

INVITATION FOR BIDS (IFB) 3-1736

NEW FLYER BUS REPAIR KITS



ORANGE COUNTY TRANSPORTATION AUTHORITY

550 South Main Street

P.O. Box 14184

Orange, CA 92863-1584

(714) 560-6282

Key IFB Dates

Issue Date: May 24, 2013

Question Submittal Date: May 31, 2013

Bid Submittal Date: June 13, 2013

**U.S Department of Transportation
FTA FUNDED PROJECT**

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May 24, 2013

**SUBJECT: NOTICE OF INVITATION FOR BIDS
(IFB) 3-1736: "NEW FLYER BUS REPAIR KITS"**

TO: ALL BIDDERS

**FROM: CONTRACTS ADMINISTRATION AND MATERIALS
MANAGEMENT DEPARTMENT**

The Orange County Transportation Authority (Authority) invites bids from qualified contractors for NEW FLYER BUS REPAIR KITS.

Bids must be received in the Authority's office at or before 11:00 a.m. on June 13, 2013.

Bids delivered in person or by a means other than the U.S. Postal Service shall be submitted to the following:

**Orange County Transportation Authority
Contracts Administration and Materials Management
600 South Main Street, 4th Floor
Orange, California 92868
Attention: Angela Hahn, Buyer**

Bids delivered using the U.S. Postal Service shall be addressed as follows:

**Orange County Transportation Authority
Contracts Administration and Materials Management
P.O. Box 14184
Orange, California 92863-1584
Attention: Angela Hahn, Buyer**

Bids and amendments received after the date and time specified above will be returned to the bidders unopened.

Bidders interested in obtaining a copy of this IFB may do so by downloading the IFB from CAMM NET at www.octa.net/cammnet.

All bidders interested in doing business with the Authority are required to

register their business on-line at CAMM NET. The website can be found at www.octa.net. From the site menu, click on CAMM NET to register.

To receive all further information regarding this IFB, bidders and sub-contractors must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

Category:

Buses; Parts, Components,
Vehicles

Commodity:

Bus Parts - Axle, Steering,
Suspension
Bus Parts - Brakes
Bus Parts - Engine
Bus Parts - Electrical

Bidders are encouraged to subcontract with small businesses to the maximum extent possible.

All bidders will be required to comply with all applicable equal opportunity laws and regulations.

The award of this contract is subject to receipt of federal, state and/or local funds adequate to carry out the provisions of the agreement including the project specifications.

SECTION I: INSTRUCTIONS TO BIDDERS

SECTION I. INSTRUCTIONS TO BIDDERS**A. EXAMINATION OF IFB DOCUMENTS**

By submitting a bid, bidder represents that it has thoroughly examined and become familiar with the work required under this IFB and that it is capable of performing quality work to achieve the Authority's objectives.

B. ADDENDA

Any Authority changes to the requirements will be made by written addendum to this IFB. Any written addenda issued pertaining to this IFB shall be incorporated into the terms and conditions of any resulting Agreement. The Authority will not be bound to any modifications to or deviations from the requirements set forth in this IFB as the result of oral instructions. Bidders shall acknowledge receipt of addenda in their bids. Failure to acknowledge receipt of Addenda may cause the bid to be deemed non-responsive to this IFB and be rejected.

C. AUTHORITY CONTACT

All questions and/or contacts with Authority staff regarding this IFB are to be directed to the following Contract Administrator:

Angela Hahn, Buyer
Contracts Administration and Materials Management Department
550 South Main Street
P.O. Box 14184
Orange, CA 92863-1584
Phone: 714.560.5626, Fax: 714.560.5792
Email: ahahn@octa.net

D. CLARIFICATIONS**1. EXAMINATION OF DOCUMENTS**

Should a bidder find discrepancies in, or omissions from, the drawings or specifications, or be in doubt as to their meaning, the bidder shall notify the Authority in writing in accordance with Section - D.3 below. Should it be found that the point in question is not clearly and fully set forth, a written addendum clarifying the matter will be sent to all firms registered on CAMM NET under the commodity codes specified in the IFB.

2. PREFERENCE FOR MATERIALS

In accordance with the California Public Contract Code Section 3400, reference to any equipment, material, article or patented process, by trade name, make, or catalog number, shall not be construed as limiting competition. In those cases where the specifications call for a designated material, product, or service by specific brand or trade name and there is only one brand or trade name listed,

the item involves a unique or novel product application required to be used in the public interest or is the only brand or trade name known to the Authority.

Where the specifications or drawings identify any material, product or service by one or more brand names, whether or not "or equal" is added, and a bidder wishes to propose the use of another item as being equal, approval shall be requested as set forth below.

3. SUBMITTING REQUESTS

- a. All questions, clarifications, requests for approved equals, or comments must be put in writing and must be received by the Authority no later than 5:00 p.m., on May 31, 2013.
- b. Requests for clarifications, questions and comments must be clearly labeled, "Written Questions". The Authority is not responsible for failure to respond to a request that has not been labeled as such.
- c. Any request for an approved equal must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirements. The burden of proof as to the equality, substitutability, and compatibility of proposed alternates or equals shall be upon the bidder, who shall furnish all necessary information at no cost to the Authority. The Authority shall be the sole judge as to the equality, substitutability, and compatibility of proposed alternates or equals.
- d. Any of the following methods of delivering written questions are acceptable as long as the questions are received no later than the date and time specified above:
 - (1) U.S. Mail: Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584.
 - (2) Personal Delivery: Contracts Administration and Materials Management Department, 600 South Main Street, 4th Floor, Orange, California 92868.
 - (3) Facsimile: (714) 560-5792.
 - (4) Email: ahahn@octa.net

4. AUTHORITY RESPONSES

Responses from the Authority will be posted on CAMM NET, no later than June 6, 2013. Bidders may download responses from CAMM NET at www.octa.net/cammnet, or request responses be sent via U.S. Mail by

emailing or faxing the request to Angela Hahn, Buyer.

To receive email notification of Authority responses when they are posted on CAMM NET, bidders and their subcontractors must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

Category:

Buses; Parts, Components,
Vehicles

Commodity:

Bus Parts - Axle, Steering,
Suspension
Bus Parts - Brakes
Bus Parts - Engine
Bus Parts - Electrical

Inquiries received after 5:00 p.m. on, May 31, 2013, will not be responded to.

E. BRAND NAMES

It should be understood that specifying a brand name, components, and/or equipment in this IFB shall not relieve the bidder from their responsibility to produce the product in accordance with the performance warranty and contractual requirements. The bidder is responsible for notifying the Authority of any inappropriate brand name, component, and/or equipment substitute for consideration by the Authority.

Brand names and model number, when used, are for the purpose of identifying a standard of requirement and are not to be construed as restricting the procurement to those brand names and model numbers called out. Refer to above Paragraph D.2.

F. SUBMISSION OF BIDS

1. DATE AND TIME

Bids must be received in the Authority's office at or before 11:00 a.m. on June 13, 2013.

Bids received after the above-specified date and time will be returned to bidders unopened.

Bids will be publicly opened in the Authority's Administration and Contracts office at the submission time indicated above.

2. ADDRESS

Bids delivered in person or by a means other than the U.S. Postal Service shall be submitted to the following:

**Orange County Transportation Authority
Contracts Administration and Materials Management (CAMM)
600 South Main Street, 4th Floor
Orange, California 92868
Attention: Angela Hahn, Buyer**

or bids delivered using the U.S. Postal Services shall be addressed as follows:

**Orange County Transportation Authority
Contracts Administration and Materials Management (CAMM)
P.O. Box 14184
Orange, California 92863-1584
Attention: Angela Hahn, Buyer**

Firms must obtain a visitor badge from the receptionist in the lobby of the 600 Building prior to delivering any information to CAMM.

3. IDENTIFICATION OF BIDS

Bidder shall submit its bid in a sealed package, addressed as shown above, bearing the bidder's name and address and clearly marked as follows:

"IFB No. 3-1736"

Bidder shall be entirely responsible for any consequences, including disqualification of the bid, resulting from any inadvertent opening of unsealed or improperly identified packages. It is the bidder's sole responsibility to see that its bid is received as requested.

4. ACCEPTANCE OF BIDS

- a. The Authority reserves the right to postpone bid openings for its own convenience.
- b. Bids received and opened by Authority are public information and must be made available to any person upon request.
- c. Submitted bids are not to be copyrighted.

G. PRE-CONTRACTUAL EXPENSES

The Authority shall not, in any event, be liable for any pre-contractual expenses

incurred by bidder in the preparation of its bid. Bidder shall not include any such expenses as part of its bid.

1. Preparing a bid in response to this IFB
2. Submitting that bid to the Authority;
3. Negotiating with the Authority any matter related to this bid; and
4. Any other expenses incurred by bidder prior to date of award, if any, of the Agreement.

H. JOINT BIDS

Where two or more firms desire to submit a single bid in response to this IFB, they should do so on a prime-subcontractor basis rather than as a joint venture. The Authority intends to contract with a single firm and not with multiple firms doing business as a joint venture.

