

**SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY  
REQUEST FOR PROPOSALS FOR CONSTRUCTION MANAGEMENT SERVICES  
FOR THE ALAMEDA MAIN STREET FERRY TERMINAL REFURBISHMENT PROJECT**

**RFP #21-025**

**ISSUED: OCTOBER 20, 2021**

**PART A: INSTRUCTIONS**

**1. BACKGROUND**

WETA, a local agency with multi-county jurisdiction, was established by the California Legislature to expand regional ferry service and coordinate waterborne emergency response activities on San Francisco Bay. WETA’s vision is to develop, operate and manage an expanded and enhanced region-wide ferry system that provides a reliable, state-of-the-art and attractive transportation option for the Bay Area, and to play a critical role in coordinating and providing water transportation to serve emergency response and economic recovery needs.

WETA is seeking construction management services from qualified individuals or firms (Proposers) for construction of the Alameda Main Street ferry terminal refurbishment project. For detailed information regarding the required Services, please refer to Part B, Scope of Services. The individual or firm selected pursuant to this RFP (Selected Proposer) will be expected to provide any and all Services in compliance with applicable local, state and federal laws, rules and regulations.

On July 24, 2020, the Federal Transit Administration (FTA) announced a Ferry Grant Program award to WETA to support refurbishment of the Alameda Main Street ferry terminal to ensure that it remains in a state of good repair.

A contract awarded in connection with this RFP will be financed in part with federal funds. The federal requirements applicable to this RFP and any associated contract are included in Attachment D, Federal Requirements in Part D. The Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) participation requirements applicable to this RFP and any associated contract are included in Attachment E, DBE/SBE Requirements in Part D.

**2. SOLICITATION TIMELINE**

Listed below is the anticipated schedule that outlines pertinent dates of which Proposers should be aware—all dates are subject to revision at WETA's sole discretion:

Issuance of RFP	October 20, 2021
Pre-Proposal Conference	October 28, 2021 at 11:00 AM
Written requests for clarifications are due	November 4, 2021 by 5:00 pm, PST
Proposals due	December 1, 2021 by 5:00 pm, PST
Board Award	January 26, 2022 (Tentative)

### **3. PRE-PROPOSAL CONFERENCE**

WETA will conduct a Pre-Proposal Conference. Attendance is not mandatory but is highly recommended. The Pre-Proposal Conference will take place on October 28, 2021 from 11:00 AM to 12:00 PM via a Zoom Conference Call. **A link for the Zoom conference call will be posted on the WETA Opportunities website prior to October 28, 2021.**

The purpose of the Pre-Proposal Conference will be to answer questions about the RFP, including questions concerning DBE participation. All statements and interpretations provided by WETA representatives at the Pre-Proposal Conference are non-binding unless contained in a subsequent written Addendum.

### **4. REQUESTS FOR CLARIFICATION OF RFP; ADDENDA**

All requests for clarification regarding the meaning or interpretation of any part of this RFP should be in writing and sent to Chad Mason at [mason@watertransit.org](mailto:mason@watertransit.org). Questions regarding DBE requirements should be directed to Lauren Duran Gularte at [gularte@watertransit.org](mailto:gularte@watertransit.org). All requests must be submitted by the date and time set forth in Part A, Section 2.

Should WETA determine that a clarification of the RFP is in order, WETA will issue a written addendum clarifying the matter, which will be posted on WETA's website (<https://weta.sanfranciscobayferry.com/>). Each Proposer has an on-going responsibility to check WETA's website for addenda. **WETA has no obligation to provide any other notice of addenda being issued.** WETA's failure to respond to a request for clarification or modification will be deemed to be a rejection of such request. Any WETA determination on any Proposer request will be final. **Addenda issued for this RFP, if any, must be expressly acknowledged in Proposer's cover letter.**

### **5. EX PARTE COMMUNICATIONS**

Proposers and Proposers' representatives may not communicate orally with an officer, director, employee, or agent of WETA, outside the procedures set forth in this RFP, until after a final agreement between the Selected Proposer and WETA has been executed. Proposers and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of WETA during a public meeting. Any written communication regarding the RFP between a Proposer (or the Proposer's representative) and WETA's Executive Director, Board Member, officer, employee or consultant, regardless of who initiates the communication, other than as part of the procurement process set forth in this RFP, before WETA issues a Notice to Proceed, will be available for disclosure to the general public.

### **6. CONFIDENTIALITY**

The California Public Records Act (CPRA) (Government Code Sections 6250 et seq.) mandates public access to public records not exempt from disclosure under the CPRA. Therefore, unless the information is exempt from disclosure by law, the content of the proposal, as well as any other written communication between WETA and a Proposer, is a public record that must be made available to the public upon request.

#### **A. Confidentiality Index and Waiver of Claims**

If the Proposer believes its proposal, any other communications with WETA, or any documents or materials of any kind provided to WETA to supplement or explain its proposal, or in response to any

WETA inquiry or request in connection with this RFP ("supplemental materials"), contains information exempt from disclosure under the CPRA, including trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer must request that the WETA withhold from disclosure the exempt information by submitting:

- (1) An unredacted copy of the proposal, communication and/or supplemental materials marking each page containing such exempt information as confidential; and
- (2) A redacted copy of the proposal, communication and/or supplemental materials that redacts the purportedly exempt information; and
- (3) A "confidentiality index" that complies with the following requirements:
  - i. For proposals, the confidentiality index must include: (i) the section and page number of the proposal where the information except from disclosure is located; and (ii) an explanation of why the information is exempt from disclosure under the CPRA.
  - ii. For communications and supplemental materials, the confidentiality index must include: (i) the section and page number of the communication or supplemental document where the information exempt from disclosure is located, as appropriate; and (ii) an explanation of why the information is exempt from disclosure under the CPRA.
- (4) A signed letter with the following statement: "By submitting this [proposal/communication/supplemental material], Proposer agrees to indemnify, defend, and hold harmless WETA, its directors, officers, employees and agents, from any and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the Proposer information), and pay any and all cost and expenses, including attorneys' fees, related to the withholding of the information included in the confidentiality index. If Proposer fails to accept a tender of a defense, WETA reserves the right to resolve all claims at its sole discretion, without limiting any rights stated herein."

By submitting a proposal, communication, or supplemental material, Proposer:

- (1) Consents to the release of the redacted version of the proposal, communication, or supplemental material; and
- (2) Consents to the release of any portion of its proposal, communication, or supplemental material not included in the confidentiality index; and
- (3) Waives all claims against WETA, its directors, officers, employees and agents, for the disclosure of such information.

If the Proposer does not include an unredacted copy, redacted copy, confidentiality index and signed indemnification statement, with its proposal, communication, or supplemental material in accordance with the requirements of this section, WETA will have no obligation to withhold any information in the proposal, communication, or supplemental material from disclosure and may release the proposal, communication, or supplemental material without liability to WETA.

A Proposer may not designate its entire proposal or major portions of its Proposal as confidential. A Proposer may not designate WETA forms as confidential. WETA will not honor such designations and will disclose submittals so designated to the public.

**B. Review of Confidentiality Index**

Upon receipt of a request pursuant to the CPRA seeking a proposal, communication or supplemental material relating to this RFP, WETA may provide the redacted version of the requested record or may withhold information designated in the confidentiality index that is exempt from disclosure. If WETA determines that information in the confidentiality index is not exempt from disclosure, WETA will give reasonable notice to the Proposer prior to releasing any material listed in the confidentiality index.

In the event of a conflict between the redacted version of a record, the confidentiality index, and confidentiality designations in the body of the record, the redacted version of the record prevails.

**C. Confidentiality Indemnity**

Proposers agree to indemnify, defend, and hold harmless WETA, its directors, officers, employees and agents, from any and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the Proposer information), and pay any and all cost and expenses, including attorneys' fees, related to the withholding of the information included in a confidentiality index. If Proposer fails to accept a tender of a defense, WETA reserves the right to resolve all claims at its sole discretion, without limiting any rights stated herein.

**7. LEVINE ACT**

The Levine Act (Government Code 84308) is part of the Political Reform Act of 1974 and applies to elected officials who serve on appointed boards such as the WETA Board of Directors (Board). The Levine Act prohibits any Board Member from participating in or influencing the decision on awarding a contract with WETA to anyone who has contributed \$250.00 or more to the Board Member within the previous twelve months. The Levine Act also requires a member of the Board who has received such a contribution to disclose the contribution on the record of the proceeding. In addition, Board Members are prohibited from soliciting or accepting a contribution from a party applying for a contract while the matter of awarding the contract is pending before WETA or for three months following the date a final decision concerning the contract has been made.

Proposers must disclose on the record any contribution of \$250.00 or more that they have made to a WETA Board Member within the twelve-month period preceding submission of their response to this RFP. This duty applies to the Proposer, any member of Proposer's team, any agents for the Proposer other team members, and to the major shareholders of any closed corporation that is part of the Proposer's team.

Proposers must indicate in the cover letter submitted with their proposal whether any contribution(s) must be disclosed pursuant to the Levine Act. If the Proposer has made a contribution that needs to be disclosed, the Proposer must include with its proposal a separate written document stating the date, amount, and receipt of the contribution(s).

**8. CONFLICTS OF INTEREST**

WETA previously engaged COWI to assess the Main Street Terminal facility conditions and to study potential modifications to the Main Street Terminal. In order to ensure a fair and transparent competitive procurement process, the reports resulting from COWI's work are included in Attachments F and G to this RFP.

WETA has engaged COWI North America, Inc. to provide engineering and design services for the Main Street Ferry Terminal Refurbishment Project. Due to the Scope of Work to be performed, and in order to avoid any conflicts of interest, COWI is not eligible to submit a proposal in response to, or to serve as a subcontractor for a prime contractor submitting a proposal in response to, this RFP.

By submitting a proposal, the Proposer represents and warrants that no director, officer or employee of WETA is in any manner interested directly or indirectly in the proposal or in the Agreement which may be made under it or in any expected profits to arise there from, as set forth in Article 4, Division 4, Title I (commencing with Sec. 1090) of the Government Code of the State of California.

The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code Sections 1090 et seq. or Sections 87100 et seq. during the performance of services under this Agreement. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

Depending on the nature of the work performed, the Proposer may be required to publicly disclose financial interests under WETA's Conflict of Interest Code. The Proposer agrees to promptly submit a Statement of Economic Interest on the form provided by WETA upon receipt. No person previously in the position of director, officer, employee or agent of WETA may act as an agent or attorney for, or otherwise represent, the Proposer by making any formal or informal appearance, or any oral or written communication, before WETA, or any officer or employee of WETA, for a period of twelve (12) months after leaving office or employment with WETA if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, awards or revocation of a permit, license, grant or contract.

The Proposer warrants that it has no organizational conflicts of interest at this time. Alternatively, the Proposer must disclose all known organizational conflicts of interest. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to WETA; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other agreement.

See the Sample Agreement in Part C of the RFP for additional conflict of interest provisions that will be in effect during the contract term.

## **9. NON-COLLUSION**

By submitting a proposal in response to this RFP, each Proposer certifies that its proposal is genuine and not a sham or collusive or made in the interest of or on behalf of any person not named therein; that the Proposer has not, directly or indirectly, induced or solicited any other person to submit a sham proposal or any other person to refrain from responding to this RFP; and that the Proposer has not in any manner sought collusion to secure any improper advantage over any other person submitting a response to this RFP.

