

Bay Breeze and Solano Replacement Vessels

19-013

Request for Proposals
and Proposal Notices

Request for Proposal

20 April 2020

SAN FRANCISCO BAY AREA

**WATER EMERGENCY
TRANSPORTATION AUTHORITY**

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The San Francisco Bay Area Water Emergency Transportation Authority (WETA, "OWNER") is seeking proposals from qualified firms in response to this Request for Proposals ("RFP") for two Passenger Vessels that will replace the M/V Bay Breeze and the M/V Solano, RFP #19-013, as well as an option for a third vessel, for WETA's exercise in its sole discretion any time prior to December 31, 2021.

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. The OWNER's comprehensive plan to establish ferry service on seven new routes was approved by the Legislature in 2003 (the "Plan"). The OWNER 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. The OWNER'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.

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 the OWNER's discretion:

TIMELINE	
4/20/2020	RFP Release
5/4/2020	Pre-Proposal Conference @ 1:00 PM
5/18/2020	Written requests for clarifications are due
6/29/2020	Proposals Due @ 2:00 PM PST
Q4 2020	Board Approval

PURPOSE

The purpose of this Project is to contract with a qualified builder ("Proposer") to design and construct two (2) passenger only ferry vessels that will service multiple existing and future routes on San Francisco Bay, and, if requested by WETA, an optional third passenger only ferry vessel ("Option Vessel"). The vessels are not intended as the primary vessels on any specific route, rather as alternate vessels that are able to be employed as needed to service any of the designated routes. Certain routes have unique physical limitations and performance requirements that must be met to service the route. These key requirements are described in the

Technical Specification. The critical requirements of the design carry weighted scoring as described in the Proposal Evaluation Process section of this document.

All work must be performed in conformance with the Technical Specifications attached as Part B of this RFP.

SAMPLE AGREEMENT

WETA's sample agreement for this project is included as Part C of this RFP. The sample contract contains many terms and conditions affecting the successful performance of the contract work. Proposers are responsible for taking the contracting requirements into account when preparing their proposals. Proposers will be deemed to have accepted all terms and conditions in the sample agreement unless any exceptions taken are identified and explained in their proposal.

PERFORMANCE BOND

The Contractor must furnish at its own expense a Performance Bond at the times and in the amounts as follows:

- Within ten (10) calendar days of execution of the contract, Contractor must furnish a Performance Bond in an amount equal to 25% of the total price for Base Vessel 1 and Base Vessel 2.
- Upon OWNER's Final Acceptance of Base Vessel 1, the Performance Bond may be reduced to an amount equal to the sum of 25% of the total price for Base Vessel 2, plus 10% of the total price for Base Vessel 1.
- Upon the expiration of the warranty period and settlement of all outstanding warranty claims for Base Vessel 1, the Performance Bond may be reduced to an amount equal to 25% of the total price for Base Vessel 2.
- Upon OWNER's Final Acceptance of Base Vessel 2, the Performance Bond may be reduced to an amount equal to 10% of the total price for Base Vessel 2 and remain in full force and effect until the expiration of all warranties and settlement of all outstanding warranty claims.
- If OWNER exercises the option for the Option Vessel, within ten (10) calendar days of the Notice to Proceed for the Option Vessel, Contractor must furnish a Performance Bond in an amount specified by OWNER.

The bond must be with a California-admitted corporate surety or with two (2) or more sufficient sureties to be approved by the OWNER. As an alternative to furnishing a bond, the Contractor may guarantee faithful performance of the contract by depositing with the OWNER a certified check or cashier's check from a solvent bank for the prescribed amount. An irrevocable standby letter of credit issued in a form approved by the OWNER may also be an acceptable substitute to a Performance Bond. The Performance Bond will guarantee the Contractor's faithful performance of the contract and compliance with all terms, conditions and requirements specified in the contract and must remain in full force and effect until the expiration of all warranties and settlement of all outstanding warranty claims. The Bond must be submitted using the form included in Part D.

For purposes of Proposer's Price Proposal, set forth in Part D, Proposers must include bonding costs to satisfy the requirements set forth above.

RFP CONTENT; EXAMINATION OF DOCUMENTS

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

This RFP is organized into the following four parts:

- Request for Proposals: Part A
- Technical Specification: Part B
- Sample Agreement: Part C
- Proposal and Contract Forms: Part D

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.

PRE-PROPOSAL CONFERENCE

The OWNER will conduct a pre-proposal conference as outlined in the proposal timeline table above. Attendance is not mandatory, but is strongly encouraged. The pre-proposal conference is scheduled to take place online through a video conference application. Proposers are required to submit contact information to Tim Hanners, Hanners@watertransit.org & Christian Stark, Christian@auroramarinadesign.net for attendees so that email invitations can be sent.

