



REGIONAL TRANSPORTATION COMMISSION

Public Transportation • Streets and Highways • Planning

INVITATION FOR BID

#RTC10-5

FOR THE PURCHASE
AND DELIVERY OF

TELEPHONY HARDWARE AND SOFTWARE
NORTEL COMMUNICATION
SERVER 1000M CABINETS

Date Issued: February 2, 2010

Date Due: February 23, 2010

Regional Transportation Commission

1105 Terminal Way, Suite 300

Reno, NV 89502

Tel: 775-332-2174

Fax: 775-348-1066

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**LEGAL NOTICE
#RTC10-5**

**NOTICE OF INVITATION FOR BID (IFB)
REGIONAL TRANSPORTATION COMMISSION**

NOTICE IS HEREBY GIVEN that the Regional Transportation Commission of Washoe County, Nevada (RTC) is soliciting bids from qualified vendors to provide hardware and software for RTC's existing telephony system.

A copy of the Invitation For Bid, including the necessary submittal requirements, will be available from the RTC February 2, 2010 by contacting Brad T. McKeachnie Procurement/Compliance Analyst by phone at 775-332-2174, by fax at 775-348-1066, by email at bmckeachnie@rtcwashoe.com, or by mail at 1105 Terminal Way, Suite 300, Reno, NV 89502. Copies of the IFB will also be available at the RTC Finance Department Office at 1105 Terminal Way, Suite 300, Reno, Nevada 89502 and online from the RTCWashoe.com website.

IFB's will be accepted until 2:00 PM (PDT), Tuesday February 23, 2010, at the above address.

RTC reserves the right to reject any or all Bids, alternates or options, or any combination thereof, or accept the Bid that is deemed by the RTC to be in the best interest of the RTC. The RTC also reserves the right to waive any irregularities and/or informalities with the Bids as submitted and purchase all or part of equipment from the successful bid.

The RTC, 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 of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the Department of Transportation Issued Pursuant to Such Act, hereby notifies all proposers that it will affirmatively ensure that in regard to any contact or procurement entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this request and will not be discriminated against on the grounds of race, religion, color, sex, age, disability, or national origin in consideration for an award.

SOLICITATION SCHEDULE

IFB Released	February 2, 2010
Advertise Date	February 2, 2010
Bid Due Date	February 23, 2010
Protest Period	March 4, 2010
Award Contract	March 4, 2010

SCOPE

To provide the Regional Transportation Commission with the hardware and software equipment required to upgrade all existing Nortel 11c PBX equipment to the latest release available including warranty as set out in the Equipment Pricing Sheet. All equipment proposed must be **EXACT, EQUAL OR BETTER**. Freight is to be "F.O.B. Prepaid" and priced separately on the Equipment Pricing Sheet. Title for goods will transfer at point of destination, Reno, Nevada.

NOTICE TO BIDDERS

The Regional Transportation Commission of Washoe County (RTC) is seeking Bids for telephony hardware and software. The award of contract will be for the acquisition of Nortel hardware and software, or **EXACT, EQUAL OR BETTER**. If Bidders are proposing equal or better equipment, the Bidder must submit documentation to substantiate that the equipment is equal or better in all respects (see Equipment Pricing Sheet).

One (1) original and one (1) copy of the Bid must be received by RTC no later than February 23, 2010 at 2:00 PM (PDT), and should be addressed to:

Regional Transportation Commission – Finance
Brad T. McKeachnie, Procurement and Compliance Analyst
1105 Terminal Way, Suite 300
Reno, NV 89502

Bids submitted late will not be accepted and will be returned to the Bidder. No reimbursement will be made by the RTC for any costs incurred for preparation of Bids or required documentation. Bids are to be submitted in a sealed opaque envelope, The Bidders name clearly labeled, with all signed addenda, pricing sheets, exhibits and items per the check list, to be considered.

NOTE: In responding to this Invitation to Bid (IFB), Bidders should address all of the

requirements listed in the Instructions to Bidders, in the format described.

Solicitation documents are available at:

Regional Transportation Commission – Finance
1105 Terminal Way, Suite 300
Reno, NV 89502

On February 23, 2010 at 2:00 PM (PDT) all bids received in terms with this IFB will be publically opened at:

Regional Transportation Commission – Finance
1105 Terminal Way, Suite 300
Reno, NV 89502

In connection with the execution of this contract, the Bidder shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, or national origin. The Bidder shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, disability, or national origin.

The Regional Transportation Commission, 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 of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the Department of Transportation Issued Pursuant to Such Act, hereby notifies all bidders that it will affirmatively ensure that in regard to any contract or procurement entered into pursuant to this advertisement, disadvantaged business enterprises (DBE's) will be afforded full opportunity to submit bids and Bids in response to this invitation and will not be discriminated against on the grounds of race, religion, color, sex, age, disability, or national origin in consideration for an award.

The RTC reserves the right to reject any and all Bids or accept the Bid that is deemed by the RTC to be in the best interest of the RTC. The RTC also reserves the right to waive any irregularities and/or information in the submitted Bid Forms. The RTC will also have the right to accept any and/or all parts quoted.

INSTRUCTIONS TO BIDDERS

1. **BIDS:** To receive consideration, Bids should be made in accordance with the following instructions:
 - A. Bids shall be made on the Equipment Pricing Sheet provided hereto. All items shall be filled out; numbers shall be stated both in writing and in figures (Equipment Pricing Sheet requires figures only) and signatures of all individuals must be in longhand. The completed form shall be without interlineations, alterations or erasures. Each bid must be submitted in a

sealed opaque envelope bearing on the outside the name of the bidder, his address, and the name of the project for which bid is submitted. If forwarded by mail, the opaque sealed envelope containing the bid must be enclosed in another envelope addressed as specified herein.