## **10. SAMPLE AGREEMENT; EXCEPTIONS**

The Selected Proposer will be required to execute a contract with WETA, a sample of which is included in Part C of this RFP. Proposers must review all of the terms and conditions set forth in the Sample

Agreement. Submittal of a proposal will be deemed acceptance of all of the terms set forth in this RFP and the Sample Agreement unless the Proposer includes any modifications requested to the Sample Agreement in its cover letter, or in an attachment thereto. All requests for exceptions must be in writing, separately identified, and delineated for each section of the Sample Agreement. WETA reserves the right to request further clarification of any requested exception during negotiations and to exclude unacceptable exception(s). No exceptions may be requested after the deadline for the submittal of proposals.

### **11. PERFORMANCE BOND**

NOT APPLICABLE.

### **12. FEDERAL REQUIREMENTS**

This RFP is subject to financial assistance from the Federal Transit Administration (FTA). Please refer to Attachment D, "Federal Requirements" in Part D for federal terms and conditions applicable to the RFP and any contract awarded pursuant to this RFP. If for any reason the federal financial assistance is withdrawn, WETA reserves the right to withdraw this RFP and/or terminate any contract entered into pursuant to this RFP.

### **13. DIVERSITY PROGRAM FOR CONTRACTS**

WETA is committed to and has adopted a Diversity Program for Contracts for the participation of Disadvantaged Business Enterprises (DBEs) and Small Business Enterprises (SBEs) in WETA contracting opportunities in accordance with 49 C.F.R. Part 26, as may be amended. It is the policy of WETA to ensure nondiscrimination in the award and administration of contracts assisted by the U.S. Department of Transportation. Proposers must cooperate with WETA in meeting these commitments and objectives.

There is no DBE/SBE contract-specific goal or DBE/SBE project goal applicable to this Project.

Please refer to Part D for the DBE/SBE requirements applicable to this RFP and any contract awarded pursuant to this RFP.

Proposers must submit with their proposals the following forms included in Part D of this RFP:

- Attachment B-1, Prime Contractor/Consultant and Subcontractors/Subconsultants/Supplier Report;
- Attachment B-2, SBE Affidavit of Size for its firm, if applicable, and for any SBE subcontractors, subconsultants, or suppliers proposed to perform the services under this contract; and
- Attachment B-3, Description of the Selection Process of Subcontractors/Subconsultants/Suppliers, if applicable.

Proposers are strongly encouraged to obtain DBE participation on this project, although there is no contract-specific DBE or SBE goal established. Proposers are advised that WETA has analyzed the data regarding the portions of work that could be subcontracted out to small businesses, including DBEs, and whether DBEs are available to perform those types of work. Subcontracting opportunities may include, but are not limited to:

- Engineering Services - North American Industrial Code System (NAICS) 541330

DBEs are available to perform the above-listed area of work. Proposers are provided this information to facilitate consideration of small businesses, including DBEs, for subcontracting opportunities. As further described in Exhibit C-3, Proposers are required to document their activities in the solicitation and selection of subcontractors to ensure that this process is carried out in a nondiscriminatory manner.

For DBE/SBE questions or assistance, refer to <https://weta.sanfranciscobayferry.com/dbe-and-sbe-information>, and/or contact Lauren Duran Gularte, DBE Program Administrator at (415) 364-3188 or by email at [gularte@watertransit.org](mailto:gularte@watertransit.org).

#### **14. TECHNICAL PROPOSAL CONTENT AND FORMAT**

Each technical proposal submitted in response to this RFP must respond fully to the requirements of this RFP and include the following elements in the sequence listed below. It is expected that proposals submitted to WETA be of professional caliber in context and appearance; however, expensive binders are neither required nor desired. All descriptions and materials should be clear, concise, and provide sufficient information to minimize questions and assumptions. Technical proposals should be limited to 12 pages, excluding cover letter, table of contents, resumes, required forms, DBE certifications, and the cost proposal. Proposers are encouraged to print double-sided pages to conserve resources.

WETA, at its option, may require a Proposer to provide additional information and/or clarify submitted information.

##### **A. Cover Letter**

The cover letter must be on company letterhead, be signed by an individual who is legally authorized to bind the firm to the proposal (including the cost proposal) and must include all of the following information:

- Proposer's name, including all firms involved in a joint venture and any subcontractors.
- If the Proposer is a joint venture: (1) provide an executed copy of the Joint Venture contract with the proposal; and (2) outline the specific areas of responsibility (including administrative, technical, and financial) for each member of the Joint Venture.
- Proposer's business address, telephone numbers, and e-mail address.
- Introduce the firm and summarize its qualifications.
- Name(s) of authorized principals with authority to negotiate and contractually bind the firm.
- Statement that binds the Proposer to its proposal and Cost Proposal for 90 calendar days.
- Include an express acknowledgement of the receipt of a complete set of RFP documents and all Addenda issued for this RFP, if any.
- If Proposer submits a confidentiality index, the statement required in Part A, Section 6.A of this RFP. Alternatively, if the Proposer does not submit a confidentiality index in accordance with Part A, Section 6.A, a statement confirming that the Proposal does not contain any confidential information and may be released, in its entirety, by WETA in response to a request made pursuant to the California Public Records Act.
- Indicate whether there are any required disclosures pursuant to the Levine Act. See Part A, Section 7 Include any such disclosure in a separate document as per Part A, Section 7.
- Indicate whether there are any conflicts of interest that would limit the Proposer's ability to provide the requested services. See Part A, Section 8.

- Requests for exceptions to the Sample Agreement must be stated in the cover letter, or in an attachment thereto. All requests for exceptions to the Sample Agreement must be in writing, separately identified, and delineated for each section of the Sample Agreement. See Part A, Section 10 and Part C of this RFP.

**B. Project Understanding and Approach**

In this section, provide all of the following information:

- A discussion demonstrating the Proposer’s understanding of the Services and their significance to WETA’s day-to-day activities.
- Proposer’s proposed approach to providing the Services, including identification of all subconsultants or subcontractors the Proposer intends to use for this Project.
- A discussion on potential impacts to cost, scope and schedule based on lessons learned performing work similar to the Services, including Proposer’s recommendations to lower and/or control costs, if applicable.
- Identification of additional tasks, if any, not identified in the Scope of Services in Part B of this RFP that may be required to successfully meet the stated objectives of this RFP.
- Proposer’s approach to working with WETA staff.
- An organization chart that clearly identifies the proposed team composition.
- A staffing plan by task listed in the Scope of Services in Part B . Discuss workload for all Key Personnel, indicating their expected availability, the percentage of their time that will be devoted to this Project and any other assurances as to their ability to provide the Services in a responsive and timely manner.
- Address how unanticipated staffing shortfalls will be handled.
- Explain how Key Personnel and subcontractors will be managed.
- If the work is to be shared among firms and offices at different locations, indicate where each office is located and what work is to be performed in each office.

**C. Proposer's Qualifications and Experience**

In this section, the Proposer must provide information about its company so that WETA can evaluate Proposer's stability and ability to support the commitments in their proposal.

- Description of Proposer's qualifications to perform the Services, specifically including:
  - Appropriate professional licenses required to perform the Services; and
  - Knowledge and understanding of applicable regulations, codes and local conditions relating to the Services.

**D. Proposer's Business and Financial Qualifications**

In this section, Proposers must provide pertinent information to allow the WETA to reasonably formulate a determination about the financial stability and strength of the Proposer such as financial references, financial statements, or other relevant documentation. Describe any administrative proceedings, claims lawsuits, settlements, or other exposures pending against the Proposer.

**E. Qualifications and Experience of Key Personnel**

“Key Personnel” are those individuals who are essential to the successful completion and execution of the Services. Key Personnel must be available for the duration of the engagement and may not be substituted by the Selected Proposer without WETA's prior written approval. Substitution of Key Personnel without WETA's prior written approval will constitute a breach of the Agreement awarded



pursuant to this RFP. WETA reserves the right to direct the removal of any individual, including Key Personnel. In this section, Proposers must provide the following for all Key Personnel:

- Name and title
- A description of their qualifications and experience relevant to performing the Services
- Number of years of experience performing work similar to or related to the Services
- A resume

#### **F. References**

Proposers must provide at least three references of client for whom, within the past five years, the Proposer has provided the same or similar services as those called for in this RFP and/or list specific types of references required. For each reference include:

- Entity name
- Contact name, email address and phone number
- A brief description of the project and the roles of the respective team members in successfully completing the project.

#### **G. All Required Forms**

Proposers must submit all the required forms listed in Part D of the RFP pursuant to the instructions in Section 16 below. Failure to execute and submit all the required forms and provide all the requested information may result in the Proposal being rejected as nonresponsive.

### **15. COST PROPOSAL**

Cost proposal/labor rates will remain sealed and confidential until opened in accordance with Part A, Section 19.D. Response to this section will not count toward the 12-page proposal limit and must be submitted separately. WETA intends to compensate the Selected Contractor on a time and materials basis based on the contractor's fully burdened rates, subject to a not to exceed maximum contract amount. Accordingly, Proposers are to propose all-in fully burdened labor rates that includes labor, overhead, general and administrative costs, and profit. Expenses for travel and reasonable other expenses will be reimbursed at cost. Subconsultant costs will be reimbursed at cost, no mark-ups by prime consultant will be permitted. Costs of administering the work of subconsultants shall be reflected as an effort required by the prime consultant to provide project management.

Submit the following, in a separate sealed envelope, labeled "COST PROPOSAL – Construction Management Services for the Alameda Main Street Ferry Terminal Refurbishment Project #21-025" and include the Proposer's name. The Cost Proposal matrix, developed in MS-Excel, must be provided in the envelope, in hardcopy format and electronic format on a USB drive.

- A letter signed by a principal or officer of the firm indicating the applicable fully burdened labor rates for each job category that will apply to this engagement. Provide this information for the prime firm and each proposed subconsultant in a single letter.

### **16. PROPOSAL SUBMISSION INSTRUCTIONS**

Submit the Technical Proposal and all required forms, except the Cost Proposal, as a single PDF to Chad Mason at [Mason@watertransit.org](mailto:Mason@watertransit.org). The Technical Proposals should be titled "Construction Management Services for the Alameda Main Street Ferry Terminal Refurbishment Project #21-025" and include the Proposer's name.

Submit the Cost Proposal in a sealed envelope to:

San Francisco Bay Area Water Emergency Transportation Authority  
ATTENTION: Chad Mason  
Pier 9, Suite 111, The Embarcadero  
San Francisco, CA 94111

Technical Proposals and Cost Proposals received after the date and time specified in Section 2 will be considered late and will not be accepted.

## **17. WAIVER**

Proposers are solely responsible for examining, with appropriate care and diligence, all parts of this RFP and fully informing themselves of all relevant aspects of the Scope of Services. By submitting a proposal, the Proposer represents and warrants that the Proposer has: sufficiently examined and is familiar with each part of this RFP and with all matters affecting the performance of the Scope of Services; checked its proposal for errors and omissions; confirmed that the prices stated in its proposal are correct for performing the Scope of Services and as intended by it. The Proposer waives any claim against WETA for costs incurred in preparing a proposal and responding to this RFP.

