



Request for Proposals For the Manufacturing of Bicycle Facilities

RFP No.: 2016-FP-09

Date Issued: August 1, 2016

CSJ 0916-35-199; STP 1602(476)TP

CSJ 0916-35-202; STP 1602(478)TP

Sealed proposal will be received at the offices of the Corpus Christi Regional Transportation Authority, hereinafter called the "CCRTA," at 602 North Staples Street, Corpus Christi, Texas 78401, until 3:00 PM (CST) Monday, August 29, 2016 for the Manufacturing of Bicycle Facilities. This is a bicycle facilities purchase with CCRTA Board of Directors approval. Proposal prices shall be good for one hundred twenty (120) calendar days from proposal opening date.

Proposers are encouraged to attend a pre-proposal meeting scheduled for Wednesday, August 10, 2016 at 3:00 PM, at 602 North Staples Street, Corpus Christi, Texas 78401. The purpose of this meeting is to provide an overview of the requirements of the project and to answer any questions Proposers may have concerning this procurement. Although attendance is not mandatory, it is recommended. **Request for Information** must be submitted by **Monday, August 15, 2016 at 3:00PM (CST)**, with CCRTA responding by **Friday, August 19, 2016**.

Copies of this Request for Proposals (RFP) and information may be obtained from the CCRTA website at <http://ccrta.org/business-with-ccrta.html>. Further information may be obtained from Sherrié Clay, Buyer, or Sharon Montez, Managing Director of Customer Programs, at (361) 289-2712.

The CCRTA has a Disadvantaged Business Enterprise (DBE) program; however, no DBE goal is assigned to this procurement. For additional information regarding this program, please contact Christina Perez, DBE/EEO Compliance Officer at (361) 289-2712.

Proposers should note that this procurement is subject to a financial assistance contract between the CCRTA and the Texas Department of Transportation (TxDOT) for 100% of the contract amount. The successful firm or firms will be required to comply with, in addition to other provisions of the Request for Proposals, the conditions required by applicable federal regulations, including the following:

Equal Employment Opportunity: CONTRACTOR shall be required to comply with applicable Equal Employment Opportunity laws and regulations;

Title VI Assurance: CONTRACTORS and subcontractors shall be required to comply with all requirements imposed by Title VI of the Civil Rights Act of 1964 (49 U.S.C. S2000d), the Regulations of TxDOT, DOT, and the Assurances by the CCRTA pursuant thereto;

Ineligible Firms: All firms will be required to certify they are not on the Comptroller General's List of Ineligible Contractors; and

The following proposal documents are applicable under this procurement:

- Request for Proposals,
- Instructions to Proposers,
- Special Instructions
- Scope of Work,
- Standard Service Terms and Conditions,
- Federal Supplemental Conditions (non-construction),
- Special Provisions Concerning Disadvantaged Business Enterprises (DBE),
- Price Schedule, and
- Certification Forms.

The following documents must be signed and returned with your proposal in order for it to be considered responsive:

- Response to RFP **one (1) original, five (5) hard copies, and one (1) electronic version in PDF format supplied on a USB Flash Drive,**
- Price Schedule (Appendix A) **in a separately sealed envelope,**
- Certification Forms (Appendix B),
- Certification and Statement of Qualifications (Appendix C),
- Disclosure of Interest Certification (Appendix D),
- Buy America (Appendix E),
- Certification of Restrictions on Lobbying (Appendix F),
- Accessibility Policy (Appendix G),
- References (Appendix H), and
- Request for Information Form (Appendix I).

Firms must submit a proposal, and all documentation supporting the Proposal. A Price Schedule must be submitted in a separate, sealed envelope. Failure to provide this information may deem your proposal to be non-responsive.

INSTRUCTIONS TO PROPOSERS

1. GENERAL.

The following instructions by the CCRTA are intended to afford proposers an equal opportunity to participate in the CCRTA's contracts.

2. EXPLANATIONS.

Any explanation desired by a proposer regarding the meaning or interpretation of these Instructions or any other proposal documents must be requested in writing to the CCRTA with sufficient time allowed for a reply to reach proposers before the submission of their proposals. Oral explanations or instructions will not be binding. Any information given to a prospective proposer concerning a Request for Proposals will be furnished to all prospective proposers as an addendum to the request if such information is necessary to proposers in submitting proposals on the request or if the lack of such information would be prejudicial to uninformed proposers.

3. SPECIFICATIONS.

3.1 Proposers are expected to examine the specifications, standard provisions, and all instructions. Failure to do so will be at the proposer's risk. Proposals that are submitted on other than authorized forms or with different terms or provisions may not be considered as responsive proposals.

3.2 The apparent silence of the specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of the specifications shall be made on the basis of this statement.

4. INFORMATION REQUIRED.

4.1. Each proposer shall furnish the information required by the Request for Proposals. The proposer shall sign the Price Schedule and the proposal, which collectively shall constitute the proposer's offer. Erasures or other changes must be initialed by the person signing the documents. Proposals signed by an agent are to be accompanied by evidence of his authority unless such evidence has been previously furnished to the CCRTA.

- 4.2. All prices shall be entered on the Price Schedule in ink or be typewritten. Totals shall be entered in the "Total Price" column of the Price Schedule, and in case of discrepancy between the unit price and the extended total price, the unit price will be presumed to be correct.
- 4.3. Only signed, written proposals specifically accepting responsibility for meeting the objectives and requirements specified in the Request for Proposals will be considered. The cover letter must bear the signature of a person duly authorized to legally commit for the proposer. All costs of proposal preparation will be borne by the proposer.
- 4.4. The CCRTA does not have to pay federal excise taxes or state and local sales and use taxes, except for contracts for improvements to real property.

5. **SUBMISSION OF PROPOSALS.**

- 5.1. Sealed Proposals should be submitted in an envelope marked on the outside with the proposer's name and address and proposal description addressed to:

**Corpus Christi Regional Transportation Authority
Attn: Contracts Department
602 North Staples Street
Corpus Christi, Texas 78401
Proposal For: RFP No. 2016-FP-09 Manufacturing of Bicycle Facilities
Proposal Due Date: Monday, August 29, 2016 @ 3:00 PM (CST)**

- 5.2. **The Price Schedule should be submitted in a separately sealed envelope** along with the proposal. Proposals must be submitted in sufficient time to be received and time-stamped at the above location on or before the published proposal date and time shown on the Request for Proposals. Proposals received after the published time and date cannot be considered. Any proposals which are mislabeled or do not indicate the proposer's name or address as required above may be opened by the CCRTA solely for the purpose of identifying the proposer for return of the proposal.

- 5.3. **Schedule**

Proposals shall be governed by the following schedule:

- **August 1, 2016 – RFP Issued**
Proposal documents are available at the CCRTA Website:
<http://ccrta.org/business-with-ccrta.html>
- **August 10, 2016 - Pre-proposal Meeting** at 3:00 pm at the CCRTA's

Administration Building located at 602 North Staples Street, Corpus Christi, Texas 78401.

If you are unable to attend the pre-proposal conference but would like to participate via Go to Meeting, please email Sherrié Clay, Buyer, at smclay@ccrta.org to request a login.

- **August 15, 2016 – Request for Information**

Written Request for Information (Appendix J) are due no later than 3:00 PM. Request for Information must be received via email to smclay@ccrta.org, or hand-delivered at the CCRTA's Administration Building located at 602 North Staples Street, Corpus Christi, Texas 78401.

- **August 19, 2016 – CCRTA Responses to Request for Information**

- **August 29, 2016 - Proposals Due**

Written proposals are due no later than 3:00 PM (Central Time). All proposals must be received at the CCRTA's Administration Building located at 602 North Staples Street, Corpus Christi, Texas 78401 prior to deadline.

- **September 21, 2016 – Contract Recommended for Award**

A Committee of the CCRTA's Board of Directors will meet to recommend the award of a Contract to the successful Proposing firm.

- **October 12, 2016 – Contract Awarded (Pending Approval)**

The CCRTA's Board of Directors will meet to approve the award of a Contract to the successful Proposing firm.

6. MODIFICATION OR WITHDRAWAL OF PROPOSALS.

Proposals may be modified or withdrawn by written or email notice received by the CCRTA prior to the exact hour and date specified for receipt of proposals. A proposal may also be withdrawn in person by a proposer or an authorized representative prior to the proposal deadline; provided the proposer's identity is made known and he or she signs a receipt for the proposal.

7. OPENING PROPOSALS.

All proposals shall be opened by the CCRTA as soon after the proposal deadline as is reasonably practicable. Information submitted in response to the Request for Proposals shall not be released by the CCRTA during the proposal evaluation

process or prior to Contract award. Proposers are advised that the CCRTA may be required to release proposal information, other than trade secrets, after Contract award.