- B. The Regional Transportation Commission confirms that there is no state or local taxes applicable to this contract. The RTC tax exempt certificate number is 88-91-0617K.
- C. A Bidder who fails or refuses to complete and return the applicable enclosures shall be deemed non-responsive and will not be awarded the contract. Please refer to the Bid Submittal Check List.
- D. Should a Bidder find discrepancies in, or omission from the documents, or should the Bidder be in doubt as to their meaning, the Bidder shall at once notify the RTC.
- E. No increase in cost or extension in performance time will be considered for failure to know the conditions to be encountered as to the character, quality, and quantity of work to be performed, and the materials to be furnished, and as to the requirement of the Specifications.
- F. Any addenda issued during the time of Bid, shall become part of the Bid. Signed copies of all addenda and/or bulletins issued to prospective bidders shall be enclosed with the Bid. Failure to enclose said addenda and/or bulletins may be considered grounds for rejection of the Bid.
- G. Only written Bids will be accepted. No oral, telephonic, fax or electronic Bids or modifications to Bids will be considered. The contractor shall assume all responsibility for the accuracy of any Bids and modifications.
- H. Bids may be withdrawn by the Bidder prior to the time fixed for submittal of Bids. No Bids may be withdrawn within a period of thirty (30) calendar days after Bid due date and then only in case the award of contract has not been made. The RTC reserves the right to hold the Bids for thirty (30) calendar days before awarding the contract.
- I. RTC reserves the right to reject any or all Bids or any portion or combination thereof, or accept the Bid deemed by the RTC to be in the best interest of the RTC. The RTC also reserves the right to waive any irregularities and/or informalities with the Bid submittals. **The RTC will also have the right to accept any and/or all parts quoted.**
- J. No Contract shall be considered effective until it has been executed by all parties thereto.

- K. The work to be performed under this Contract shall be commenced after all executed Bid documents have been submitted, and the bid awarded.
- L. Contract for work under this Bid will obligate the Bidder not to discriminate in employment practices pursuant to Federal and State laws.
- M. All product information, explanations, comments, calculations, or descriptions must be in sufficient detail; to allow the RTC to understand the nature of the topic without excessive use of “jargon” or industry-specific terms.
- N. All communications with the RTC regarding this procurement shall be marked IFB# RTC10-5. Communications shall be in writing and may be delivered personally, via mail, telex, telegram, or facsimile. Telephone calls may be used to expedite communications but shall not be considered official communications unless confirmed in writing. All communications with the Procuring Agency must be addressed to:

Regional Transportation Commission
Brad T. McKeachnie
1105 Terminal Way, Suite 300
Reno, NV 89502

Communications shall be considered received at the time actually received by the addressee or designated agent.

BID SUBMITTAL CHECK LIST

The following forms shall be submitted with each Bid. Failure to do so may result in the Bid being rejected as non-responsive.

- _____ Bid
- _____ Equipment Pricing Sheet
- _____ Exhibit A – Affidavit of Non-Collusion
- _____ Exhibit B – Debarment Certification
- _____ Addenda Acknowledgement (if any)

BID FORM

_____ (Company Name) of _____ (Address), agrees to furnish and deliver all materials necessary to complete the Nortel Telephony Hardware and Software Project in accordance with the Instructions to Bidders, Bid, Equipment Pricing Sheet, and Attachments, including any amendments or addenda to all these aforementioned documents, all of which are hereinafter referred to as the "Solicitation Documents".

To the Regional Transportation Commission, Washoe County, Nevada, (RTC):

The undersigned, as Bidder, declares that this Bid is made without collusion with any other person, firm, or corporation, that the Bidder has carefully examined the Solicitation Documents referred to and made a part hereof, and the Bidder proposes and agrees, if this Bid is accepted, that the Bidder will contract with the Regional Transportation Commission to furnish all the materials and equipment specified in the Solicitation Documents in the manner and time prescribed and according to the requirements herein set forth, and that the Bidder will accept in full payment therefore per the prices quoted in the Equipment Pricing Sheet.

This Bid is for a firm, fixed-price contract.

In submitting a bid, the Bidder affirms that the Bidder is sufficiently informed in all matters affecting the Contract scope, and that the Bidder has checked the bid for errors and omissions, and that the prices stated in the Bid are correct and as intended by the Bidder, and is a complete and correct statement of the Bid, as required by the Contract documents and specifications.

By execution below, the Bidder hereby offers to acceptably complete the bid as indicated herein. Upon acceptance by the Procuring Agency, the contract is complete with all provisions stated in the solicitation documents and all attachments herein.

BIDDER: _____
(Company Name)

(Street Address)

(City, State, Zip Code)

(Authorized Representative)

(Signature Of Authorized Signer) (Date)

(Telephone Number) (Fax Number)