## **18. WITHDRAWAL OF PROPOSAL**

Submission of a Proposal shall constitute a firm offer to WETA for 90 calendar days from the submission deadline for proposals stated in Section 2 of this RFP.

A Proposer may withdraw its proposal any time before the date and time when proposals are due, without prejudice, by submitting a written request for its withdrawal to Chad Mason at [Mason@watertransit.org](mailto:Mason@watertransit.org). A telephone request is not acceptable.

## **19. EVALUATION PROCESS**

### **A. WETA Evaluation Committee**

WETA will establish an evaluation committee appointed by the Executive Director with responsibility for (1) reviewing all proposals and (2) conducting the evaluation and interviews, if any, described in this RFP. WETA reserves the right to reject or accept any and all proposals, to waive any minor irregularities in proposals or procedures, and to request additional information from Proposers at any stage of the evaluation.

### **B. Preliminary Evaluation of Technical Proposals**

The Evaluation Committee will conduct a preliminary responsiveness check to confirm that each technical proposal contains all the required documentation and information necessary to be deemed responsive to the RFP. WETA may reject as non-responsive any technical proposal that does not include the documents and information required by the RFP. However, WETA reserves the right to request additional information and clarifications during the evaluation and selection process from any or all Proposers regarding their technical proposals.

**C. Evaluation Criteria**

WETA intends to award a contract to the most qualified, responsible firm submitting a responsive technical proposal. Ranking of Proposers will be based on a maximum of 100 points, allocated as indicated below. To determine the number of points a Proposer will receive in each category, the Evaluation Committee will consider the technical proposal material submitted, interviews (if applicable), additional information requested by WETA, client references and any other relevant information about a given Proposer.

The following criteria will be used by the WETA's Evaluation Committee in the evaluation of the technical proposals:

<b>Evaluation Criteria</b>	<b>Maximum Points</b>
<p><b>Project Understanding and Approach</b></p> <ul style="list-style-type: none"> <li>• Proposer’s understanding of the Services.</li> <li>• Proposer’s proposed approach to providing the Services and working with WETA staff.</li> <li>• Organization chart of proposed team.</li> <li>• Staffing plan for the Project.</li> </ul>	25
<p><b>Proposer's Qualifications and Experience</b></p> <ul style="list-style-type: none"> <li>• Proposer's qualifications to perform the Services, specifically including its demonstrated ability to satisfy the requirements of Part A, Section 14.C.</li> <li>• Proposer's relevant experience performing work that is the same or similar to the Services, including the scope and dollar value of prior projects completed and Proposer's references.</li> <li>• Sufficiency of Proposer's financial strength, resources and capabilities to perform the Services, as measured by information provided in response to Part A, Section 14.D.</li> </ul>	50
<p><b>Qualifications and Experience of Key Personnel</b></p> <ul style="list-style-type: none"> <li>• Key Personnel's qualifications to perform the Services.</li> <li>• Key Personnel's relevant experience performing work that is the same or similar to the Services.</li> </ul>	25
<b>Total Possible Points</b>	100

**D. Revised Proposals, Interviews and Negotiations**

After completing the preliminary evaluation, the Evaluation Committee may conduct further discussion or interviews with firms whose technical proposals the Evaluation Committee considers sufficiently viable to allow for further consideration ("the competitive range"). The Evaluation Committee may also reject any technical proposals it deems not within the competitive range. The Evaluation Committee may require that some or all Proposers attend an interview (may be in person or conducted via telephone per WETA’s request) in order to seek clarification regarding the various technical proposals. WETA also reserves the right to request additional information and to require any such information in writing. The Evaluation Committee may also contact any reference listed in the proposal or otherwise seek input about Proposers. WETA reserves the right to complete the evaluation process without any interviews or additional information, so Proposers are encouraged to submit their best technical Proposal with their initial submission.

Upon completion of the final evaluation process, WETA will rank each firm based on the evaluation criteria above, considering the Technical Proposal and any additional Technical Proposal information

the Evaluation Committee received during the final evaluation process. WETA will open the Cost Proposal from the top-ranked firm only and it may accept the proposal or negotiate the cost and exceptions taken to the Sample Agreement, if any. If negotiations are unsuccessful, WETA will terminate the negotiations with that firm and may open negotiations with the next highest-ranked firm. If negotiations with this firm are also not successful, WETA may repeat the negotiations process with the next-highest ranked firm or, at its sole discretion, WETA may reject all remaining proposals. WETA, however, may award a contract without conducting negotiations.

#### **E. Notice of Intent to Award**

If WETA determines to award a contract pursuant to this RFP, Proposers will be notified via email of WETA's intent to award the contract at least 72 hours before the contract is awarded by WETA's Board of Directors.

### **20. WETA'S RIGHTS: WAIVER OF COSTS**

This RFP does not commit WETA to entering into a contract nor does it obligate WETA to pay for any costs incurred in preparation and submission of proposals submitted in response to this RFP. WETA will not reimburse any firm for costs incurred as a result of preparing or submitting a proposal, including negotiating with WETA on any matter related to this RFP. WETA reserves the right to:

- Remedy errors in the RFP process
- Reject any and all proposals
- Waive formalities and irregularities in proposals
- Modify or rescind any part of or the entire RFP
- Negotiate with any, all or none of the Proposers
- Issue subsequent RFPs for the Services
- Accept a proposal that does not offer the lowest price

In the event the Selected Proposer defaults or fails to execute a contract with WETA, WETA may enter a contract with another proposer.

### **21. PROTEST PROCEDURES**

Chapter 5, Article XII, of WETA's Administrative Code provides that specific protest procedures set forth in an RFP prevail over those that may be included in WETA's Administrative Code. The following procedures therefore apply.

#### **A. Protests Based Upon the RFP**

Protests based upon restrictive requirements or alleged improprieties in the RFP procedure which are apparent or reasonably should have been discovered prior to the proposal due date, must be filed in writing at least five (5) calendar days prior to the proposal due date. The protest must clearly specify in writing the grounds and evidence on which the protest is based and the relief sought. Protesters must first have availed themselves of the procedures for requesting modifications or clarifications of the RFP prior to submitting any protest. Protests that are received outside of the above time period will be rejected.

For timely protests based upon restrictive requirements or alleged improprieties in the RFP procedures, the Executive Director will respond with a written determination prior to the proposal due date. If the Executive Director's determination could affect proposal submission, an appropriate extension of the

proposal due date may be granted by WETA via a written addendum. The decision of the Executive Director is final.

**B. Protests Based Upon the Notification of Intent to Award a Contract**

Protests based upon WETA's notification of intent to award the Contract must be submitted in writing within forty-eight (48) hours of receipt of notice intent to award. The protest must clearly specify in writing the grounds and evidence on which the protest is based and the relief sought. For timely protests based upon the notice of intent to award, the Executive Director will make efforts to notify other Proposers of the protest. The Executive Director will rule on the protest and will respond with a written determination. The decision of the Executive Director is final.

**C. Submission of Protests**

All Protests should be submitted in writing to WETA's Executive Director at [murphy@watertransit.org](mailto:murphy@watertransit.org). Protests that are received outside of the above time periods specified in this section will be rejected. No protests will be considered after contract award, except for compelling reasons whereby the lateness is due to WETA's untimely handling of the protest submission. In no event will WETA consider protests filed after contract award due to the neglect of the protestor. Failure to comply with the time periods for filing protests as set forth in this section will be a basis for rejection of the protest.

**22. CONTRACT AWARD AND EXECUTION**

WETA reserves the right to not award any contract as a result of this procurement and may terminate the procurement and commence a new procurement for part or all of the Services at any time. Formal contract award will only occur as and when, if at all, the WETA Board takes such action.

If the WETA Board acts to award the Agreement, the Selected Proposer must execute and deliver execution copies of the Agreement within ten (10) working days of receipt, together with all required documents, including but not limited to, the insurance certificates. If the Proposer is an individual, the Agreement must be executed by the individual personally. If the Proposer is a co-partnership, it is desirable that the Agreement be executed by all of the partners, but it may be executed by one (1) of them. If the Proposer is a corporation, this Agreement must be executed by two corporate officers, consisting of: (1) the president, vice president or chair of the board; and (2) the secretary, assistant secretary, chief financial officer or assistant treasurer. In the alternative, this Agreement may be executed by a single officer or a person other than an officer provided that evidence satisfactory to WETA is provided demonstrating that such individual is authorized to bind the corporation (e.g. a copy of a certified resolution from the corporation's board or a copy of the corporation's bylaws). If the Proposer is a joint venture, the Agreement must be executed on behalf of each participating firm by officers or other authorized individuals. If the Proposer is an LLC, the Agreement must be executed by an officer or member who is authorized to bind the LLC.

## **PART B: SCOPE OF SERVICES**

The Selected Contractor must provide WETA with dedicated services of an individual or firm with the resources, training, prior experience, knowledge, skills, and expertise to effectively perform and complete this Scope of Services.

### **Project Overview**

The Alameda Main Street Ferry Terminal is a high-use terminal that supports WETA operation seven days a week. It is important to keep all facilities in a state of good repair to support ongoing operations and safety. The Terminal consists of a gangway, pier, bridge structures, piles, passenger float, and ramping. The City of Alameda (City) installed the terminal in 1991 and the City completed repairs in 2007 to address the deterioration of its wooden pilings. In 2014, after the service transition to WETA, stabilization repairs were made to the pier bridge structure.

The current passenger float is a converted Navy barge estimated to be over 50 years old. In 2015, gangway and walkway improvements were made for passenger safety and boarding efficiency. The repairs to the pier bridge structure were intended to be temporary and the passenger float is at the end of its useful life. This Project will replace the pier bridge structure and passenger float. The Project will also include other improvements and modifications as needed.

The Scope of Services includes, at a minimum, the following project elements, as tasked by WETA:

### **Phase 1 – Contract Procurement Support Services**

- Assist WETA staff and its design consultants in finalizing design build contract procurement documents.
- Participate on the Proposal Evaluation Committee, which is responsible for confirming submittal responsiveness and scoring technical and price proposals received from all Offerors.
- Support WETA staff with negotiation and execution of final construction contract.

### **Phase 2 – Construction Management Services**

- Oversee and coordinate construction contractor submittal of all documents required contractor prior to issuance of Design Phase Notice to Proceed and subsequent Construction Notice(s) to Proceed.
- Perform all necessary construction administration functions as required by WETA, including, but not limited to the following:
  - Perform all required field inspection activities, monitor contractor's performance and enforce all requirements of applicable codes, permits, specifications, and contract drawings.
  - Provide inspectors for day-to-day on job observation/inspection of work. The inspectors shall make reasonable efforts to guard against defects and deficiencies in the work of the construction contractor and to enforce that provisions of the contract documents are being met.
  - Prepare daily inspection reports documenting observed construction activities.
  - Coordinate and attend progress meetings, weekly or as deemed necessary, between contractors, WETA, and other interested parties. Prepare and distribute minutes of all meetings.
  - Take photographs and videotape recordings of field conditions during pre-construction, construction, and post-construction phases.