8. EVALUATION FACTORS.

- 8.1. The CCRTA will award contracts based upon the criteria set forth in the Request for Proposals. Contracts may be awarded on a lump sum basis or on a unit price basis, provided that in the event a contract specifies a unit price basis, the compensation paid by the CCRTA shall be based upon the actual quantities supplied.
- 8.2. Pre-award inspection of the proposer's facility may be made prior to the award of the Contract. Proposals will be considered only from firms that are regularly engaged and licensed in the business of providing the goods and/or services described in the Request for Proposals for a reasonable period of time; and have sufficient financial support, equipment, and organization to ensure that they can satisfactorily execute the services if awarded a Contract under the terms and conditions herein stated. The terms "equipment" and "organization" as used herein shall be construed to mean a fully-equipped and well-established company in line with the best business practices in the industry as determined by the CCRTA. In making the award, the CCRTA may consider any evidence available to it of the financial, technical, and other qualifications and abilities of a proposer, including past performance (experience) with the CCRTA and other similar customers. A record of nonperformance or poor performance may disqualify a proposer from award.

9. ELIGIBILITY FOR AWARD.

- 9.1. In order for a proposer to be eligible for award of the Contract, the proposal must be responsive to the Request for Proposals; and the CCRTA must be able to determine that the proposer is responsible to perform the Contract satisfactorily.
- 9.2. Responsive proposals are those complying with all material aspects of the Request for Proposals. Proposals which do not comply with all the terms and conditions of the Request for Proposals will be rejected as non-responsive.
- 9.3. Responsible proposers at a minimum must:
 - 9.3.1. Have adequate financial resources or the ability to obtain such resources as required during the performance of the Contract;
 - 9.3.2. Have a satisfactory record of past performance;

- 9.3.3. Have necessary management and technical capability to perform;
 - 9.3.4. Be qualified as an established firm regularly engaged in the type of business to perform the Contract required by this Request for Proposals;
 - 9.3.5 Be otherwise qualified and eligible to receive an award under applicable federal, state, county, or municipal laws and regulations; and
 - 9.3.6 Certify that it is not on the U.S. Comptroller General's list of ineligible contractors – signing and submitting the proposal is so certifying. (NOTE: This requirement is only applicable to federally-funded contracts.)
- 9.4. A proposer may be requested to submit written evidence verifying that it meets the minimum criteria necessary to be determined a responsible proposer. Refusal to provide requested information shall result in the proposer being declared not responsible, and the proposal shall be rejected.

10. RESERVATION OF RIGHTS.

The CCRTA expressly reserves the right to:

- 10.1. Reject or cancel any or all proposals;
- 10.2. Waive any defect, irregularity or informality in any proposal or proposal procedure;
- 10.3. Waive as an informality, minor deviations from specifications at a lower price than other proposals meeting all aspects of the specifications if it is determined that total cost is lower and the overall function is improved or not impaired;
- 10.4. Extend the proposal due date;
- 10.5. Reissue a Request for Proposals;
- 10.6. Procure any item or services by other means;
- 10.7. The CCRTA reserves the right to retain all proposals submitted. The selection or rejection of a proposal does not affect this right; and

10.8. The CCRTA reserves the right to negotiate a Contract with the proposer having the best evaluation as determined by the CCRTA. No award will be made automatically based upon the lowest price or based solely on the proposal submitted. The CCRTA additionally reserved the right to suspend negotiations with the first proposer should it not progress in a manner satisfactory to the CCRTA and commence negotiations with the next best rated proposer.

11. ACCEPTANCE.

Acceptance of a proposer's offer in some instances will be in the form of purchase orders issued by the CCRTA. Otherwise, acceptance of a proposer's offer will be by acceptance letters issued by the CCRTA. Subsequent purchase orders and release orders may be issued as appropriate. Unless the proposer specifies otherwise in the proposal, the CCRTA may award the contract for any item or group of items shown on the Request for Proposals.

12. PROTESTS.

In the event that a proposer desires to protest any procedure, the proposer should present such protest, in writing, to the CCRTA Chief Executive Officer within five (5) business days following the proposal due date. The protest shall state the name and address of the protestor, refer to the project number and description of the Request for Proposals, and contain a statement of the grounds for protest and any supporting documentation. For federally-assisted contracts, certain additional protest procedures apply and may be found in the Supplemental Conditions contained within the Request for Proposals.

13. EQUAL OPPORTUNITY.

Proposers are expected to comply with the Affirmative Action Programs of the CCRTA with respect to its provisions concerning contractors.

14. SINGLE PROPOSAL.

14.1. In the event a single proposal is received, the CCRTA will, at its option, either conduct a price and/or cost analysis of the proposal and make the award by negotiation or reject the proposal and revise the Request for Proposals. A price analysis is the process of examining the proposal and evaluating a prospective price without evaluating the separate cost elements. Price analysis shall be performed by comparison of the price quotations, with published price lists, or other established or competitive prices. The comparison shall be made to a purchase of similar quantity and involving similar specifications. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto.

- 14.2. Where it is impossible to obtain a valid price analysis, it may be necessary for the CCRTA to conduct a cost analysis of the proposal price. Cost analysis is the review and evaluation of a proposer's cost or pricing data and of the factors applied in projecting from such data the estimated costs of performing the contract, assuming reasonable economy and efficiency.
- 14.3. The price and/or cost analysis shall be made by personnel of the CCRTA's selection. The CCRTA's discretion exercised as to its options in this regard shall be final.

SPECIAL INSTRUCTIONS

1.0 PROPOSAL CONTENT

1.1 General

Firms shall submit an original and five (5) copies of their proposal, which must be concise and straightforward. An electronic submission of the proposal is also required in an Adobe Acrobat (.PDF) format on a USB flash drive.

All proposals must be submitted before the deadline in the solicitation and addressed with the information as noted in the "Instructions to Proposers" section 5.

1.2 Proposal Elements

To enhance comparability, proposal elements must be addressed in the informational sequence noted below. The proposal shall also be brief and straight-forward. Please submit one signed original proposal and five (5) copies of the proposal.

1.2.1 Ability and approach

State in precise terms your understanding of the scope of work presented by the RFP. Provide a concise narrative description of the proposed effort and the services that will be provided, including project organization.

1.2.2 Personnel and Equipment

Identify and provide resumes of those staff persons including supervisor who will be handling this contract. Include the number of professional personnel by skill and qualifications, including helpers. Provide information on the tools and equipment, which will be used to service this Contract. Include any particulars, such as minimum hours, your firm requires.

1.2.3 Experience and Workmanship

Firm - Proposer must submit any information appropriate to the RFP necessary to establish qualifications, experience, workmanship (i.e.; references with contact name and telephone number).

Personnel - Proposer must include detailed work experience and number of specific personnel who will be directly involved ("hands-on" personnel) with this project and identify the proposed project manager.

List and describe recent experiences in similar requirements.

1.2.5 Price Schedule

Firm must submit one (1) original price schedule (sealed in a separate envelope) with its original proposal. Failure to complete and return this section will be cause for rejection of this proposal as non-responsive.

2.0 EVALUATION CRITERIA

2.1 Evaluation factors with their weights are as follows:

| | |
|--|-------------|
| Firm's Response to RFP | 10% |
| Firm's Experience | 20% |
| Product Materials and Workmanship | 40% |
| Cost including Warranty Specifications | 30% |
| Total | <u>100%</u> |

2.2 The CCRTA will first evaluate the proposals on all factors other than cost. After a preliminary evaluation, the cost proposal will be included in the evaluation process. The CCRTA may select a firm for the project after this review, if the CCRTA feels it is in the CCRTA's best interest. Otherwise, a short-list of interviewees will be established based upon the overall results. After completion of the interviews, the evaluation of the proposals will be reviewed and modified as necessary.

2.3 The evaluation panel will be comprised of representatives from the CCRTA and the City of Corpus Christi.

SCOPE OF WORK

1.0 DESCRIPTION

1.1 The Corpus Christi Transportation Authority “CCRTA”, or "The B", began operations in January 1986 and has since provided public transportation services to citizens and visitors of the Coastal Bend, including the cities of Agua Dulce, Banquete, Bishop, Corpus Christi, Driscoll, Gregory, Port Aransas, and Robstown. The CCRTA operates 44 fixed route services serving approximately 1,425 bus stops within a service area of 841 square miles within Nueces and San Patricio Counties. In addition to fixed route services, the CCRTA provides transportation services to rural communities with flexible demand response service, administers vanpool programs, and provides B-Line paratransit service for qualified individuals. The family of transit services supports approximately six million boardings per year.

1.2 The CCRTA is seeking proposals from qualified bicycle facility manufacturing professionals interested in providing the CCRTA durable, corrosion resistant bicycle facilities to withstand exposure to elements which includes surface mount racks, pumps, tool kiosks, and bicycle lockers. The CCRTA is working in coordination with the MPO to install bicycle facilities at bus stop or bus station locations in alignment with the MPO’s Bicycle Mobility Plan completed in late 2015.