I. TAXES

Bids are subject to State and Local sales taxes. However, the Authority is exempt from the payment of Federal Excise and Transportation Taxes. Contractor is responsible for payment of all taxes for any goods, services, processes, and operations incidental to or involved in the contract.

J. DISADVANTAGED BUSINESS ENTERPRISE

This project is subject to Part 26, title 49, code of Federal regulations (CFR), entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs ("Regulations"). The Regulations in their entirety are incorporated herein by this reference under Section IV titled "Disadvantaged Business Enterprises". The Authority has established an overall DBE project Goal of 0%. Bidders are to be fully informed respecting the DBE requirements and the Regulations. A copy of the Authority's DBE program for this project is included in this IFB.

K. PROTEST PROCEDURES

The Authority has on file a set of written protest procedures applicable to this solicitation that may be obtained by contacting the Contract Administrator responsible for this procurement. Any protest filed by a bidder in connection with this IFB must be submitted in accordance with the Authority's written procedures.

L. DELIVERY

The items described herein are to be delivered to the following facility:

4301 W. Mac Arthur Blvd. Santa Ana, CA 92704

M. CASH DISCOUNTS

Cash/payment discounts will not be considered in the evaluation of bids.

N. APPENDICES

Information considered by bidder to be pertinent to this project and which has not been specifically solicited in any of the aforementioned sections may be placed in a separate appendix section. Bidders are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials; appendices should be relevant and brief.

O. HAZARDOUS SUBSTANCES**1. CAL-OSHA REQUIREMENTS**

All flammable, corrosive, toxic, or reactive materials being bid must have a complete CAL-OSHA Material Safety Data Sheet accompanying the submitted bid.

2. SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (SCAQMD)

All materials (paints, coatings, inks, solvents, and adhesives) shall comply with the volatile organic compounds (VOC) content requirements of the applicable SCAQMD rules.

3. NOTICE OF HAZARDOUS SUBSTANCES

Title 8, California Code of Regulations, Section 5194 (e) (c), states that the employer must inform any contractor employers with employees working in the employer's workplace of the hazardous substances to which their employees may be exposed while performing their work. In compliance with this requirement, the Authority hereby gives notice to all bidders that the following general categories of hazardous substances are present on the Authority's premises:

- Adhesives, sealant, patching, and coating products
- Antifreezes, coolants
- Cleaners, detergents
- Paints, thinners, solvents
- Pesticides, Petroleum products (diesel and unleaded fuel, oil products)
- Printing, photocopying materials
- Propane Welding materials/compressed gases (e.g., acetylene, oxygen, nitrogen)

More specific information may be obtained from the Authority's Safety and Benefits office at (714) 560-5854, and from Material Safety Data Sheets for individual products.

4. HAZARDOUS WASTE LABELS

Containers containing hazardous substances must be labeled with the following information:

- Identity of hazardous substance-chemical name, not manufacturer or trade name;
- Appropriate health warning relative to health and physical hazard; and
- Name and address of manufacturer or other responsible party. All containers containing hazardous substances may be rejected unless containers are properly labeled. Containers of 55 gallons or larger must have either weather resistant labels or the information should be painted directly on the containers.

P. CONTRACT AWARD

Any contract awarded as a result of this IFB, will be awarded to the lowest responsive and responsible Bidder and shall be on a lump sum basis, in accordance with the requirements of this IFB.

Q. AUTHORITY'S RIGHTS

1. The Authority reserves the right to accept or reject any and all bids, or any item or part thereof, or to waive any informalities or irregularities in bids.
2. The Authority reserves the right to withdraw or cancel this IFB at any time without prior notice. The authority makes no representations that any contract will be awarded to any bidder responding to this IFB.
3. The Authority reserves the right to issue a new IFB for the project.
4. The Authority reserves the right to postpone the bid opening for its own convenience.
5. Each bid will be received with the understanding that acceptance by the authority of the bid to provide the goods and services described herein shall constitute a contract between the bidder and Authority which shall bind the bidder on its part to furnish and deliver at the prices given and in accordance with conditions of said accepted bid and specifications.
6. The Authority reserves the right to investigate the qualifications of any bidder, and/or require additional evidence of qualifications to perform the work.

R. PUBLIC RECORDS AND INFORMATION

Bids received by Authority are considered public information and will be made available to the public if requested to do so.

S. FORMS**STATUS OF PAST AND PRESENT CONTRACTS FORM**

Offeror is required to complete and sign the form entitled "Status of Past and Present Contracts" provided in this RFP and submit as part of the proposal. Offeror shall list the status of past and present contracts where the firm has either provided services as a prime contractor or a subcontractor during the past five (5) years and the contract has ended or will end in a termination, settlement, or litigation. A separate form must be completed for each contract. Offeror shall provide an accurate name and telephone number for each contract and indicate the term of the contract and the original contract value. If the contract was terminated, Offeror must list the reason for termination. Offeror must identify and state the status of any litigation, claims or settlement agreements related to any of the contracts. Each form must be signed by the Offeror confirming the information that the information provided is true and accurate. Offeror is required to submit one copy of the completed form(s) as part of its proposals and it should be included in only the original proposal.

T. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

The bidder shall include the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity provides notice to Bidder regarding the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications".

U. LIST OF SUBCONTRACTORS FORM - EXHIBIT G

Bidder shall complete Exhibit G, which lists all subcontractors performing work in excess of one half of one percent ($\frac{1}{2}$ of 1%) of the bid amount per the instructions set forth in Section I "Instructions to Bidders".

V. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - PRIMARY PARTICIPANT AND LOWER-TIER PARTICIPANTS

Unless otherwise permitted by law, any person or bidder (Prime or Sub-contractor) that is debarred, suspended, or voluntarily excluded, as defined in the Federal Transit Administration (FTA) Circular 2015.1, dated April 28, 1989, may not take part in any federally funded transaction, either as a participant or a principal, during the period of debarment, suspension, or voluntary exclusion. Accordingly, the Authority may not enter into any transaction with such debarred, suspended, or voluntarily excluded persons or firms during such period.

W. DISADVANTAGED BUSINESS ENTERPRISE

Each Bidder must complete the following Exhibits F, G & H forms and submit with its bid:

1. "List of Subcontractors"
2. "DBE Race-Neutral Participation Listing"
3. "Bidders List"

SECTION II: KEY CONTRACTUAL TERMS

SECTION II. KEY CONTRACTUAL TERMS

The following terms and conditions are highlighted to make bidders aware of the contractual parameters of this procurement.

A. ACCEPTANCE OF ORDER

Bidder will be required to accept a written Agreement or Purchase Order in accordance with and including as a part thereof the published notice of Invitation For Bids, the requirements, conditions and specifications, with no exceptions other than those specifically listed in the written Agreement or Purchase Order.

B. CHANGES

By written notice or order, Authority may, from time to time, make changes including but not limited to drawings, designs, specifications, delivery schedules, property and services furnished by Authority. If any such change causes an increase or decrease in price of this Agreement or Purchase Order or in the time required for its performance, the bidder shall promptly notify Authority thereof and assert its claim for adjustment within thirty (30) days after the change is ordered, and an equitable adjustment shall be negotiated. However, nothing in this clause shall excuse the bidder from proceeding immediately with the Agreement or Purchase Order as changed.

C. INVOICE AND PAYMENT

A separate invoice shall be issued for each shipment. Unless otherwise specified in the Agreement or Purchase Order, no invoice shall be issued prior to shipment of goods. Payment due dates, including discount period, will be computed from date of receipt of goods or of correct invoice (whichever is later) to date Authority check is mailed. Any discount taken will be taken on full amount of invoice, unless other charges are itemized and discount thereon is specifically disallowed.

D. WARRANTIES

1. Bidder warrants to Authority that, for a period of one year following Authority's inspection and acceptance of each item delivered hereunder, each item shall conform to the requirements hereof and will be free from defects. In addition to other remedies, which may be available, the Authority may, at its option, return any nonconforming or defective items to bidder and/or require correction or replacement of said item at the location of the item when the defect is discovered, all at bidder's risk and expense. If Authority does not require correction or replacement of nonconforming or defective items, bidder shall repay such portion of the payment specified herein or such additional amount as is equitable under the circumstances. Authority's rights hereunder are in addition to, but not

limited by, bidder's standard warranties. Inspection and acceptance of items by Authority, or payment therefore, shall not relieve bidder of its obligations hereunder.

2. Any supplies or parts thereof corrected or furnished in replacement pursuant to this clause shall also be subject to all the provisions of this clause to the same extent as supplies initially delivered.

E. INSURANCE

The bidder shall procure and maintain insurance coverage during the entire term of the Agreement. Coverage shall be full coverage and not subject to self-insurance provisions. The bidder shall provide the following insurance coverage:

1. Commercial General Liability, to include Products/Completed Operations, Independent Contractors', contractual Liability, Personal Injury Liability, and Property Damage with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 general aggregate.;
2. Automobile Liability Insurance to include owned, hired and non-owned autos with a minimum combined single limit of \$1,000,000;
3. Worker's Compensation with limits as required by the State of California, including waiver of subrogation in favor of Authority, its officers, directors, employees or agents;
4. Employers' Liability with minimum limits of \$1,000,000; and

Proof of such coverage, in the form of an insurance company issued policy endorsement and a broker-issued insurance certificate, must be received by the Authority prior to contract award. Proof of insurance coverage must be received by Authority, prior to contract execution. The Authority, its officers, directors, employees and agents must be designated as an additional insured on the commercial general liability certificate.

