

# WATER EMERGENCY TRANSPORTATION AUTHORITY

## REQUEST FOR PROPOSALS (RFP #19-012)

### Construction Management Services for the Bay Breeze Replacement

The San Francisco Bay Area Water Emergency Transportation Authority (“WETA”) is seeking proposals from qualified firms in response to this Request for Proposals (“RFP”) for Construction Management Services for the Bay Breeze Replacement (the “Project”).

#### A. BACKGROUND

The San Francisco Bay Area Water Emergency Transportation Authority, a local agency with multi-county jurisdiction, was established by the California State Legislature to expand regional ferry service and coordinate waterborne emergency response activities on San Francisco Bay. WETA’s comprehensive plan to establish ferry service on seven new routes was approved by the Legislature in 2003 (the “Plan”). WETA has also assumed operation of existing ferry services in the Bay Area (with the exception of those that are operated by the Golden Gate Bridge Highway and Transportation District), as directed by the Legislature through SB 976 and SB 1093. The Plan was prepared with input from existing private operators, public transit providers, governmental agencies, environmental groups, business organizations and local representatives. WETA’s goal is to design, build and operate a seamless transit system that responds to the region’s congestion management needs, serves in an emergency response capacity, develops innovative environmental solutions for ferry vessels, contributes to economic viability, and improves quality of life.

WETA is seeking construction management support services for an aluminum passenger vessel built under 46 CFR Subchapter “K” ferry vessels. The expected vessel capacity is 320 passengers with a service speed of 34 knots. WETA intends to retain the services of an experienced marine engineering and construction management firm to support development and management of this work. The work required is varied and includes such items as preparing and reviewing technical designs and drawings, developing procurement specifications, managing procurement processes and providing onsite shipyard construction inspection and oversight. The passenger vessel project and estimated schedule requiring construction management support to be procured under this RFP include:

- New Vessel Construction procurement. March 2020
- Construction. May 2020 – October 2021
- Warranty Period. November 2021 – October 2022

Firms that respond to this RFP (“Proposers”) must note that a contract awarded in connection with this RFP will be financed in part with federal funds. The consultant selected based on the procurement process detailed herein (the “Selected Consultant”) will be expected to provide any and all services in compliance with applicable federal laws, rules and regulations. Please also note the Disadvantaged Business Enterprise (“DBE”) participation requirements associated with this RFP.

**B. PROPOSAL 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 discretion:

<b>January 13, 2020 @ 2:00 PM</b>	Written requests for clarifications are due
<b>January 24, 2020 @ 2:00 PM</b>	Proposals due

**C. SCOPE OF SERVICES**

This RFP will solicit proposals from qualified firms to assist with vessel design and specifications preparation, vessel construction management oversight, and warranty administration once the vessel is put into service.

The Selected Consultant will provide WETA with dedicated services of an individual or firm with the resources, training, prior experience and knowledge, skills, and expertise to effectively perform and complete the scope of Services for this Project.

The estimated capital budget for this project is \$15,000,000 and WETA traditionally allocates approximately 3-5% of the budget to construction management services that are the subject to this RFP. The scope of work for construction management services will likely include at a minimum the following project elements, as tasked by WETA:

**Pre-Bid Services**

- Attend meetings
- Respond to questions from bidders
- Review of Technical proposals, bids, bid bonds and related contract bid proposal submittals
- Manage construction contract bidding phase and management of pre-bid conference and bid opening procedures including review of bids, bid bonds, insurance certificates, and related contract bid proposal submittals.
- Assist the Authority in selecting a bidder, preparing a recommendation for contract award, and executing a construction contract with the successful bidder.

**Construction Phase Services**

Perform all necessary administration functions as required by the Authority, including, but not limited to the following:

- Perform on-site shipyard inspections, monitor contractor's performance and enforce all requirements of applicable regulations and specifications
- Review all shipyard submittals including purchase orders, engineering analyses and calculations, and all drawings
- Provide inspectors for day-to-day observation/inspection of work. The inspectors shall make reasonable efforts to guard against defects and deficiencies in the work of the Contractor and to enforce the provisions of the contract documents to ensure all requirements are being met, including compliance with approved drawings and USCG regulations
- Prepare inspection reports documenting observed contractor activities

- Attend progress meetings, weekly or as deemed necessary, between contractors, the Authority, and other interested parties.
- Take photographs of field conditions during construction and post-construction phases
- Review contractor progress payment requests including measurements of bid items. Negotiate differences over the amount with contractor and progress payments through the Authority Project Manager
- Monitor project budget, purchases, and payments
- Prepare monthly progress reports documenting the progress of construction describing key issues, cost status, and schedule status
- Establish and process project control documents, including:
  - \* Inspection diaries
  - \* Weekly progress reports
  - \* Monthly construction payments
  - \* Requests for Information (RFI)
  - \* Material certifications
  - \* Contract Change Orders
  - \* Coast guard approvals
- Evaluate, negotiate, recommend, and prepare change orders. Perform quantity and cost analysis as required for negotiation of change orders
- Act as construction project coordinator and point of contact for all communications with Contractor
- Quality Assurance/Quality Control (QA/QC) – Verify QA/QC procedures are being followed
- Witness dock trials and sea trials
- Provide all required coordination with the Authority’s Operator

**Post-Construction Services**

- Perform Post-Construction Phase activities, including:
  - \* Prepare initial deficiency/warranty lists
  - \* Coordinate preparation of record drawings (as-built drawings)
  - \* Provide final inspection services and project closeout activities
  - \* Provide coordination with the Authority’s Operator to schedule, establish and complete crew training.
  - \* Provide the efforts required to carry out warranty period repairs
  - \* Provide the coordination required to close out warranty repairs with the contractor

**D. SAMPLE AGREEMENT/TASK ORDERS**

The Selected Consultant will be required to execute an Agreement, a sample of which is attached as Attachment A. If a Proposer desires any modifications to the Agreement, they must be submitted for consideration with the Proposal. Otherwise, the Proposer will be deemed to have accepted the form of Agreement without modification. All Services will be performed on a task order basis. In general, the first item of work will be a scoping task, which will identify the critical steps necessary and how the Services will be coordinated. Budgets for each task order will be negotiated based on the rates identified in the Agreement.

