (List contractor, including each joint venture partner, and all subcontractors, and indicate if firm is a DBE.)	B Portion of Work	C Amount of Subcontractor Purchase Order	D Amount of Change Orders to Date	E Total Amount Subcontractor Purchase Order to Date + Change Orders (C + D)	F Amount Invoiced This Reporting Period	G Amount of Progress Payments Paid to Date	H Percent Completed to Date [F + G] / E
TOTALS							

WETA DBE FORM NO. 7
SUBCONTRACTOR PAYMENT DECLARATION

Do not fill out this form as part of Submittal

To be completed and submitted by Contractor, including all joint venture partners, if any, and submitted to Lauren Gularte at WETA within 10 working days following actual payment to subcontractor. Payments to subcontractor shall be made no later than 30 working days following receipt of progress payment from WETA.

TRANSMITTAL TO: Lauren Gularte (Gularte@watertransit.org)

COPY TO: Project Manager

From: Prime Contractor: _____ Date Transmitted: _____

Provide the following information for each progress payment received from WETA. Use additional sheets to include complete payment information for all subcontractors and vendors utilized on this Contract including each joint venture partner. Failure to submit all required information may lead to partial withholding of progress payment.

Contract No.: _____ Contract Title: _____

Progress Payment No.: _____ Period Ending: _____

Amount Received: \$ _____ Date: _____ Check No.: _____

Subcontractor/ Vendor/JV Name (Indicate if DBE or SBE)	Business Address	Amount Paid	Payment Date	Check Number

I/We declare under penalty of perjury under the laws of the State of California that the above information is complete, and that the tabulated amounts paid to date are accurate and correct.

Prime Contractor, including each joint venture partner, must sign this form on following page.

Owner/Authorized Representative (Signature)

Name (please print/type)

Title (please print/type) Date

Firm Name

(_____) _____
Telephone

Owner/Authorized Representative (Signature)

Name (please print/type)

Title (please print/type) Date

Firm Name

(_____) _____
Telephone

END OF WETA DBE FORM NO. 7

WATER EMERGENCY TRANSPORTATION AUTHORITY (WETA) DBE FINAL EXPENDITURE REPORT											
To be completed by the Prime Contractor at end of the contract and submitted to Lauren Gularte, WETA: gularte@watertransit.org											
Contract Title/No:				Total Contract Award Amount:				Date of Award:			
Prime Contractor/Consultant Name and Address:				Total Expenditures at End of Contract:				Date of Contract Completion:			
Project Manager Name:				Project Manager Signature:				Date:			
Contract Person Name RE: Final Exp. Report:				Contact Phone Number:				Contact Email:			
IMPORTANT: 1) Identify all DBE/SBE Firms being claimed for credit. W) List names of all dBE/SBE subcontractors and their respective items of work.											
					DBE Participation						
List Business Firm(s) List Name, Address and Contact Person (if not the same as above)	Phone Number	Email Address	Items of Work, Service or Materials Supplied	NAICS Code*	Certified DBE/SBE (Y/N)	Certifying Agency	Type of DBE or SBE**	Date of Work Completed	Date of Final Payment	Total Amount Paid	% of Total Expenditures
A. PRIME CONTRACTOR											
B. SUBCONTRACTORS/VENDERS/JOINT VENTURES											
Total										\$	%
Comments/Notes: (Explain cost overruns or discrepancies; DBE firm substitutions, etc.)											
*NAICS Code: North American Classification System Code. Codes can be found at http://www.census.gov/naics **Type of DBE/SBE: (1) African American (2) Hispanic (3) Native American (4) Asian-Pacific (5) Asian-Indian (6) Female-Woman (7) Other (designated as a Small Business) - DBEs must be certified by an agency participating in the Californian United Certification Program. Visit the Caltrans website at http://dot.ca.gov/hq/bep/ucp.htm for a list of participating agencies. - SBEs must be certified by the California Department of General Services (http://www.eprocure.dgs.ca.gov/default.htm , _____) - Important: Attach proof of certification for each DBE/SBE firm used toward meeting the DBE/SBE goal - Use additional sheets as necessary.											