- Prepare and recommend contract progress payments including measurements of bid items. Negotiate differences over the amount with contractor and process payments through the WETA Project Manager.
- Monitor project budget, purchases, and payment.
- Prepare monthly progress reports documenting the progress of construction describing key issues, cost status, and schedule status.
- Establish and process project control documents, including:
  - Daily inspection diaries
  - Weekly progress reports
  - Monthly construction payments
  - Requests for Information (RFI)
  - Materials certification
  - Materials submittals
  - Weekly Statement of Working Days
  - Construction Change Orders
  - Review of certified payrolls
- Review construction contractor's monthly updates incorporating actual progress, weather delays, and change order impacts. Compare work progress with planned schedule and notify construction contractor of potential slippage. Review Construction Contractor's plan to mitigate schedule delay.
- Evaluate, negotiate, recommend, and prepare change orders. Perform quantity and cost analysis as required for negotiation of change orders.
- Analyze additional compensation claims submitted by Construction Contractor and prepare responses. Perform claims administration including coordinating and monitoring claims responses, logging claims, and tracking claims status.
- Process all Construction Contract submittals and monitor design consultant review activities.
- Review, comment, and facilitate responses to RFIs. Prepare responses to RFIs on construction issues. Transmit design related RFIs to designer. Conduct meetings with Construction Contractor and other parties as necessary to discuss and resolve RFIs.
- Act as construction project coordinator and point of contact for all communications with Construction Contractor, City and County representatives, BCDC, US Army Corp of Engineers, National Marine Fisheries Service, etc. and all affected parties.
- Schedule, manage, and perform, and document all field and laboratory testing services. Ensure the Construction Contractor furnishes Certificates of Compliance of source release tags with the applicable delivered materials at the project site.
- Coordinate and meet construction oversight requirements of City/Port departments, BCDC, US Army Corp of Engineers, National Marine Fisheries Service, etc. for all work being performed within the respective jurisdictions. Construction Manager shall be responsible for coordinating traffic control measures, responses to public inquiries, and complaints regarding the project.
- Oversee environmental mitigation monitoring. Monitor and enforce construction contractor SWPPP compliance.
- Enforce safety and health requirements and applicable regulations for the protection of the public and project personnel.
- Facilitate all necessary utility coordination with respective utility companies.
- Maintain construction documents per state and Federal requirements. Enforce Labor Compliance requirements.
- Quality Assurance/Quality Control (QA/QC) – Establish and implement a QA/QC procedure for construction management activities undertaken by in-house staff and by subconsultants.
- Perform construction contract closeout services, including:
- Prepare initial punch list and final punch list items.

- Finalize all bid item, claims, and changes orders. Coordinate preparation of record drawings (as-built drawings) by Construction Contractor.
- Provide final inspection services and project closeout activities, including preparation of a final construction report per state and Federal requirements.
- Turn all required construction documents over to WETA for archiving.

### **General Project Administration**

- Maintain a suitable construction field office in the project area for the duration of the project, which shall include desks, layout table, phone, computers, fax machine, reproduction machine, file cabinets provided by WETA or the construction contractor.
- Provide all necessary safety equipment required for personnel to perform the work efficiently and safely.
- Prepare a monthly summary of total construction management service charges made to each task/task order. This summary shall present the contract budget for each task, any re-allocated budget amounts, the prior billing amount, the current billing, total billed to date, and a total percent billed to date. Narratives will contain a brief analysis of budget-to-actual expenditure variances, highlighting any items of potential concern for WETA consideration before an item becomes a funding issue.
- Provide a monthly invoice in the standard format determined by WETA that will present charges by task, by staff members at agreed-upon hourly rates, with summary expense charges and subconsultant charges. Detailed support documentation for all Construction Manager direct expenses and subconsultant charges will be attached.
- WETA desires to coordinate with Selected Contractor to utilize mutually acceptable project management software to manage workflow.



**PART C: SAMPLE AGREEMENT**

**PROFESSIONAL SERVICES AGREEMENT #21-025**

between

**SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY**

and

**[CONTRACTOR]**

This Agreement is made and entered into as of [Date] (Effective Date), by and between the San Francisco Bay Area Water Emergency Transportation Authority (WETA) and [Contractor] located at [Address] (Contractor). For purposes of this AGREEMENT, each of the WETA and Contractor may be referred to individually as a “Party” or together, as “Parties.”

**RECITALS**

**WHEREAS**, WETA requires Construction Management Services and has issued a Request for Proposals (RFP) dated [Date], Part B: Scope of Services of which is attached and incorporated into this Agreement as Exhibit A; and

**WHEREAS**, the Contractor desires to provide such services and has represented that it is experienced and qualified to perform such services. It has submitted a written proposal, dated [Date], a copy of which is attached and incorporated into this Agreement as Exhibit B; and

**WHEREAS**, on [Date], WETA’s Board of Directors authorized award of the Agreement to the Contractor;

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**1. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

In the performance of the Services, as defined in Section 2, the Contractor represents and warrants that:

- a. Professional Expertise. It has and will exercise the degree of professional care, skill, efficiency, and judgment of contractors with special expertise in construction management; that it carries all applicable licenses, certificates, and registrations in current and good standing that may be required to perform the work; and that it will retain all such licenses, certificates, and registrations in active status throughout the duration of this engagement.
- b. Intellectual Property Rights. In the performance of Services, its use of any third party's intellectual property does not and will not infringe or violate the patent, copyright, trade-secret, or other intellectual-property or proprietary rights of any third party. Contractor further represents and warrants that it has or will have all appropriate licenses, agreements, or ownership rights pertaining to all patent, copyright, trade-secret, or other intellectual-property or proprietary rights needed for the performance of its obligations under this Agreement—including without limitation that it will have all necessary rights to use patentable or copyrightable materials, equipment, devices, or processes not furnished by WETA. Contractor assumes all risks arising from the use of any such patented or copyrighted materials, equipment, devices, or processes.

- c. Existence and Powers. Contractor is a [insert type of entity] duly organized, validly existing and in good standing under the laws of the State of California and has the authority to do business in the State of California. It has the full legal right, power, and authority to own its properties and to carry on its business as now owned and operated and as required by this Agreement.
- d. Corporate Authorization and Binding Obligation. Contractor has the authority and legal capacity to enter into and perform its obligations under this Agreement. This Agreement has been duly authorized, executed and delivered by all necessary corporate action of Contractor and constitutes a legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditor's rights from time-to-time in effect and equitable principles of general application. The persons signing this Agreement on behalf of Contractor have authority to do so.
- e. No Conflict. Neither the execution and delivery by Contractor of this Agreement nor the performance by Contractor of its obligations under the Agreement: (a) conflicts with, violates or results in a breach of any constitution, law or governmental regulation, bylaws or certificates of incorporation applicable to Contractor; or (b) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument, to which Contractor is a party or by which Contractor or any of its properties or assets are bound.
- f. No Litigation. Except as disclosed in writing to WETA before the Effective Date of this Agreement, there is no legal proceeding, at law or in equity, pending or, to the best of Contractor's knowledge, overtly threatened or publicly announced against Contractor, or any of its affiliates or its parent or subsidiary corporations, or otherwise affecting Contractor, in which an unfavorable decision, ruling, or finding, in any single case or in the aggregate, could reasonably be expected to have a material and adverse effect on the execution and delivery of this Agreement by Contractor or on the validity or enforceability of this Agreement against Contractor.
- g. Claims and Demands. Except as disclosed in writing to WETA before the Effective Date of this Agreement, there are no material and adverse claims and demands based in contract or tort law pending or, to the best of its knowledge, threatened against Contractor, or any of its affiliates or its parent or subsidiary corporations, with respect to any project similar to the one that is the subject of this Agreement.

**2. SCOPE OF SERVICES**

The scope of the Contractor's services will consist of services set forth in Exhibit A, as supplemented by Exhibit B, except when inconsistent with Exhibit A (collectively referred to as the "Services"). Services may also be performed on a task order basis, with individual task orders including specific scopes of services and other task-specific terms and conditions. The Contractor is responsible for performing all work necessary to complete, in a manner satisfactory to WETA, the work described in this Agreement, and in any properly approved task orders or amendments.

**3. COMPONENT PARTS OF THE AGREEMENT**

This Agreement consists of the following documents, all of which are incorporated into this Agreement by this reference. In the event of any conflict of inconsistency between the following documents, they are listed in order of precedence:

- a. Amendments to the Agreement, and any task orders issued by WETA
- b. This Agreement
- c. Attachment A, Federal Requirements
- d. Attachment B, DBE/SBE Requirements
- e. Exhibit A, Scope of Services
- f. Exhibit B, Contractor's Proposal, including all forms, and supporting materials, as accepted by WETA
- g. Exhibit C, Insurance Requirements

**4. TERM**

The term of this Agreement will commence upon the Effective Date and end when all work is completed, as determined by WETA, unless the Agreement is terminated sooner pursuant to Section 20. The Contractor will furnish all materials, equipment and services called for under this Agreement, and perform all work in accordance with this Agreement.

If WETA issues task orders under this Agreement, performance of services for each task order will commence upon receipt of the notice to proceed issued by WETA for the respective task order and the Contractor will complete the services within the period specified in the task order. In the event that a task order specifies a performance period extending beyond the term of the Agreement, including any options, the Agreement will remain in full force and effect until all outstanding services under all task orders are completed or terminated.

**5. KEY PERSONNEL**

It is understood and agreed by the Parties that at all times during the term of this Agreement that [Name], will serve as the [primary staff person/designated representative] of the Contractor to undertake, render and oversee all of the services under this Agreement (Key Personnel). The Contractor may not reassign Key Personnel or assign another resource to the Key Personnel role until and unless WETA, in its sole discretion, approves a replacement in writing. WETA reserves the right to direct the removal of any personnel, including but not limited to Key Personnel, when in WETA's opinion the individual's performance is unsatisfactory. Replacement of personnel will not excuse the Contractor from compliance with all of the requirements of this Agreement, including any schedule.

**6. COMPENSATION**

The Contractor agrees to perform the services set forth in Section 2 for the total all-inclusive not to exceed amount of \$[Amount] in accordance with Exhibit A and Exhibit B. This all-inclusive not to exceed amount includes all labor, materials, taxes, overhead, insurance, travel expenses, employee benefits, profit, and other costs and expenses incurred by the Contractor.

WETA will pay the Contractor in accordance with Section 7. Compensation for any task order WETA may issue will be as set forth in the task order, provided that the hourly rate(s) that will apply to any task order will be as set forth in Exhibit B.

**7. MANNER OF PAYMENT**

The Contractor must submit invoices on a monthly basis for each complete calendar month. Invoices must be submitted to WETA as soon as possible but no later than 30 days after the end of each month. Charges will be based upon services performed during the billing period at

the rates set forth in Exhibit B. Invoices must describe in detail the services rendered by Contractor during the billing period and must state the number of hours, and applicable hourly rate of each person. All invoices must include the contract number and task order number and must include the full name, phone number, and email of the person to contact with invoice questions.

PDF invoices should be emailed to the WETA Project Manager, Chad Mason at [Mason@watertransit.org](mailto:Mason@watertransit.org) with cc to [payables@watertransit.org](mailto:payables@watertransit.org). No hard copy invoices are required if WETA acknowledges receipt of the email invoice.