1.3 The CCRTA intends to purchase manufactured bicycle facilities described in the required specifications by interested persons (hereinafter known as “the proposer”). Prices quoted shall be all-inclusive and represent the required specifications. The proposer shall be responsible for all parts and all other associated apparatus necessary to completely manufacture bicycle facilities detailed herein.

2.0 CONTRACTOR’S RESPONSIBILITIES

The Contractor shall be fully capable of manufacturing durable bicycle facilities to withstand corrosive and other potentially damaging elements in the South Texas region. The Contractor shall, at a minimum, possess the following qualifications:

2.1 Possess those licenses/permits required to perform manufacturing in the specified jurisdiction.

2.2 Provide references of the type of manufacturing provided in this specification.

2.3 Personnel knowledgeable in local, state, province and national codes, and regulations. All work shall comply with the latest revision of the codes or regulations. When conflict exists between local or national codes or regulations, the most stringent codes or regulations shall be followed.

3.0 SCOPE OF WORK

3.1. Product Preferences

The CCRTA's product preferences are as follows:

- 3.1.1 Manufacture highly durable, corrosion resistant surface mount bicycle facilities to be placed near or at bus stops and bus stations.
- 3.1.2 Facilities shall be of high tensile strength with powder coat finish or similar material to withstand corrosion related to salt exposure, temperature and wind variations, and abrasions.
- 3.1.3 No material shall be used that can be easily cut with a saw, bolt cutter, or hack saw as part of the structural or locking point components.
- 3.1.4 Facilities shall not require special foundations or footings, and must be designed to mount onto existing hardscape.
- 3.1.5 Minimize maintenance needed to maintain attractive look and appeal of facilities. Maintenance and cleaning of facilities will be completed by the CCRTA.
- 3.1.6 Achieve greater than five years for maximum useful life of facilities.

3.2 Product Installation

- 3.2.1 The CCRTA will install the bicycle facilities at various locations based on transit ridership levels, bicycle network connectivity, and other origin and destination locations.
- 3.2.2 Contractor shall not propose locations for the installation of bicycle facilities.
- 3.2.3 In order for the CCRTA to properly install the facilities, manufacturer shall provide proven and recommended installation methods, size of screws and bolts or other fasteners, recommended materials, size and type of washers, and other instructions.
- 3.2.4 Contractor shall provide installation instructions in standard Microsoft or similar software formats if possible.
- 3.2.5 On-site installation training with CCRTA staff may be required.

4.0 PRODUCT GUARANTEE AND WARRANTY

4.1 Materials and workmanship hereinafter specified and furnished shall be fully guaranteed against any defects. The proposer shall correct defects that may occur as the result of faulty workmanship within first year at no additional cost to the CCRTA. The proposer shall promptly, at no cost to the CCRTA, correct or re-perform (including modifications or additions as necessary) any nonconforming or defective materials after completion of the project of which the work is a part. The period of the proposer's warranty for any items herein are not exclusive

remedies, and the CCRTA has recourse to any warranties of additional scope given by the proposer to The CCRTA and all other remedies available at law or in equity. The proposer's warranties shall commence with acceptance of/or payment for the work in full.

4.2 If the proposer procures equipment or materials under the Contract, the proposer shall obtain for the benefit of the CCRTA equipment and materials warranties against defects in materials and workmanship to the extent such warranties are reasonably obtainable.

4.3 The proposer shall pass along to the CCRTA any additional warranties offered at no additional costs to the CCRTA.

STANDARD SERVICE TERMS AND CONDITIONS

1. **SERVICE STANDARDS.**

Contractor shall perform all work set forth in the specifications in a “first class” manner, consistent with all applicable regulations and industry standards. All work shall be performed to the reasonable satisfaction of the CCRTA, and any defective or substandard performance shall be promptly remedied.

2. **INVOICES AND PAYMENTS.**

Contractor shall submit separate invoices, in duplicate, on a monthly basis or as otherwise specified in the contract documents to Corpus Christi Regional Transportation Authority, Attn: Accounts Payable, 602 North Staples Street, Corpus Christi, Texas 78401. Invoices shall indicate the contract number and shall be itemized in accordance with the different components of work set forth in the Price Schedule. Payment shall not be due until thirty (30) days after the date the above instruments are submitted or the work is actually performed, whichever is later. In the event payment has not been made by the due date, Contractor shall submit a reminder invoice marked “overdue.” The CCRTA reserves the right to review all of Contractor’s invoices after payment and recover any overcharges resulting from such review.

3. **TOOLS, EQUIPMENT AND SUPPLIES.**

Contractor shall provide such tools, equipment, supplies, materials, employees, management, and any other items or services as may be necessary in order to enable Contractor to provide the services required under the terms of this Contract.

4. **ESTIMATED QUANTITIES.**

The estimated quantities for products to be performed noted in the Price Schedule are approximate. These quantities are to be used only for the comparison of proposal and the award of this Contract and are based on past and projected usage. Contractor agrees and understands that the actual quantities to be utilized are within the sole and absolute discretion of the CCRTA. Should the actual quantities be greater or lesser than the estimates contained in the Price Schedule, Contractor agrees that, regardless of the amount of such variance, it shall not be the basis for deviating from the quoted unit prices. Further, Contractor agrees to honor quoted unit prices for the duration of this Contract.

5. **LIABILITY INSURANCE COVERAGE.**

Contractor shall maintain at all times during the term of this Contract at its sole cost and expense each of the following insurance coverage's listed below having policy limits not less than the dollar amounts set forth:

Commercial general liability insurance with minimum policy limits of \$1,000,000 (In the event motor vehicles will be used by Contractor to perform the services specified). Automobile liability insurance with a combined single limit of \$1,000,000.

Contractual liability insurance covering Contractors' indemnification obligations contained in this Contract.

Each of such insurance policies shall be issued by insurance companies licensed to do business in the State of Texas and rated A- or better by the A. M. Best insurance rating guide. Each such policy shall name the CCRTA as an additional insured, and a certificate of insurance evidencing such coverage's shall be furnished to the CCRTA prior to the commencement of work and maintained throughout the term of the Contract. Such insurance policies shall not be cancelled, materially changed, or not renewed, without thirty (30) days' prior written notice to the CCRTA, and the certificate of such insurance coverage shall reflect the foregoing cancellation provision. Copies of the insurance policies shall be promptly furnished to the CCRTA upon its written request after award of contract.

6. WORKERS' COMPENSATION.

Contractor shall maintain at all times during the term of this Contract at its sole cost and expense workers' compensation as required by statute and employer's liability insurance with policy limits of \$300,000 containing a waiver of subrogation endorsement waiving any right of recovery under subrogation or otherwise against the CCRTA.

(In the event this Contract covers construction services, Section 6.1 through 6.11 shall apply.)

6.1. The following definitions shall apply:

Certificate of coverage ("certificate") – A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project – includes the time from the beginning of the work on the project until Contractor's work on the project has been completed and accepted by the CCRTA.

Persons providing services on the project (“subcontractor” in §406.096) – includes all persons or entities performing all or part of the services Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. “Services” includes, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. “Services” does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- 6.2. Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, §401.011(44) for all employees of Contractor providing services on the project, for the duration of the project.
- 6.3. Contractor shall provide a certificate of coverage to the CCRTA prior to being awarded the contract.
- 6.4. If the coverage period shown on Contractor’s current certificate of coverage ends during the duration of the project, Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the CCRTA showing that coverage has been extended.
- 6.5. Contractor shall obtain from each person providing services on a project and furnish CCRTA:
 - 6.5.1. a certificate of coverage, prior to that person beginning work on the project, so the CCRTA will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - 6.5.2. no later than seven days after receipt by Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate ends during the duration of the project.
- 6.6. Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- 6.7. Contractor shall notify the CCRTA in writing by certified mail or personal delivery, within 10 days after Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

- 6.8. Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- 6.9. Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - 6.9.1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, §401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - 6.9.2. provide to Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - 6.9.3. provide Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - 6.9.4. Obtain from each other person with whom it contracts, and provide to Contractor:

A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - 6.9.5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - 6.9.6. notify the CCRTA in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - 6.9.7. Contractually require each person with whom it contracts, to perform as required by this subsection, with the certificates of coverage to be provided to the person for whom they are providing services.
- 6.10. By signing this Contract or providing a certificate of coverage, Contractor is representing to the CCRTA that all employees of Contractor who will provide service on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of

classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

- 6.11. Contractor's failure to comply with any of these provisions is a breach of contract by Contractor which entitles the CCRTA to declare the Contract void if Contractor does not remedy the breach within 10 days after receipt of notice of breach from the CCRTA.