The purpose of the pre-proposal conference will be to answer questions about the RFP. All statements and interpretations provided by the OWNER at the pre-proposal conference are non-binding on the OWNER unless contained in a subsequent written addendum.

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. All requests must be submitted by the dates and times set forth in the proposal timeline table above.

The OWNER specifically requests that any questions concerning this RFP be directed only to Tim Hanners, Project Manager.

Should the Owner determine that clarification of a possibly ambiguous or incomplete statement contained in the RFP is in order, the Owner will issue a written addendum clarifying the matter, which will be posted on the Owner's website (weta.sanfranciscobayferry.com). Each Proposer has an ongoing responsibility to check the Owner's website for addenda. The OWNER 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.

PROPOSAL DUE DATE: SUBMISSION OF PROPOSALS

Proposals will be submitted and evaluated as set forth in this RFP.

All proposals should be submitted to:

Tim Hanners, Project Manager
San Francisco Bay Area Water Emergency Transportation Authority
1050 Nimitz Ave, Vallejo CA. 94592

One (1) hard copy and one (1) digital copy on USB drive of Proposals must be received at the above address no later than outlined in the timeline table above. Proposals received after the date and time specified above will be considered late and will not be accepted.

All proposals in response to this RFP should be submitted in a sealed envelope labeled **Bay Breeze and Solano Replacement Vessel, RFP #19-013**, and include the name of the Proposer. Price Proposal information must be submitted in a separate sealed envelope labeled **PRICE PROPOSAL – Bay Breeze and Solano Replacement Vessels, RFP #19-013**, and include the name of the Proposer.

PROPOSAL CONTENTS AND FORMAT

Proposals 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 the OWNER 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 enough information to minimize questions and assumptions.

Cover Letter

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

- Introduction of the firm and summary of its qualifications.
- Name(s) of authorized principals with authority to negotiate and contractually bind the firm.
- A statement that binds the Proposer to its proposal for 180 calendar days.
- Acceptance of or exceptions to the Agreement included as Part C. This confirmation must include an explicit acknowledgement that Proposer will meet all insurance requirements in the Agreement.
- An express acknowledgement of the receipt of a complete set of RFP documents and all Addenda issued for this RFP, if any.
- Indication of whether there are any conflicts of interest that would limit the Proposer's ability to provide the requested services. Disclose any such conflicts on a separate document included with the proposal.
- Indicate whether there are any required disclosures pursuant to the Levine Act. Include any such disclosure in a separate document with the proposal.

- 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.

Technical Proposal

Proposers must provide a Technical Proposal that consists of an Executive summary and the following four elements:

- Technical Approach, Qualifications and Experience
- Vessel Design
- Schedule for the completion of all vessels including the option vessel
- Vessel Metrics

EXECUTIVE SUMMARY

Provide a brief summary of the Proposer's qualifications and proposed technical approach. The summary should include any feature(s) that may differentiate this team from others. Describe the Proposer's understanding of the Project and the objectives for the vessels.

Identify each equity member of Proposer's team and each other member of Proposer's team, (a) with primary responsibility for design; (b) with primary responsibility for construction; or (c) a Subcontractor with a proposed subcontract value greater than 15% of the anticipated contract value (collectively "Major Participants"). Provide a summary of the proposed management, decision making, and day-to-day operation structure of Proposer.

The Executive Summary should be written in a non-technical style and should contain sufficient information for reviewers with both technical and non-technical backgrounds to become familiar with Proposer's ability to satisfy the requirements of the Project.

TECHNICAL APPROACH, QUALIFICATIONS AND EXPERIENCE

TECHNICAL APPROACH

Provide an organization chart showing the reporting structure of the Project team noting the location of key personnel and Subcontractors with a proposed subcontract value greater than 15% of the anticipated contract value that would have a lead role in the Project (Major Participant). At a minimum, key personnel should include the Project Manager and/or senior Project Representatives for the Proposer and Major Participants but may include any other team members that the Proposer wishes to identify. Provide a responsibility matrix covering the responsibilities and scope of work for key positions.

The technical approach should include the following:

- Design and engineering approach including the selection of Major Participants and the division of engineering tasks between internal and external resources.
- Approach to adapting or modifying a parent craft design or the procedures that will be used to mitigate the risks associated with the development of a new design. Describe any specialized software or analysis tools that will be used to mitigate performance risk.
- Proposed construction approach and build strategy including, if applicable, the modular construction plan, utilization of CNC capabilities and any outsourcing of subassemblies or components.
- Vessel construction plan including workflow.
- Identification of any other current or anticipated projects that could interfere with your construction plan.
- Vessel outfitting plan.
- Vessel launch plan identifying any special equipment requirements, environmental or seasonal constraints.
- Test and trials plan execution.
- Proposed method for delivery of the vessel(s).
- The roles and responsibilities of the Proposer and Major Participants and how the Proposer, Major Participants, Subcontractors, Vendors and Suppliers will be coordinated and managed during the Project.
- How the Project will be staffed, and plan for dealing with unanticipated staffing shortfalls.
- How that staff will be managed.
- How Subcontractors will be managed. The plan should include contingencies for difficulties with Subcontractors.
- Systems used to organize and allocate resources.
- Systems used to schedule design, construction, and testing activities.
- How work is monitored, and how adjustments in production are made.
- Quality control, quality assurance, and internal testing programs.
- How the USCG inspection and testing program will be structured and managed.
- How the Proposer intends to interface with the OWNER during design, construction and post-construction.
- How the review process will be structured and managed with the OWNER.