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**SAN FRANCISCO BAY AREA
WATER EMERGENCY TRANSPORTATION AUTHORITY (WETA)
SOLANO RFP 17-021**

**APPENDIX E
CONTRACT BONDS**

PERFORMANCE, PAYMENT AND WARRANTY BONDS OR LETTERS OF CREDIT (LOCS)
(General Provisions Section 103)

The Contractor shall furnish Performance, Payment and Warranty Bonds, or letters of credit, or warranty insurance, if acceptable to WETA, for the Project on forms provided by WETA. The Payment and Performance Bonds shall be delivered before a Notice to Proceed shall be issued. The Warranty Bond shall be issued at the time of Acceptance of the Vessel. WETA may, at its sole discretion, terminate the Contract for default if the Contractor fails to timely submit the required bonds or other performance and payment guarantees.

1. The Offerer to whom the Contract is awarded shall furnish the following Contract Bonds:

- A. Performance Bond, in an amount not less than twenty five percent (25%) of the Contract Price, to secure faithful performance of the Contract. The obligation guaranteed by the Performance Bond shall be considered complete upon Acceptance by WETA of the Vessel and concurrent delivery of a Warranty Bond.
- B. Payment Bond, in an amount not less than ten percent (10%) of the Contract Price, to secure payment of all claims of laborers, mechanics, or materialmen, Subcontractors or other persons named in California Civil Code Section 3181 for costs of materials, equipment, supplies, and labor furnished in the course of the performance of the Contract.

In the alternative, the Contractor may submit as security Irrevocable Standby Letters of Credit from a United States bank acceptable to the WETA and in form acceptable to WETA in lieu of the Performance and Payment Bonds. The form and terms and conditions of the Irrevocable Standby Letters of Credit must be acceptable to the WETA, and must include terms usual and customary for instruments when used as a substitute for bonds. The Irrevocable Standby Letter of Credit must provide the same protections to the WETA as the bond for which it is substituted.

- C. Warranty Bond in an amount equal to ten percent (10%) of the Contract Price as adjusted by Change Orders or other price adjustment agreements between the Contractor and the Owner. The Warranty Bond will be returned upon expiration of the vessel warranties and the resolution of all outstanding warranty claims.
2. All alterations, extensions of time, extra and additional work and other changes authorized by the Contract Documents may be made without securing the consent of the surety or sureties on the Contract Bonds.

**SAN FRANCISCO BAY AREA
WATER EMERGENCY TRANSPORTATION AUTHORITY (WETA)
SOLANO RFP 17-021**

**APPENDIX F
FEDERAL TRANSPORTATION ADMINISTRATION
GENERAL PROVISIONS**

This procurement is financed in part by Federal transit legislation codified at 49 U.S.C. §§ 5301 et seq.: under Title 23, U.S.C. (Highways); or under other provisions of MAP-21, the Moving Ahead for Progress in the 21st Century Act (P.L. 112-141). The selected Contractor agrees to comply with all federal statutes and regulations applicable to grantees under the Act, including but not limited to the following:

(Note section 2.10 DAVIS-BACON ACT REQUIREMENTS, other than Copeland Act requirements in paragraphs E, F, G and H, are not applicable to this project).

FEDERAL REQUIREMENTS

PART 1: FEDERAL REQUIREMENTS

1.01 GENERAL

This project will be financed in part by the Federal Transit Administration (“**FTA**”). Accordingly, the federal contract provisions, as required by the FTA, must be complied with in the performance of this AGREEMENT. To the extent the contract provisions required by the FTA and State law are inconsistent, the Contractor is responsible for complying with the more comprehensive or stricter requirements.

PART 2: FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

2.01 FLY AMERICA REQUIREMENTS

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

2.02 BUY AMERICA REQUIREMENTS

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 66 1.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent (60%) domestic content.

All Bidders must submit the appropriate Buy America certification to WETA with their bids, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower-tier subcontractors.

2.03 CARGO PREFERENCE REQUIREMENTS

The Contractor agrees: (a) to use privately owned United States Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract by ocean vessels 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 leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to WETA (through the Contractor in the case of a subcontractor's bill-of-lading); and (c) to include these requirements in all subcontracts issued pursuant to this AGREEMENT when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

2.04 SEISMIC SAFETY

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

2.05 ENERGY CONSERVATION

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

2.06 ENVIRONMENTAL REQUIREMENTS

The Contractor and any subcontractor or third-party Contractor under this AGREEMENT shall comply with all applicable environmental requirements and regulations, including any amendments, as follows:

A. Environmental Protection

The Contractor shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq.