**E. RFP CONTENT: EXAMINATION OF DOCUMENTS**

This RFP sets forth the requirements for the preparation, submission and contents of proposals submitted to WETA. Further, this RFP describes the process and factors under which each proposal will be evaluated, and the Selected Consultant identified.

This RFP includes the following documents:

- (1) Request for Proposals
- (2) Attachment A: Sample Agreement
- (3) Attachment B: DBE/SBE Forms
- (4) Attachment C: Lobbying Certification

Proposers are solely responsible for examining, with appropriate care and diligence, all these documents and fully informing themselves of all relevant aspects of the Services. By submitting a response to this RFP, Proposers represent that they have examined this RFP and are familiar with the scope of Services.

**F. PRE-PROPOSAL CONFERENCE**

WETA will not conduct a Pre-Proposal conference.

**G. REQUEST FOR CLARIFICATION OF RFP**

A request for clarification regarding the meaning or interpretation of this RFP or the Scope of Services may be requested in written form by contacting Tim Hanners, Project Manager, at [hanners@watertransit.org](mailto:hanners@watertransit.org). All requests must be submitted by the date and time set forth in Section B.

WETA specifically requests that any questions concerning this RFP, except those concerning the DBE / SBE requirements, be directed only to Tim Hanners, Project Manager. Questions regarding DBE requirements should be directed to Lauren Gularte at [gularte@watertransit.org](mailto:gularte@watertransit.org).

Should WETA determine that clarification of a possibly ambiguous or incomplete statement contained in the RFP is in order, WETA will issue a written addendum clarifying the matter, which will be posted on WETA's website ([weta.sanfranciscobayferry.com](http://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. Addenda issued for this RFP, if any, must be expressly acknowledged in Proposer's cover letter.

**H. PROPOSAL DUE DATE: SUBMISSION OF PROPOSALS**

All proposals should be submitted to:

Tim Hanners, Project Manager  
San Francisco Bay Area Water Emergency Transportation Authority  
Pier 9, Suite 111, The Embarcadero  
San Francisco, CA, 94111

Two (2) hard copies and one (1) digital copy on USB drive of Proposals must be received at the above address **no later than 2:00 P.M. on January 24, 2020**. Proposals received after the date and time specified above will be considered late and will not be accepted.

Proposals in response to this RFP should be submitted in a sealed envelope labeled Construction Management Services for the Bay Breeze Replacement RFP #19-012 and include the name of the Proposer. Cost proposal information must be submitted in a separate sealed envelope labeled COST PROPOSAL labeled, Construction Management Services for the Bay Breeze Replacement RFP #19-012 and include the name of the Proposer.

## **I. PROPOSAL CONTENTS AND FORMAT**

Each 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. Proposals should be limited to 25 pages, excluding cover letter, table of contents, resumes, assurances and miscellaneous section, DBE certifications, and the cost proposal.

**1. Cover Letter.** The signed cover letter must be on company letterhead clearly stating the firm name of the Proposer, business address, telephone, and e-mail address. The cover letter must include the following information:

- Introduce the firm and summarize its qualifications.
- Name(s) of authorized principals with authority to negotiate and contractually bind the firm.
- A statement that binds the Proposer to the proposed Scope of Services and cost proposal for ninety (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.
- Confirm acceptance of or indicate exceptions to the Agreement. See Section I.2.d.vi. This confirmation must include an explicit acknowledgement that Consultant will meet all insurance requirements in the Agreement.
- Indicate whether there are any conflicts of interest that would limit the Proposer's ability to provide the requested services. See Section Q. Disclose any such conflicts in a separate document as per Section 2.d.
- Indicate whether there are any required disclosures pursuant to the Levine Act. See Section N. Include any such disclosure in a separate document as per Section 2.d.
- Confirm that there are no portions of the proposal that contain confidential information or indicate that the proposal includes a confidentiality index. If Proposer is marking information as confidential and submitting a confidentiality index, the cover letter must include a statement that the Proposer: i) assumes all responsibility for any challenges resulting from non-disclosure, (ii) waives all claims against WETA and its directors, officers, employees or agents in connection with withholding the material in the confidentiality index or the disclosure of any portion of the proposal not included in the confidentiality index; and iii) agrees to indemnify and defend WETA against all claims and damages arising from WETA's non-disclosure of material included in the confidentiality index.

**2. Content.** Proposals must contain the following five sections:

- Understanding of Project Objectives
- Technical and Management Approach
- Capabilities and Experience of Proposed Staff
- Assurances and Miscellaneous (not included in 25-page limit)
- Cost (not included in 25-page limit and submitted separately in a sealed envelope)

**a. Understanding of Project Objectives.** In this section, Proposers must provide the following information:

- A discussion demonstrating the Proposer's understanding of the services to be provided and their significance to WETA's day-to-day activities.
- Identification of additional tasks, if any, not identified in Section 2.b. that may be required to successfully meet the objectives of services requested in this RFP.

**b. Technical and Management Approach.** In this section, Proposers must describe their approach to the delivery of services included in Section 2.a., above. This section must (1) reflect the Proposer's knowledge of small passenger vessel rehabilitation, from plan and engineering design review, construction, inspection and project commissioning, (2) include a discussion on potential impacts to cost, scope, and schedule based on lessons learned, including any recommendations the consultant proposes to lower and/or control costs given the proposed scope of the project and (3) the Proposer's approach to working with WETA staff. Proposers must provide the names and positions of all staff proposed. An organization chart should be included that clearly establishes principal team member firms and sub-consultants. Also identify any specialty sub-consultants that would not necessarily be part of the core team but would be available on an as-needed basis for specialty support. Proposers responding to this RFP are expected to be familiar with all aspects of project management.

The proposal should also designate who will be the Principal-in-Charge, Construction Manager, and other key construction management personnel in charge of the scope of services, and who will be WETA's contact throughout the contract duration. Proposals must discuss workload for all key team members, indicating their expected availability, the percentage of their time that will be devoted to WETA's contract and any other assurances as to their ability to provide the requested services in a responsive and timely manner.