State of _____

County of _____

This instrument was acknowledged before me on _____, 2010

by _____ as _____ of _____

_____ .

Notary Public

Equipment Pricing Sheet

<u>Qty</u>	<u>Part</u>	<u>Description</u>	<u>Bid Price*</u>	<u>Extended Price</u>	<u>Equal or Better**</u>
1	CoResDELL-R3030V.7	Contact Center Co-Res Dell Server Standard Rack-Mount			
1	NTDW41AAE6	Dell R300 COTS Server for Enterprise			
1	NTHU65AC	CS 1000 Applications on COTS Server - R6			
1	N0134948	Full Application Site Move Summary Sheet			
1	N0134948	Full Application Site Move Summary Sheet			
1	NT9S34AA	CC License File on Media			
1	NT9S55AA	SCCS 4.0 Base Upg.to CCM 7.0			
30	NT9S55GA	SCCS 4.0 to CCM 7 Voice Agent Upgrade Increment 1-49			
1	NT9S80AC	Contact Center License Information Sheet			
1	NT9S89PA	Contact Center R7 Nodal Indicator			
1	NTAG81AAE6	Audio Cable (RoHS)			
1	NTAG81BAE6	CABLE 9PIN D-SUB MALE TO 9PIN			
1	NTAG81CAE6	Media Card Maint. Cable (3m)			
1	NTAG81DAE6	VLAN Maintenance Cable (RoHS)			
1	NTAK20ADE5	Stratum 3 Clock Contr.PCP Assy			
1	NTAK20ADE5	Stratum 3 Clock Contr.PCP Assy			
1	NTBK80BA	Ground Bar Assy Opt11			
1	NTDU0606E6	Cable Ethernet RJ45 M-M 25cm			
1	NTDU0606E6	Cable Ethernet RJ45 M-M 25cm			
1	NTDU0606E6	Cable Ethernet RJ45 M-M 25cm			
1	NTDU22JB	Media Gateway 1000E Cabinet (AC)			
1	NTDU22JB	Media Gateway 1000E Cabinet (AC)			
1	NTDU41GA	Media Card 32S (MC 32S)			
3	NTDW63BAE5	Kit Plastics Upgrade M1 Option 11C Cabinet			
2	NTDW63BAE5	Kit Plastics Upgrade M1 Option 11C Cabinet			
1	NTDW63BAE5	Kit Plastics Upgrade M1 Option 11C Cabinet			
1	NTE960UA	System Upgrade to Communication Server 1000E CPPM Standard Availability			
1	NTE960UA	System Upgrade to Communication Server 1000E CPPM Standard Availability			

Equipment Pricing Sheet -continued

1	NTM496GA	SRG50 Rls3 to Rls5 SW Upgrade Kit for CS1000 (incl Auth code and BCM Upgrade kit and SRG50 Docs)			
1	NTE960UA	System Upgrade to CS 1000E CPPM CS/SS Co-Res			
1	NTE960UA	System Upgrade to CS 1000E CPPM CS/SS Co-Res			
48	NTE980JA	SIP Access Port License			
24	NTE980JA	Convert 1 ITG Trunk ISM to 1 H323 Access Port			
24	NTE980JA	Convert 1 ITG Trunk ISM to 1 H323 Access Port			
4	NTE980RA	RAN CON Licence			
1	NTM440EA	Compact Flash S/W Inst Kit Single Proc (CPPM) R6 with 512 MB Compact Flash, 128 MB CF backup, 1 GB CF, Doc DVD, dongle			
1	NTM440EA	Compact Flash S/W Inst Kit CS/SS Co-Res (CPPM) R6 with 2 GB Compact Flash, 128 MB CF backup, 1 CPPM SigServ Hard Drive Kit, 1 GB DRAM Memory, Doc DVD, dongle kit			
1	NTM440EA	Compact Flash S/W Inst Kit CS/SS Co-Res (CPPM) R6 with 2 GB Compact Flash, 128 MB CF backup, 1 CPPM SigServ Hard Drive Kit, 1 GB DRAM Memory, Doc DVD, dongle kit			
1	NTRX26NPE6	DB9F TO DB9F SERIAL CABLE NULL MODEM			
1	NTTK14ABE6	PWR Cord 9.9ft 11CM 125VA			
1	NTTK14ABE6	PWR Cord 9.9ft 11CM 125VA			
1	NTTL43AD	SRS Upgrade Upgd TM 4.0			
1	NTWB17AB	System Upgrade Kit to CS 1000E CPPM - SA			
1	NTWB17AB	System Upgrade Kit to CS 1000E CPPM - SA			
1	NTWB17AB	System Upgrade Kit to CS 1000E CPPM - SA			
2	NTWB22AB	Conversion to MG 1000E			
1	NTWB22AB	Conversion to MG 1000E			
2	NTZE07EA	Callpilot 2 Voice Channel Package			
1	NTZE32KA	CallPilot 3.0/4.0 to 5.0 IPE Upgrade Package			
1	NTZE4002	CP Upgrade Code (NO Charge)			
1	NTZE4002	CallPilot Upgrade Order Specifier Code (No Charge)			
350	NTZE56FA	CallPilot R3.0 to R5.0 Software Upgrade Fee			
1	NTZE58AA	CallPilot 5.0 IPE 201i Disk Drive Upgrade Kit			

Equipment Pricing Sheet -continued

200	SVOM0068	SRS - SW Upg L/L to R6.0			
128	SVOM0068	SRS - SW Upg L/L to R6.0			
128	SVOM0068	SRS - SW Upg L/L to R6.0			
200	NTE957LL	SW Upgrade Existing to R6 (up to 1199 users per system)			
128	NTE957LL	SW Upgrade Existing to R6 (up to 1199 users per system)			
128	NTE957LL	SW Upgrade Existing to R6 (up to 1199 users per system)			
200	GU4300882	CS1000 Partner Assurance Software Support - Plus-SL882 - (Villanova)			
128	GU4300882	CS1000 Partner Assurance Software Support - Plus-SL882 - (Terminal)			
128	GU4300882	CS1000 Partner Assurance Software Support - Plus-SL882 (Sutro)			
350	GU4300883	CallPilot Partner Assurance Software Support - Plus - SL883			
30	GU4300AK1	Contact Center Manager - 1-499 Standard Voice Agents Partner Assurance Software Support PLUS Upgrades - SLAK1			
1	GU4300AJ1	Contact Center Manager - Nodal Base System PASS Plus upgrades - SLAJ1			

Total Freight Charges

Total Bid Price

* Please enter "No Bid" or "Equal or Better" if not pricing Exact item.

** Enter "Equal or Better" part number in column provided and submit documentation to substantiate that the proposed equipment is Equal or Better in all respects (referencing part #) on separate sheet.