7. INDEMNIFICATION.

Contractor shall indemnify and hold harmless the CCRTA, its officers, employees, agents, attorneys, representatives, successors and assigns from any and all claims, demands, costs, expenses (including attorney's fees and expert witness fees), liabilities and losses of whatsoever kind or character arising out of or in connection with any act or omission of Contractor or its officers, employees or agents, during the term of this Contract. Contractor shall assume on behalf of the CCRTA and the indemnified parties described above, and conduct with due diligence and in good faith, the defense of any and all such claims, whether or not the CCRTA is joined therein, even if such claims be groundless, false or fraudulent.

8. INDEPENDENT CONTRACTOR.

At all times during the term of this Contract, Contractor shall be an independent contractor to the CCRTA, and Contractor shall not in any event be deemed an employee or other representative of the CCRTA. Any persons employed by Contractor shall at all times hereunder be deemed to be the employees of Contractor, and Contractor shall be solely liable for the payment of all wages and other benefits made available to such employees in connection with their employ. Contractor shall remain solely responsible for the supervision and performance of any such employees in completing its obligations under this Contract. Contractor warrants that any such employees shall be fully covered by workers' compensation insurance and that each of such employees has been carefully screened as to character and fitness for the performance of his or her job.

9. ASSIGNMENT.

Contractor shall not assign or subcontract any of its rights, duties or obligations under this Contract without prior written consent of the CCRTA. Contractor shall be entitled to assign, pledge or encumber its right to receive payments under this Contract pursuant to security interests created in conformity with the Uniform Commercial Code so long as the CCRTA shall never be obligated to negotiate with any such third party in respect to compliance with the terms and conditions

of this Contract. Any such assignment, pledge or encumbrance shall be limited by any rights of offset by the CCRTA for damages or claims arising under this Contract or any other obligation owed by Contractor to the CCRTA.

10. AMENDMENTS.

No amendments, modifications or other changes to this Contract shall be valid or effective absent the written agreement of both parties hereto.

11. TERMINATION.

The CCRTA shall have the right to terminate for default all or any part of its Contract if Contractor breaches any of the terms hereof or if Contractor becomes insolvent or files any petition in bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies which the CCRTA may have in law or equity, specifically including, but not limited to, the right to sue for damages or demand specific performance. The CCRTA additionally has the right to terminate this Contract without cause by delivery to Contractor of a "Notice of Termination" specifying the extent to which performance hereunder is terminated and the date upon which such termination becomes effective.

12. ADVERTISING.

Contractor shall not advertise or publish, without the CCRTA's prior consent, the fact that it has entered into this Contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local authorities.

13. GRATUITIES.

No gratuities in the form of entertainment, gifts, or otherwise, shall be offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the CCRTA with a view toward securing a contract or securing favorable treatment with respect to a contract.

14. EQUAL OPPORTUNITY.

Contractor agrees that during the performance of this Contract it will:

- 14.1. Treat all applicants and employees without discrimination as to race, color, religion, sex, national origin, marital status, age or handicap.
- 14.2. Identify itself as an "Equal Opportunity Employer" in all help wanted advertising or requests.

Contractor shall be advised of any complaints filed with the CCRTA alleging that Contractor is not an equal opportunity employer. The CCRTA reserves the right

to consider such complaints in determining whether or not to terminate any portion of this Contract for which the services have not yet been performed; however, Contractor is specifically advised that no equal opportunity employment complaint will be the basis for denial of payment for any services already completed.

15. ENFORCEABILITY.

This Contract shall be interpreted, construed, and governed by the laws of the United States and the State of Texas and shall be enforceable in any state court of competent jurisdiction in Nueces County, Texas. Contractor shall comply with all applicable laws and regulations in performing under this contract.

16. NOTICES.

Notices shall be given to the parties by delivering or mailing such notice to the addresses set forth in the Contract documents, or at such other addresses as the parties may designate to each other in writing.

17. INTERPRETATION.

This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms thereof. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used herein, and acceptance of a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting party has knowledge of the performance and opportunity for objection.

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SUPPLEMENTAL CONDITIONS

(PURCHASE ORDER/NON-CONSTRUCTION CONTRACTS)

As used in these Supplemental Conditions, the term "CCRTA" shall refer to the Corpus Christi Regional Transportation Authority in Corpus Christi, Texas, the term "Contractor" shall refer to the contractor named in the Contract to which these Supplemental Conditions are attached. The term "FHWA" shall refer to the Federal Highway Administration and the term "TxDOT" shall refer to the Texas Department of Transportation.

1. EQUAL EMPLOYMENT OPPORTUNITY.

In connection with the execution of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, age, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, disability, 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. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

2. LABOR PROVISIONS.

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

2.2. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the requirements of 29 C.F.R. Section 5.5(b) (1), Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under Contract for the District of Columbia or a territory, to such district or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of 29 C.F.R. Section 5.5(b)(1) in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by 29 C.F.R. Section 5.5(b)(1).

2.3. Withholding For Unpaid Wages and Liquidated Damages. The CCRTA or TxDOT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by Contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth at 29 C.F.R. Section

5.5(b)(2).

2.4. Non-construction Grants. Contractor and any subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, Contractor shall insert in any such subcontract a clause providing that the records to be maintained under this section shall be made available by Contractor or subcontractor for inspection, copying or transcription by authorized representatives of the CCRTA, TxDOT and the Department of Labor, and Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

2.5 Subcontracts. Contractor or any subcontractor shall insert in any subcontracts the clauses set forth in subsections 2.1 through 2.4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subsections 2.1 through 2.4 of this section.

3. TITLE VI COMPLIANCE.

3.1 The CCRTA (hereinafter referred to as the "Recipient") HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the Department of Transportation it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of TxDOT-Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, 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 be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance from TxDOT, including the CCRTA, and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a)(1) of the Regulations.

3.2 That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with the manufacturing of bicycle facilities and, in adapted form in all proposals for negotiated agreements:

- The Recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidden that it will affirmatively insure that in any contact entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

3.3. That the Recipient shall insert the clauses of Appendix A of this assurance in every contract

subject to the Act and the Regulations.

3.3.1 During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor shall comply with the Regulation 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 contract.

2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, 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 Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor 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 Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The Contractor 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 CCRTA or TxDOT to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the CCRTA or TxDOT as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the CCRTA shall impose such contract sanctions as it or TxDOT may determine to be appropriate, including, but not limited to:

- a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
- b. cancellation, termination or suspension of the contract, in whole or in part.

6. **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

4. PATENT RIGHTS.

If any invention, improvement, or discovery of Contractor is conceived or first actually reduced to practice in the course of or under this Project, which invention, improvement, or discovery may be patentable under the laws of the United States of America or any foreign

country, Contractor shall immediately notify CCRTA and TxDOT and provide a detailed report. The rights and responsibilities of Contractor, the CCRTA and TxDOT with respect to such invention, improvement, or discovery will be determined in accordance with applicable federal laws, regulations, policies, and any waiver thereof.

5. PRIVACY.

5.1. Contractor agrees:

5.1.1. To comply with the Privacy Act of 1974, 5 U.S.C. Section 552a (the Act) and regulations thereunder, when performance under the Contract involves the design, development, or operation of any system of records on individuals to be operated by Contract or its employees to accomplish a governmental function;

5.1.2. To notify the CCRTA and TxDOT when Contractor anticipates operating a system of records on behalf of the CCRTA in order to accomplish the requirements of this Contract, if such system contains information about individuals, which information will be retrieved by the individual's name or other identifier assigned to the individual. A system of records subject to the Act may not be employed in the performance of this Contract until the necessary approval and publication requirements applicable to the system have been carried out. Contractor agrees to correct, maintain, disseminate, and use such records in accordance with the requirements of the Act, and to comply with all applicable requirements of the Act;

5.1.3. To include the Privacy Act Notification contained in this Contract in every third party contract solicitation and in every third party contract when the performance of work under that proposed third party contract may involve the design, development, or operation of a system of records on individuals to be operated under the contract to accomplish a governmental function; and

5.1.4. To include this clause, including this subsection, in all third party contracts under which work for this Contract is performed or which is awarded pursuant to this Contract or which may involve the design, development, or operation of such a system of records on behalf of the CCRTA.

In addition, failure to comply with the provisions of the Act or of this clause will make this Contract subject to termination.

5.2 The terms used in this clause have the following meanings:

5.2.1 "Operation of a system of records" means performance of any of the activities associated with maintaining the system of records on behalf of the CCRTA, including collection, use and dissemination of records.

5.2.2 "Record" means any item, collection, or grouping of information about an Individual that is maintained by Contractor on behalf of the CCRTA, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular signed to the individual, such as a finger or voice print or a photograph.

5.2.3 "System of records" on individuals means a group of any records under the control of Contractor on behalf of the CCRTA from which information is retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to

the individual..