**c. Capabilities and Experience of Proposed Staff.** In this section, Proposers must state the qualifications and experience of the proposed team, emphasizing the specific qualifications and experience acquired while providing services similar to those being sought by WETA, particularly for Construction Manager and other key project staff members assigned to the project.

This section must include the following information:

- Names of Project Manager/Construction Manager and other key team members;
- Resumes of all technical personnel to be assigned to work within this Scope of Services (resumes will not count toward the 25-page limitation);

- Statement of Proposer's background and experience related to activities and services being sought through this RFP;
- Brief description of similar ferryboat procurement/construction projects for which the Proposer has provided services during the past seven (7) years, including the following information:
  - Client, including reference contact information
  - Project description and location
  - Description of services
  - Total value of services provided
  - Key personnel involved

**d. Assurance and Miscellaneous Items.** Response to this section will not count toward the 25-page limit. In this section, the proposal must provide the following information:

**i. DBE Compliance and Documentation Forms.** The Agreement awarded pursuant to this RFP, if any, will be assisted by funds from the U.S. Department of Transportation (U.S. DOT). WETA's proposed annual overall Disadvantaged Business Enterprise (DBE) goal for FFY 2019/20 is 0.24% for FTA-assisted contracts. WETA proposes to meet 100% of its goals using race-neutral methods. WETA's proposed annual overall Small Business Enterprise (SBE) goal for FFY 2019/20 is 7.5% for FTA-assisted contracts.

Consultants are strongly encouraged to obtain DBE and SBE participation on this Project, although there is no contract-specific DBE or SBE goal. Please document the process used to solicit and select subcontractors/sub-consultants/suppliers. Documentation must be submitted on the forms contained in Attachment B: (1) Prime Consultant and Subcontractors/Sub-consultants/Suppliers Report; and (2) Description of the Selection Process of Subcontractors/Sub-consultants/Suppliers. Please submit the Small Business Affidavit of Size for your firm, if applicable, and for any SBE subcontractors/subconsultants/suppliers proposed to perform the Services. Submittals that fail to document the solicitation of DBE or SBE participation will not be considered.

DBE compliance and documentation forms, including the Prime Consultant and Subcontractors/Subconsultants/Suppliers Report and Description of the Selection Process for Subcontractors/Subconsultants/Suppliers forms, shall be submitted with the Cost Proposal in a separate sealed envelope.

For DBE or SBE questions or assistance, refer to the DBE Program, available at [weta.sanfranciscobayferry.com](http://weta.sanfranciscobayferry.com), and/or contact Lauren Gularte, DBE Program Administrator at (415) 364-3188 or by email at [gularte@watertransit.org](mailto:gularte@watertransit.org).

**ii. Levine Act Disclosure.** If required, disclose any Levine Act-related information, as described in Section N of this RFP, below.

- iii. **Lobbying Certification.** Provide the required certification in the form contained in Attachment C of this RFP.
- iv. **Conflict of Interest Disclosure.** Disclose any conflict of interest, as more fully described in Section Q of this RFP, below.
- v. **References.** Proposers must provide at least three references (names, current email addresses and telephone numbers). The references should cover work performed by the Construction Manager and other key project staff members. Additionally, references should be for work recently performed and similar in nature to the services sought in this RFP. The references must include a brief description of the projects involved, and the roles of the respective team members in successfully completing the project.
- vi. **Agreement.** If a Proposer desires any modifications to the Agreement (See Attachment A), they must be submitted for consideration with the Proposal. Otherwise, the Proposer will be deemed to have accepted the form of Agreement without modification.
- vii. **Financial Stability.** Provide pertinent information to allow 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. **Cost.** Response to this section will not count toward the 25-page limit and must be submitted separately in a sealed envelope. WETA intends to compensate the Selected Consultant on a task order basis in accordance with the labor rates and expenses set forth in its Cost Proposal and accepted by WETA. Each task order will include a not-to-exceed limit on compensation. Proposers are to propose fully burdened labor rates for all job categories by position. Hourly rates must remain firm for at least one calendar year. Proposers must either indicate the hourly rates that will apply for each calendar year of the Agreement or indicate an escalation formula that will apply to such hourly rates.

Expenses for travel and reasonable other expenses will be reimbursed at cost and upon submission of expenses. In the Cost Proposal, proposers should indicate the estimated categories and costs of expenses to be incurred in providing the Services.

Cost Proposals will remain sealed and confidential until opened in accordance with Section K.

## **J. WITHDRAWAL OF PROPOSAL**

Submission of a Proposal constitutes a firm offer to WETA for ninety (90) calendar days from the submission deadline for Proposals.

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 WETA. A telephone or email request is not acceptable.

**K. PROPOSAL EVALUATION PROCESS**

**1. 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.

**2. Evaluation Criteria.** WETA intends to award a contract to the most qualified, responsible firm submitting a responsive Proposal. Ranking will be based on a maximum of 100 points, weighted as indicated below. In determining the number of points a Proposal will receive in each category, WETA will consider the Proposal material submitted, oral 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 Proposals:

1.	Understanding of Project Objectives	15
2.	Technical and Management Approach	25
3.	Capabilities and Experience of Proposed Staff	60
Total		100

**3. Interviews.** WETA's 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 proposals. WETA also reserves the right to require any such clarifications in writing.

**4. Negotiations.** Upon completion of the evaluation process, WETA will rank each firm in accordance with the evaluation criteria above. After the Consultant ranking has been determined by WETA, WETA will open the cost proposal from the top-ranked firm only. WETA may accept the highest-ranked Proposal or negotiate the terms and conditions of the Agreement with the highest-ranked firm. 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 firms, or, at its sole discretion, WETA may reject all remaining Proposals.

**5. Notice of Intent to Award.** If the Contract is to be awarded, Proposers will be notified of WETA's intent to award the Contract at least 72 hours before the WETA Board acts to award the Contract.

**L. 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. 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.

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.

**M. 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.

All Protests should be submitted to WETA's Executive Director.

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 based upon WETA's notification of intent to award the Contract must be submitted in writing by 4pm pacific time on the fifth day after WETA issues the Notice of Intent to Award a contract. Day one is the day after the date on the Notice of Intent to Award. If the fifth day falls on a weekend or holiday, protests must be received no later than 10am pacific time on the first business day after the fifth day. The protest must clearly specify in writing the grounds and evidence on which the protest is based, and the relief sought.