*** An editable Excel Spreadsheet will also be provided that will allow you to type in the pricing information.

EXHIBITS

EXHIBIT A

AFFIDAVIT OF NON-COLLUSION

EXHIBIT A
AFFIDAVIT OF NON-COLLUSION

I hereby swear (or affirm) under the penalty for perjury:

1. That I am the Bidder (if the Bidder is an individual, a partner in the Bid (of the Bidder is a partnership) or an officer or employee of the bidding corporation having authority to sign on its behalf (if the Bidder is a corporation);
2. That the attached Bid or Bids has been arrived at by the Bidder independently and have submitted without collusion and without any agreement, understanding or planned common course of action with any other vendor of materials, supplies, equipment or service described in the invitation to bid, designed to limit independent Bids or competition;
3. That the contents of the Bid or Bids has not been communicated by the Bidder or its employees or agents to any person not an employee or agent of the Bidder or its surety on any bond furnished with the Bid or Bids and will not be communicated to any such person prior to the official opening of the Bid or Bids; and
4. That I have fully informed myself regarding the accuracy of the statements made in the affidavit.

SIGNED _____

FIRM NAME _____

STATE OF _____)

) SS:

COUNTY OF _____)

This instrument was acknowledged before me on _____(Date)
by _____(Name(s) of persons)_____
as _____(Type of authority, e.g., Officer, trustee, etc.)_____
of _____(Name of party on behalf of whom instrument was
executed).

(Seal, if any)

(Signature of Notarial Officer)

(Title and rank (optional))

(My commission expires (optional):_____)

EXHIBIT B

DEBARMENT CERTIFICATION

EXHIBIT B

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION**

The Contractor/Primary Participant _____ certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not, within a three-year period preceding this Bid, been convicted of or had a civil judgment rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public function (federal, state or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not, within a three-year period preceding this Bid. had one or more public transactions (federal, state, or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this Bid.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

(Affiant) _____ (Date)

STATE OF _____

) SS:

COUNTY OF _____

This instrument was acknowledged before me on _____ (Date) _____
by _____ (Name(s) of persons) _____
as _____ (Type of authority, e.g., Officer, trustee, etc.) _____
of _____ (Name of party on behalf of whom instrument was executed).

(Seal, if any)

(Signature of Notarial Officer)

(Title and rank (optional))

My commission expires (optional): _____)

EXHIBIT C

GENERAL PROVISIONS

EXHIBIT C

GENERAL PROVISIONS

Nevada Law Applies

The provisions of this Agreement shall be governed and construed in accordance with the laws of the State of Nevada. The exclusive venue and court for all lawsuits concerning this Agreement shall be the Second Judicial District Court of the State of Nevada, County of Washoe, and the parties hereto submit to the jurisdiction of that District Court.

Exclusive Agreement

There are no verbal agreements, representations, or understandings affecting this Agreement, and all negotiations, representations and undertakings are set forth herein with the understanding that this Agreement constitutes the entire understanding by and between the parties.

Amendments

No alteration, amendment or modification of this Agreement shall be effective unless it is in writing and signed by both parties.

Attorneys' Fees

In the event any party files suit to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs of suit.

Regulatory Compliance

Bidder shall comply with all applicable federal, state and local government laws, regulations and ordinances.

Time is of the Essence

It is understood and agreed that all times stated and referred to herein are of the essence. The times stated and referred to may be extended by the RTC Executive Director for such additional periods as the RTC Executive Director may approve. No extension of time shall be valid unless reduced to writing and signed by the Executive Director.

Non-Transferability

This Agreement is for Bidder's equipment, and BIDDER'S rights and obligations hereunder may not be assigned without the prior written consent of RTC.

Unavoidable Delays

If the acceptable completion of this contract should be unavoidably delayed, RTC shall extend the time for completion of the contract for not less than the number of days Bidder was unavoidably delayed. A delay is unavoidable only if the delay is not reasonably expected to occur in connection with or during Bidder's performance, is not caused directly or indirectly by the acts, omissions, negligence, or mistakes of Bidder is substantial and in fact causes Bidder to miss specified completion dates, and cannot adequately be guarded against by contractual or legal means.

Notification of Delay

Bidder shall notify RTC as soon as Bidder has, or should have, knowledge that an event has occurred which will delay contract completion. Within five (5) calendar days, Bidder shall confirm such notice to RTC in writing, furnishing as much detail as is available.

Request for Extension

Any request for an extension of time to complete the contract shall be made in writing to RTC's representative(s) identified in the Solicitation documents. Bidder shall supply to RTC, upon request, documentation to substantiate the justification for additional time needed for Project completion. RTC shall provide Bidder with notice of its decision within five (5) days.

Compliance with Laws/Permits and Licenses

Bidder shall comply with all applicable federal, state, county and local laws, ordinances, rules, regulations, standards and orders of public authority. If the contract documents are at variance with the above, appropriate modification shall be made by the RTC. Omission of any applicable laws, ordinances, rules, regulations, standards or orders by RTC in the contract documents shall be construed as an oversight and shall not relieve the Bidder from his or her obligations to meet such fully and completely. Upon request, the Bidder shall furnish to RTC, certificates of compliance with all such laws, orders and regulations. The Bidder shall be responsible for obtaining all necessary permits and licenses required for performance under the contract.

Applicable provisions of all federal, state, county, and local laws, and of all ordinances, rules, and regulations shall govern any and all claims and disputes which may arise between persons(s) submitting a Bid response hereto and the RTC by and through its officers, employees, and authorized representatives, and lack of knowledge by any Bidder shall not be a defense.

Insurance:

Not applicable

Hold Harmless

Bidder shall defend, indemnify, and hold RTC, its officials, employees and agents harmless from any and all claims, demands, or actions for personal injury or property damage to the extent they arise from Bidder's act or omissions, or negligent performance of work under this Agreement. Should RTC be joined or named as a party in any claim, suit, action, or other legal proceedings arising out of the services performed by Bidder under this Agreement, Bidder shall defend and hold RTC, its officials and employees harmless from same, and shall pay all costs and expenses, including attorneys' fees and defense costs, incurred in connection therewith. This paragraph shall not apply to a situation where liability arises solely from the negligent or intentional acts, of any officer, employee of some other contractor or agent of RTC. agents.