6. BUY AMERICA PROVISION. (Required for contracts over \$100,000.)

6.1 Comply with the latest provisions of Buy America as listed at 23 CFR 635.410. Use steel or iron materials manufactured in the United States except when:

- the cost of materials, including delivery, does not exceed 0.1% of the total contract cost or \$2,500, whichever is greater,
- the Contract contains an alternate bid item for a foreign source steel or iron product and the Contract is awarded based on the alternate item, or
- the materials are temporarily installed.

6.2 Submit a notarized original of the FORM D-9-USA-1 (TxDOT Department Form 1818) with the proper attachments for verification of compliance.

6.3 Manufacturing is any process that modifies the chemical content, physical shape or size, or final finish of a product. Manufacturing begins with initial melting and mixing and continues through fabrication (cutting, drilling, welding, bending, etc.) and coating (paint, galvanizing, epoxy, etc.).

7. DRUG-FREE WORKPLACE COMPLIANCE AND TESTING.

7.1. This subsection only applies to contracts in excess of \$25,000). Contractor agrees to comply with the Drug-Free Workplace Act and certifies as follows:

7.1.1 Contractor has published a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace, and specifying the consequences of any such employee violation.

7.1.2. Contractor has established a drug-free awareness program to inform employees of the dangers of drug abuse in the workplace, Contractor's policy of maintaining a drug-free workplace, the availability of counseling, rehabilitation and employee assistance programs, and the penalties which may be imposed for drug abuse violation.

7.1.3. Contractor has given copy of the policy statement to each of Contractor's employees engaged in the performance of this Contract.

7.1.4. Contractor has notified the employees in such statement that, as a condition for employment under this Contract, the employee will abide by the terms of the statement and notify Contractor of any conviction or violation of a criminal drug statute in the workplace no later than 5 days after the conviction.

7.1.5. Contractor shall notify the CCRTA within 10 days after receipt of notice of a conviction of an employee.

7.1.6. Contractor agrees to take disciplinary action against any employee convicted for violation of any criminal drug statute in the workplace or required such employee's participation in a drug abuse assistance or rehabilitation program.

7.1.7 Contractor shall make a good faith effort to continue to maintain a drug-free workplace.

7.2. Contractor shall comply with the requirements of the drug and alcohol testing of employees engaged in safety sensitive functions, 49 C.F.R. Part 655.

8. CONFLICT OF INTEREST.

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

the employee, officer, board member or agent;

any member of his or her immediate family;

his or her partner; or

an organization which employs, or is about to employ any such person has a financial or other interest in the firm selected for award.

The CCRTA's officers, employees, board members or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subcontracts.

9. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION.

The contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C § 6101 note, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R Part 180. The contractor agrees to, and assures that its subcontractors, lessees, third and other participants at any tier of the Project will, review the "Excluded Parties Listing System" at www.sam.gov before entering into any subagreement, lease, third contract, or other arrangement in connection with the Project.

10. BID PROTEST PROCEDURES.

10.1 An appeal of any decision made by the CCRTA under its bidding procedures may be made by notifying the CCRTA's Chief Executive Officer, in writing, within five (5) business days following the action being appealed. The appeal shall state the name and address of the protestor, refer to the Project number and description of the solicitation, and contain a statement of the grounds for protest and any supporting documentation. Any appeals received by the CCRTA later than five (5) business days after the appealed action will not be considered. The CCRTA's Chief Executive Officer shall respond in writing to any such appeal within five (5) business days from the date the protest is submitted.

10.2 The CCRTA will not award any Contract during the five-day period following its decision on a bid protest provided in subsection 11.3 below except in accordance with TxDOT guidance.

10.3 In the event a bidder should be dissatisfied with the CCRTA's decision, an appeal may be made to the CCRTA. Such appeal shall be filed in writing no later than five (5) days after the

final determination by the CCRTA. If filed, the CCRTA will resolve with guidance from TxDOT.

11. GENERAL REMEDIES/SANCTIONS FOR BREACH OF CONTRACT.

In the event of any default under the Contract, the CCRTA may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance of any obligations, agreement, or covenant of Contractor under the Contract. No remedy herein conferred upon or reserved to the CCRTA is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Contract or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the CCRTA to exercise any remedy reserved to it in this section, it shall not be necessary to give any notice other than such notice as may be herein expressly required. In the event any provision, covenant, or agreement contained in the Contract should be breached by Contractor and thereafter waived by the CCRTA, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

12. LEGAL AUTHORITY.

Contractor assures and guarantees that it possesses the legal authority to enter into this Contract, to receive the funds authorized by this Contract, and to perform the services Contractor has obligated itself to perform under this Contract. The person signing this Contract on behalf of Contractor hereby warrants that he/she has been fully authorized by Contractor to execute this Contract on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions herein set forth.

13. INDEPENDENT CONTRACTOR.

It is expressly understood and agreed by both parties that the CCRTA is contracting with Contractor as an independent contractor. No provision of this Contract or act of the CCRTA in performance of this contract shall be construed as making Contractor the agent, servant, or employee of the CCRTA; employees of Contractor are not employees of the CCRTA; and Contractor is solely responsible for employee payrolls and claims arising therefrom.

14. COMMUNICATIONS.

All notices and requests given to or made upon the parties hereto shall, except as otherwise specified herein, be in writing and shall be delivered or mailed to such party at the notice addresses specified in this Contract. The parties hereto may change their notice addresses upon five (5) days' notice to the other party. Any notices or requests shall be deemed given upon actual delivery or depositing the same with the U.S. mail, properly addressed, postage prepaid, certified mail, return receipt requested.

15. PREFERENCES FOR RECYCLED PRODUCTS.

(Applies to all contracts for items designated by the EPA, when procurement is made of \$10,000 more of one of these items during a fiscal year, using Federal funds). The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited

to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

16. ENTIRE AGREEMENT.

All oral or written agreements between the parties hereto to the subject matter of this Contract made prior to the execution of this Contract have been incorporated herein.

17. CONTINGENT ON FUNDING.

The CCRTA's obligations hereunder are contingent upon the availability of funds from which payment for the Contract can be made. No legal liability on the part of the CCRTA for payment of any money shall arise unless and until funds are appropriated and made available to the CCRTA.

Reimbursement process. Item 18 does not apply to this procurement.

18. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

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

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

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

19.2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FHWA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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

20. SENSITIVE SECURITY INFORMATION.

Each Contractor must protect, and take measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of a contract or subcontract with the CCRTA to ensure compliance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 1520.

21. ACCESS FOR INDIVIDUALS WITH DISABILITIES.

The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws. In addition, the Contractor agrees to comply with applicable implementing Federal regulations and directives and any subsequent amendments thereto, as follows:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay

Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

(9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

(10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(11) Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

22. DISPUTES, BREACHES, DEFAULTS, OR OTHER LITIGATION.

The Contractor agrees that FHWA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

a. Notification to TxDOT. The Contractor agrees to notify the CCRTA, who in turn will notify TxDOT in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Contractor seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Contractor agrees to inform CCRTA & TxDOT in writing before doing so. Each notice to TxDOT under this Section shall be sent, at a minimum, to the TxDOT Office of General Counsel within whose Region the Contractor operates its public transportation system or implements the Project.

b. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the Project, of proceeds derived from any third party recovery, except that the Contractor may return any liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.

c. Enforcement. The Contractor agrees to pursue all legal rights provided within any third party contract.

d. TxDOT Concurrence. TxDOT reserves the right to concur in any compromise or settlement of any claim involving the Project and the Contractor.

e. Alternative Dispute Resolution. TxDOT encourages the Contractor to use alternative dispute resolution procedures, as may be appropriate.

23. NON-CONSTRUCTION EMPLOYEE PROTECTION.

Activities Not Involving Construction. The Contractor agrees to comply, and assures the compliance of each third party contractor and each subcontractor at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

24. EMPLOYEE PROTECTIONS.

Public Transportation Employee Protective Arrangements. If the Grant Agreement or Cooperative Agreement for the Project indicates that public transportation employee protective arrangements required by U.S. DOL apply to public transportation operations performed in connection with the Project, the Contractor agrees to comply with the applicable requirements for its Project as follows:

(1) Standard Public Transportation Employee Protective Arrangements. To the extent that the Project involves public transportation operations and as required by Federal law, the Contractor agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333(b), and with the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215 and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of public transportation employee protective arrangements to FHWA, the date of which appears in the Grant Agreement or Cooperative Agreement for the Project. The Contractor agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The requirements of this Subsection 24.d(1) of this Master Agreement do not apply to Projects for elderly individuals or individuals with disabilities that are authorized by 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU, or to Projects for nonurbanized areas authorized by 49 U.S.C. § 5311; separate requirements for those Projects are contained in Subsections 24.d(2) and (3), respectively, of this Master Agreement.