B. Air Quality

The Contractor shall to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to Owner, to FTA and the appropriate EPA Regional Office. The Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

C. Clean Water

The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. The Contractor agrees to report each violation to Owner, to FTA and the appropriate EPA Regional Office. The Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

D. Use of Public Lands.

The Contractor shall ensure that no publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the Federal, state, or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance may be used under this AGREEMENT unless the FTA makes the specific findings required by 49 U.S.C. § 303.

E. Historic Preservation

The Contractor shall assist the Federal Government in complying with section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, involving historic and archaeological preservation.

F. Mitigation of Adverse Environmental Effects

The Contractor shall take all reasonable steps to minimize adverse environmental effects in accordance with 49 U.S.C. § 5324(b), and all other applicable Federal laws and regulations, specifically the procedures of 23 C.F.R. Part 771 and 49 C.F.R. Part 622. ***

2.07 LOBBYING

Contractor shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Contractor shall certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor 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 agreement, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded to Owner. Contractor shall ensure that all of its subcontractors under this AGREEMENT shall certify the same. Prior to execution of this Agreement, Bidder shall submit the "Certification for Federal Aid Contracts," included in the contract documents. Owner is responsible for keeping the certification of the Bidder, who is in turn responsible for keeping the certification forms of subcontractors.

2.08 ACCESS TO RECORDS AND REPORTS

Contractor shall provide all authorized representatives of Owner, the FTA, and the Comptroller General of the United States access to any books, documents, papers and records of the Bidder, which are directly pertinent to this AGREEMENT for the purposes of making audits, copies, examinations, excerpts and transcriptions. Contractor also agrees to maintain all books, records, accounts and reports required under this AGREEMENT for a period of not less than three years after the date of termination or expiration of this AGREEMENT, except in the event of litigation or settlement of claims arising from the performance of this AGREEMENT, in which case Contractor agrees to maintain the same until Owner, the FTA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

2.09 FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (6) dated October, 1999) between Owner and the FTA, as they may be amended or promulgated from time to time during the term of this AGREEMENT. Contractor's failure to so comply shall constitute a material breach of this AGREEMENT.

2.10 DAVIS-BACON ACT REQUIREMENTS

A. Minimum Wages

1. All laborers and mechanics employed or working upon the site of any qualifying construction work under the AGREEMENT (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, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section I (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 Subsection (A)(4) of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which such work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the Work Site in a prominent and accessible place where it can be easily seen by the workers.

2. Whenever the minimum wage rate prescribed in the AGREEMENT for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
3. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
4. 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 AGREEMENT shall be classified in conformance with the wage determination.
 - (a) The contracting officer shall approve an additional classification and wage rate and fringe benefits required only when the following criteria have been met:
 - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (ii) The classification is utilized in the area by the construction industry; and
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - (b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards

- Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (d) The wage rate (including fringe benefits where appropriate) determined pursuant to Subsections (A)(4)(b) or (c) of this Section, shall be paid to all workers performing work in the classification under this AGREEMENT from the first day on which work is performed in the classification.

B. Withholding

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

C. Payrolls and Basic Records

1. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section I (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1 (b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which

show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

2. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Owner. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.
 - (a) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the AGREEMENT and shall certify the following:
 - (i) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5 and that such information is correct and complete;
 - (ii) 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;
 - (iii) 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 AGREEMENT.
 - (b) 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 (C)(2)(a) of this Section.
 - (c) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

3. The Contractor or subcontractor shall make the records required under paragraph (C)(1) 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 at the Work Site. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

D. Apprentices and Trainees

1. Apprentices

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

2. Trainees

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

3. 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.

E. Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this AGREEMENT.