NOTE: IF THIS CONTRACT IS FTA FUNDED, THE CONTRACTOR SHALL ALSO DEFEND THE FEDERAL GOVERNMENT.

Written Change Orders

Oral change orders are not permitted. No change in this Contract shall be made unless the Contracting Officer gives prior written approval therefore. The Bidder shall be liable for all costs resulting from, and/or for satisfactorily correcting, any specification change not properly ordered by written modification to the Contract and signed by the Contracting Officer.

Changes

Fixed price

- (A) The Contracting Officer may at any time, by written change order, (oral change orders are not permitted) and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
- (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs or specifications.
 - (2) Method of shipment or packing.
 - (3) Place of delivery.
- (B) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
3. (C) The Bidder must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a Bid submitted before final payment of the contract.
4. (D) If the Bid includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.
5. (E) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Bidder from proceeding with the contract as changed.
6. (F) The Bidder shall be liable for all costs resulting from, and/or for satisfactorily correcting any specification change not properly ordered by written modification to the Contract and signed by the RTC.

Single Bid Response

If only one Bid is received in response to the IFB, a detailed cost/price proposal may be requested of the single proposer. A price analysis and evaluation and/or audit may be performed of the proposal in order to determine if the price is fair and reasonable.

Continuing Obligation

The Bidder agrees that if, because of death or any other occurrence it becomes impossible for any principal or employee of Bidder to render the services required under this Contract, neither the Bidder nor the surviving principals shall be relieved of any obligation to render complete performance. However, in such event, the RTC may terminate this Contract if it considers the death or incapacity of such principal or employee to be a loss of such magnitude as to affect the Bidders ability to satisfactorily complete the performance of the Contract.

Assumption of Risk or Loss

The RTC shall assume risk of loss upon signed receipt of delivery by RTC. Prior to delivery, the Bidder shall retain risk of loss.

EXHIBIT D

FEDERAL TRANSIT ADMINISTRATION

ASSISTED REQUIRED CLAUSES

EXHIBIT D

FEDERAL TRANSIT ADMINISTRATION ASSISTED REQUIRED CLAUSES

FOR CAPITAL AND PROFESSIONAL SERVICE PROCUREMENTS

It is a requirement of the Federal Government that activities financed, in part, with Federal funds and performed by a third party contractor and its subcontractors on behalf of a Federal grantee must be carried out in accordance with Federal requirements.

Activities performed resulting from the original contract to this and any other prior or subsequent contract amendments thereto are financed, in part, by a grant from the United States Department of Transportation (DOT), Federal Transit Administration (FTA), and are therefore subject to the applicable grant terms, conditions, and regulations.

Accordingly, any contractor and its subcontractors performing activities under this contract must adhere to the Federal regulations stated herein as a condition of satisfactory performance. All subcontracts and subcontractors employed as a result of this contract are subject to the same conditions and regulations as set forth herein unless specifically exempted.

The prime contractor shall ensure that its subcontractors at all tiers are made aware of and comply with these Federal regulations. The prime contractor will be held liable for compliance failures by its subcontractors.

Failure to comply will render the prime contractor responsible for damages and/or contract termination.

1. Buy America requirements - (applicable to bids \$100,000 or more)

The Buy America requirement provides that Federal funds may not be obligated for mass transportation projects unless steel, cement, and manufactured products, as defined by the Federal Transit Administration, used in such projects are produced in the United States. As a condition of responsiveness, the bidder must submit as part of its bid a completed "Buy America Certificate". The Recipient agrees to comply with 49 U.S.C. 5323(j), FTA's Buy America regulations at 49 C.F.R. Part 661, and any implementing guidance FTA may issue.

The submission of a false certification is a criminal act and in violation of 18 U.S. Code 1001. Therefore, any Contractor who submits a written response to this procurement solicitation must certify and submit either the compliance or the non-compliance "Buy America Certificate" attached.

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.

A bidder or offeror must submit to the RTC the appropriate Buy America certification (attached) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as

nonresponsive. This requirement does not apply to lower tier subcontractors.

2. Non-Collusion

The Proposer guarantees that the Proposal submitted is not a product of collusion with any other Proposer and that it has not been communicated by the Proposer to anyone not an employee or agent or surety of the Proposer. Proposers are required to furnish a Federal Non-collusion Affidavit (attached). Failure to submit the signed affidavit at the time of proposal opening shall be grounds for disqualification of the Proposal.

3. Incorporation of FTA Terms

General Contract Provisions, includes, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any RTC requests that would cause RTC to be in Violation of the FTA terms and conditions.

4. Fly America

The Recipient understands and agrees that the Federal Government will not participate in the costs on international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S.- flag air carriers to the extent service by U.S. - flag air carriers is available, consistent with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, and U.S. General Services Administration (U.S. GSA) regulations "Use of United States Flag Air Carriers", 41 CFR. 301-131 through 301.143.

5. Nondiscrimination Assurance

The Contractor, subrecipients or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the RTC deems appropriate as specified in the contract.

6. Prompt Payment Provision

The prime contractor must pay subcontractor for satisfactory performance of their contracts no later than 10 days from the receipt of payment made to the prime by the RTC. Prompt return of retainage payments from the prime contractor to the subcontractor will be made within 15 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment among the parties may take place only for good cause and with the RTC's prior written approval. If the prime contractor determines the work of the subcontractor to be unsatisfactory, it must notify the RTC's project manager and DBE Liaison Officer immediately in writing and state the reasons. Failure by the prime contractor to comply with this requirement will be construed to be a breach of contract and may be subject to sanctions as specified in the contract or any other options listed in 49 CFR Section 26.29.