(2) Public Transportation Employee Protective Arrangements for Elderly Individuals and Individuals with Disabilities for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program. To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority subcontractor participating a Project authorized by 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), and the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's certification of public transportation employee protective arrangements to FHWA, the date of which appears in the Grant Agreement. The Contractor agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

(3) Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, U.S. DOL implementing procedures, and any revisions thereto.

25. SPECIAL NOTIFICATION REQUIREMENTS FOR STATES.

To the extent required by Federal law, the States agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative

Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FHWA assistance for the Program or the Project shall indicate that FHWA is the Federal agency that is providing the Federal assistance, the Catalog of Federal Domestic Assistance Number of the program from which the Federal assistance is authorized, as may be applicable, and the amount of Federal assistance FHWA provided.

SPECIAL PROVISIONS CONCERNING
DISADVANTAGED BUSINESS ENTERPRISES
(Federally-Funded Project)

As used in these Special Provisions, the term “CCRTA” shall refer to the Corpus Christi Regional Transportation Authority in Corpus Christi, Texas, the term “Contractor” shall refer to the bidders and successful contractor named in the Contract to which these Special Provisions are attached, and the term “FTA” shall refer to the Federal Transit Administration.

1. **DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION.**

This project is subject to Title 49, C.F.R. Part 26 entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.” Portions of the Regulations (which are incorporated in their entirety by this reference) are set forth in these Special Instructions.

2. **DEFINITIONS.**

For purposes of these instructions:

2.1 “Disadvantaged Business Enterprise (DBE)” means a for-profit small business concern which is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or in the case a corporation in which at least 51 percent of the stock of which is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

2.2 “Small business concern” means a small business as defined in Section 3 of the Small Business Act (15 U.S.C. Section 632) and Small Business Administration regulations implementing it (13 C.F.R. Part 121) that also does not exceed \$22.41 million in average gross receipts over the previous three fiscal years.

2.3 “Socially and economically disadvantaged individuals” are presumed to include United States citizen (or lawfully admitted permanent resident) who the CCRTA determines to be a socially and economically disadvantaged individual on a case-by-case basis or any members of the following groups which are rebuttably presumed to be socially and economically disadvantaged: Black Americans, Hispanic Americans, Native Americans (Indians, Eskimos, Aleuts or Native Hawaiians), Asian-Pacific Americans, Subcontinent Asian Americans, women or any individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

3. DBE PARTICIPATION.

The DBE participation goal for this Contract is that percentage of the total Contract Price set forth in the Bid Documents.

4. DBE PARTICIPATION CRITERIA.

4.1 DBE participation includes contracts (other than employee contracts) with DBEs for any goods or services specifically required for the completion of the work under this Contract. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime subcontractor, vendor of material or supplies incorporated or expended in the work, or a supplier of other services such as shipping, transportation, testing, equipment rental, insurance services and other support services necessary to fulfill the requirements of this Contract.

4.2 A DBE joint venture partner must be responsible for a clearly defined portion of the work to be performed in addition to satisfying requirements for ownership and control. The DBE joint venturer must submit information for determining joint venture eligibility.

4.3 A DBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing and supervising the work.

4.4 DBE participants will be counted toward meeting the goal set herein as follows:

4.4.1 The total dollar value of that portion of the work under the Contract that is performed by the Contractor's own forces if the Contractor is DBE. If the Contractor is a joint venture, only the proportionate interest of the DBE in the joint venture will be counted toward the goal.

4.4.2 The dollar value of all DBE subcontracts for work or services under the Contract.

4.4.3 The dollar value of material or supplies purchased from a DBE manufacturer for such material or supplies.

4.4.4 Sixty percent of the dollar value of material or supplies purchased from a DBE regular dealer. A regular dealer is a firm that owns, operates, or maintains a store, warehouse or other establishment in which the material or supplies required for the performance of the Contract are brought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the

products in question. A regular dealer in such bulk items as steel, cement, stone, gravel and petroleum products need not keep such products in stock if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers.

4.4.5 Fees or commissions charged for providing a bona fide service and assistance in the procurement of essential personnel, facilities, equipment, material or supplies required for performance of the Contract, delivery of material and supplies required on a job site, or for providing any bonds or insurance specifically required for the performance of the Contract, provided that such fees or commissions are reasonable and not excessive as compared with fees or commissions customarily allowed for similar services.

5. DBE INFORMATION.

5.1 The following information shall also be submitted pursuant to the Contract, within five (5) business days following the written notice:

5.1.1 Application for Certification for each business not currently certified by the CCRTA as a DBE.

5.1.2 Joint Venture Eligibility Form for each DBE joint venture.

5.1.3 A completed DBE participation Form, with the names of DBEs to be used and a description of the work, services or supplies to be provided by each and the dollar value of each DBE transaction. (Note: DBEs listed on the DBE Participation Form may also be required to be listed in the designation of subcontractors form if both forms are required by the Contract documents).

5.2 The DBE Participation Form may be obtained from the CCRTA's DBE Officer located at 5658 Bear Lane, Corpus Christi, Texas 78405, telephone (361) 289-2712. Businesses not meeting the definitions set out in Section 2 and the criteria for participation in Section 4 will not be counted toward meeting the goal.

5.3 A Contractor whose DBE Participation Form indicates that the DBE goal has not been met must submit a written report with supporting documentation covering all actions listed in Section 6 taken by the Contractor prior to bid submission to meet the goal.

5.4 The CCRTA may request additional information following its review, which shall be submitted by the Contractor within five days of the request.

5.5 CONTRACTOR IS WARNED that failure to comply with the requirements of this Section within the times prescribed may, unless a later time is authorized by the CCRTA, result in rejection of a bid or termination of the Contract.

6. GOOD FAITH EFFORTS TO MEET THE DBE GOAL.

Good faith efforts are those that, given all relevant circumstances, a Contractor actively and aggressively seeking to meet the goal would make. Contractor is encouraged to attend any pre-bid meeting listed in the Notice to Bidder scheduled by the CCRTA to inform DBEs of subcontracting opportunities for the DBE program requirements for the Contract. Any Contractor who does not attend the pre-bid meeting assumes responsibility to be fully informed as to the DBE program requirements pertaining to the Contract. In determining whether sufficient good faith efforts have been made, the CCRTA will consider on the basis of documentation submitted by the Contractor whether the following actions have been taken:

6.1 Advertisements soliciting sub-bid on this Contract from DBEs in the Corpus Christi Caller Times and local minority and women trade association publications.

6.2 Solicitation of interest in this Contract from DBEs evidenced by copies of registered or certified letters to relevant listed DBEs or to a reasonable number of certifiable DBEs in sufficient time to allow the DBEs to participate effectively;

6.3 Follow-up of initial solicitation of DBE interest;

6.4 Identification of portions of work to be performed by DBEs in order to increase the likelihood of meeting the goals (including, where appropriate, breaking down the work into economically feasible units to facilitate DBE participation);

6.5 Records of responses, bids and/or bid received from DBEs for specific sub-bid including:

6.5.1 The names, addresses and telephone numbers of all DBEs contacted;

6.5.2 A description of the information provided to DBEs regarding the plans and specification for portions for the work to be performed;

6.5.3 The reasons for rejection of any DBE sub-bid submitted to Contractor;

6.5.4 A description of the investigation conducted of any DBEs rejected as unqualified.

6.6 Description of assistance provided to DBEs relative to obtaining plans, specifications, and required bonding or insurance;

6.7 Description of the use made by Contractor of the services of available minority community organizations, minority contractors groups, and information services such as those provided by the CCRTA through the Department of Contract Compliance, telephone (361) 289-2712, concerning available certifiable DBEs for work under the Contract. Contractor's efforts may be deemed insufficient by the CCRTA if Contractor has failed to make any of the foregoing efforts or has rejected DBE sub-bid without adequate reasons. Price alone will not be considered an adequate reason. Contractor shall also include in the report submitted under this Section any other efforts made not listed above which are relevant to meeting the DBE goals.

7. CERTIFICATION REVIEW COMMITTEE.

The CCRTA has established a DBE Certification Review Committee consisting of the following persons for the purpose of hearing appeals or challenges concerning the certification of DBEs under the program:

Director of Capital Projects and Facilities Maintenance;
Managing Director of Administration;
General Legal Counsel.

8. HEARING ON GOOD FAITH EFFORTS DETERMINATION.

If it appears to the CCRTA that Contractor has neither achieved the indicated percentage of DBE participation nor made sufficient good faith efforts to meet the goal, Contractor will be notified that this Contract will be recommended for termination and the reasons therefore. Within five days of such notification, Contractor may request a hearing. Such hearing will be held at the convenience of the CCRTA but no later than ten days after receipt of the request and in accordance with the CCRTA's Hearing Procedures, copies of which are available upon request. At such hearing Contractor shall bear the burden of demonstrating:

8.1 Achievement of the percentage goal for DBE participation, or

8.2 Good faith effort that, given all relevant circumstances, could have been expected to produce a level of DBE participation to meet the Contract goal.