F. EXCESS REPROCUREMENT LIABILITY

Bidder shall be liable to Authority for all expenses incurred by Authority in reprocurring elsewhere the same or similar items or services offered by bidder hereunder, should bidder fail to perform or be disqualified for failure to meet the terms and conditions set forth herein.

G. PACKING AND SHIPPING

All items shall be prepared for shipment and packed to prevent damage or deterioration and shipped at the lowest transportation rates in compliance with carrier tariffs. All shipments to be forwarded on one day, via one route, shall be consolidated. Each container shall be consecutively numbered, and marked with

the herein Agreement or Purchase Order and part numbers. Container and Agreement or Purchase Order numbers shall be indicated on bill of lading. Two copies of packing slips, showing Agreement or Purchase Order number, shall be attached to No. 1 container of each shipment. Items sold F.O.B. origin shall be shipped prepaid. No charges will be paid by Authority for preparation, packing, crating, cartage or freight.

H. TITLE AND RISK OF LOSS

Unless otherwise provided in the Agreement or Purchase Order, bidder shall have title to and bear the risk of any loss of or damage to the items purchased hereunder until they are delivered in conformity with this Agreement or Purchase Order at the F.O.B. point specified herein, and upon such delivery title shall pass from bidder and bidder's responsibility for loss or damage shall cease, except for loss or damage resulting from bidder's negligence. Passing of title upon such delivery shall not constitute acceptance of the item by Authority.

I. NEW MATERIALS

Except as to any supplies and components which this Agreement or Purchase Order specifically provides need not be new, the bidder represents that the supplies and components to be provided under this Agreement or Purchase Order are new and of recent manufacture (not used or reconditioned or recycled, and not of such age or so deteriorated as to impair their usefulness or safety). If at any time during the performance of this Agreement or Purchase Order, the bidder believes that the furnishing of supplies or components which are not new is necessary or desirable, bidder shall notify the Authority immediately, in writing, including the reasons therefore and proposing any consideration which will flow to the Authority if authorization to use such supplies is granted.

J. INSPECTION AND ACCEPTANCE

All items are subject to final inspection and acceptance by Authority at destination. Final inspection will be made within a reasonable time after receipt of items hereunder.

Payment will be made within a reasonable time after inspection and formal acceptance of the equipment by the Authority.

K. INDEMNIFICATION

Bidder shall indemnify, defend and hold harmless Authority, its officers, directors, employees and agents from and against any and all claims (including attorneys' fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions or willful misconduct by bidder, its officers, directors, employees, agents, subcontractors or suppliers in connection with or arising out of the performance of this Agreement or Purchase Order.

L. INFRINGEMENT INDEMNITY

In lieu of any other warranty by Authority or bidder against infringement, statutory or otherwise, it is agreed that bidder shall defend at its expense any suit against Authority based on a claim that any item furnished under this Agreement or Purchase Order or the normal use or sale thereof infringes any United States Letters Patent or copyright, and shall pay costs and damages finally awarded in any such suit, provided that bidder is notified in writing of the suit and given authority, information and assistance at bidder's expense for the defense of the suit. Bidder, at no expense to Authority, shall obtain for Authority the right to use and sell said item, or shall substitute an equivalent item acceptable to Authority and extend this patent indemnity thereto.

M. SUBCONTRACTORS AND ASSIGNMENTS

Neither this Agreement nor Purchase Order, nor any interest herein, nor any claim hereunder, may be assigned by the bidder either voluntarily or by operation of law, nor may all or substantially all of this Agreement or Purchase Order be further subcontracted by the bidder without the prior written consent of the Authority. No consent shall be deemed to relieve the bidder of its obligations to comply fully with the requirements hereof.

N. DISPUTES

This Agreement or Purchase Order shall be construed and all disputes hereunder shall be settled in accordance with the laws of the State of California. Pending final resolution of a dispute hereunder, bidder shall proceed diligently with the performance of this Agreement or Purchase Order.

O. NOTICE OF LABOR DISPUTE

Whenever bidder has knowledge that any actual or potential labor dispute may delay this Agreement or Purchase Order, bidder shall immediately notify and submit all relevant information to Authority. Bidder shall insert the substance of this entire clause in any subcontract hereunder, as to which a labor dispute may delay this Agreement or Purchase Order.

P. PROHIBITED INTEREST

The bidder covenants that, for the term of this agreement, no member, director, officer or employee of the Authority during his/her tenure in office or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Q. RIGHTS IN DATA

Bidder agrees that all data including, but not limited to, drawings, tapes, software, photo prints and other graphic information required to be furnished under this Agreement or Purchase Order, together with any other information presented orally, shall be furnished with unlimited rights and as such, shall be free from proprietary restriction except as elsewhere authorized in this Agreement or Purchase Order. Bidder further agrees that all such data are owned by Authority and that bidder shall have no interest or claim thereto, and that said data is subject to the provisions of the Freedom of Information Act, 5 USC 552.

R. FEDERAL, STATE AND LOCAL LAWS

Bidder warrants that in the performance of this Agreement or Purchase Order it shall comply with all applicable federal, state, and local laws and ordinances and all lawful orders, rules and regulations.

S. EQUAL EMPLOYMENT OPPORTUNITY

If awarded an Agreement or Purchase Order resulting from this IFB, bidder shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. The bidder shall take affirmative action to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex, age or national origin. Such actions 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.

T. CONFLICT OF INTEREST

Bidders agree to avoid organizational conflict of interest. An organizational conflict of interest means that due to other activities, relationships or contracts, the Bidders are unable, or potentially unable to render impartial assistance or advise the Authority; Bidder's objectivity in performing the work identified in the specifications are or might be otherwise impaired; or the Bidders have an unfair competitive advantage. Bidders are obligated to fully disclose to the Authority in writing any Conflicts of Interest issues as soon as they are known to the Bidders. All Conflicts of Interest must be disclosed at the time of bid submittal.

U. CODE OF CONDUCT

Bidders agree to comply with the Authority's Code of Conduct as it relates to Third-Party contracts which is hereby referenced and by this reference is incorporated herein. Bidders agree to include these requirements in all of its subcontracts.

V. FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**1. FEDERAL CHANGES**

VENDOR 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 between the AUTHORITY and FTA , as they may be amended or promulgated from time to time during this Agreement. VENDOR's failure to comply shall constitute a material breach of contract.

2. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

AUTHORITY and VENDOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, 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 the AUTHORITY, VENDOR, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the underlying Agreement. VENDOR agrees to include these requirements in all of its subcontracts.

3. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

VENDOR 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. Accordingly, by signing this Agreement, VENDOR 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 Agreement of the FTA assisted project for which this Agreement's work is being performed. VENDOR also 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 penalties of the Program Fraud Civil Remedies Act of 1986 on the VENDOR to the extent the Federal Government deems appropriate.

VENDOR 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 an agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under the authority of 49 U.S.C. §5307 et seq., the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n) (1) et seq. on the VENDOR, to the extent the Federal Government deems appropriate. VENDOR agrees to include this requirement in all of its subcontracts.

4. CIVIL RIGHTS ASSURANCE

During the performance of this Agreement, VENDOR, for itself, its assignees and successors in interest agree as follows:

- a. Compliance with Regulations: VENDOR shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- b. Nondiscrimination: VENDOR, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The VENDOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the VENDOR for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the VENDOR of the VENDOR's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: VENDOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the AUTHORITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a VENDOR is in the exclusive possession of another who fails or refuses to furnish this information the VENDOR shall so certify to the AUTHORITY as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of the VENDOR's noncompliance with nondiscrimination provisions of this Agreement, the AUTHORITY shall impose Agreement sanctions as it may determine to be appropriate, including, but not limited to:

- (1) Withholding of payments to the VENDOR under the Agreement until the VENDOR complies; and/or
 - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- f. Title VI of the Civil Rights Act. In determining the types of property or services to acquire, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000d *et seq.* and DOT regulations, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR Part 21. In addition, FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for FTA Recipients," 05-13-07, provides FTA guidance and instructions for implementing DOT's Title VI regulations.
- g. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.
- h. Incorporation of Provisions: VENDOR shall include the provisions of paragraphs (A) through (H) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The VENDOR shall take such action with respect to any subcontract or procurement as the AUTHORITY may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a VENDOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the VENDOR may request the AUTHORITY to enter into such litigation to protect the interests of the AUTHORITY, and, in addition, the VENDOR may request the United States to enter into such litigation to protect the interests of the United States.