WETA will endeavor to pay approved invoices within thirty (30) days of their receipt. If WETA objects to any invoice submitted by Contractor, WETA will so advise the Contractor in writing giving reasons for its objection. If any invoice submitted by the Contractor is disputed by WETA, only that portion so disputed may be withheld from payment and the Contractor must continue to perform diligently during the pendency of any dispute resolution process that may ensue.

**8. NOTICES**

All communications relating to the day-to-day activities of the project will be exchanged between WETA's Chad Mason for this Project, at [Mason@watertransit.org](mailto:Mason@watertransit.org) and the Contractor's [Name] at [Email]

All other notices and communications regarding interpretation of the terms of this Agreement and changes thereto will be given to the other Party in writing and may be given by personal delivery to a representative of the parties, by emailing as follows, or by overnight mailing or courier service the same, addressed as follows:

If to WETA: San Francisco Bay Area Water Emergency Transportation Authority  
Attn: Chad Mason  
1050 Nimitz Avenue  
Vallejo, CA 94592  
Email: [Mason@watertransit.org](mailto:Mason@watertransit.org)

If to the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

The addresses to which notice may be given may be changed from time to time by notice emailed or mailed as described above. Notice will be deemed given on the day after that on which it is emailed, delivered in person, or deposited with a courier.

**9. OWNERSHIP OF WORK**

All reports, designs, drawings, plans, photographic images, video and sound recording, specifications, analyses, charts, tables, schedules and all other materials prepared, or in the process of being prepared, for the services to be performed by the Contractor will be and are the property of WETA. WETA will be entitled access to and copies of these materials during the progress of the work. Any such materials remaining in the hands of the Contractor or in the hands of any subcontractor upon completion or termination of the work must be immediately delivered to WETA. If any materials are lost, damaged or destroyed before final delivery to WETA, the Contractor must replace them at its own expense, and the Contractor assumes all

risks of loss, damage or destruction of or to such materials. The Contractor may retain a copy of all material produced under this Agreement for its use in its general business activities.

Any and all rights, title, and interest (including without limitation copyright and any other intellectual property or proprietary right) to materials prepared under this Agreement are hereby assigned to WETA. The Contractor agrees to execute any additional documents which may be necessary to evidence such assignment.

The Contractor represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

**10. NA**

**11. CONFIDENTIALITY**

Any WETA materials to which the Contractor has access or materials prepared by the Contractor during the course of this Agreement ("confidential information") must be held in confidence by the Contractor, who must exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees and agents of the Contractor as necessary to accomplish the rendition of services set forth in Section 2 of this Agreement.

The Contractor, its employees, subcontractors, and agents may not release any reports, information or other materials prepared in connection with this Agreement, whether deemed confidential or not, to any third party without the approval of WETA.

**12. USE OF SUBCONTRACTORS**

Unless identified in Contractor's proposal as accepted by WETA, the Contractor may not subcontract any services to be performed by it under this Agreement without the prior written approval of WETA. Any subcontractors must be engaged under written contract with the Contractor with provisions allowing the Contractor to comply with all requirements of this Agreement. The Contractor will be solely responsible for reimbursing any subcontractors, and WETA will have no obligation to them.

**13. CHANGES**

WETA may, at any time, by written order, make changes to Exhibit A. If such changes cause an increase in the budgeted cost of or the time required for performance of the Services, an equitable adjustment as mutually agreed will be made in the limit on compensation set forth in Section 5 or in the time of required performance as set forth in Part C, or both.

In the event that the Contractor encounters any unanticipated conditions or contingencies that may affect the Services, schedule or the amount of compensation specified herein, the Contractor will so advise WETA immediately upon notice of such condition or contingency. The written notice will explain the circumstances giving rise to the unforeseen condition or contingency and will set forth the proposed adjustment in schedule or compensation. The Contractor must give this notice to WETA prior to performing work related to any proposed adjustment. The pertinent changes will be expressed in a written supplement to this Agreement prior to implementation of such changes.

**14. RESPONSIBILITY; INDEMNIFICATION**

To the maximum extent permitted by law, the Contractor must indemnify, keep and save harmless WETA and its directors, officers, agents and employees against any and all suits, claims or actions arising out of any of the following:

- A. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the Contractor caused by a negligent act or omission or willful misconduct of the Contractor or its employees, subcontractors or agents, including but not limited to any failure to comply with applicable law as set forth in Section 32; or
- B. Any allegation that materials or services provided by the Contractor under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

The Contractor further agrees to defend any and all such actions, suits or claims, with counsel acceptable to WETA in its sole discretion, and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered, or settlement reached, against WETA, or any of the other individuals enumerated above in any such action, the Contractor must, at its expense, satisfy and discharge the same. This indemnification will survive termination or expiration of the Agreement.

**15. INSURANCE**

Contractor is required to procure and maintain at its sole cost and expense the insurance coverage listed in Exhibit C. Contractor will provide a certificate evidencing that it meets the insurance requirements prior to WETA issuing a Notice to Proceed, and will provide updated certificate(s) each year. Contractor will maintain the required insurance for the duration of this Agreement and will provide WETA with at least 30 days notice of any modification or cancellation of any policy.

**16. CONTRACTOR'S STATUS**

Neither the Contractor nor any party contracting with the Contractor are deemed to be an agent or employee of WETA. The Contractor is and will be an Independent Contractor, and the legal relationship of any person performing services for the Contractor will be one solely between that person and the Contractor.

**17. ASSIGNMENT**

The Contractor may not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of WETA.

**18. WETA WARRANTIES**

WETA makes no warranties, representations or agreements, either express or implied, beyond such as are explicitly stated in this Agreement.

**19. WETA REPRESENTATIVE**

Except when approval or other action is required to be given or taken by the WETA Board of Directors, the WETA Executive Director or the Executive Director's designee will represent and act for WETA.

**20. DISPUTE RESOLUTION**

The Contractor will be solely responsible for providing timely written notice to WETA of any claims for additional compensation and/or time in accordance with the provisions of this Agreement. It is WETA's intent to investigate and attempt to resolve any Contractor claims before the Contractor has performed any disputed work. Therefore, Contractor's failure to provide timely notice will constitute a waiver of Contractor's claims for additional compensation and/or time.

Claims by the Contractor disputing any interpretation of the meaning and intent of this Agreement by WETA or arising from performance of this Agreement must be referred in writing to WETA's Project Manager, Chad Mason for a written decision. All such claims must be filed within ten (10) calendar days after Contractor knows, or should have known, of the issues giving rise to the claim, and must be accompanied by written documentation substantiating the reasons for which the Contractor believes additional compensation/time may be due, the nature of the costs involved, and the amount of the potential claim. WETA's Project Manager, Chad Mason will respond to the Contractor in writing with a decision within thirty (30) calendar days following receipt of the Contractor's claim. WETA may, in its discretion, extend the time for its response if necessary, or may request, in writing, within thirty (30) calendar days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims WETA may have against the Contractor.

If there is a dispute over any claim, the Contractor must continue to work during the dispute resolution process in a diligent and timely manner as directed by WETA, and will be governed by all applicable provisions of the Agreement. The Contractor must maintain cost records of all work which is the basis of any dispute.

Unless agreed upon by the parties, all disputes will use the following escalation procedures:

- a. Contractor and WETA will use good faith efforts to resolve all disputes informally at the Project Manager level. In the event such efforts are unsuccessful, either Party may request that WETA provide a written determination as to the proposed resolution of the dispute.
- b. Within thirty (30) calendar days of the request, the Project Manager will provide a written determination as to the dispute, which will include the basis for its decision. Upon Contractor's written acceptance of the Project Manager's determination, the Agreement may be modified and the determination implemented or, failing agreement, WETA may in its sole discretion pay such amounts and/or revise the time for performance in accordance with the Project Manager's determination.
- c. If the Project Manager's determination is not accepted by the Contractor, or if the Project Manager fails to respond within thirty (30) calendar days, the matter will promptly be referred to senior executives of the Parties having designated authority to settle the dispute. The senior executives will exchange memoranda stating the issues in dispute and their respective positions and then meet for negotiations at a mutually agreed time and place. At either Party's request, such meeting will take place within thirty (30) calendar days of the referral of the claim to senior management pursuant to this paragraph. If the matter has not been resolved within thirty (30) calendar days of commencement of senior management negotiations, the Parties may mutually agree to try to settle the dispute by means of alternate dispute resolution methodologies such as mediation or arbitration.

- d. In the event that efforts to resolve disputes under this Section are unsuccessful, Contractor must file a government claim, pursuant to California Government Code Section 910 et seq., in order to initiate a civil action.

**21. SUSPENSION**

WETA has the right to suspend this Agreement or any task order at any time and for any reason, including but not limited to non-appropriation of funds and reasons related to the impacts of the COVID-19 pandemic, by giving five (5) calendar days' prior written notice to Contractor. Upon receipt of such notice, Contractor must not commit itself to any further expenditure of time or resources ("Suspension Period").

The Suspension Period will continue until WETA provides written notice to Contractor to resume performance of this Agreement, provided at WETA's sole discretion. With the exception of Contractor's obligations under Section 13 of this Agreement, which continue in full force and effect during the Suspension Period, Contractor will not provide any services required under this Agreement during the Suspension Period. WETA will have no obligation to compensate Contractor during the Suspension Period. If WETA, in its sole discretion, exercises its right to terminate this Agreement following suspension of work, the terms and conditions in Section 21 of this Agreement will apply.

During the Suspension Period, WETA may require Contractor to provide a written plan for resuming services to the District's satisfaction. Contractor agrees to provide such a plan and any additional information requested by WETA. WETA reserves the right to continue the Suspension Period until Contractor and WETA mutually agree to a written plan for resuming performance of this Agreement.

After Contractor resumes services pursuant to the agreed-upon plan, if applicable, the parties may determine it is necessary to modify the plan, or WETA may subsequently suspend this Agreement again upon five (5) calendar days' written notice to Contractor. In the event of a subsequent Agreement suspension, the terms and conditions of this section will apply.

Under no circumstances will WETA be liable for any costs, expenses, wages, actual or projected lost profits, or damages of any kind incurred by Contractor during the Suspension Period, or as a result of suspension of this Agreement or the impacts of the COVID-19 pandemic. Contractor agrees not to make any claims against the District for losses of any kind related to suspension of this Agreement.

**22. TERMINATION**

WETA will have the right to terminate this Agreement or any task order at any time for cause or for convenience (including but not limited to for non-appropriation of funds) by giving written notice to the Contractor. Upon receipt of such notice, the Contractor must not commit itself to any further expenditure of time or resources. If the Agreement is terminated for any reason other than a breach or default by the Contractor, WETA will pay the Contractor in accordance with the provisions of the applicable task order and this Agreement all sums actually due and owing from WETA for all services performed and all expenses incurred up to the day written notice of termination is given, plus any costs reasonably and necessary incurred by the Contractor to effect such termination.

If the Agreement or any task order is terminated for breach or default, WETA will provide Contractor a reasonable opportunity to cure any breach or default prior to termination. If the Agreement or any task order is terminated for breach or default, WETA will pay the Contractor



an amount to cover only those services actually performed and expenses incurred in full accordance with the terms and conditions of this Agreement and task order up to the effective date of termination.