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. The decision of the Executive Director is final.

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 at least 72 hours prior to the Board meeting at which any action is taken to award the contract. The decision of the Executive Director is final.

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.

**N. LEVINE ACT**

The Levine Act (Government Code 84308) is part of the Fair Political Practices Act that applies to elected officials who serve on appointed Boards such as the San Francisco Bay Area Water Emergency Transportation Authority. The Levine Act prohibits any Authority Member who has received \$250.00 or more within the previous twelve months from an applicant from participating in or influencing the decision on awarding a contract with WETA. The Levine Act also requires a member of WETA who has received such a contribution to disclose the contribution on the record of the proceeding. In addition, Authority 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.

Applicants must disclose on the record any contribution of \$250.00 or more that they have made to an Authority Member within the twelve-month period preceding submission of their response to this RFP. This duty applies to your company, any member of your team, any agents for you or other team members and to the major shareholders of any closed corporation that is part of your team. If you have made a contribution that needs to be disclosed, you must provide written notice of the date, amount, and receipt of the contribution(s) in writing to WETA's Executive Director. This information, if any, must accompany your response to this RFP.

**O. CONFIDENTIALITY**

1. **Confidentiality Index and Waiver of Claims.** The California Public Records Act (Cal. Govt. Code Sections 6250 et seq.) (CPRA) mandates public access to government records. 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 the Proposer, may be a public record that must be made available to the public.

If the Proposer believes any communication 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 WETA withhold from disclosure the exempt information by marking each page containing such exempt information as confidential and must also submit a separate confidentiality index including all of the following information:

- 1) The section and page number of the proposal where the information is located.
- 2) An explanation of why the information is exempt from disclosure under the CPRA.

By submitting a proposal, Proposer: i) consents to the release of any portion of its proposal not included in the confidentiality index; and ii) waives all claims and agrees not to maintain any legal action against WETA, its directors, officers, employees and agents, for the disclosure of such information.

If the Proposer does not include a confidentiality index in its proposal, WETA will have no obligation to withhold any information from disclosure and may release the information sought without liability to WETA.

In the event of conflicts between the confidentiality index and confidentiality designations in the body of the proposal, the confidentiality index prevails.

A Proposer may not designate its entire proposal as confidential nor may a Proposer designate Proposal Forms or its Price Proposal as confidential. WETA will not honor such designations and will disclose submittals so designated to the public.

2. **Confidentiality Indemnity.** Upon receipt of a request pursuant to the CPRA seeking proposal material relating to this RFP, WETA will withhold material 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 Proposer prior to releasing any material listed in the confidentiality index.

By submitting a proposal, 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.

**P. EX PARTE COMMUNICATION**

Proposers and Proposers' representatives must communicate in the manner set forth in this RFP. All such communication must be directed to the Project Manager named in this RFP until after a Notice to Proceed has been issued by WETA. There must be no communication with any officer, director, employee, or agent of WETA, except as may be reasonably necessary to carry out the procedures specified in this RFP.

Proposers and Proposers' representatives may not communicate with WETA's Board members except in writing and if the communication is made public. Nothing herein prohibits Proposers and their representatives from making oral statements or presentations in public to one or more representatives of the Agency during a public meeting.

**Q. CONFLICT OF INTEREST**

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 Agreement for additional conflict of interest provisions that will be in effect during the contract term.

**R. 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.

**S. AUDIT REQUIREMENTS**

The Selected Consultant's proposed rates and costs are subject to audit in accordance with Federal Cost Principals (Title 48, Code of Federal Regulations, Part 31) and/or Generally Accepted Accounting Principles (GAAP). The Selected Consultant must cooperate with WETA and its audit firm. After any audit recommendations are received by WETA, the proposed rates and costs must be adjusted by the Selected Consultant and approved by WETA, to conform to the audit recommendations. The Selected Consultant agrees that individual items of cost may be incorporated into the Consultant's Agreement at WETA's sole discretion to conform to the audit recommendations. Refusal by Consultant to incorporate audit recommendations will be considered

a breach of the Agreement and may, at WETA's sole discretion, be considered cause for termination of the Agreement.

Proposers may be required to submit recent audit reports (not older than 18 months) of any subconsultant's direct and indirect rates prior to contract award, and must state whether rates are consistent with Federal Cost Principals (Title 48, Code of Federal Regulations, Part 31). Each audit must have been conducted by the Federal Government, a Certified Public Accountant, or Independent Auditor. Proposers must identify the audit source, contact name, phone number, and furnish copies of findings. If a Proposer provides fully burdened rates for approval, for themselves or for a subconsultant, the rates must be accompanied by proof where another public agency has recently approved the quoted rate, or some other justification acceptable to WETA.

**T. FEDERAL REQUIREMENTS**

This RFP is subject to financial assistance from the U.S. Department of Transportation, Federal Transit Administration (FTA). The Selected Consultant agrees to comply with all applicable federal statutes, rules and regulations, including but not limited to the following:

**1. FLY AMERICA REQUIREMENTS.** The Consultant 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 consultants 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 Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements, if used. The Consultant agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

**2. ENERGY CONSERVATION.** The Consultant 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.*

**3. RECYCLED PRODUCTS.** The Consultant 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 CFR part 247.

**4. CLEAN WATER AND AIR REQUIREMENTS.** The Consultant 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 Consultant agrees to report each violation to WETA and understands and agrees that WETA will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office.

The Consultant 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.

**5. LOBBYING.** Consultant shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Consultant 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. Consultant 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 WETA. Consultant shall ensure that all of its subcontractors/subconsultants under this Contract shall certify the same. WETA is responsible for keeping the certification of the Consultant, who is in turn responsible for keeping the certification forms of subcontractors/subconsultants.

The Proposer must complete Standard Form SF-LLL, "Disclosure of Lobbying Activities," which is included with the Bid Documents, including instructions for completion.