5. DISADVANTAGED BUSINESS ENTERPRISES

- a. A. In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), the Orange

County Transportation Authority (AUTHORITY) has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs". The project is subject to these stipulated regulations. In order to ensure that the Authority achieves its overall DBE Program goals and objectives, the Authority encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these Regulations, it is also the policy of the Authority to:

- (1) Fulfill the spirit and intent of the Federal DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBEs have equitable access to participate in all of Authority's DOT-assisted contracting opportunities.
 - (2) Ensure that DBEs can fairly compete for and perform on all DOT-assisted contracts and subcontracts.
 - (3) Ensure non-discrimination in the award and administration of AUTHORITY's DOT-assisted contracts.
 - (4) Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
 - (5) Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
 - (6) Help remove barriers to the participation of DBEs in DOT-assisted contracts.
 - (7) Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.
- b. VENDOR shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Any terms used in this section that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and the Authority's DBE Program with respect to DOT-assisted contracts, the Regulations shall prevail.
- c. AUTHORITY's New Race-Neutral DBE Policy Implementation Directives: Pursuant to recently released Race-Neutral DBE policy directives issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v. Washington State Department of Transportation*, the Authority has

implemented a wholly Race-Neutral DBE Program.

A Race-Neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, AUTHORITY does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. VENDOR shall not be required to achieve a specific level of DBE participation as a condition of contract compliance in the performance of this DOT-assisted contract. However, VENDOR shall adhere to race-neutral DBE participation commitment(s) made at the time of contract award.

d. Definitions: The following definitions apply to the terms as used in these provisions:

- (1) "Disadvantaged Business Enterprise (DBE)" means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) 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" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$19.57 million over the previous three fiscal years.
- (3) "Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by the Authority pursuant to 49 CFR part 26.65. Members of the following groups are presumed to be socially and economically disadvantaged:
 - a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

- b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - c. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;
 - e. "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and
 - f. Women, regardless of ethnicity or race.
- (4) "Owned and Controlled" means a business: (a) which is at least 51 percent owned by one or more "Socially and Economically Disadvantaged Individuals" or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically Disadvantaged Individuals"; and (b) whose management and daily business operations are controlled by one or more such individuals.
- (5) "Manufacturer" means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the VENDOR.
- (6) "Regular Dealer" means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
- (7) "Other Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration or AUTHORITY to meet the social and economic disadvantage criteria described below.

- a. Social Disadvantage: The individual's social disadvantage must stem from his/her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.
 - i. The individual must demonstrate that he/she has personally suffered social disadvantage.
 - ii. The individual's social disadvantage must be rooted in treatment, which he/she has experienced in American society, not in other countries.
 - iii. The individual's social disadvantage must be chronic, longstanding and substantial, not fleeting or insignificant.
 - iv. The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.
 - v. A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.
- b. Economic Disadvantage
 - i. The individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area that are not socially disadvantaged.
 - ii. The following criteria will be considered when determining the degree of diminished credit and capital opportunities of a person claiming social and economic disadvantage:
With respect to the individual:
 - availability of financing
 - bonding capability
 - availability of outside equity capital
 - available marketsWith respect to the individual and the business concern:
 - personal and business assets
 - personal and business net worth
 - personal and business income and profits
- e. Race-Neutral DBE Submission and Ongoing Reporting Requirements (Post-Award).

VENDOR shall complete and submit the following DBE exhibits (forms) at the times specified: "Monthly Race-Neutral DBE Subcontractors Paid Report Summary and Payment Verification" (Form 103). If VENDOR is a DBE firm and/or has proposed to utilize DBE firms, VENDOR will be required to complete and submit a Form 103 to AUTHORITY by the 10th of each month until completion of the contract to facilitate reporting of race-neutral DBE participation, following the first month of contract activity. VENDOR shall report the total dollar value paid to DBEs for the applicable reporting period. VENDOR shall also report the DBE's scope of work and the total subcontract value of commitment for each DBE reported. VENDOR is advised not to report the participation of DBEs toward VENDOR's race-neutral DBE attainment until the amount being counted has been paid to the DBE. Upon completion of the contract, VENDOR will be required to prepare and submit to the Authority a "Race-Neutral DBE Subcontractors Paid Report Summary and Payment Verification" (Form 103) clearly marked "Final" to facilitate reporting and capturing actual DBE race-neutral attainments. VENDOR shall complete and submit a Final Form 103 whether or not DBEs were utilized in the performance of the contract.

- f. F. DBE Eligibility and Commercially Useful Function Standards: A DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work). A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources: The CUCP web site, which can be accessed at <http://www.californiaucp.com>; or the Caltrans "Civil Rights" web site at <http://www.dot.ca.gov/hq/bep>. The CUCP DBE Directory, which may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815; Telephone: (916) 445-3520.

- g. DBE Crediting Provisions: When a DBE is proposed to participate in the contract, either as a prime VENDOR or Subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted towards race-neutral DBE participation. If VENDOR is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be counted. If a DBE intends to subcontract part of the work of its subcontract to a lower tier Subcontractor, the value of the subcontracted work may be counted toward race-neutral DBE participation only if the DBE Subcontractor is a certified DBE and actually performs the work with their own forces. Services subcontracted to a non-DBE firm may not be credited toward the prime Contractor's race-neutral DBE attainment. VENDOR is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward race-neutral DBE attainment, as follows: Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer. The following types of fees or commissions paid to DBE Subcontractors, Brokers, and Packagers may be credited toward the prime VENDOR's race-neutral DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including: Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract; Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies; Fees and commissions charged for providing any insurance specifically required in the performance of the Contract. VENDOR may count the participation of DBE trucking companies toward race-neutral DBE attainment, as follows: The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs. 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 an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE. For purposes of this paragraph, 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 the 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. If VENDOR listed a non-certified DBE 1st tier subcontractor to perform work on this contract, and the non-certified DBE subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subcontractor or Vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward race-neutral DBE participation on the contract.

- h. Performance of DBE Subcontractors: DBE subcontractors listed by VENDOR in its "DBE Race-Neutral Participation Listing" (Exhibit D-2) submitted at the time of proposal submittal shall perform the work and supply the materials for which they are listed, unless the VENDOR has received prior written authorization from the Authority to perform the work with other forces or to obtain the materials from other sources. VENDOR shall provide written notification to the AUTHORITY in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.
- i. Additional DBE Subcontractors: In the event VENDOR identifies additional DBE subcontractors or suppliers not previously identified by VENDOR for race-neutral DBE participation under the contract, VENDOR shall notify the Authority by submitting "Request for Additional DBE Firm" to enable VENDOR to capture all race-neutral DBE participation. VENDOR shall also submit, for each DBE identified after contract execution, a written confirmation from the DBE acknowledging that it is participating in the contract for a specified value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation).
- j. DBE Certification Status: If a listed DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify VENDOR in writing with the date of decertification. If a non-DBE subcontractor becomes a certified DBE during the life of the

project, the DBE subcontractor shall notify VENDOR in writing with the date of certification. VENDOR shall furnish the written documentation to AUTHORITY in a timely manner.

- k. VENDOR's Assurance Clause Regarding Non-Discrimination: In compliance with State and Federal anti-discrimination laws, VENDOR shall affirm that they will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, VENDOR shall affirm that they will consider, and utilize subcontractors and vendors, in a manner consistent with non-discrimination objectives.

6. ACCESS TO RECORDS AND REPORTS

VENDOR shall provide AUTHORITY, the U.S. Department of Transportation (DOT), the Comptroller General of the United States, or other agents of AUTHORITY, such access to VENDOR's accounting books, records, payroll documents and facilities of the VENDOR which are directly pertinent to this Agreement for the purposes of examining, auditing and inspecting all accounting books, records, work data, documents and activities related hereto. VENDOR shall maintain such books, records; data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during VENDOR's performance hereunder and for a period of four (4) years from the date of final payment by AUTHORITY. AUTHORITY's right to audit books and records directly related to this Agreement shall also extend to all first-tier subcontractors identified in this Agreement. VENDOR shall permit any of the foregoing parties to reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

7. INCORPORATION OF FTA TERMS

All contractual provisions required by Department of Transportation (DOT), whether or not expressly set forth in this document, as set forth in Federal Transit Administration (FTA) Circular 4220.1F, as amended, 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. VENDOR shall not perform any act, fail to perform any act, or refuse to comply with any requests, which would cause AUTHORITY to be in violation of the FTA terms and conditions.

8. ENERGY CONSERVATION REQUIREMENTS

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

9. PROHIBITED INTERESTS

VENDOR covenants that, for the term of this Agreement, no director, member, officer or employee of AUTHORITY during his/her tenure in office or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

No member of or delegate to, the Congress of the United States shall have any interest, direct or indirect, in this Agreement or to the benefits thereof.

10. ALCOHOL AND DRUG POLICY

A. VENDOR agrees to establish and implement an alcohol and drug program that complies with 41 U.S.C sections 701-707, (the Drug Free Workplace Act of 1988), which is attached to this Agreement as Exhibit B, and produce any documentation necessary to establish its compliance with sections 701-707.

B. Failure to comply with this Article may result in nonpayment or termination of this Agreement.

11. PRIVACY ACT

VENDOR shall 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, VENDOR agrees to obtain the express consent of the Federal Government before the VENDOR or its employees operate a system of records on behalf of the Federal Government. VENDOR 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 Agreement.