9. CHALLENGE PROCEDURE.

To challenge the eligibility of a firm that the CCRTA has certified as a DBE, a third party may present evidence that the firm's owners are not truly socially and/or economically disadvantaged, even though they are members of one of the presumptive groups. The Challenge Procedure is as follows:

9.1 Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the CCRTA as a disadvantaged business. The challenge shall be made in writing to the CCRTA. With its letter, the challenging party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.

9.2 The CCRTA shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and economically disadvantaged. In implementing this challenge procedure, the DBE Certification Review Committee identified herein will review information and make the determination of the social and economic disadvantage of the challenged party on behalf of the CCRTA. If the CCRTA determines that there is no reason to believe that the challenged party is not socially and economically disadvantaged, the CCRTA shall so inform the challenging party in writing. This finding terminates the proceeding. If the CCRTA determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the CCRTA shall begin a proceeding as provided in the following subsections.

9.3 The CCRTA shall notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide the CCRTA within reasonable time information sufficient to permit it to evaluate his or her status as a socially and economically disadvantaged individual.

9.4 The CCRTA shall evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the challenged party. The CCRTA shall notify both parties of this proposed determination, in writing, setting forth the reasons for its bid. The CCRTA shall provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.

9.5 Following the informal hearing, the CCRTA shall make a final determination. The CCRTA shall inform the parties in writing of the final determination, setting forth the reasons for its decision.

9.6 During the pendency of a challenge under this attachment, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.

9.7 The final determination of the CCRTA may be appealed to the Department of Transportation by the adversely affected party under the procedures of 49 CFR 26.

10. APPEALS.

10.1 Any firm which believes that it has been wrongly denied certification as a DBE or joint venture by the CCRTA may file an appeal in writing, signed and dated, with the Department of Transportation. The appeal shall be filed no later than 180 days after the date of denial of certification. The Secretary of Transportation may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reasons for so doing. Third parties who have reason to believe that another firm has been wrongly denied or granted certification as a DBE or joint venture may advise the Secretary. This information is not considered an appeal pursuant to this Section.

10.2 The Secretary shall insure that a prompt investigation is made pursuant to prescribed DOT Title VI investigation procedures. The Secretary may at his/her discretion deny the DBE or joint venture in question eligibility to participate as a DBE in DOT-assisted contracts let during the pendency of the investigation after providing the DBE or joint venture in question an opportunity to show cause by written statement to the Secretary why this temporary denial by the Secretary should not occur. All parties shall cooperate fully with the investigation. Failure or refusal to furnish requested information or other failure to cooperate is a violation of this procedure.

10.3 The Secretary shall make one of the following determinations and inform the DBE or joint venture in writing of the reasons for the determination:

10.3.1 The DBE or joint venture is certified, or

10.3.2 The DBE or joint venture is not eligible and is denied eligibility to participate as a DBE in any contract until a new application for certification is approved by the CCRTA.

11. SUBSTITUTION OF DBE SUBCONTRACTORS OR SUPPLIERS.

Should substitution of any DBE listed on the DBE Participation Form become necessary, Contractor shall make good faith efforts, in cooperation with the CCRTA's staff, to replace the affected DBE with another DBE.

12. CHANGE ORDERS.

Contractor shall make good faith efforts to meet the DBE percentage goal set out herein in the performance of work under any change orders that may be issued under this Contract.

13. DBE RECORDS.

Contractor shall maintain sufficient records to verify DBE participation. Such records shall show the name and business address of each DBE participating in the Contract and the total dollar amount actually paid each DBE and the date of payment. A quarterly report based on these records and certified to be correct by Contractor shall be submitted with the appropriate monthly invoice required under the Contract. CCRTA reserves the right to withhold any invoice for payment unless the current report has been furnished.

14. NONCOMPLIANCE.

Failure to comply with the requirements of these provisions shall be grounds for termination of the Contract in whole or in part, for withholding payments due Contractor during the period of noncompliance, or for assessing liquidated damages as provided herein.

15. LIQUIDATED DAMAGES.

In the event Contractor fails to achieve the DBE participation goals set forth herein, the CCRTA may assess, as liquidated damages and not as a penalty, an amount equal to the difference in the final DBE percentage goal multiplied by the total Contract price from the actual dollar amount of documented DBE participation in the Contract. The above liquidated damages may be assessed since the calculation of actual damages to the CCRTA would be difficult to determine due to the potential loss of all or part of any federal funding available to the CCRTA and the costs and expenses incurred in administering the CCRTA's DBE program.

16. INCORPORATION INTO CONTRACT.

The terms and conditions of these Special Provisions are incorporated into the Contract as part of the Contract Documents and upon acceptance of the Contractor's bid shall be fully binding upon the Contractor.

APPENDIX A

PRICE SCHEDULE

RFP No.: 2016-FP-09

PROPOSER: _____

CSJ 0916-35-199; STP 1602(476)TP

CSJ 0916-35-202; STP 1602(478)TP

INSTRUCTIONS:

- (1) Refer to "Special Instructions" before completing Price Schedule and quote your best price.
- (2) **Submit in a separately sealed envelope one (1) signed original of this Price Schedule** to the CCRTA, Attn: Contracts Department at 602 North Staples Street, Corpus Christi, Texas 78401. On the outside of your sealed proposal include your Firm's name and address in the top left corner and the information as noted in "Instructions to Proposers", Section 5.

| Quantity | Bicycle Facility | Weather Resistant Add-on | Unit Price (without Add-on) | Unit Price Total (without Add-on) | Unit Price (with Add-on) | Unit Price Total (with Add-on) |
|----------|--|--|-----------------------------|-----------------------------------|--------------------------|--------------------------------|
| 150 | Surface mount outdoor air pump, galvanized | Custom color thermoplastic or exterior coating (e.g. rubber) | | | | |
| 65 | Surface mount outdoor tool station (assorted tools + air pump), galvanized | Custom color thermoplastic or exterior coating (e.g. rubber) | | | | |
| 1,000 | Small (2 bikes) surface mount outdoor rack (such as arc, hitch, U, hoop, etc.), powder coat (custom color) or galvanized | Custom color thermoplastic or exterior coating (e.g. rubber) | | | | |
| 50 | Medium (3-5 bikes) surface mount outdoor rack (such as helix, rolling rack, etc.), galvanized | Custom color thermoplastic or exterior coating (e.g. rubber) | | | | |
| 25 | Large (6-8 bikes) surface mount outdoor rack, galvanized | Custom color thermoplastic or exterior coating (e.g. rubber) | | | | |
| 15 | Surface mount covered individual bike storage (e.g. locker), composite material or galvanized | | | | | |

| Quantity | Bicycle Facility | Weather Resistant Add-on | Unit Price (without Add-on) | Unit Price Total (without Add-on) | Unit Price (with Add-on) | Unit Price Total (with Add-on) |
|--------------------|------------------|--------------------------|-----------------------------|-----------------------------------|--------------------------|--------------------------------|
| Total Price | | | | | | |

CERTIFICATION FORMS

Please fill out and sign the following forms and return with your signed proposal.

APPENDIX B

CERTIFICATION FORM

In submitting this proposal, the undersigned certifies on behalf of its firm and any proposed subcontractors as follows:

- (1) **Proposal Validity Certification:** If this offer is accepted within one hundred twenty (120) calendar days from the due date, to furnish any or all services upon which prices are offered at the designated point within the time specified;
- (2) **Non-Collusion Certification:** Has made this proposal independently, without consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to this Request for Proposals with any other FIRM or with any other competitor,
- (3) **Affirmative Action/DBE Certification:** Is in compliance with the Common Grant Rules affirmative action and Department of Transportation's Disadvantaged Business Enterprise requirements.
 - **Non-Conflict Certification:** Represents and warrants that no employee, official, or member of the Corpus Christi Regional Transportation Authority's Board of Directors is or will be pecuniarily benefited directly or indirectly in this Contract,
 - **Non-Inducement Certification:** The undersigned hereby certifies that neither it nor any of its employees, representatives, or agents have offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any director, officer, or employee of the Corpus Christi Regional Transportation Authority with the view toward securing favorable treatment in the awarding, amending, or the making of any determination with respect to the performance of this Contract.
 - **Non-Debarment Certification:** Certifies that it is not included on the U. S. Comptroller General's Consolidated List of Persons or Firms currently debarred for violations of various contracts incorporating labor standards provisions, and from Federal programs under DOT regulations 2CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4
 - **Integrity and Ethics:** Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A)
 - **Public Policy:** Is in compliance with the public policies of the Federal Government, as required by 49 U.S.C. Section 5325(j)(2)(B)
 - **Administrative and Technical Capacity:** Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D)
 - **Licensing and Taxes:** Is in compliance with applicable licensing and tax laws and regulations
 - **Financial Resources:** Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U. S. C. Section 5325 (j)(2)(D)
 - **Production Capability:** Has, or can obtain, the necessary production, construction, and technical equipment and facilities.
 - **Timeliness:** Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
 - **Performance Record:** Is able to provide a satisfactory current and past performance record.