**6. ACCESS TO RECORDS AND REPORTS.** Consultant shall provide all authorized representatives of WETA, the FTA Administrator, the State Auditor and the Comptroller General of the United States access to any books, documents, papers and records of the Consultant which are directly pertinent to this Contract for the purposes of making audits, copies, examinations, excerpts and transcriptions. Consultant also agrees to maintain all books, records, accounts and reports required under 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 Consultant agrees to maintain the same until WETA, 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.** Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (25) dated October 1, 2018) between WETA and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Consultant's failure to so comply shall constitute a material breach of this Contract.

**8. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.** WETA and Consultant 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 shall not be subject to any obligations or liabilities to WETA, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Consultant 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.**

The Consultant 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 Consultant 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 work is being performed. In addition to other penalties that may be applicable, the Consultant 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 Consultant to the extent the Federal Government deems appropriate.

The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5353(l) on the Consultant, to the extent the Federal Government deems appropriate.

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

**10. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION.** This contract is a covered transaction for purposes of 2 CFR Parts 180. As such, the Consultant is required to verify that none of the Consultant, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940 and 180.935.

The Consultant is required to comply with 2 CFR Part 180, Subpart C and must include the requirement to comply with 2 CFR Part 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, Consultant certifies as follows:

The certification in this clause is a material representation of fact relied upon by WETA. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to WETA, 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 CFR Part 180, Subpart C 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.

**11. CIVIL RIGHTS REQUIREMENTS.**

The following requirements apply to the underlying contract:

1. 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 Consultant 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 Consultant

agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying contract:
  - (a) 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 Consultant 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 Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant 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 Consultant agrees to comply with any implementing requirements FTA may issue.
  - (b) 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 Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.
  - (c) Disabilities – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant 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 Consultant agrees to comply with any implementing requirements FTA may issue.
3. The Consultant 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.

**12. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS.**

WETA is committed to and has adopted a DBE Program for the participation of DBEs in WETA contracting opportunities in accordance with Federal Regulation 49 CFR, Part 26, effective March 4,

1999 as may be amended (the “DBE Program”), the terms and conditions of which are incorporated by this reference.

It is the policy of WETA to ensure nondiscrimination on the basis of race, color, sex, or national origin in the award and administration of US DOT assisted contracts 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 consultant will cooperate with WETA in meeting these commitments and objectives. WETA reserves the right to require that the consultant provide additional DBE or SBE information.

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

WETA’s DBE program applies to all DOT-assisted contracting activities. WETA’s Diversity Program for Contracts (DBE) is available at <http://sanfranciscobayferry.com/weta/publications> and lists the database consultants can find DBEs and how WETA implements the DBE regulations. WETA’s Diversity Program for Contracts also includes WETA’s Small Business Enterprise (SBE) Program in Exhibit C, which details the types of Small Business Certifications that are eligible to be counted towards WETA’s SBE Program.

#### Clause Language:

The following clause language is mandatory and must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts. The clauses below incorporate the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. A substantial change to the payment provisions in the newest version of Part 26 concerns retention (see section 26.29). Grantee choices concerning retention should be reflected in the language choices in clause subsection d.

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. WETA’s proposed annual overall Disadvantaged Business Enterprise (DBE) goal for Fiscal Year 2019/20 is 0.24% for FTA-assisted contracts. WETA proposes to meet 100% of its goals using race-neutral methods. WETA’s proposed annual overall Small Business Enterprise (SBE) goal for Fiscal Year 2019/20 is 7.5% for FTA-assisted contracts.
- b. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as WETA deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

- c. Bidders/Offerors are required to document sufficient DBE/SBE participation or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following concurrent with and accompanying an initial proposal:
1. The names and addresses of DBE/SBE firms that will participate in this contract;
  2. A description of the work each DBE/SBE will perform;
  3. The dollar amount of the participation of each DBE/SBE firm participating;
  4. Written documentation of the bidder/Offeror's commitment to use a DBE/SBE subcontractor whose participation it submits with the bidder/Offeror's submittal. The Consultant commits to using the subcontractors listed in their response to the RFP.
  5. Written confirmation from the DBE/SBE that it is participating in the contract as provided in the prime Contractor's commitment; and
  6. If not able to obtain DBE/SBE participation, evidence of good faith efforts to do so.

Bidders/Offerors must present the information required above with proposal submission on the required forms provided in this document (see 49 CFR 26.53(3)).

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

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

By submitting a proposal the proposer is deemed to have made the foregoing assurances and to be bound by its terms. For DBE or SBE questions or assistance, contact Lauren Gularte, DBE Program Administrator at (415) 364-3188 or by email at [gularte@watertransit.org](mailto:gularte@watertransit.org).

**13. SAFE OPERATION OF MOTOR VEHICLES.** The Consultant 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 Consultant or WETA. The Consultant 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 Consultant owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

**14. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.** The preceding provisions include, in part, certain Standard Terms and Conditions required by U.S. DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008 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 Consultant shall not perform any act, fail to perform any act, or refuse to comply with any WETA requests which would cause WETA to be in violation of the FTA terms and conditions.

**-END OF REQUEST-**

**ATTACHMENT A—SAMPLE AGREEMENT**

**ATTACHMENT A TO RFP**  
**CONSTRUCTION MANAGEMENT SERVICES**  
**SAMPLE AGREEMENT**

**RFP# 19-012**

THIS AGREEMENT is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_, by and between the SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY (hereinafter referred to as “WETA”) and \_\_\_\_\_ (hereinafter referred to as “Consultant”).

WHEREAS, WETA desires to obtain construction management services in connection with the Bay Breeze Replacement; and

WHEREAS, WETA has issued an RFP dated \_\_\_\_\_, 201\_, a copy of which is attached and incorporated as Exhibit A; and

WHEREAS, the Consultant 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 \_\_\_\_\_, 201\_, and a cost proposal dated \_\_\_\_\_, 201\_ copies of which are attached and incorporated as Exhibit B; and

WHEREAS, on \_\_\_\_\_, 201\_, WETA's Board of Directors authorized award of the Agreement to the Consultant.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

**1. RENDITION OF SERVICES**

The Consultant agrees to provide professional services to WETA in accordance with the terms and conditions of this Agreement. In the performance of its work, the Consultant represents that it (1) has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants with special expertise in providing such services; (2) carries all applicable licenses, certificates, and registrations in current and good standing that may be required to perform the work; and (3) will retain all such licenses, certificates, and registrations in active status throughout the duration of this engagement.