Upon termination for any reason, Contractor must transfer title to WETA (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by WETA the work in process, completed work, and all other material produced as a part of, or acquired in respect of the performance. All data, work in process, completed work, and other material produced as a part of, or acquired in respect of the performance, whether complete or incomplete, must be delivered promptly to WETA in native format, or other such format as instructed by WETA. Additionally, at WETA's request, for up to ninety (90) calendar days after any expiration or termination of this Agreement, Contractor will provide reasonable transition assistance; and for any such services outside the scope of this Agreement, Contractor may charge its then-prevailing rates for such services, but no more than the rates it charges to other customers for similar or comparable services and no more than reasonable rates.

In the event of termination, WETA will not in any manner be liable for the Contractor's actual or projected lost profits had the Contractor completed the services required by this Agreement or any task order.

**23. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS**

All Contractor and subcontractor costs incurred in the performance of this Agreement will be subject to audit. The Contractor and its subcontractors must permit WETA and the State Auditor to inspect, examine, make excerpts from, transcribe, and copy the Contractor's books, work, documents, papers, materials, payrolls records, accounts and any and all data relevant to the Agreement at any reasonable time, and to audit and verify statements, invoices or bills submitted by the Contractor pursuant to this Agreement. The Contractor must also provide such assistance as may be required in the course of such audit. The Contractor must retain these records and make them available for inspection hereunder for a period of four (4) years after expiration or termination of the Agreement.

If, as a result of the audit, it is determined by WETA's auditor or staff that reimbursement of any costs including profit or fee under this Agreement was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, the Contractor agrees to reimburse WETA for those costs within sixty (60) days of written notification by WETA.

**24. WORKERS' COMPENSATION COMPLIANCE**

Contractor is required to secure the payment of compensation of its employees in accordance with Labor Code section 3700. Contractor certifies the following:

Contractor is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor will comply with such provisions before commencing the performance of the any work or services under the Agreement or any subcontract.

**25. EQUAL EMPLOYMENT OPPORTUNITY**

In connection with the performance of this Agreement, the Contractor may not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual

orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The Contractor must take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national origin, or any other characteristic protected under state, federal, or local laws. Such actions include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by WETA's contracting officer setting forth the provisions of this nondiscrimination clause. The Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision will not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice, to be provided by WETA's contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and will post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Contractor's books, records, and accounts by WETA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further WETA contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The Contractor will include the provisions of all of the above paragraphs in this Section 24 in every subcontract or purchase order entered into under this Agreement, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**26. NON-DISCRIMINATION ASSURANCE**

The Contractor may not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor must carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted contracts. Further, the Contractor agrees to comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. The Contractor must obtain the same assurances from its joint venture partners, subcontractors, and subconsultants by including this assurance in all subcontracts entered into under this Agreement. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as WETA deems appropriate.

**27. CONFLICT OF INTEREST**

The Contractor warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code §§ 1090 et seq. or §§ 87100 et seq. during the performance of services under this Agreement. The Contractor further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

Depending on the nature of the work performed, a Contractor of WETA is subject to the same conflict of interest prohibitions that govern WETA employees and officials (Cal. Govt. Code Section 1090 et seq. and Cal. Govt. Code Section 87100 et seq. as well as all applicable federal regulations and laws). During the proposal process or the term of the Agreement, Contractor and its employees may be required to disclose financial interests.

Depending on the nature of the work performed, the Contractor may be required to publicly disclose financial interests under WETA's Conflict of Interest Code. Upon receipt, the Contractor agrees to promptly submit a Statement of Economic Interest on the form provided by WETA.

No person previously in the position of director, officer, employee or agent of WETA may act as an agent or attorney for, or otherwise represent, the Contractor by making any formal or informal appearance, or any oral or written communication, before WETA, or any officer or employee of WETA, for a period of twelve (12) months after leaving office or employment with WETA if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant or contract.

The Contractor must take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement and other solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to WETA; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

The Contractor may not engage the services of any subcontractor or independent Contractor on any work related to this Agreement if the subcontractor or independent Contractor, or any employee of the subcontractor or independent Contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement, the Contractor becomes aware of an organizational conflict of interest in connection with the work performed hereunder, the Contractor immediately must provide WETA with written notice of the facts and circumstances giving rise to this organizational conflict of interest. The Contractor's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the term of this Agreement, WETA becomes aware of an organizational conflict of interest in connection with the Contractor's performance of the work hereunder, WETA will similarly notify the Contractor. In the event a conflict is presented, whether disclosed by the Contractor or discovered by WETA, WETA will consider the conflict presented and any alternatives proposed and meet with the Contractor to determine an appropriate course of action. WETA's determination as to the manner in which to address the conflict will be final.

During the term of this Agreement, the Contractor must maintain lists of its employees, and the subcontractors and independent Contractor used and their employees. The Contractor must provide this information to WETA upon request. However, submittal of such lists does not relieve the Contractor of its obligation to assure that no organizational conflicts of interest exist. The Contractor must retain this record for five (5) years after WETA makes final payment under this Agreement. Such lists may be published as part of future WETA solicitations.

The Contractor must maintain written policies prohibiting organizational conflicts of interest and must ensure that its employees are fully familiar with these policies. The Contractor must monitor and enforce these policies and must require any subcontractors and affiliates to maintain, monitor and enforce policies prohibiting organizational conflicts of interest.

Failure to comply with this section may subject the Contractor to damages incurred by WETA in addressing organizational conflicts that arise out of work performed by the Contractor, which damages the Contractor agrees to reimburse, or to termination of this Agreement for breach.

**28. PUBLICITY**

The Contractor, its employees, subcontractors and agents may not refer to WETA, or use any logos, images or photographs of WETA for any commercial purpose, including, but not limited to, advertising, promotion or public relations, without WETA's prior written consent. Such written consent will not be required for the inclusion of WETA's name on a customer list.

**29. ATTORNEYS' FEES**

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding will recover, in addition to all court costs, reasonable legal fees.

**30. WAIVER**

Any waiver of any breach or covenant of this Agreement must be in a writing executed by a duly authorized representative of the party waiving the breach. A waiver by any of the parties of a breach or covenant of this Agreement does not waive any succeeding breach or any other covenant unless specifically and explicitly stated in such waiver.

**31. SEVERABILITY**

If any provision of this Agreement is deemed invalid or unenforceable, that provision may be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement, and in any event, the remaining provisions of this Agreement will remain in full force and effect.

**32. NO THIRD PARTY BENEFICIARIES**

This Agreement is not for the benefit of any person or entity other than the parties.

**33. COMPLIANCE WITH LAWS, PRACTICES AND POLICIES**

Contractor and its employees, agents, and subcontractors performing the Services under this Agreement must at all times comply with all applicable local, state, federal laws, ordinances, statutes, and regulations (including without limitation any applicable health and safety standards) in effect at the time Services under this Agreement are performed. Contractor, when present at WETA's facilities, will observe and obey (and compel its officers, employees, guests, and those doing business with it, to observe and obey) all generally applicable policies, practices, and procedures of WETA.

**34. APPLICABLE LAW**

This Agreement, its interpretation and all work performed under it will be governed by the laws of the State of California.

**35. BINDING ON SUCCESSORS**

All of the terms, provisions and conditions of this Agreement are binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.

**36. COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which will be deemed an original. All counterparts will be construed together and will constitute one agreement.

**37. ENTIRE AGREEMENT; MODIFICATION**

This Agreement, including any attachments, constitutes the entire Agreement between the parties with respect to the subject matter hereof and may not be amended except by a written amendment executed by authorized representatives of both parties. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers.

**CONTRACTOR\*:**

NAME

By: \_\_\_\_\_  
Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**WETA:**

SAN FRANCISCO BAY AREA WATER  
EMERGENCY TRANSPORTATION  
AUTHORITY

By: \_\_\_\_\_  
Date: \_\_\_\_\_  
Name: Seamus Murphy  
Title: Executive Director

Approved as to form:

\_\_\_\_\_  
Legal Counsel to WETA

\* *If the Contractor is a corporation, this Agreement must be executed by two corporate officers, consisting of: (1) the president, vice president or chair of the board; and (2) the secretary, assistant secretary, chief financial officer or assistant treasurer. In the alternative, this Agreement may be executed by a single officer or a person other than an officer provided that evidence satisfactory to WETA is provided demonstrating that such individual is authorized to bind the corporation (e.g. a copy of a certified resolution from the corporation's board or a copy of the corporation's bylaws).*

**PART D: FORMS AND ATTACHMENTS**

1. REQUIRED FORMS TO BE SUBMITTED WITH THE TECHNICAL PROPOSAL. Each Proposer must submit all of the forms listed below. Failure to submit these required forms may result in WETA declaring a proposal non-responsive. All forms should be signed by an authorized individual. Electronic signatures, including digital signatures, are acceptable. WETA may reject as non-responsive forms containing interlineations, alternations, or erasures.

Attachment A, "Lobbying Certification"

Attachment B-1, "Prime Contractor/Consultant and Subcontractors/Subconsultants/Supplier Report"

Attachment B-2, "SBE Affidavit of Size" for Proposer, if applicable, and for any SBE subcontractors, subconsultants, or suppliers proposed to perform the Services

Attachment B-3, "Description of the Selection Process of Subcontractors/Subconsultants/Suppliers"

2. ATTACHMENTS. The following attachments are made part of this RFP and any contract awarded pursuant to this RFP:

Attachment C, "Insurance Requirements"

Attachment D, "Federal Requirements"

Attachment E, "DBE/SBE Requirements"

Attachment F, "Alameda Main Street Ferry Terminal - Facility Assessment Report"

Attachment G, "WETA Main Street Terminal Modification Study"

**ATTACHMENT A to RFP**

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

**LOBBYING CERTIFICATION FOR CONTRACTS, GRANTS,  
LOANS AND COOPERATIVE AGREEMENTS  
(PURSUANT TO 49 CFR PART 20, APPENDIX A)**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions and as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

The Offerer, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Offerer understands and agrees that the provisions of 31 U.S.C. A 3801, et. seq. apply to this certification and disclosure, if any.