QUALIFICATIONS

Provide resumes showing the professional qualifications, capabilities, experience, education, and current responsibilities of the Project Manager and key staff (including, at a minimum, the Project Superintendent, scheduler, and Project safety officer). Include any experience on similar projects. Resumes should indicate current assignment, work location, and availability.

Where relevant, note when individuals mentioned above have worked with each other and briefly describe the circumstances (project, relationship, etc.). When individuals have worked together on multiple projects, only one example is required. Describe the qualifications and experience of the scheduling personnel.

EXPERIENCE

Identify and describe the aluminum vessel construction experience of the Proposer and each Major Participant. List experience of Proposer and Major Participants on not less than three (3) and up to seven (7) relevant projects over the last 12 years. The projects should demonstrate the Proposer's capability and expertise with similar vessel construction. For each project, provide:

- Designer.
- Specifications.
- General characteristics.
- Route.
- Capacity.
- Configuration.
- Interior amenities.
- Propulsion (make, model and configuration).
- Auxiliary units.
- General Arrangement (drawings).
- Construction Schedule.
- As-built performance.
- Service speed (and engine load at that speed).
- Max speed (and engine load at that speed).
- Fuel consumption at service speed.
- Price as delivered.

SHIPYARD/FACILITIES

Describe Proposer's facilities that will be used. Include detail of production capacity including what other projects are presently underway or anticipated. Descriptions of the facilities should include yard capacity, infrastructure, and current and future workload.

- Describe the facilities that will be utilized including fabrication and assembly locations.
- Describe areas used for materials handling and storage.
- Describe crane capacity and capability.
- Describe how the vessels will be docked and launched.
- Describe where the vessels will be moored and accessibility after launch.

ENGINEERING

Describe the Proposer's approach to engineering the vessel.

- Describe the Proposer’s in-house engineering capabilities, staff size and experience.
- Describe the workshare and responsibility split between outside naval architecture or engineering resources and the in-house staff.
- Describe the process for developing the as-built drawings.
- Provide sample production-level drawings from a previous vessel:
 - Structural assembly drawing showing part labeling, weld callouts, and parts lists.
 - Example of a parts nest file showing labeled parts and material standards.
 - A foundation drawing showing fabrication details and installation.
 - An HVAC installation drawing showing major equipment and duct routing.
 - Any significant piping system showing pipe system diagram, installation drawing with BOM, and spools.
 - Propulsion System drawing showing shafting between the gear output flange and the propulsor (either waterjet or propeller).

REFERENCES

List experience of Proposer on not less than three similar projects over the last seven (7) years. The projects should demonstrate the Proposer’s capability and expertise with similar vessel construction. Provide contact information for all the listed similar projects.

FINANCIAL CAPACITY

Provide pertinent information to allow the OWNER to reasonably formulate a determination about the financial stability and strength of the Proposer such as financial (banking) references, financial statements, or other relevant documentation. Describe any administrative proceedings, claims lawsuits, settlements, or other exposures pending against the Proposer or to which the Proposer has been a party in the last five years where the amount in dispute exceeded \$100,000.

Provide a letter from a California admitted surety, verifying that the Proposer will be able to obtain a Performance Bond in the amounts set forth in "Performance Bond" section of this RFP. Letters indicating “unlimited bonding capability” are not acceptable. The surety providing such letter must be rated in one of the top two categories by two nationally recognized rating agencies or rated at least A minus (A-) or better or Class VIII or better by “AM Best & Company,” and must indicate the relevant rating in the letter. The letter must specifically state that the surety has read the RFP and evaluated the Proposer’s backlog and work-in-progress in determining its bonding capacity. If a Proposer is a joint venture, partnership, Limited Liability Company or other association, separate letters for one or more of the individual equity participants of the Proposer are acceptable, as is a single letter covering all equity participants.

In the alternative, Proposer may provide a written assurance from an authorized representative of the Proposer that it will provide, at the time of contract execution, an Irrevocable Standby Letter of Credit (LOC) equal to 100% of the Total Price included in the Price Proposal.