Signature

Printed Name

Title

Date

APPENDIX C

CERTIFICATION AND STATEMENT OF QUALIFICATIONS

The undersigned PROPOSER hereby further certifies that she/he has read all of the documents and agrees to abide by the terms, certifications, and conditions thereof.

Signature: _____

Printed Name: _____

Title: _____ Date: _____

Firm Name: _____

Business Address: _____

Telephone: Office: _____ Fax: _____

Email Address: _____

Firm Owner: _____ Firm CEO: _____

Taxpayer Identification Number: _____

Number of years in contracting business under present name: _____

Type of work performed by your company: _____

Have you ever failed to complete any work awarded to you? _____

Have you ever defaulted on a Contract? _____

Taxpayer ID#: _____ Date Organized: _____

Date Incorporated: _____

Is your firm considered a disadvantaged business enterprise (DBE)? _____

If you answered yes to the DBE question, explain type. _____

ADDENDA ACKNOWLEDGMENT

Receipt of the following addenda is acknowledged (list addenda number):

DUNS # _____ (Required) A DUNS number may be obtained from D & B by telephone (currently at 866-705-5711) or the internet (currently at <http://fedgov.dnb.com/webform>).

APPENDIX D

DISCLOSURE OF INTERESTS CERTIFICATION

FIRM NAME: _____

STREET: _____ CITY: _____ ZIP: _____

FIRM is: 1. Corporation 2. Partnership 3. Sole Owner
 4. Association 5. Other _____

DISCLOSURE QUESTIONS

If additional space is necessary, please use the reverse side of this page or attach separate sheets.

1. State the names of each “employee” of the Regional Transportation Authority having an “ownership interest” constituting 3% or more of the ownership in the above named “firm”.

| NAME | JOB TITLE AND DEPARTMENT (IF KNOWN) |
|-------|-------------------------------------|
| _____ | _____ |
| _____ | _____ |

2. State the names of each “official” of the Regional Transportation Authority having an “ownership interest” constituting 3% or more of the ownership in the above named “firm”.

| NAME | TITLE |
|-------|-------|
| _____ | _____ |
| _____ | _____ |

3. State the names of each “board member” of the Regional Transportation Authority having an “ownership interest” constituting 3% or more of the ownership in the above named “firm”.

| NAME | BOARD, COMMISSION OR COMMITTEE |
|-------|--------------------------------|
| _____ | _____ |
| _____ | _____ |

4. State the names of each employee or officer of a “consultant” for the Regional Transportation Authority who worked on any matter related to the subject of this contract and has an “ownership interest” constituting 3% or more of the ownership in the above named “firm”

| NAME | CONSULTANT |
|------|------------|
|------|------------|

CERTIFICATE

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the Regional Transportation Authority, Texas as changes occur.

Certifying Person: _____

Title: _____
(Type or Print)

Signature of Certifying Person: _____

Date: _____

APPENDIX E

Buy America Certificate

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 C.F.R. 661

The proposer or offeror hereby certifies that it will meet the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982 and the regulations of 49 C.F.R. 661.

Date _____

Signature _____

Printed Name: _____

Title _____

Company Name _____

or

Certificate of Non-Compliance with 49 C.F.R. 661

The proposer or offeror hereby certifies that it cannot comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982 and the regulations of 49 C.F.R. 661.7.

Date _____

Signature _____

Printed Name: _____

Title _____

Company Name _____

APPENDIX F

**CERTIFICATION
OF
RESTRICTIONS ON LOBBYING**
(Required for contracts over \$100,000)

I, _____, _____, hereby certify on behalf of
(Name) (Title)

the _____, that:
(Company Name)

- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, regarding the award of Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement, contract, grant, loan, or cooperative agreement.
- If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for Federal assistance, federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL: "Disclosure of Form to Report Lobbying," including information required by the instructions accompanying the form, which form may be amended to omit such information as authorized by 49 CFR Part 20.110.
- The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

The undersigned understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 49 CFR Part 20.110. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 2015.

Signed: _____

Printed Name: _____

Company Name: _____

APPENDIX G



CORPUS CHRISTI REGIONAL
TRANSPORTATION AUTHORITY

CORPUS CHRISTI REGIONAL TRANSPORTATION AUTHORITY BOARD APPROVED

ACCESSIBILITY POLICY

POLICY STATEMENT

To provide full participation and equality of opportunity for people with disabilities, people who are aging and other people with access and functional needs, the Corpus Christi Regional Transportation Authority (CCRTA) Board of Directors calls for all CCRTA departments, within their regular duties and responsibilities, to establish a commitment to access.

APPLICABILITY

This policy statement is broad, cross-cutting and designed for application to all actions of the CCRTA, including but not limited to the following:

1. Policy Development
2. Customer Service
3. Service Provision and Operation (Directly Provided or Contracted)
4. Employment
5. Physical Environment
6. Communications/Media/Website
7. Public Involvement
8. External Meetings and Agency Sponsored Events
9. Fleet Characteristics
10. Maintenance
11. Safety/Security/Emergency Operations
12. Procurements
13. Staff Development and Training
14. Construction and Engineering
15. Route and Service Planning

IMPLEMENTATION

Effective implementation of the Accessibility Policy statement begins with the establishment of a Universal Access Team. Each CCRTA department will designate sufficient and appropriate team members to serve and meet monthly to ensure compliance with the policy. This team will help develop guiding principles in conjunction with the CCRTA Regional Committee on Accessible Transportation

(RCAT). Meeting of the Universal Access Team will be coordinated through the designated CCRTA ADA Coordinator and report current activities and initiatives to the Chief Executive Officer (CEO).

Support of all CCRTA staff will include initial and ongoing training and professional development regarding integration and elimination of barriers for people with disabilities, people who are aging and other people with access and functional needs.

Additional tools available to all CCRTA staff will include the use of an Impact Statement (approved by the CEO) to ensure an effective outcome. The Impact Statement will provide for the review of programs, projects, and developing or ongoing CCRTA services that answer, at a minimum, the following questions:

1. Are any barriers being created for people with disabilities, people who are aging and other people with access and functional needs?
2. Is CCRTA enhancing access and integration for people with disabilities, people who are aging and other people with access and functional needs?
3. Does the program, project, or service result in the most integrated setting appropriate for people with disabilities, people who are aging and other people with access and functional needs?
4. Has CCRTA taken steps to reduce or eliminate any negative impacts?

POLICY REVIEW

Review of this policy will be done no less than annually or more frequently as needed. To complement the review, CCRTA staff through the Universal Access Team will establish procedures and conduct the following:

3. Establish Review Baseline
4. Conduct Internal Review of Regulatory Compliance to include an ongoing ADA Performance Monitoring Program for all modes of transportation
5. Self-Evaluation Review and Update
6. ADA Transition Plan Review and Update
7. Establish Best Practices and Lessons Learned Components

Adopted July 6, 2011

Signed by: _____ Company: _____

Position: _____

Date: _____

APPENDIX H

REFERENCES: The Proposer must supply a list of three (3) similar projects which he/she has completed within the last five (5) years that satisfactorily met the client's specifications, and list three (3) that did not satisfactorily meet the client's specifications.

1. Company: _____
Owner: _____ Contact: _____
Address: _____
Telephone No.: _____
Project: _____
Date Completed: _____ Cost: _____

2. Company: _____
Owner: _____ Contact: _____
Address: _____
Telephone No.: _____
Project: _____
Date Completed: _____ Cost: _____

3. Company: _____
Owner: _____ Contact: _____
Address: _____
Telephone No.: _____
Project: _____
Date Completed: _____ Cost: _____

4. Company: _____
Owner: _____ Contact: _____
Address: _____
Telephone No.: _____
Project: _____
Date Completed: _____ Cost: _____

5. Company: _____
Owner: _____ Contact: _____
Address: _____
Telephone No.: _____
Project: _____
Date Completed: _____ Cost: _____

6. Company: _____
Owner: _____ Contact: _____
Address: _____
Telephone No.: _____
Project: _____
Date Completed: _____ Cost: _____

CONTRACTS ON HAND: The Proposer must provide a list of contracts that the firm is currently in process:

APPENDIX I

REQUEST FOR INFORMATION/EXCEPTIONS

(Please submit this form for each Request for Information/exception/approved equal)

Page:

VENDOR:

PROJECT: RFP No. 2016-FP-09

PAGE: _____ PARAGRAPH: _____ SUBJECT: _____

Request:

Signature

FOR CCRTA USE

Approved: _____ Disapproved: _____ Clarification: _____

Response:

Chief Executive Officer/Designee