7. Prohibitions against exclusionary or discriminatory specifications

Apart from inconsistent requirements imposed by Federal statute or regulations, the Recipient

agrees that it will comply with the requirements of 49 U.S.C. 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

8. Geographic restrictions

The Recipient agrees to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal statute, and as permitted by FTA, such as stated in Subsection 15.1 of the Master Agreement.

9. Nondiscrimination

During the performance of this contract, Contractor, for itself, its assignees, and successors in interest, agrees as follows:

(A) Compliance with Regulations Contractor shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT"), Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

(B) Nondiscrimination Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of age, race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. 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.

(C) Solicitations for Subcontracts, including Procurement of Materials and Equipment In all solicitations, whether by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of the Contractor obligations under this contract and the Regulations relative to nondiscrimination on the grounds of age, race, color, sex, or national origin.

(D) Information and Reports 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 RTC to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information is required, or such information is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to RTC, and shall set forth what efforts it has made to obtain the information.

(E) Sanctions for Noncompliance In the event of Contractor's noncompliance with the nondiscrimination provisions of this contract, RTC shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

1. Withholding of payments to Contractor under the contract until Contractor complies, and/or
2. Cancellation, termination, or suspension of the contract, in whole or in part.

10. Incorporation of Provisions

Contractor shall include the provisions of Paragraphs a) through e) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as RTC may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Contractor may request RTC to enter into such litigation to protect the interests of RTC.

Affirmative Action in Employment

Contractor shall comply with the provisions of Section 503 of the Rehabilitation Act of 1973.

(A) Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(B) Contractor agrees to comply with the rules, regulations, and relevant orders of the secretary of labor pursuant to the act.

(C) In the event of Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the secretary of labor pursuant to the act.

(D) Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the director, provided by or through the contracting officer. Such notices shall state Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally disabled individuals.

Contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance (41 CFR 60-741.4.4).

11. Third Party Rights

Notwithstanding anything herein to the contrary, the services provided under this Agreement

shall not give rise to, nor shall be deemed to or construed so as to confer any rights on any other party, as a third party beneficiary or otherwise.

12. Interest of members of Congress

No member of or delegate to the Congress of the United States may be admitted to any share or part of this agreement or to any benefit arising therefrom.

13. Interest of public officials

No member, officer, or employee of any public body, during his tenure, or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the benefits thereof.

14. Federal changes

Contractor shall at all time comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

15. Recovered materials

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

16. Civil rights

The following requirements apply to the underlying contract:

(A) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and Federal transit law at 49 U.S.C. 5532, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

(1) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e, and Federal transit laws at 49 U.S.C. 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, Equal Employment Opportunity", as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity", 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that

employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

17. Covenants Against Gratuities

The Contractor shall not offer or provide gifts, favors, entertainment, or any other gratuities of monetary value to any official, employee, or agent of the RTC during the period of this contract or for a period of one year thereafter.

18. Ineligible Contractors

In the event the Contractor is on the comptroller General's List of Ineligible Contractors for federally financed or assisted projects, this contract may be canceled, terminated, or suspended by the RTC.

19. Provisions for Resolution of Disputes or Breaches

The Recipient agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly: 1) The Recipient agrees to notify FTA of any current or prospective major dispute, breach, default, or litigation pertaining to the Project. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees in informing the FTA before doing so. 2) The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share committed to the Project, of any proceeds derived from any third party recovery, except that liquidated damages recovered may be returned to the Project Account in lieu of returning the Federal Share to the Federal Government. 3) The Recipient agrees to pursue all legal rights available under any third party contract. 4) FTA reserves the right to concur in any compromise or settlement of any claim involving Project and the Recipient. 5) FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.

20. Access Requirements for Persons with Disabilities ADA

The contractor agrees to comply with the requirements of 49 U.S.C. 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. 12101 et seq., which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

- (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. 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. DOT regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services", 28 C.F.R. Part 35;
- (5) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities", 28 C.F.R. Part 36;
- (6) U.S. GSA regulations, "Accommodations for Physically Handicapped", 41 C.F.R. subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission," Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R.Part 1630;
- (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) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (10) Any implementing requirements FTA may issue.

21. Notice of Federal Requirements

New Federal laws, regulations, policies, and administrative practices may be established after the date of this Contract, which may apply to this Contract. If Federal requirements change, the changed requirements will apply to the Contract or the performance of work under the Contract as required. All standards or limits set forth in this Contract to be observed in the performance of the work are minimum requirements.

22. Records Retention/Audit and Inspection of Records

- (A) The Contractor shall permit the authorized representatives of RTC, the U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit all data and records of the Contractor relating to its performance under the contract until the expiration of three years after final payment under this contract.
- (B) The Contractor further agrees to include in all subcontracts hereunder a provision to the effect that the subcontractor agrees that RTC, the U.S. Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any books, documents, papers, and records of the subcontractor directly pertinent to this contract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
- (C) The periods of access and examination described above, for records which relate to (1) appeals under the dispute clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract to which an exception has been taken by the U.S. Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of.

23. No Federal Government obligations to third parties by use of a disclaimer

The recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipients, any third party contractor, or any other person not a party to the Grant Agreement or Cooperative Agreement in connection with the performance of the Project. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement, or third party contract, the Federal Government continues to have no obligations or liabilities to any party, including the subrecipients and third party contractor.

24. Program fraud and false or fraudulent statements and related acts

The Recipient acknowledges and agrees as follows:

- (A) The Recipient acknowledges that the requirements 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 the Project. Accordingly, by signing the Grant Agreement or Cooperative Agreement, the Recipient certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the covered by the Grant Agreement or Cooperative Agreement. In addition to other penalties that may be applicable, the Recipient also acknowledges that if it makes 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, as amended, on the Recipient to the extent the Federal Government deems appropriate.