12. CONFLICT OF INTEREST

VENDOR agrees to avoid organizational conflicts of interest. An organizational conflict of interest means that due to other activities, relationships or contracts, the VENDOR is unable, or potentially unable to render impartial assistance or advice to the Authority; VENDOR's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or the VENDOR has an unfair competitive advantage. VENDOR is obligated to fully disclose to the AUTHORITY in writing Conflict of Interest issues as soon as they are known to the VENDOR. VENDOR is obligated to fully disclose to the AUTHORITY in writing Conflict of Interest issues as soon as they are known to the VENDOR. All disclosures must be submitted in writing to AUTHORITY pursuant to the Notice provision herein. This disclosure requirement is for the entire term of this Agreement.

13. PROTEST PROCEDURES

The Authority has on file a set of written protest procedures applicable to this solicitation that may be obtained by contacting the Contract Administrator/Buyer responsible for this procurement. Any protest filed by the vendor in connection with this solicitation must be submitted in accordance with the Authority's written procedures.

The following additional provisions apply to all purchases over \$10,000

14. TERMINATION

AUTHORITY may terminate this Agreement for its convenience at any time, in whole or part, by giving VENDOR written notice thereof. Upon termination, AUTHORITY shall pay VENDOR its allowable costs incurred to date of that portion terminated. Said termination shall be construed in accordance with the provisions of CFR Title 48, Chapter 1, Part 49, of the Federal Acquisition Regulation (FAR) and specific subparts and other provisions thereof applicable to termination for convenience. If AUTHORITY sees fit to terminate this Agreement for convenience, said notice shall be given to VENDOR in accordance with the provisions of the FAR referenced above. Upon receipt of said notification, VENDOR agrees to comply with all applicable provisions of the FAR pertaining to termination for convenience.

AUTHORITY may terminate this Agreement for VENDOR's default if a federal or state proceeding for the relief of debtors is undertaken by or against VENDOR, or if VENDOR makes an assignment for the benefit of creditors, or for cause if VENDOR fails to perform in accordance with the scope of work or breaches any term(s) or violates any provision(s) of this Agreement and does not cure such breach or violation within ten (10) calendar days after written notice thereof by AUTHORITY. VENDOR shall be liable for any and all reasonable costs incurred by AUTHORITY as a result of such default or breach including, but not limited to, reprocurement costs of the same or similar services defaulted by VENDOR under this Agreement. Such termination shall comply with CFR Title 48, Chapter 1, Part 49, of the FAR.

15. RECYCLED PRODUCTS

VENDOR shall comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of 40 CFR Part 247. VENDOR agrees to include this requirement in all of its subcontracts.

The following additional provisions apply to all purchases over \$25,000**16. DEBARMENT & SUSPENSION:****CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - PRIMARY PARTICIPANT AND LOWER-TIER PARTICIPANTS**

Unless otherwise permitted by law, any person or firm that is debarred, suspended, or voluntarily excluded, as defined in the Federal Transit Administration (FTA) Circular 2015.1, dated April 28, 1989, may not take part in any federally funded transaction, either as a participant or a principal, during the period of debarment, suspension, or voluntary exclusion. Accordingly, the Authority, acting on behalf of the District, may not enter into any transaction with such debarred, suspended, or voluntarily excluded persons or firms during such period.

A certification process has been established by 49 CFR Part 29, as a means to ensure that debarred suspended or voluntarily excluded persons or firms do not participate in Federally assisted projects. The inability to provide the required certification will not necessarily result in denial of participation in a covered transaction. A person or firm that is unable to provide a positive certification as required by this solicitation must submit a complete explanation attached to the certification. FTA will consider the certification and any accompanying explanation in determining whether or not to provide assistance for the project. Failure to furnish a certification or an explanation may disqualify that person or firm from participating in the project.

SECTION III: BID PACKAGE

BID PACKAGE

The bidder should complete all the forms identified below. The bid may not contain exceptions to or deviations from the terms or requirements of this IFB.

EXHIBIT A. BID FORM

The bidder must complete the Bid Form. In addition to providing the lump sum bid, the bidder affirms that the Bid Form statements are true and correct.

EXHIBIT B PRICE SUMMARY

EXHIBIT C. INFORMATION REQUIRED OF BIDDER

Bidder must provide all the information requested in this form.

EXHIBIT A: BID FORM

BID FORM

INVITATION FOR BIDS NUMBER: 3-1736

DESCRIPTION: NEW FLYER BUS REPAIR KITS

BIDDER'S NAME AND ADDRESS

NAME OF AUTHORIZED REPRESENTATIVE

TELEPHONE NUMBER

FAX NUMBER

EMAIL ADDRESS

I acknowledge receipt of IFB and Addenda Numbers:

AUTHORIZED SIGNATURE TO BIND BID:

PRINT SIGNER'S NAME AND TITLE:

DATE SIGNED:

For the Authority's requirements to purchase Test & Tooling Kits for New Flyer Articulated Buses as specified in Exhibit A entitled "Bid Form."

Quantities listed on the Bid Summary Sheet are for evaluation purposes only and do not imply any guaranteed minimum or maximum usage by the Authority. Prices quoted shall remain firm for the term of the Purchase Order.

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Deliveries will be made to the following address:

- 4301 W. Mac Arthur Blvd. Santa Ana, CA 92704

Enter below the price for each of the items described in the Bid Form, Exhibit A. Prices shall include direct costs, indirect costs, and profits. The Authority's intention is to award a firm-fixed price purchase order.

Are there any additional and/or incidental costs necessary in order to fully comply with the procurement of parts? Yes/No

If "yes", please provide a complete and comprehensive listing of all such costs:

Cash discount allowable ____%____days: unless otherwise stated, payment terms are: Net 30 days. Cash/payment discounts will not be considered in the evaluation of bids.

This bid shall be in effect for 120 days after the bid close date.

EXHIBIT B: PRICE SUMMARY

	Part #	Description	Qty	Unit of Measure	Unit Cost
1	6408306	Hub Repair Kit - MAN HY-1336 RR Axle	1	Each	
2	6408310	Repair Kit - Disc Brakes & Calipers	1	Each	
3	6353624	Accumulator Fill and Test Kit	1	Each	
4	111248	Universal Flat Tow Bar Assy	1	Each	
5	6353626	Hydraulic Block Torque Kit	1	Each	
6	6393934	Intelligaire III Diagnostic Software & Cables	1	Each	
7	6395097	Xcelsior Flat Tow adapter (2 pcs. Per set)	1	Each	
8	6396567	Kit - Lift Tow Receivers	1	Each	
9	6359042	Roof Strut R&R Tool	1	Each	
10	6339222	Allison Universal DOC Software	1	Each	
11	6408307	ABS Sensor R&R Kit - MAN HY-1336 RR Axle	1	Each	
12	434434	Xcelsior Jacking adapter	1	Each	
13	6408309	Pinion Seal Repair Kit - MAN HY-1336 RR Axle	1	Each	
14	6389934	Wrist Joint Nut Restraint	1	Each	
15	6334596	Wabco Software	1	Each	
16	6396565	Kit - Lift Tow Universal	1	Each	
17	6353636	Cylinder Pin Holder	1	Each	
18	6353637	Cylinder Pin Extractor	1	Each	
19	6389937	Holder, Cover Plate	1	Each	
20	128951	6 to 9 pin adapter	1	Each	
21	6339620	Wabco Cable for 6334596 - Converter	1	Each	
22	6339621	Wabco Cable for 6334596 - 6 pin Deutch	1	Each	
23	6357775	Eye Bolt	1	Each	
24	6339622	Wabco Cable for 6334596 - Male/Female extension	1	Each	
	SHIPPING & HANDLING				
	SALES TAX 8.00 %				
			LUMP	SUM	\$_____

EXHIBIT C: INFORMATION REQUIRED OF BIDDERS

INFORMATION REQUIRED OF BIDDER

The bidder is required to supply the following information. Additional sheets may be attached if necessary.

1. Name of Bidder: _____
2. Business Address: _____
3. Telephone () _____ Fax () _____ E-Mail: _____
4. Type of Firm - Individual, Partnership or Corporation: _____
5. Corporation organized under the laws of state of: _____
6. Contractor's License No.: _____ Class _____ Years of Experience: _____
7. Expiration Date of License: _____
8. Is your firm a certified small business in California? Yes _____ No _____
9. List the names and addresses of all owners of the firm or names and titles of all officers of the corporation:

INFORMATION REQUIRED OF BIDDER, PAGE 2

10. Please list the following: a) All prior and current license numbers that the current owner(s) or officers possess or have possessed in the last five years and the current status of those license; b) any prior company names that the owner(s) had in operation during the previous five years.

Current Officers or Owners Name	Prior Company Names (During the last 5 years)	Prior and Current License Numbers	Status of License

Note: If additional space is required to detail the information requested, please attach another page. All information requested must be included. Failure to identify all of the information may result in your bid being found non-responsive and your bid being rejected.