**2. SCOPE OF SERVICES**

The general scope of the Consultant’s services consists of the services set forth in section C of the RFP. Services will be performed on a task order basis, with individual task orders including specific scopes of services and other task-specific terms and conditions. In the event of any conflict or inconsistency between a task order and this Agreement, including Exhibits A and B, this Agreement, including Exhibits A and B, will control.

**3. Component Parts of the agreement**

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

- Amendments to the Agreement
- This Agreement
- Exhibit A, WETA's RFP
- Tasks orders issued under this agreement
- Exhibit B, Consultant's Proposal, both technical and cost proposal, and including all forms and attachments

**4. TERM AND TIME OF COMPLETION**

The term of this Agreement will be for a five-year base term commencing upon WETA's issuance of a written notice to proceed. Task Orders may be issued under this Agreement any time during the base term, or option terms if exercised. The Consultant's performance of services will commence for each Task Order upon receipt of the Notice to Proceed issued by WETA for the respective Task Order and the Consultant must 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. WETA may exercise its option to extend this Agreement for up to two additional one-year periods. If WETA determines to exercise the first and/or subsequent option terms, WETA will provide at least 30 days' written notice of its intention to exercise the option terms.

**5. KEY PERSONNEL**

It is understood and agreed by the parties that at all times during the term of this Agreement that \_\_\_\_\_ will serve as the primary staff person of the Consultant to undertake, render and oversee all of the services under this Agreement (Key Personnel). WETA awarded this Agreement to Consultant based on WETA's confidence and reliance on the expertise of Consultant's Key Personnel. Consultant 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 Consultant from compliance with all of the requirements of this Agreement, including any schedule.

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**6. COMPENSATION**

There is no guaranteed compensation under this Agreement. The Consultant agrees to perform all of the services included in Section 2 in accordance with Exhibits A and B and any Task Order. The total not-to-exceed amount includes labor, materials, taxes, insurance, subcontractor costs, travel expenses, telephone costs, copying costs, profit, administrative and overhead fees, and all other costs and expenses incurred by the Consultant. The hourly rate by personnel category is set forth in Exhibit B. WETA will pay the Consultant in accordance with Section 7.

**7. MANNER OF PAYMENT**

The Consultant may 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.

Invoices must describe in detail the services rendered by Consultant 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, with cc to Chavez@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 Consultant, WETA will so advise the Consultant in writing giving reasons for its objection. If any invoice submitted by the Consultant is disputed by WETA, only that portion so disputed may be withheld from payment and the Consultant 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 must be exchanged between WETA's Project Manager, Tim Hanners and the Consultant's \_\_\_\_\_.

All other notices and communications regarding interpretation of the terms of this Agreement and changes thereto must be given to the other party in writing and may be given by personal delivery to a representative of the parties or by mailing the same postage prepaid, addressed as follows:

If to WETA: San Francisco Bay Water Emergency Transportation Authority  
Pier 9, Suite 111  
San Francisco, CA, 94111  
Attn: Tim Hanners, Engineering & Maintenance Administrator

If to the Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

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The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail will be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

**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 Consultant are the property of WETA. WETA is entitled access to and copies of these materials during the progress of the work. Any such materials remaining in the hands of the Consultant 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 Consultant must replace them at its own expense, and the Consultant assumes all risks of loss, damage or destruction of or to such materials. The Consultant 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, patent rights, copyright and any other intellectual-property or proprietary right) to materials prepared under this Agreement are hereby assigned to WETA. The Consultant agrees to execute any additional documents which may be necessary to evidence such assignment.

The Consultant 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. CONFIDENTIALITY**

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

The Consultant, 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.

**11. USE OF SUBCONTRACTORS**

The Consultant commits to using the subcontractors listed in their response to the RFP. The Consultant may not subcontract any services to be performed by it under this Agreement without the prior written approval of WETA, except for service firms engaged in drawing, reproduction, typing, and printing. Any subcontractors must be engaged under written contract with the Consultant with provisions allowing the Consultant to comply with all requirements of this Agreement. The Consultant is solely responsible for reimbursing any subcontractors, and WETA has no obligation to them.

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**12. CHANGES**

WETA may, at any time, by written order, make changes within the scope of work and services described in this Agreement. If such changes cause an increase in the budgeted cost of or the time required for performance of the agreed upon work, an equitable adjustment as mutually agreed will be made in the limit on compensation as set forth in Section 6 or in the time of required performance as set forth in Section 4, or both. In the event that the Consultant encounters any unanticipated conditions or contingencies that may affect the scope of work or services, schedule, or the amount of compensation specified herein, the Consultant must so advise WETA immediately upon notice of such condition or contingency. The written notice must explain the circumstances giving rise to the unforeseen condition or contingency and must set forth the proposed adjustment in schedule or compensation. This notice must be given to WETA prior to the time that the Consultant performs work or services related to any proposed adjustment. The pertinent changes will be expressed in a written supplement to this Agreement prior to implementation of such changes.

**13. RESPONSIBILITY; INDEMNIFICATION**

To the maximum extent permitted by law, the Consultant 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 Consultant caused by a negligent act or omission or willful misconduct of the Consultant or its employees, subcontractors or agents; or
- B. Any allegation that materials or services provided by the Consultant 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 Consultant 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 Consultant must, at its expense, satisfy and discharge the same. This indemnification survives the termination or expiration of the Agreement.

**14. INSURANCE**

Consultant agrees to comply with the insurance requirements set forth in this section. Consultant 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. Consultant 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.

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## INSURANCE REQUIREMENTS

CONSULTANT shall, at its own expense, obtain and maintain in effect at all times the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement, placed with insurers with a Best's rating of A- or better.

- a) COMMERCIAL GENERAL LIABILITY coverage (including but not limited to premises and operations; completed operations and products liability; personal injury and advertising injury; and contractual liability on written contracts) of not less than:

One Million Dollars (**\$1,000,000**) combined single limit per occurrence for bodily harm and property damage; and

Two Million Dollars (**\$2,000,000**) general aggregate annual limit.