F. Subcontracts

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

G. Contract Termination: Debarment

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

H. 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 AGREEMENT.

I. Disputes Concerning Labor Standards

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

J. Certification of Eligibility

1. By entering into this AGREEMENT, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
2. No part of this AGREEMENT shall be subcontracted to person or firm ineligible for an award of a government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

2.11 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

A. Overtime

Neither the Contractor nor its subcontractors may permit any laborer or mechanic in any workweek in which he or she is employed on such work under this AGREEMENT to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; Liability for Unpaid Wages; Liquidated Damages

In the event of any violation of the clause set forth in paragraph (A) of this Section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages required. In addition, Contractor and subcontractor shall be liable to the United States for Liquidated Damages. Such Liquidated Damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) 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 (A) of this Section.

C. Withholding for Unpaid Wages and Liquidated Damages

Owner 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 Contractor under any such contract or any other Federal contract with Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or subcontractor for unpaid wages and Liquidated Damages as provided in the clause set forth in paragraph (B) of this Section.

D. Subcontracts

The Contractor shall insert in any subcontract the clauses set forth in this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Section.

E. Payrolls and Basic Records

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

2.12 COMPLIANCE WITH COPELAND ACT REQUIREMENTS

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this AGREEMENT.

2.13 NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

- B. The Contractor agrees to include the clause set forth subsection A of this Section 2.13 in any subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that such clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2.14 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this AGREEMENT work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

2.15 PRIVACY ACT

The following requirements apply to Contractor and any of its employees that may administer any system of records on behalf of the Federal Government under any contract:

- A. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- B. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

2.16 CIVIL RIGHTS REQUIREMENTS

A. Nondiscrimination

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

B. Equal Employment Opportunity

The following equal employment opportunity requirements apply to this AGREEMENT:

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act; as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor ("**U.S. DOL**") regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 113 75, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.

During the performance of this AGREEMENT, the Contractor agrees as follows:

- (a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

- (c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.
- (d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this AGREEMENT or with any of the said rules, regulations, or orders, this AGREEMENT may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (g) The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempt by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age

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

3. Disabilities

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

4. Access Requirements for Individuals with Disabilities

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. Contractor also agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 ("**ADA**"), 42 U.S.C. §§ 12101, et seq., and 49 U.S.C. § 322; § 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; § 16 of the Federal Transit Act, as amended; 49 U.S.C. App. § 612; and the following federal regulations, including any amendments thereto:

- (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (c) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (d) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (f) U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (g) U.S. Equal Employment Opportunity Commission, "Regulations in Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- (i) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (j) Any other implementing federal regulations and requirements.

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

2.17 DEBARMENT AND SUSPENSION

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

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the Bidder or Offeror certifies as follows:

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

2.18 DISADVANTAGED BUSINESS (DBE) (49 CFR PART 26)

The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retention) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retention (see section 26.29). Grantee choices concerning retention should be reflected in the language choices in clause subsection d.

Clause Language:

The following clause language is mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors.

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. WETA's proposed annual overall Disadvantaged Business Enterprise (DBE) goal for Fiscal Year 2017/18 is 1.78% for FTA-assisted contracts. WETA proposes to meet 100% of its goals using race-neutral methods. WETA's proposed annual overall Small Business Enterprise (SBE) goal for Fiscal Year 2017/18 is 5.04% for FTA-assisted contracts.

- b. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as WETA deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. Bidders/Offerors are required to document sufficient DBE/SBE participation or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following concurrent with and accompanying an initial proposal:
 - 1. The names and addresses of DBE/SBE firms that will participate in this contract;
 - 2. A description of the work each DBE/SBE will perform;
 - 3. The dollar amount of the participation of each DBE/SBE firm participating;
 - 4. Written documentation of the bidder/Offeror's commitment to use a DBE/SBE subcontractor whose participation it submits to meet the contract goal;
 - 5. Written confirmation from the DBE/SBE that it is participating in the contract as provided in the prime Contractor's commitment; and
 - 6. If not able to obtain DBE/SBE participation, evidence of good faith efforts to do so.

Bidders/Offerors must present the information required above with initial proposals (see 49 CFR 26.53(3)).

The successful Bidder/Offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- d. The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from WETA. In addition, the Contractor is required to return any retention payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.
- e. The Contractor must promptly notify WETA, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of WETA.

2.19 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by U.S. DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220. 1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Owner requests, which would cause Owner to be in violation of the FTA terms and conditions.

2.20 BREACHES AND DISPUTE RESOLUTION

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

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor 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 (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

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

END OF PROPOSAL SUBMISSION REQUIREMENTS