11. List all construction projects (public and private) for which Bidder has provided general contractor services for the past three years:

Contract Type (Public or Private)	Project Description	Dates of Service	Total Cost	Name and Address of Owner	Contact Name and Phone Number

Note: If additional space is required to detail the information requested, please attach

another page. All information requested must be included. Failure to identify all of the information, may result in your bid being found non-responsive and your bid being rejected.

12. List the name, address and phone number of Superintendent for this project:

13. List all construction projects (public and private) for which Superintendent has provided services as a Superintendent for the past three years.

Contract Type (Public or Private)	Project Description	Dates of Service	Total Cost	Name and Address of Owner	Contact Name and Phone Number

NOTE: If requested by the Authority, bidder shall furnish a certified financial statement, financial data, or other information and references sufficiently comprehensive to permit an appraisal of its current financial condition.

I hereby certify the above is true and correct to the best of my belief.

Signature

Name

Title

Company Name

Telephone Number

Fax Number

Email Address

SECTION IV: DISADVANTAGED BUSINESS ENTERPRISES

SECTION IV: DISADVANTAGED BUSINESS ENTERPRISES
DISADVANTAGED BUSINESS ENTERPRISE PROVISIONS

A. POLICY AND OBLIGATION

1. Policy - It is the policy of the Orange County Transportation Authority (Authority) and the United States Department of Transportation (DOT) that Disadvantaged Business Enterprises (DBEs), as defined herein and in the federal regulations published at 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the DBE requirements of 49 CFR Part 26 apply to this contract.
2. DBE Obligation - Bidder agrees to ensure that DBEs have the maximum opportunity to participate in the performance of the Authority's contracts and subcontracts. In this regard, the Bidder shall take all necessary and reasonable steps in accordance with these provisions and 49 CFR Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform contracts. Bidders shall not discriminate on the basis of race, religion, color, sex, age or national origin, in the award or performance of DOT-assisted contracts.

B. DBE GOAL

1. The Authority has established a goal for participation by DBEs of 0% of the total contract value. If the awarded firm has a total DBE commitment (D-2) in excess of the DBE goal, the firm will be held to the higher commitment amount.
2. Only DBEs who meet the definitions contained in Section C below of these provisions and who have been certified prior to contract award may be credited toward the goal.
3. Work that is performed by a DBE prime contractor shall be counted towards the contract goal for DBE participation. In most cases, this means that a DBE bidder on a prime contract will meet the contract goal by virtue of the work it performs on the prime contract with its own forces.

For example, suppose DBE Firm X is the apparent low bidder on a prime contract with a 10 percent contract goal. Firm X will perform 30 percent of the work on the contract with its own forces (the minimum possible if a DBE is to perform a commercially useful function. This means that 30 percent of the contract amount counts toward the DBE contract goal. This exceeds the 10 percent contract goal. Therefore, Firm X meets the contract goal. (In this example, the entire 30 percent DBE participation on the contract would be counted as race-neutral participation, since Firm X obtained the contract solely on the basis of its low bid.)

For the purposes of OCTA contracts, refer to the following method to determine DBE participation. In calculating the total DBE percentage, only the total dollar value either the prime contracts or subcontracts to be awarded to firms owned and controlled by DBEs may be counted towards meeting the DBE goal.

C. DEFINITIONS

The following definitions apply to the terms as used in these provisions.

1. "Disadvantaged Business Enterprise (DBE)" means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) 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" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$17.4 million over the previous three fiscal years.
3. "Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by the Authority pursuant to 49 CFR Part 23.62. Members of the following groups are presumed to be socially and economically disadvantaged:
 - a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - b. "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;
 - c. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - d. "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), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia or Hong Kong;
- e. "Subcontinent-Asian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; Bhutan, the Maldives Islands, Nepal, or Sri Lanka.
 - f. Women, regardless of ethnicity or race.
 - g. Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.
4. "Owned and Controlled" means a business: (a) which is at least 51 percent owned by one or more "Socially and Economically Disadvantaged Individuals" or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically Disadvantaged Individuals"; and (b) whose management and daily business operations are controlled by one or more such individuals.
- a. "Manufacturer" means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.
 - b. "Regular Dealer" means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
 - c. "Other Socially and Economically Disadvantaged Individuals" mean those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration or the Authority to meet the social and economic disadvantage criteria described below.

5. Social Disadvantage

- a. The individual's social disadvantage must stem from his/her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.
- b. The individual must demonstrate that he/she has personally suffered social disadvantage.
- c. The individual's social disadvantage must be rooted in treatment, which he/she has experienced in American society, not in other countries.
- d. The individual's social disadvantage must be chronic, longstanding and substantial, not fleeting or insignificant.
- e. The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.
- f. A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

6. Economic Disadvantage

- a. The individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area that are not socially disadvantaged.
- b. The following criteria will be considered when determining the degree of diminished credit and capital opportunities of a person claiming social and economic disadvantage:

With respect to the individual:

- availability of financing
- bonding capability
- availability of outside equity capital
- available markets

With respect to the individual and the business concern:

- personal and business assets

- personal and business net worth
- personal and business income and profits

D. BIDDERS' OBLIGATION

1. "Bidders' DBE Commitment - Bidders shall identify in their Bid (on the LIST OF SUBCONTRACTOR's (Exhibit D-2)), all of the DBEs identified to participate in the project, regardless of their percent of participation. The LIST OF PROPOSED DBEs shall be completed as follows:
 - a. The Bidder shall identify how DBE firms will participate in this project. The DBE goal may be satisfied by a commitment to DBE participation in the contract as a subcontractor, trucker, or supplier.
 - b. The Bidder shall list the name of each DBE prime subcontractor, trucker, or supplier, which the Bidder intends to credit toward the DBE goal. The Bidder shall identify, on the form, the complete legal business name of each DBE subcontractor, as it appears on the DBE certification form.
 - c. The Bidder shall identify the primary location of business for each DBE subcontractor identified.
 - d. The Bidder shall describe the work to be performed, or materials supplied, by each DBE.
 - e. The Bidder shall state each DBE's participation in the contract, expressed as an estimated dollar value.
 - f. The Bidder shall state the dollar amount for each DBE on the List of Subcontractors form (Exhibit D-2). The percentage allocated for each DBE must be in accordance with the following provisions:
 - g. DBE must perform a commercially useful function, that is, must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work. In light of standard industry practices and other relevant considerations, the DBE must have a necessary and useful role in the transaction, of a kind for which there is a market outside the context of the DBE Program.
 - h. Credit for the participation of DBE vendors of materials and supplies is to be counted as follows:
 - 60 percent of expenditures for materials and supplies required under the contract and obtained from a "regular dealer" as defined in Section C b above.

- 100 percent of expenditures for materials and supplies obtained from a DBE "manufacturer" as defined in Section C a above, or from a DBE supplier who substantially alters the material before resale.
- i. The following types of fees or commissions paid to DBE consultants, brokers, and packagers may be counted toward the goal, provided that the fee or commission is reasonable and not excessive as compared with fees or commissions customarily allowed for similar services.
- The fees or commissions charged for providing a bona fide service such as professional and technical, or procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the contract.
 - The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials or supplies themselves) when the hauler, trucker or delivery service is not also the manufacturer of, or a regular dealer in, the materials and supplies.
 - The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract.
- j. The Bidder shall state the total dollar participation for all DBEs.
- k. The Bidder shall state the participation for all DBEs expressed as a percentage of the total bid price. These totals shall include the sum of the following:
- l. The value of all DBE subcontracts.
- m. The dollar value of all materials and supplies to be provided by DBEs (to be credited as noted in Section D 1 k above).
- n. Bidders Information Form. Incorporated in the new regulations is the requirement that all vendors, both primes and subcontractors who intend to submit a bid sign a Offeror's/Bidders Information Form (Exhibit D-3). This list must be completed by each vendor in detail as the information is sent to the Federal Transit Administration to better track DBE outreach efforts. A copy of Exhibit D-3 is attached herein.

2. Responsive Bidder
 - a. To be responsive, a Bidder must have either:
 1. Met the DBE goal set forth in Section F above; or
 2. If the goal was not met, satisfy the Authority that it exercised good faith efforts to meet the goal by attaining **a minimum of 70 points** of the good faith efforts listed in Section D 3 below.
 - b. Documentation of a Bidder's good faith efforts must be submitted to the Authority within three working days after request by the Authority.
 - c. A Bidder shall be deemed to have exercised good faith efforts only if the Bidder satisfies the Authority that it literally complied with the good faith efforts enumerated in Section D 3 below.
 - d. A Bidder shall complete and submit with the Bid, the good faith effort documentation referenced in Section D 3 below, if the DBE goal is not met.
3. Good Faith Efforts - To be determined responsive, a Bidder who fails to meet the DBE goal must present evidence to satisfy the Authority that the Bidder has met a minimum of 70 points out of a possible 100 points towards the good faith effort, as enumerated below. Literal compliance in the exercise of these good faith efforts is mandatory. The following are the minimum required good faith efforts, the Authority's criteria and assigned point value for each good faith effort, and the types of documentation necessary to evidence such efforts.
 - a. Attendance at (pre-bid) meeting scheduled by Authority to inform perspective competitors and DBE's of contracting and subcontracting opportunities **(4 points)**;
 - b. Bidder shall have advertised in at least one newspaper of general circulation, at least one trade association publication, **and** at least two minorities focus media. The advertisements shall be placed in the business, classified or request for sub-bid section. The initial advertisement shall appear in these publications no later than fifteen (15) calendar days prior to the originally specified bid opening date. A list of minority focus newspapers may be obtained from the Authority's Small Business Program.
 1. Advertisements shall include at a minimum the following information:
 - project name and location;

- indication of Authority as owner;
- location where plans and specifications may be obtained or viewed;
- sub-bid due date;
- trades or scopes of work for which sub-bids are being solicited;
- statement that bid solicitation is in response to the Authority DBE Program; and
- statement that Bidder intends to seriously negotiate with DBE firms for participation on the project.