Policy shall include a Waiver of Subrogation and Additional Insured endorsement. Policy will also contain Separation of Interests Clause and Primary and Non-contributory language.

- b) AUTOMOBILE LIABILITY INSURANCE coverage (including but not limited to use of all owned and non-owned vehicles, uninsured motorists, and leased and hired vehicles) of not less than:

One Million Dollars (**\$1,000,000**) combined single limit per occurrence and aggregate for bodily harm and property damage.

Policy shall include a Waiver of Subrogation and Additional Insured endorsement

- c) PROFESSIONAL LIABILITY (Errors and Omissions) INSURANCE coverage for Errors and Omissions in an amount not less than one million dollars (**\$1,000,000**) per occurrence or claim, two million dollars (**\$2,000,000**) aggregate.

- d) WORKERS COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

Workers Compensation with Statutory Limits, as required by Section 3700 et seq. of the California Labor Code, or any subsequent amendments or successor acts thereto governing the liability of employers to their employees.

U.S. Longshoreman and Harbor Workers (USL&H) coverage if the Contract involves work on or adjacent to navigable water, as defined by the U.S. Department of Labor. If USL&H coverage applies, the Contract requires proof of insurance coverage in compliance with statutory requirements of the Longshoreman and Harbor Workers' Compensation Act (administered by the U.S. Department of Labor).

Employer's Liability coverage with minimum limits of one million dollars (**\$1,000,000**).

Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:

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Waiver of Subrogation.

- e) HULL AND MACHINERY INSURANCE coverage as applicable for work that involves marine activities or work from boat, vessel, skiff, floating platform, or any other equipment that floats, CONSULTANT shall provide coverage at Market Value of vessel on American Institute Hull Clauses, 6/2/77 form.
- f) PROTECTION AND INDEMNITY INSURANCE coverage as applicable for work performed using floating platforms, skiffs, boats, vessels, or any other equipment that floats in an amount not less than **\$2,000,000** per occurrence and aggregate.
- g) CLAIMS MADE COVERAGE. If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).

Consultant shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds.

If insurance is terminated for any reason, Consultant agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from Work performed under this Contract.

Policy allows for reporting of circumstances or incidents that might give rise to future claims.

- h) DEDUCTIBLES AND SELF-INSURED RETENTIONS. Consultant shall be responsible for payment of any deductible or retention on Consultant's policies without right of contribution from WETA. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event WETA seeks coverage as an additional insured under any Consultant policy that contains a deductible or self-insured retention, Consultant shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act or omission of Consultant, subconsultant, or any of their officers, directors, employees, agents, or suppliers, even if Consultant or subconsultant is not a named defendant in the lawsuit.

**15. CONSULTANT'S STATUS**

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

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**16. ASSIGNMENT**

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

**17. WETA WARRANTIES**

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

**18. WETA REPRESENTATIVE**

Except when approval or other action is required to be given or taken by the Board of Directors of WETA, the Executive Director of WETA, or such person or persons as she may designate in writing from time to time, represents and acts for WETA.

**19. DISPUTE RESOLUTION**

WETA and Consultant agree to attempt in good faith to resolve all disputes informally. If agreed to by both parties, alternate methods of dispute resolution, such as mediation, may be utilized. Unless otherwise directed by WETA, the Consultant must continue performance under this Agreement while matters in dispute are being resolved. Consultant must comply with the procedures stated in Government Code Section 900 *et seq.* prior to initiating any civil action.

**20. TERMINATION**

WETA has the right to terminate this Agreement or any Task Order at any time for cause or for convenience (including for non-appropriation of funds) by giving written notice to the Consultant. Upon receipt of such notice, the Consultant may 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 Consultant, WETA will pay to the Consultant in accordance with the provisions of the applicable Task Order and Sections 6 and 7 of 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 reasonable and necessary incurred by the Consultant to effect such termination. If the Agreement or any Task Order is terminated for breach or default, WETA will remit final payment to the Consultant in an amount to cover only those services performed and expenses incurred in full accordance with the terms and conditions of this Agreement or Task Order up to the effective date of termination.

Upon termination for any reason, Consultant 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 the course of performance. All data, work in process, completed work, and other material produced as a part of, or acquired in the course of performance, whether complete or incomplete, must be delivered promptly to WETA in native format, or other such format as instructed by WETA.

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WETA will not in any manner be liable for the Consultant's actual or projected lost profits had the Consultant completed the services required by this Agreement or any Task Order.

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

All Consultant and subconsultant costs incurred in the performance of this Agreement will be subject to audit. The Consultant and its subconsultants must permit WETA or its authorized representatives (or the State Auditor) to inspect, examine, make excerpts from, transcribe, and copy the Consultant'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 Consultant pursuant to this Agreement. The Consultant must also provide such assistance as may be required in the course of such audit. The Consultant 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 Consultant agrees to reimburse WETA for those costs within 60 days of written notification by WETA.

**22. WORKERS' COMPENSATION COMPLIANCE**

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

Consultant 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 Consultant will comply with such provisions before commencing the performance of the any work or services under the Agreement or any subcontract.

**23. EQUAL EMPLOYMENT OPPORTUNITY**

In connection with the performance of this Agreement, the Consultant will 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 Consultant will 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 will 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 Consultant further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

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**24. NON-DISCRIMINATION ASSURANCE**

The Consultant will not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant must carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Further, the Consultant 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 Consultant 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 Consultant 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.

During the performance of this Contract, Consultant and its subconsultant will not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants must insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants must comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) *et seq.*) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants must give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Consultant will include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

**25. CONFLICT OF INTEREST**

The Consultant 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 Consultant 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 Consultant 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, Consultant and its employees may be required to disclose financial interests.