- (B) The Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the Recipient the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

25. Prohibitions

- (A) Section 1352 of title 31, United States Code, among other things. Prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or, the modification of any Federal contract, grant loan, or cooperative agreement.
- (B) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
- (C) The prohibitions of the Act do not apply under the following conditions:
- (1) Agency and legislative liaison by own employees. The prohibition on the use of appropriated funds, in subparagraph B.1 of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

26. Cargo Preference: Use of United States Flag Vessels, 46 CFR, PART 381

Proposer agrees to utilize privately-owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, and Proposer agrees to furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the loading of shipments originating outside the United States, a legible copy of a rate, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph above to RTC (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C., 20230, marked with appropriate identification of the project.

27. Equal Employment Opportunity

In connection with the execution of this Contract, the Proposer shall not discriminate against

any employee or applicant for employment because of race, religion, color, sex, age, disability, or national origin. The Proposer shall take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to race, religion, color, sex, disability, 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. The Proposer shall also insert a similar provision in all subcontracts except subcontracts for standard commercial supplies or raw materials.

28. Clean Water

- (A) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (B) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

29. Clean Air

- (A) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (B) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

30. Patent Rights

If any invention, improvement, or discovery of the RTC or any contractor or subcontractor is conceived or first actually reduced to practice in the course of or under this Contract or Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, and the RTC and the contractor or any subcontractor shall notify the FTA immediately and provide a detailed report. The rights and responsibilities of the RTC, the contractor or subcontractor of any tier, and the Government with respect to such invention, improvement, or discovery will be determined in accordance with applicable federal laws, regulations, policies, and any waiver thereof.

31. Rights in Data & Copyrights

The contractor selected as a result of this solicitation agrees that, as applicable, the use of any data produced or delivered under the terms of said contract, including, but not limited to engineering drawings and associated lists, specifications, process sheets, and technical reports, shall be governed by provisions of 49 C.F.R. 18.34. In addition, the contractor agrees that it will not publish such data without the written consent of the RTC, and, if appropriate, the Federal Government.

32. Environmental Requirements

The contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq. Consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality", 42 U.S.C. 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures", 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

33. Energy Conservation

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

34. Certification of Contractor Regarding Debarment, Suspension, Other Ineligibility and Voluntary Exclusion

Title 49 CFR Part 29 and Executive Order 12549 establish regulations pertaining to DOT and other federal contractors at any tier, and procedures applicable to their debarment, suspension, ineligibility or exclusion from participation in any DOT or other federal contracts.

Proposers are required to review the above regulations and to complete and submit a Certification Regarding Debarment, Suspension, Other Ineligibility and Voluntary Exclusion (Section 1.4.15), or furnish an explanation as to why the Certification cannot be provided.

The Proposer agrees by submitting this Bid that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower-tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by RTC.

The Proposer further agrees by submitting this Proposal that it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction", in all lower-tier covered transactions over \$25,000 and in all solicitations for lower tier contracts.

35. Restrictions on Lobbying

Section 1352 of Title 31, United States Code, provides in part that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person by influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement.

Each Proposer is required to review the above referenced Regulations and complete and submit a Certification of Compliance with Federal Lobbying Regulations (Section 1.4.16). Pursuant to federal regulations, the Proposer is required to have all subcontractors (at any tier) providing more than \$100,000 towards the contract also complete with this Certification, to be included with the Proposer's Bid.

36. Contract Termination for Default

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the RTC may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

37. Contract Termination for Convenience

The RTC may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the RTC's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to RTC to be paid the Contractor. If the Contractor has any property in its possession belonging to the RTC, the Contractor or will account for the same, and dispose of it in the manner the RTC directs.

38. Breaches and Dispute Resolution

Disputes

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of RTC's Contracting Officer.

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

Performance During Dispute

Unless otherwise directed by RTC, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Remedies

Unless this contract provides otherwise, all claims, counterclaims, Disputes and other matters in question between the RTC and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the RTC is located.

Rights and Remedies

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

39. Labor Provisions: Contract Work Hours and Safety Standards Act, 40 U.S.C. Sections 327-33, 29 CFR 5.5.(b)

(A) 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 such work week unless such laborer or mechanic receives compensation no less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such work week.

(B) Violation; Liability for Unpaid Wages; Liquidated Damages:

In the event of any violation of the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5, the Bidder and any subcontractor responsible thereof shall be liable for the unpaid wages. In addition, such Bidder 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 such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5 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 the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5.

(C) Withholding for Unpaid Wages and Liquidated Damages: DOT, FTA, or RTC shall upon their 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 the Bidder or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b) (2) of 29 CFR Section 5.5.

(D) Subcontractors: The Proposer or subcontractor shall insert in any subcontracts the clauses set forth in above paragraphs under the heading of Labor Provisions and shall also require subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in the paragraphs of this section.

(E) The requirements of the clauses contained in 29 CFR Part 5.5. (b) or (a) through (d) above are applicable to any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR Part 5.1. The Bidder or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) 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 employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Bidder or the subcontractor for inspection, copying, or transcription by authorized representatives of DOT, the Department of Labor, FTA, or RTC. The Bidder or subcontractor will permit such representatives to interview employees during working hours on the job.

40. Disadvantaged Business Enterprise (DBE) Utilization

The Regional Transportation Commission 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 of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all bidders and proposers that it will affirmatively ensure that in regard to any contract or procurement entered into, Disadvantaged Business Enterprises will be afforded full opportunity to submit bids and proposals in response to our invitation and will not be discriminated against on the grounds of race, color, sex, age, disability, or national origin in consideration for an award.