2. Documentation -- Proof of publication or copies of tear sheets, showing dates and names of publications **(8 points)**.

- c. Bidder shall have selected portions of the work for which interest from DBEs was solicited in a manner to increase the likelihood of achieving the stated goals. When economically feasible, the Bidder shall have divided work into small tasks or quantities to permit maximum participation of DBE businesses.

To be competitive in the face of a DBE goal specification, a Bidder with total in-house manufacturing capabilities may have to try to subcontract out various functions or components, which the Bidder could otherwise do or furnish itself. Good faith effort constitutes comparing prices from DBEs to those of other non-DBEs in the same trade or industry, and not solely to those of the Bidder.

1. Documentation - Submit a list of work items and estimated dollar value of each item. Separate work, which the Bidder intends to perform with its own work force apart from areas of work, which the Bidder, identified for DBE participation. State whether or not the Bidder gave consideration to dividing the contract into economically feasible units of work. If this was not done, explain why it could not be done **(13 points)**.

- d. Bidder shall have extended written invitations to bid to at least one (1) DBE no later than fifteen (15) calendar days prior to the Authority's originally specified bid due date. The Authority will credit toward this threshold only the following DBEs:

- DBEs certified on or before the contract/purchase order execution date;

- Firms certified as DBE by any other Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) recipient agency pursuant to 49 CFR Part 26, Subpart D, or CUCP Agency;
- Firms certified as a DBE by the California Unified Certificate Program (CUCP).

The invitation/solicitation shall provide at least the following information:

- Date of correspondence, invitation/solicitation;
 - Project name and location;
 - Indication of the Authority as owner;
 - A description of work for which bids/proposals are being solicited;
 - Copies of technical specifications or information where plans and specifications may be obtained or viewed;
 - Sub-bid/proposal due date;
 - Statement that solicitation is in response to the Authority's DBE Program; and
 - Statement that Bidder intends to seriously consider and negotiate with capable, competitive DBE firms for participation in the contract.
- e. Documentation - A list of DBE firms which the Bidder identified to solicit interest in the contract. Identify the source of this list (i.e., LACMTA, CALTRANS, other transit property, supplemental list, etc). Copies of letters, Request for Bids/Proposals, mail receipts, addressed postcards sent to DBEs **(18 points)**.
- f. Bidder shall have followed-up orally or in writing with all DBE firms who were initially sent the invitation/solicitation described in good faith effort above, by evidence of attempting to contact them to determine with certainty whether they were interested in submitting a sub-bid, quotation, or proposal, and the response by the DBE firms.
1. Documentation - A written record of any oral follow-up is required. Records which can be verified to document contact with these DBE firms (e.g., letters; minutes or notes of meetings

held with DBE firms; copies of correspondence [including undeliverable mail] to and from DBE's, solicitation call sheets or telephone logs) **(16 points)**. This documentation must reflect the following:

- Name and address of firm contacted.
- Person contacted, telephone number (if follow-up is by phone), and date contacted.
- Response from these firms as to their interest in bidding on the contract.

g. Bidder shall have outreached to DBEs through the minority and women contractor, trade and professional associations at least fifteen (15) calendar days prior to the specified bid opening date. Notices to these associations shall include at least the same information listed in good faith effort.

1. Documentation - Records or correspondence which confirm notification to the associations, and any response thereto **(10 points)**.

h. Bidder shall have assisted DBEs, who requested assistance in obtaining lines of credit or bonding, if the Bidder required bonding.

1. Examples of assistance are:

- contact bonding companies, lenders, on behalf of the DBE firm;
- arrange with sureties incremental or phased bonding for the DBE;
- pay for the cost of the bond;
- waive bonding requirements; and/or
- refer the DBE to Business Development Centers or other resource agencies who may assist DBE in obtaining bonding or lines of credit as referenced in good faith effort Section D 3 g 1 above.

2. Documentation - If the Bidder required bonding, etc., provide a list of DBEs who requested assistance in these areas and any assistance provided by the Bidder; or a statement of the Bidder's decision to waive bonding requirements **(6 points)**.

i. Bidder shall provide adequate information about plans, specifications, and/or contracting.

1. Documentation – Lists of the DBEs contacted, names of people contacted, and types of information provided to the potential subcontractors **(14 points)**.

j. Bidder shall have negotiated in good faith with interested, capable and competitive DBEs, not rejecting DBEs as unqualified without sound reasons.

1. Documentation **(11 points)**:

- Correspondence between the Bidder and DBEs;
- Internal logs, forms, or memoranda used by the Bidder to record communication between the Bidder and DBEs concerning the DBE's participation in the contract, terms and conditions of their participation, the scope of work to be bid by DBEs;
- Telephone quotations and follow-up written subbids from DBEs to confirm their verbal quote.
- A chart summarizing the outcome of the Bidder's efforts to negotiate in good faith with interested DBEs. This chart shall contain the following information for each DBE responding:
 - Name of DBE;
 - Work items or scope of work bid;
 - Dollar amount of bid or proposal;
 - If negotiations were held but no contract resulted, reasons therefore; and
 - If the Bidder rejected sub-bid/proposal, reasons therefore.

4. DBE Certification

a. **DBE firms are required to be certified at the time of Bid submittal date.**

b. The Authority's LIST OF DBE CERTIFIED COMPANIES which is in effect on the date of advertisement for bids on this contract will be

provided to all interested parties along with the bid documents upon request.

1. A current DBE list may be obtained on-line at www.octa.net, CAMM NET, DBE Program, DBE search by commodity codes. DBE certifications with the State of California Uniform Certification Program (UCP) may be verified by contacting:

Orange County Transportation Authority
Contracts Administration and Materials Management
Small Business Program
550 S. Main Street
P.O. Box 14184
Orange, CA 92863-1584
(714) 560-5613

2. This list does not represent all DBEs available in the trade or specialty areas required by this contract.
- c. DBE certification application for certification by the Authority may be obtained by submitting Uniform Certification Application (for individual, business concerns). This form is attached hereto, and is also available at www.octa.net/cammnet.
1. Within five working days of request by the Authority, a Bidder shall cause each of its purported DBE firms not currently certified by the Authority or reciprocity Agency to submit to the Authority information to confirm DBE status. Each firm applying for certification shall submit Uniform Certification Application with the required supporting documentation.
 2. If Bidder is a DBE, the firm should have a current DBE certification with the CUCP.
 3. All DBE certifications must be final by the due date of the bid in order to be counted for DBE goal participation.
- d. "FRAUDS" and "FRONTS" - Bidders are hereby cautioned against knowingly and willfully using "fronts" to meet the DBE goal of this contract. Only legitimate DBEs are eligible to participate in any federally funded contract. The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations. Any indication of fraud, waste, abuse or mismanagement of federal funds should be immediately reported to the Authority or to the Office of Inspector General, U.S. Department of Transportation at the toll-free hotline (800-424-9071), or to the following field office: FTA Special Agent-in-Charge, 211 Main Street, Suite 1022, San Francisco, CA 94105, (415-974-9875).

E. CONTRACTOR'S OBLIGATION

1. During the term of the contract/purchase order, the contractor shall continue to make good faith efforts to ensure that DBEs committed to in the bid have maximum opportunity to successfully perform in the contract, and that the contractor meets the DBE goal. These efforts shall include but not be limited to the following:
2. Negotiating in good faith to attempt to finalize and execute a subcontract agreement with the DBEs committed to in the Bid.
 - a. For contractors who fell short of meeting the DBE goal set for this contract, but who were determined by the Authority to have made good faith efforts to meet the goal, exerting efforts that can be documented to seek out and utilize additional DBE suppliers and DBE subcontractors whose participation is less than 1/2 of one percent of the contract value, to make up for the shortfall.
 - b. Continuing to provide assistance to DBE subcontractors or suppliers in obtaining bonding, lines of credit, etc., if required by the contractor.
 - c. Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting Authority approval to substitute for the DBE subcontractor.
 - d. As with all subcontractors, timely payment of all monies due and owing to DBE subcontractors and suppliers.
 - e. Timely submittal of complete and accurate DBE monthly reports in accordance with Section E 4 below.
 - f. Alerting the Authority's Contract Compliance Section in a timely manner of any problems anticipated in attaining the DBE participation goal committed to in the bid.
3. Substitution of Subcontractors - If a contractor requests a substitution of DBE subcontractors or suppliers, the contractor shall exert good faith efforts to replace a DBE subcontractor with another DBE subcontractor, subject to the approval of the Authority, and in California with California State Public Contracts Code Section 4100.
4. Contract Compliance Reporting Requirements - The contractor shall submit monthly progress reports to the Authority, in conformance with the currently approved schedule, reflecting its DBE participation. The Summary Subcontracts Award and Paid Report shall be submitted monthly to comply with this reporting requirement. Failure to submit this report in a timely manner and not meeting the DBE goal shall result in the imposition of

administrative sanctions including stop payment and or cancellation of the contract pursuant to the Authority's DBE Policy and U.S. DOT regulations (49 CFR part 26).