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Depending on the nature of the work performed, the Consultant may be required to publicly disclose financial interests under WETA's Conflict of Interest Code. Upon receipt, the Consultant 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 Consultant 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 Consultant will 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 Consultant may not engage the services of any subcontractor or independent Consultant on any work related to this Agreement if the subcontractor or independent Consultant, or any employee of the subcontractor or independent Consultant, 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 Consultant becomes aware of an organizational conflict of interest in connection with the work performed hereunder, the Consultant must immediately provide WETA with written notice of the facts and circumstances giving rise to this organizational conflict of interest. The Consultant'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 Consultant's performance of the work hereunder, WETA will similarly notify the Consultant. In the event a conflict is presented, whether disclosed by the Consultant or discovered by WETA, WETA will consider the conflict presented and any alternatives proposed and meet with the Consultant 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 Consultant must maintain lists of its employees, and the subcontractors and independent Consultant used and their employees. The Consultant must provide this information to WETA upon request. However, submittal of such lists does not relieve the Consultant of its obligation to assure that no organizational conflicts of interest exist. The Consultant 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 Consultant must maintain written policies prohibiting organizational conflicts of interest and must ensure that its employees are fully familiar with these policies. The Consultant must monitor and enforce these policies and must require any subcontractors and affiliates to maintain, monitor and enforce policies prohibiting organizational conflicts of interest.

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

**26. PUBLICITY**

The Consultant, 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.

**27. 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 may recover, in addition to all court costs, reasonable legal fees.

**28. 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.

**29. 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 remain in full force and effect.

**30. NO THIRD-PARTY BENEFICIARIES**

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

**31. COMPLIANCE WITH LAWS**

Consultant and its employees, agents, and subconsultants performing the Services under this Agreement must at all times comply with all applicable local, state, federal laws, ordinances, statutes, and regulations in effect at the time Services under this Agreement are performed. Consultant must indemnify and hold harmless WETA from and against any and all claims or expenses caused or occasioned directly or indirectly by its failure to so comply.

**32. APPLICABLE LAW**

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

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**33. BINDING ON SUCCESSORS**

All 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.

**34. 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.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the day and year first above written.

**FOR WETA:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

**FOR THE CONSULTANT\*:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Attorney for WETA

\* *If the Consultant 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 or LLC (e.g. a copy of a certified resolution from the corporation's or LLC's board or a copy of the corporation's bylaws or LLC's operating agreement.)*

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**ATTACHMENT B to RFP—DBE/SBE FORMS**

- Form - Prime Consultant and Subcontractors/Subconsultants/Suppliers Report. Your submittal will not be considered if this form is not completely filled out. Please carefully read instructions starting on page 3 of the form.
- Form - Small Business Enterprise Affidavit of Size, if applicable.
- Form- Description of the Selection Process of Subcontractors/Subconsultants/Suppliers. Your submittal may not be considered if this form is not completely filled out.

**SAN FRANCISCO BAY AREA  
WATER EMERGENCY TRANSPORTATION AUTHORITY (WETA)  
CONSTRUCTION MANAGEMENT SERVICES FOR THE BAY BREEZE REPLACEMENT**

**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.

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REQUEST FOR PROPOSALS #19-012  
 SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

**DBE/SBE PARTICIPATION**

1. Subcontractor/ Subconsultant/ Supplier	2. Annual Gross Receipts (check one)	3. Contractor's License No. (if applicable)	4. Certified DBE (Yes/No)	5. Certified SBE (Yes/No)	6. DBE/SBE Certifying Agency	7. DBE Certification No. &/or SBE Type	8. Describe Work or Type of Materials/Supplies <b>and list NAICS Codes</b>	9. Proposal Accepted (Yes/No)	10. Percentage of Contract Participation
Name:	Below \$500K								
Address:	\$500K-\$1M								
	\$1M-\$4M								
Contact Person:	\$4M-\$6M						NAICS Codes:		
Phone:	\$6M-\$13M								
Email:	Above \$13M								
Age of Firm:									
Name:	Below \$500K								
Address:	\$500K-\$1M								
	\$1M-\$4M						NAICS Codes:		
Contact Person:	\$4M-\$6M								
Phone:	\$6M-\$13M								
Email:	Above \$13M								
Age of Firm:									
Name:	Below \$500K								
Address:	\$500K-\$1M								
	\$1M-\$4M						NAICS Codes:		
Contact Person:	\$4M-\$6M								
Phone:	\$6M-\$13M								
Email:	Above \$13M								
Age of Firm:									



**ATTACH ADDITIONAL SHEETS AS NECESSARY.**

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

12. 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. SMBE, 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. SDBE, 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.

**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 \$23.98 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 \$23.98 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 \$23.98 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 \$23.98 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

**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: (        ) \_\_\_\_\_

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**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.

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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.

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- 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—LOBBYING CERTIFICATE**

**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

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
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.

**DISCLOSURE OF LOBBYING ACTIVITIES**

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

<p>1. Type of Federal Action:</p> <ul style="list-style-type: none"> <li>a. contract</li> <li>b. grant</li> <li>c. cooperative agreement</li> <li>d. loan</li> <li>e. loan guarantee</li> <li>f. loan insurance</li> </ul>	<p>2. Status of Federal Action:</p> <ul style="list-style-type: none"> <li>a. bid/offer/application</li> <li>b. initial award</li> <li>c. post-award</li> </ul>	<p>3. Report Type:</p> <ul style="list-style-type: none"> <li>a. initial filing</li> <li>b. material change</li> </ul> <p>For Material Change Only:</p> <p>Year _____</p> <p>Quarter _____</p> <p>Date of last report: _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p>Prime _____ Subawardee _____</p> <p>_____</p> <p>Tier, if known: _____</p> <p>Congressional District, if known: _____</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>_____</p> <p>_____</p> <p>Congressional District, if known: _____</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description: CFDA Number, if applicable:</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known: \$ _____</p>	
<p>10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):</p>	<p>10. b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</p>	
<p>(Attach Continuation Sheet(s), if necessary)</p>		
<p>11. Amount of Payment (check all that apply):</p> <p>\$ _____</p> <p><input type="checkbox"/> actual    <input type="checkbox"/> planned</p>	<p>13. Type of Payment (check all that apply):</p> <ul style="list-style-type: none"> <li>a. retainer</li> <li>b. one-time fee</li> <li>c. commission</li> <li>d. contingent fee</li> <li>e. deferred</li> <li>f. other; specify</li> </ul>	

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.: \_\_\_\_\_