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Name and Title of Authorized Official

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Signature of Authorized Official

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Date



**INSTRUCTIONS FOR COMPLETION OF STANDARD FORM-LLL,  
DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of a covered federal action, or a material change to a previous filing pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 covered federal action. Use the Standard Form-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional authority, if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime federal recipient. Include Congressional authority, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance ("CFDA") number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number; grant announcement number, the contract, grant, or loan award number, the application/bid control number assigned by the Federal agency). Include prefixes (e.g., "IFB-DE-90-001")
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
  - (b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

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**DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action: a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application b. initial award c. post-award	3. Report Type: a. initial filing b. material change For Material Change Only: Year _____ Quarter _____ Date of last report: _____
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4. Name and Address of Reporting Entity: Prime _____ Subawardee _____ Tier, if known: _____ Congressional District, if known: _____	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: _____ _____ Congressional District, if known: _____
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable:
8. Federal Action Number, if known:	9. Award Amount, if known: \$_____
10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):	10. b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):
(Attach Continuation Sheet(s), if necessary)	
11. Amount of Payment (check all that apply):  \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply): a. retainer b. one-time fee c. commission d. contingent fee e. deferred f. other; specify
12. Form of Payment (check all that apply): a. cash b. in-kind; specify: nature _____ value _____	Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when the transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.  Signature: _____ Print Name: _____ Title: _____ Date: _____ Telephone No.: _____

**ATTACHMENT B-1 to RFP**

**SAN FRANCISCO BAY AREA  
WATER EMERGENCY TRANSPORTATION AUTHORITY (WETA)  
ALAMEDA MAIN STREET FERRY TERMINAL REFURBISHMENT PROJECT**

**PRIME CONTRACTOR/CONSULTANT AND  
SUBCONTRACTOR/SUBCONSULTANT/SUPPLIER REPORT**

**Section A: Prime Consultant/Contractor (Offerer) Information:**

1. RFQ # and Name: \_\_\_\_\_
2. Offerer's Name: \_\_\_\_\_
3. Address: \_\_\_\_\_
4. Phone: \_\_\_\_\_ Email: \_\_\_\_\_
5. Owner or Contact Person: \_\_\_\_\_
6. Title: \_\_\_\_\_
7. Offerer NAICS Codes: \_\_\_\_\_
8. Is your firm a Small Business Enterprise (SBE)?:  Yes  No
9. If your firm is a DBE or SBE please list certification type or No. and Certifying Agency:  
\_\_\_\_\_
10. If your firm is an SBE, please read and fill out, if applicable, the SBE Affidavit of Size form and attach a copy of your firm's certification.
11. Age of your firm: \_\_\_\_\_
12. Annual Gross Receipts (please check one):  
Below \$500K: \_\_\_\_\_ \$500K-\$1M: \_\_\_\_\_ \$1M-\$4M: \_\_\_\_\_ \$6M-\$13M: \_\_\_\_\_ Above \$13M: \_\_\_\_\_

**Section B: Subcontractor/Subconsultant/Suppliers Information**

You must include the DBE/SBE certification number in column 7 for each DBE/SBE subcontractor listed, and if applicable fill out SBE Affidavit of Size form included in proposal document. Attach "Intent to Perform" letter signed by each subcontractor who will perform work should this contract be awarded to the Prime listed above. Offerors MUST provide the following information on ALL subcontractors/subconsultants/ suppliers that provided Offeror a bid, quote, or proposal for work, services or supplies associated with this RFQ pursuant to Authority's sub-proposal reporting requirements. Include all sub-proposal acceptance(s) AND rejection(s). Please carefully read all instructions on page 5.





**ATTACH ADDITIONAL SHEETS AS NECESSARY.**

13. DBE Participation: \_\_\_\_\_ = % Bidder's DBE Participation

14. SBE Participation: \_\_\_\_\_ = % Bidder's SBE Participation

The undersigned will enter into a formal agreement with the subcontractor(s), subconsultant(s) and/or supplier(s) whose sub-proposal was accepted conditioned upon execution of a Contract with the San Francisco Bay Area Water Emergency Transportation Authority. I certify under penalty of perjury that the information included on this form is accurate and true.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

**HOW TO FILL OUT PRIME CONTRACTOR/CONSULTANT AND  
SUBCONTRACTOR/SUBCONSULTANT/SUPPLIER REPORT FORM**

**Section A: Prime Consultant/Contractor Information:**

1. RFQ/RFP # and Name: Insert name of WETA Request for Proposals/Qualifications (RFP/RFQ) or Invitation for Bids (IFB)
2. Offerer's Name: Insert company name.
3. Address: Insert address of company.
4. Phone & Email: Insert phone number and email address of person responsible for filling out information contained in this form.
5. Owner or Contact Person: Insert contact name for the prime contractor.
6. Title: Insert title of person listed in #5.
7. Prime Consultant/Contractor NAICS Codes: List the North American Industry Classification System Code(s) for work performed by the Prime. Codes can be found at [www.census.gov/naics](http://www.census.gov/naics).
8. Is your firm a Small Business Enterprise (SBE)?: Indicate, by checkmark, if your firm is a Small Business Enterprise as defined in the attached description of WETA's SBE Program Eligibility. Please see instructions for Section B #7, below, for SBE Certifications accepted by WETA.
9. If your firm is a DBE or SBE list certification type or No. and Certifying Agency: For DBE firms list the certification number provided by the California Unified Certification Program and the certifying agency. For SBE firms please list the type of certification (e.g. SDBE, SWBE, SB, MB, SBA, SBE/MBE/WBE) and the certifying agency. Please see the description of WETA's Small Business Enterprise Program Eligibility on the following pages for SBE Certifications accepted by WETA.
10. If your firm is an SBE, read and fill out, if applicable, the SBE Affidavit of Size form included in this RFQ/RFP and attach a copy of your firm's certification.
11. Age of your firm: Provide the number of years your firm has been in business.
12. Annual Gross Receipts: Indicate, by checkmark, the range of annual gross receipt your firm receives.



**Section B: Subcontractor/Subconsultant/Suppliers Information**

PLEASE NOTE THE IMPORTANT REQUIREMENTS BELOW:

Offerers MUST provide the following information on ALL subcontractors/subconsultants/suppliers that provided Offerer a bid, quote, or proposal for work, services or supplies associated with this RFQ pursuant to WETA's sub-proposal reporting requirements. This information shall be provided for all sub-proposers regardless of tier for DBEs, SBEs, non-DBEs and non-SBEs. Include all sub-proposal acceptance(s) AND rejection(s).

Attach "Intent to Perform" letter signed by each subcontractor who will perform work should this contract be awarded to the Prime listed above.

1. Insert the name, address, contact person, phone number, email address and age of firm for each subcontractor, subconsultant, or supplier.
2. Annual Gross Receipts: Indicate, by checkmark, the range of the firm's annual gross receipts.
3. Contractor's License No.: If applicable, insert the contractor's license number.
4. Certified DBE (Yes/No): Indicate if the firm is a certified DBE firm accepted by WETA. WETA accepts DBE participation only from firms currently certified in the California Unified Certification Program (CUCP), go to [www.californiaucp.org](http://www.californiaucp.org) for further information. Do not indicate more than one "Yes" for alternative subcontractors/subconsultants for the same work.
5. Certified SBE (Yes/No): Indicate if the firm is a certified SBE accepted by WETA. Please see WETA's SBE Program Eligibility description on the following pages for more information on certification types accepted and other requirements. A copy of SBE certification and, if applicable, SBE Affidavit of Size must be attached to your submittal.
6. DBE/SBE Certifying Agency: If you marked yes as a Certified DBE or SBE, note which agency your certification letter is from—BART, SFMTA, SamTrans etc.
7. DBE Certification No. & Type / SBE Type: If you marked yes as a Certified DBE, please provide the CUCP Certification Number AND the number corresponding to the type of DBE as follows: 1. African-American, 2. Hispanic, 3. Native American, 4. Asian-Pacific, 5. Asian-Indian, 6. Female-Woman, 7. Other. If you marked yes as a Certified SBE please list the type of certification (e.g. SMBE, SWBE, SB, MB, SBA, SBE/MBE/WBE). Please see the description of WETA's Small Business Enterprise Program Eligibility on the following pages for SBE Certifications accepted by WETA.
8. Describe Work or Type of Materials/Supplies and list NAICS Codes: DBE/SBE participation includes that portion of the work actually performed by a certified DBE/SBE with its own forces. For example, for DBE supplier, count 60% of the costs of materials and supplies. List the North American Industry Classification System Code(s) for the work to be performed by the Subcontractor/Subconsultant/Supplier. Codes can be found at [www.census.gov/naics](http://www.census.gov/naics).
9. Proposal Accepted (Yes/No): Indicate if the subcontractor/subconsultant/supplier's proposal has been accepted. If yes, please attach "Intent to Perform" letter signed by

each subcontractor who will perform work should this contract be awarded to the Prime listed above.

10. Percentage of Contract Participation: Insert the percentage of the prime contract participation for each subcontract. Prime consultant/contractor understands that the percentage of contract participation from DBE or SBE firms listed on this form is a firm commitment and will become a condition of the contract should it be awarded.
11. DBE Participation: Insert the sum of column 10 for each DBE listed.
12. SBE Participation: Insert the sum of column 10 for each SBE listed.

Use additional sheets if necessary. If there are no subcontractors proposed, Section B will remain blank.

**ATTACHMENT B-2 to RFP**

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

**SMALL BUSINESS ENTERPRISE AFFIDAVIT OF SIZE**

- SMBE/SWBE Certification by a state other than California, provided that your firm's average annual gross receipts fall below the SBA industry-specific size cap and in no case exceed \$26.29 million.
- SB Certification by the California Department of General Services (DGS), provided that your firm's average annual gross receipts fall below the SBA industry-specific size cap and in no case exceed \$26.29 million.
- SBA 8(a) Certification by the Small Business Administration provided that your firm's average annual gross receipts fall below the SBA industry-specific size cap and in no case exceed \$26.29 million.
- SBE/MBE/WBE Certification by any California county or local government-certifying agency or out-of-state government-certifying agency, provided that your firm's average annual gross receipts fall below the SBA industry-specific size cap and in no case exceed \$26.29 million.

I HEREBY DECLARE AND AFFIRM that I am the \_\_\_\_\_(Title)

and duly authorized representative of \_\_\_\_\_

(Name of Firm)

whose address is \_\_\_\_\_

and whose phone number is \_\_\_\_\_

I HEREBY DECLARE AND AFFIRM that the firm is a Small Business Enterprise (SBE) in accordance with the San Francisco Bay Area Water Emergency Transportation Authority (WETA) standards as defined in its Diversity Program for Contracts. The firm is certified as of the date that the WETA receives the bid/proposal for:

\_\_\_\_\_(RFP/RFQ Name)

and I will provide the certification to document this fact with this enclosure.

Affiant's Signature \_\_\_\_\_

State of California, County of \_\_\_\_\_

Subscribed and sworn to (or affirmed) before me on \_\_\_\_\_, by \_\_\_\_\_

Proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature \_\_\_\_\_ Notary Public

**ATTACHMENT B-3 to RFP**

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

**DESCRIPTION OF THE SELECTION PROCESS OF  
SUBCONTRACTORS/SUBCONSULTANTS/SUPPLIERS**

Offerer's Name: \_\_\_\_\_

RFP# and Name: \_\_\_\_\_

Address: \_\_\_\_\_

Is your firm a Disadvantaged Business Enterprise?  Yes  No

Owner of Contact Person: \_\_\_\_\_

Phone: (        ) \_\_\_\_\_ Fax: (        ) \_\_\_\_\_

**Instructions:**

Offerer MUST provide the following information on ALL subcontractors/subconsultants/suppliers that provided Offerer a bid, quote, or proposal for Work, services or supplies associated with this RFP pursuant to the Authority's sub-proposal reporting requirements. This information shall be provided for all sub-proposers regardless of tier for both DBEs and non-DBEs alike. Include all sub-proposal acceptance(s) AND rejection(s). Signature is required on page two of this form.

Offerer: Provide a narrative description of how the Offerer selected its subcontractors/subconsultants/suppliers, including the following elements: (Please attach additional sheets as necessary.)

1. Soliciting small businesses, including DBEs, to participate through all reasonable and available means.

Example: Include attendance at pre-bid meeting, advertisements, written notices and agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using small business concerns.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Selecting portions of the Work that are economically feasible for small businesses, including DBEs.