5. Change in Contract Amount - The dollar amount of change orders, or any other contract modifications that increase or decrease the work area in which DBE's participation has been committed to in the bid, shall be commensurately added to, or subtracted from, the total contract base figure used to compute actual dollars paid to DBEs. Revised total contract dollar values shall be reflected in the monthly progress report submitted to the Authority and referenced in Section E 4 above.
6. Noncompliance - Failure to carry out the requirements of these provisions constitutes a breach of contract and, after notification to the U.S. DOT, may result in termination of the contract by the Authority or imposition of other appropriate sanctions. This notice is given pursuant to 49 CFR Part 26.101(a).

SECTION V: FORMS

FORMS

The bidder shall complete all the forms identified below. The Bid may not contain exceptions to or deviations from the requirements of this IFB.

EXHIBIT E: STATUS OF PAST AND PRESENT CONTRACTS FORM

EXHIBIT F: LIST OF SUBCONTRACTORS

EXHIBIT G: DBE RACE NEUTRAL PARTICIPATION LISTING FORMS

EXHIBIT H: BIDDERS LIST

All aforementioned forms must be submitted along with the bid.

STATUS OF PAST AND PRESENT CONTRACTS FORM

On the form provided below, bidder shall list the status of past and present contracts where the firm has either provided services as a prime contractor or a subcontractor during the past five (5) years in which the contract has ended or will end in a termination, settlement or in legal action. A separate form must be completed for each contract. Bidder shall provide an accurate contact name and telephone number for each contract and indicate the term of the contract and the original contract value.

If the contract was terminated, list the reason for termination. Bidder must also identify and state the status of any litigation, claims or settlement agreements related to any of the identified contracts. Each form must be signed by an officer of the bidder confirming that the information provided is true and accurate.

Project city/agency/other:	
Contact Name:	Phone:
Project Award Date:	Original Contract Value:
Term of Contract:	
1) Status of contract:	
2) Identify claims/litigation or settlements associated with the contract:	
3) Reason for termination	

By signing this Form entitled "Status of Past and Present Contracts," I am affirming that all of the information provided is true and accurate.

Print Name

Date

Signature

Date

LIST OF SUBCONTRACTORS (Exhibit F)

List only the subcontractors which will perform work or labor or render services to the bidder in excess of one-half of one percent of the bidder's total bid amount. Do not use alternative subcontractors for the same work. (Use additional sheets if necessary.)

Name & Address Under Which Subcontractor is Licensed	License Number	Specific Description of Work to be Rendered	Type*	Dollar Amount
				\$
				\$
				\$
				\$
				\$
				\$
				\$
TOTAL VALUE OF SUBCONTRACTED WORK				\$

Bidder's Name: _____

DBE RACE-NEUTRAL PARTICIPATION LISTING

Bidder/Offeror shall complete and submit **Exhibit G: “DBE Race-Neutral Participation Listing”** in a **sealed envelope** with the bid/proposal, but no later than 48 hours following bid opening or proposal due date and timeline. (NOTE: In the event of no race-neutral DBE participation, Bidder/Offeror shall mark “None” under the column entitled “DBE Firm Name”.) The Bidder/Offeror shall refer to **RFP/IFB SECTION II. KEY CONTRACTUAL TERMS: “DBE Crediting Provisions”** for guidelines relative to DBE participation crediting. (Additional sheets may be duplicated as necessary.)

The DBE information and content provided under Exhibit H: “DBE Race-Neutral Participation Listing” will not be considered in evaluating the bid/proposal or determining award of any contract.

DBE Firm Name*:	DBE Certification No. and Expiration Date:	Provide Complete Description of Work to be Performed: _____ _____ _____ _____		
Business Address:		Check Appropriate Box Describing		
Contact Person:		Subcontractor (100%)	Supplier (60%)	
Telephone:	E-mail:	Regular Dealer (60%)	Broker	
License No., Classification and Expiration:		Manufacturer (100%)	Trucker	
Subcontract Amount:		Subcontractor/Supplier Activity:		

*DBE certification letter must be attached for each listed DBE firm. DBEs must be certified on the date bids/proposals are opened.

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DBE Firm Name*:	DBE Certification No. and Expiration Date:	Provide Complete Description of Work to be Performed: _____ _____ _____ _____		
Business Address:		Check Appropriate Box Describing		
Contact Person:		Subcontractor (100%)	Supplier (60%)	
Telephone:	Fax:	Regular Dealer (60%)	Broker	
License No., Classification and Expiration:		Manufacturer (100%)	Trucker	
Subcontract Amount:		Subcontractor/Supplier Activity:		

*DBE certification letter must be attached for each listed DBE firm. DBEs must be certified on the date bids/proposals are opened.

DBE Firm Name*:	DBE Certification No. and Expiration Date:	Provide Complete Description of Work to be Performed: _____ _____ _____ _____		
Business Address:				
Contact Person:		Subcontractor (100%)	Supplier (60%)	

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EXHIBIT G**

Telephone:	Fax:	Regular Dealer (60%)	Broker	
License No., Classification and Expiration:		Manufacturer (100%)	Trucker	
Subcontract Amount:		Check Appropriate Box Describing Subcontractor/Supplier Activity:		

*DBE certification letter must be attached for each listed DBE firm. DBEs must be certified on the date bids/proposals are opened.

Bidder/Offeror:	
Business Address:	
Contact Name:	Title:
Phone: ()	Fax: ()

Total Contract Amount:	\$		
DBE Race-Neutral Participation Value (% of Total Contract Value): <i>(NOTE: Mark "NONE" if no DBEs will be utilized.)</i>	%	DBE Race-Neutral Participation Dollar (\$) Value: <i>(NOTE: Mark "NONE" if no DBEs will be utilized.)</i>	\$

Signature of Authorized Representative	Printed Name
Date	Title

BIDDERS LIST

[EXHIBIT H]

Bidder/Offeror: _____ **IFB/RFP No.:** _____

The Department of Transportation requires the AUTHORITY to create and maintain a "Bidders List" containing information about all firms (DBE and Non-DBE) that bid, propose or quote on the Authority's DOT-assisted contracts, in accordance with 49 CFR Part 26.11. The "Bidders List" is intended to be a count of all firms that are participating, or attempting to participate, on DOT-assisted contracts, whether successful or unsuccessful in their attempt to obtain a contract.

The Bidder/Offeror is to complete all requested information on ***Exhibit __: Bidders List*** for themselves and all subcontractors, and submit this information at the time of bid submission. However, if not elected to do so at the time of bid submission, Bidders/Offerors must submit such information at the request of the Authority within the prescribed timeline set forth in the solicitation. The AUTHORITY will utilize this information to assist in the AUTHORITY's overall annual DBE goal-setting process. ***The Bidders List content will not be considered in evaluating the bid/proposal or determining award of any contract.***

Prime Bidder's/Offeror's Information	
Name of Prime's Firm:	Phone: ()
Firm Address:	Fax: ()
	Email:
	Type of work/services/materials provided:
Number of years in business:	
Contact Person:	Title:
Is the firm currently certified as a DBE under 49 CFR Part 26? <input type="checkbox"/> Yes <input type="checkbox"/> No	Check the box below for your firm's annual gross receipts last year.
DBE Certification Eligibility: <input type="checkbox"/> African American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Native American <input type="checkbox"/> Woman <input type="checkbox"/> Hispanic American <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Other <input type="checkbox"/> American	<input type="checkbox"/> Less than \$1 million
	<input type="checkbox"/> Less than \$5 million
	<input type="checkbox"/> Less than \$10 million
	<input type="checkbox"/> Less than \$15 million
	<input type="checkbox"/> More than \$15 million

Provide the following information for every subcontractor (DBE and non-DBE) included in this bid, proposal or quote.	
Name of Sub's Firm:	Phone: ()
Firm Address:	Fax: ()
	Email:
	Type of work/services/materials provided:
Number of years in business:	
Contact Person:	Title:
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	<input type="checkbox"/> Less than \$10 million
	<input type="checkbox"/> Less than \$15 million
	<input type="checkbox"/> More than \$15 million

If necessary, this Bidders List form can be duplicated to include all firms (DBE and non-DBE) that have submitted a bid, proposal or quote on this DOT-assisted project, whether successful or unsuccessful in their attempt to obtain a contract.

Failure of the Bidder/Offeror to submit this required Bidders List form will deem the bidder non-responsive.