EXHIBIT E

PROTEST PROCEDURES

EXHIBIT E – PROTEST PROCEDURES

1.1 General - Protests may be made by prospective bidders or proposers whose direct economic interest would be affected by award of a contract or by failure to award a contract. RTC will consider all protests requested in a timely manner regarding the award of a contract, whether submitted before or after an award. All protests are to be submitted in writing to : Regional Transportation Commission, P.O. Box 30002, Reno, Nevada 89520-3002. Protest submissions should be concise, logically arranged, and clearly state the grounds for protest. A protest must include at least the following information:

- (a) name, address, and telephone number of protestor,
- (b) identification of contract solicitation number,
- (c) a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents, and
- (d) a statement as to what relief is requested.

Protests must be submitted to RTC in accordance with these procedures and time requirements, must be complete and contain all issues that the protestor believes relevant.

1.2 Protests Before Bid Opening - Bid protests alleging restrictive specifications or improprieties which are apparent prior to bid opening or receipt of proposals must be submitted in writing to the Contracting Officer at the address above and must be received at least seven (7) days prior to bid opening or closing date for receipt of bids or proposals. If the written protest is not received by the time specified, bids or proposals may be received and award made in the normal manner unless the Contracting Officer determines that remedial action is required. Oral protests not followed up by a written protest will be disregarded. The Contracting Officer may request additional information from the appealing party and information or response from other bidders, which shall be submitted to the Contracting Officer not less than ten (10) days after the date of RTC's request. So far as practicable, appeals will be decided based on the written appeal, information and written response submitted by the appealing party and other bidders. In failure of any party to timely respond to a request for information, it may be deemed by RTC that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response, and in such a case, the protest will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent evaluation deemed appropriate by RTC, the Contracting Officer shall either (a) render a decision, or (b) at the sole election of the Contracting Officer, conduct an informal hearing at which the interested parties will be afforded opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following the informal hearing, if one is held, the Contracting Officer will render a decision, which shall be final, and notify all interested parties thereof in writing but no later than ten (10) days from the date of informal hearing.

1.3 Protests After Bid Opening/Prior to Award - Bid protests against the making of an award by the RTC must be submitted in writing to the Contracting Officer and received within seven

(7) days of the award by the RTC. Notice of the protest and the basis therefore will be given to all bidders or proposers. In addition, when a protest against the making of an award by the RTC is received and it is determined to withhold the award pending disposition of the protest, the bidders or proposers whose bids or proposals might become eligible for award shall be requested, before expiration of the time for acceptance, to extend or to withdraw the bid. Where a written protest against the making of an award is received in the time period specified, award will not be made prior to seven (7) days after resolution of the protest unless RTC determines that:

- (a) the items to be purchased are urgently required
- (b) delivery or performance will be unduly delayed by failure to make award promptly, or
- (c) failure to make award will otherwise cause undue harm to RTC or the federal government.

1.4 Protests After Award - In instances where the award has been made, the Contractor shall be furnished with the notice of protest and the basis therefore. If the contractor has not executed the contract as of the date the protest is received by RTC, the execution of the contract will not be made prior to seven (7) days after resolution of the protest unless RTC determines that :

- (a) the items to be purchased are urgently required
- (b) delivery or performance will be unduly delayed by failure to make award promptly, or
- (c) failure to make award will otherwise cause undue harm to RTC or the federal government.

Appeals and requests for reconsideration of the determination of the Contracting Officer of protests under sections 6.8.2 and 6.8.3 must be submitted to the Executive Director of RTC and received within seven (7) days after the date of written determination by the Contracting Officer. The Executive Director may request additional information of the appealing party and information or a response from other bidders, which shall likewise be submitted in writing to the Executive Director not later than ten (10) days from the date of RTC's request.

So far as practicable, appeals will be decided upon the basis of the written appeal, information, and written response submitted by the appealing party and other bidders. In failure of any party to timely respond to a request for information, it may be deemed by RTC that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to respond, and, in such event, the appeal will proceed and will not be delayed by lack of a response. Upon receipt and review of written submissions and any independent investigation deemed appropriate by RTC, the Executive Director shall either (a) render a decision, or (b) at the sole election of the Executive Director, conduct an informal hearing at which the interested participating parties will be afforded an opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following the informal hearing, the Executive Director shall render a decision, which will be final, and advise all interested parties thereof in writing, but not later than ten (10) days after the informal hearing.

1.5 Protests to Federal Transit Administration (FTA) - Under certain limited circumstances, an interested party may protest to the FTA the award of a contract pursuant to an FTA grant. FTA's review of any such protest will be limited to:

- (a) alleged failure by RTC to have written protest procedures or alleged failure to follow such procedures, or
- (b) alleged violations of specific federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that federal regulation.

Protestors shall file a protest with FTA not later than five (5) working days after a final decision of RTC's Executive Director is rendered under the RTC protest procedure. In instances where the protestor alleges that RTC failed to make a final determination on the protest, the protestor shall file a complaint with FTA no later than five (5) federal working days after the protestor knew or should have known of RTC's failure to render a final determination in the protest.

1.6 Submission of Protest to FTA - Protests submitted to FTA should be submitted to the FTA Region VIII Office in Denver, Colorado with a concurrent copy to RTC. The protest filed with FTA shall:

- (a) include the name and address of the protestor
- (b) identify the RTC project number and the number of the contract solicitation
- (c) contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow RTC's protest procedures, or the alleged failure to have procedures, and be fully supported to the extent possible
- (d) include a copy of the local protest filed with RTC and a copy of the RTC decision, if any.

EXHIBIT F

SAMPLE AWARD DOCUMENT

EXHIBIT F
SAMPLE AWARD DOCUMENT

By execution below, the Regional Transportation Commission as the Procuring Agency accepts the offer indicated in the Contractor's Bid.

Contracting Officer: _____
(Signature)

(Title)

Date of Award: _____

APPROVED AS TO LEGALITY AND FORM

A. STANYAN PECK, CHIEF LEGAL COUNSEL

State of _____

County of _____

This instrument was acknowledged before me on _____, 2010

by _____ as the Contracting Office for the Regional

Transportation Commission of Washoe County, Nevada.

Notary Public