Example: List items of Work which the Offerer made available to small business concerns, including, where appropriate, any breaking down of the Contract Work items (including those items normally performed by the Offerer with its own forces) into economically feasible units to facilitate small business participation.

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3. Providing adequate information about plans, specifications and requirements in a timely manner to small businesses, including DBEs.

Example: List dates of written notices soliciting bids from small businesses and the dates and methods used for following up initial solicitations to determine with certainty whether the small businesses were interested.

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4. Negotiating in good faith with small business concerns, including DBEs.

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5. Not rejecting small business concerns, including DBEs, as unqualified without sound business reasons.

Example: Explain reasons for rejecting bids from small business concerns and accepting sub-proposals from selected firms.

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6. Making efforts to assist small business concerns, including DBEs, in obtaining required bonding, lines of credit, or insurance.

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7. Making efforts to assist small business concerns, including DBEs, in obtaining necessary equipment, supplies or materials.

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8. Describe any other steps that the Offerer used to select its subcontractors/subconsultants/suppliers.

The undersigned certifies that the above narrative description is true and accurate, and may be relied upon by WETA in evaluating the Offerer's compliance with the RFP requirements.

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Signature of Owner or Authorized Representative

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Title

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Date

## ATTACHMENT C to RFP

### INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

#### MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

***(Not required if consultant provides written verification it has no employees)***

1. **Professional Liability** (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limit no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

#### Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

##### ***Additional Insured Status***

**The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).

##### ***Primary Coverage***

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its

officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

**Notice of Cancellation**

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the Entity.**

**Waiver of Subrogation**

Consultant hereby grants to Entity a waiver of any right to subrogation which any insurer of said Consultant may acquire against the Entity by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

**Self-Insured Retentions**

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

**Acceptability of Insurers**

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

**Claims Made Policies**

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**
3. If coverage is canceled or non-renewed, and not **replaced with another claims-made policy form with a Retroactive Date** prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of **five (5) years** after completion of contract work.

**Verification of Coverage**

Consultant shall furnish the Entity with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Entity before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**Subcontractors**

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors.



***Special Risks or Circumstances***

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**ATTACHMENT D to RFP**

**FEDERAL REQUIREMENTS**

1. **DEFINITIONS.** The following definitions apply to these federal terms and conditions:
  - a. "Bid" means bid, proposal, or offer.
  - b. "Bidder" means bidder, proposer, or offeror.
  - c. "Authority" means the Water Emergency Transportation Authority.
  - d. "Contract" means the agreement to which these Federal Terms and Conditions apply.
  - e. "Contractor" means the person or entity named in the Purchase Order, Bid, Proposal or Contract to which these Federal Terms and Conditions apply.
  - f. "FTA" means the Federal Transit Administration.
  - g. "U.S. DOT" means United States Department of Transportation.
  
2. **FLY AMERICA REQUIREMENTS.** The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their Contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property to the extent such service is available, unless travel by foreign air carrier is a matter of necessity as defined by the Fly America Act. The Contractor must submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and must, in any event, provide a certificate of compliance with the Fly America requirements, if used. The Contractor agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.
  
3. **ENERGY CONSERVATION.** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Federal Energy Policy and Conservation Act, 42 U.S.C. § 6321 *et seq.*
  
4. **RECYCLED PRODUCTS.** The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.
  
5. **CARGO PREFERENCE REQUIREMENTS.** The Contractor agrees: (a) to use privately owned United States Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers)

involved, whenever shipping any equipment, material, or commodities pursuant to this Contract by ocean vessels to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Authority (through the Contractor in the case of a subcontractor's bill-of-lading); and (c) to include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, Material, or commodities by ocean vessel.

6. **ACCESS TO RECORDS AND REPORTS.** Contractor must provide all authorized representatives of the Authority, the FTA Administrator, the State Auditor and the Comptroller General of the United States access to any books, documents, papers and records of the Contractor which are related to performance of this Contract for the purposes of making audits, copies, examinations, excerpts and transcriptions. Contractor also agrees to retain and maintain, and will require its subcontractors to retain and maintain, all books, records, accounts and reports related to this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain the same until the Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.
7. **FEDERAL CHANGES.** Contractor must at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (28) dated February 9, 2021) between the Authority and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply constitutes a material breach of this Contract.
8. **NO GOVERNMENT OBLIGATION TO THIRD PARTIES.** The Authority and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and will not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor/subconsultant who will be subject to its provisions.
9. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS.**
  - a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions

pertaining to this Project. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

- b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5353(l) on the Contractor, to the extent the Federal Government deems appropriate.
- c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses will not be modified, except to identify the subcontractor/subconsultant who will be subject to the provisions.

**10. CIVIL RIGHTS REQUIREMENTS.**

- a. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Contract:
  - i. 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 CFR Chapter 60, (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 activities undertaken in the performance of the Contract. 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.

- ii. 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.
- iii. 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 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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.

11. **SAFE OPERATION OF MOTOR VEHICLES.** The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or the Authority. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.
12. **GOVERNMENT-WIDE DEBARMENT AND SUSPENSION.** This contract is a covered transaction subject to the requirements of 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)" and 2 CFR Part 1200, U.S. DOT regulations, "Nonprocurement Suspension and Debarment." These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor is required to verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be: (a) Debarred from participation in any federally assisted Award; (b) Suspended from participation in any federally assisted Award; (c) Proposed for debarment from participation in any federally assisted Award; (d) Declared ineligible to participate in any federally assisted Award; (e) Voluntarily excluded from participation in any federally assisted Award; or (f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the Authority. If it is later determined by the Authority that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C, as supplemented by 2 C.F.R. Part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

13. **LOBBYING**. Contractor shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Contractor shall certify that it will not and has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded to the Authority. Contractor shall ensure that all of its subcontractors/subconsultants under this Contract shall certify the same. The Authority is responsible for keeping the certification of the Contractor, who is in turn responsible for keeping the certification forms of subcontractors/subconsultants. The Bidder shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities," which is included with the Bid Documents, including instructions for completion.
14. **CLEAN WATER AND AIR REQUIREMENTS**. 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., and the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in part or in whole with federal assistance provided by the FTA.
15. **ACCESSIBILITY**. The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended; 29 USC § 794; 49 USC § 5301(6); 49 CFR Parts 27, 37, 38, and 39 and any implementing requirements or regulations FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.
16. **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**. Refer to Attachment E for the applicable DBE Program requirements.

17. **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.** The preceding provisions include, in part, certain terms and conditions required by U.S. DOT, whether or not expressly set forth in the preceding provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1F, dated March 18, 2013, as may be 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 Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any the Authority requests which would cause the Authority to be in violation of the FTA terms and conditions.

## ATTACHMENT E to RFP

### DBE/SBE REQUIREMENTS

WETA is committed to and has adopted a Diversity Program for Contracts for the participation of Disadvantaged Business Enterprises (DBEs) and Small Business Enterprises (SBEs) in WETA contracting opportunities in accordance with 49 C.F.R. Part 26, as may be amended (DBE Program). The DBE Program is incorporated by this reference and is available at: <https://weta.sanfranciscobayferry.com/sites/weta/files/weta-public/dbe/WETADiversityProgramforContracts-Sept2020.pdf>

It is the policy of WETA to ensure nondiscrimination in the award and administration of contracts assisted by the U.S. Department of Transportation (U.S. DOT) and to create a level playing field on which DBEs and SBEs can compete fairly for contracts and subcontracts relating to WETA's construction, procurement and professional services activities. To this end, WETA has developed procedures to remove barriers to DBE and SBE participation in the bidding and award process and to assist DBEs and SBEs to develop and compete successfully outside the DBE Program. In connection with the performance of the Contract, the Contractor will cooperate with WETA in meeting these commitments and objectives. There is no DBE/SBE contract-specific goal or DBE/SBE project goal applicable to this project.

WETA encourages prime contractors to use financial institutions owned and controlled by socially and economically disadvantaged individuals in the community.

#### **DBE Firm Eligibility**

All DBEs firms listed by proposers for participating in the project must be certified DBEs as of the proposal due date. WETA accepts current certifications by the California Unified Certification Program (CUCP).

#### **Resources**

The DBE Database is a consolidated and automated directory that identifies firms that have been certified as DBEs by the CUCP. The DBE Database is available at: <https://dot.ca.gov/programs/civil-rights/dbe-search>.

#### **Contract Assurance**

Pursuant to 49 C.F.R. §26.13, and as a material term of any agreement with WETA, the Contractor hereby makes the following assurance and agrees to include this assurance in any agreements it makes with subcontractors or subconsultants in the performance of this contract:

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT–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 recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.



### **DBE Reporting Requirements**

During the contract term, the Contractor must submit WETA Form 6 and WETA Form 7, as applicable, in accordance with instructions provided by WETA.

The Contractor must maintain records of all DBE/SBE participation in the performance of this contract, including subcontracts entered into with certified DBEs/SBEs and all materials purchased from certified DBEs/SBEs. The Contractor and any certified DBE/SBE subcontractor/subconsultant must maintain records and documents for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of WETA.

The Contractor must promptly notify WETA whenever a DBE/SBE subcontractor performing work related to this contract is terminated or fails to complete its work. WETA reserves the right to require the Contractor or its subcontractors to provide additional information related to DBE/SBE participation.

### **Prompt Payment Requirements**

The Contractor is required to pay its subcontractors for satisfactory performance of work related to this contract no later than 30 days after the Contractor receives payment for that work from WETA. In addition, the Contractor is required to pay all retainage owed to subcontractors for satisfactory completion of work no later than 30 days after the Contractor's receipt of payment for that work from WETA.

### **Confidentiality**

To the extent permitted by law, the identity of an individual who submits a complaint related to the administration of WETA's DBE Program ("complainant") will be kept confidential, at the complainant's election. If such confidentiality will hinder an investigation, proceeding or hearing conducted by WETA or U.S. DOT, or result in a denial of appropriate administrative due process to other parties, WETA will advise the complainant for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

### **Cooperation**

WETA agrees to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information by U.S. DOT. All participants in WETA's DBE Program (including, but not limited to, all proposers or bidders subject to this Program, DBE firms, complainants and appellants, and contractors and subcontractors using DBE firms to meet an overall, project or contract goal) are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information by U.S. DOT or WETA. Failure to do so will be grounds for appropriate action against the party involved, as determined by WETA and/or U.S. DOT (e.g., with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

### **Intimidation and Retaliation**

All participants in WETA's DBE Program (including, but not limited to, all proposers or bidders subject to this Program, DBE firms, complainants and appellants, and contractors and subcontractors using DBE firms to meet an overall, project or contract goal) must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with

any right or privilege secured by the applicable federal regulations or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the applicable federal regulations. A violation of this provision constitutes noncompliance with 49 CFR section 26.109 and will be grounds for appropriate enforcement action against the party involved, as determined by WETA and/or U.S. DOT.

**Enforcement**

WETA will monitor compliance of its contractors on federally-assisted contracts with the requirements of the 49 CFR Part 26 and WETA's DBE Program. WETA may impose such contract remedies as are available under federal, state and local law and regulations for non-compliance. Such remedies may include, but are not limited to, withholding of progress payments and contract retentions, imposition of liquidated damages, and termination of the contract in whole or in part.