VESSEL DESIGN

Describe Proposer's concept vessel design including general specifications and technical information for the Project. Include general arrangement drawings with cabin and machinery layouts. Describe the major vessel features and equipment including installed horsepower required.

Vessel Design should consist of the following major elements:

DETAILED VESSEL TECHNICAL INFORMATION

Provide the following detailed technical information that fully describes the proposed vessel design:

OPERATIONAL CHARACTERISTICS

- Speed vs. power curves.
- Predicted fuel consumption curve.
- The chosen hull form, explaining maneuverability and windage.
- Wake wash prediction, showing wake wash throughout the vessels speed range and a short description of where this data was derived.
- Exhaust emissions prediction demonstrating compliance with the Technical Specification.
- Weight and stability data in the form of a Preliminary Trim & Stability Booklet.
- A preliminary analysis of the turnaround time for loading and unloading of passengers and bicycles.
- Fuel consumption at specified power level.

VESSEL DRAWINGS

- General arrangement drawing:
 - Deck layout.
 - Cabin layout.
 - Seating plan (include make and model number of all seats and tables).
 - Boarding facilities.
 - ADA facilities showing aisle widths, wheelchair tie down locations, wheelchair accessible heads.
 - Bicycle stowage
- Inboard profile.
- Midship section (including scantlings)
- Machinery arrangement including propulsion shaftline and soft patches.
- Bridge layout with lines of sight.
- Removal plan of major machinery including generator.

EQUIPMENT LIST

Provide a complete list of all major proposed equipment including make and model number. The list shall include the following at a minimum:

- Propulsion machinery.
- Electrical (Major Components)

- Steering.
- Auxiliary systems.
- HVAC.
- Navigation, communication and electronics.
- Alarm, monitoring, and control devices.
- Entertainment.
- Commissary equipment.
- Interior outfitting, seating, floor and wall coverings etc.

SCHEDULE

Provide a preliminary schedule for building each vessel, identifying each major element of work involved in the design and construction, and proposed timeline for the completion of key events. Provide a date of completion by which Proposer will commit to completing all work. The preliminary schedule should at a minimum identify the following key events for each vessel commencing with the issuance of Notice to Proceed.

- Design submittals to USCG.
- Design approvals from USCG.
- Aluminum ordered.
- Main engines ordered.
- Generators ordered.
- Keel laid.
- Hulls complete.
- Main engines landed.
- Superstructure landed on hull.
- Launch.
- Ships power functional.
- Main propulsion functional.
- Builders trials.
- Acceptance trials.
- USCG weight survey.
- USCG Certificate of Inspection.
- Delivery of vessel.

VESSEL METRICS

Offeror shall submit form *WETA-10 Vessel Metrics* containing the requested operational characteristics and dimensions as part of this RFP.

Schedule of Values

Proposers are directed to submit firm prices for all work set forth in the Contract Documents on Forms WETA-entitled "Schedule of Values" for each vessel. The Schedule of Values for each vessel will also provide detailed information on how the "Total Direct Cost" of each line item is derived. The total of each Schedule of Values shall be entered into corresponding line item for each vessel in the Price Proposal form. The prices included within the Schedule of Values Form should include all costs for labor, materials, tools, equipment, services, Subcontractors, Suppliers, taxes (except California State sales or use taxes), insurance, shipment, delivery, overhead, profit, and all other costs necessary to perform the work in accordance with the Contract Documents.

To the extent there are Design & Engineering costs that will only be incurred once for all three vessels, such non-recurring costs should be included in the Engineering Schedule of Values for Vessel 1.

The Schedule of Values for the Option Vessel should assume WETA exercises the option in calendar year 2021.

Price Proposal

Unit prices and lump sum prices must be entered in the appropriate spaces provided. Unit Prices shall be multiplied by the quantities shown, and the total shall be inserted in the TOTAL PRICE AMOUNT column. All spaces MUST be filled out and all information provided in detail and breakdown as shown on these forms. In the event of any error or discrepancy between the unit price and the calculated total price, the unit price shall govern. The Owner may correct any mathematical errors apparent on the face of the proposal.

The amounts shown in the Total Price Amount column must be added together in arriving at the Total Price.

The prices included within the Price Proposal Form should include all costs for labor, materials, tools, equipment, services, Subcontractors, Suppliers, taxes (except California State sales or use taxes), insurance, shipment, delivery, overhead, profit, and all other costs necessary to perform the Work in accordance with the Contract Documents. Please refer to the instructions below when completing the Price Proposal Form.

ROW 1, TOTAL SCHEDULE OF VALUES, VESSEL 1

Provide a total cost for all base contract scope of work as calculated from the Schedule of Values form for Base Vessel 1. The Schedules of Values line items are derived from the Contract Ship Work Breakdown Schedule (SWBS).

ROW 2, TOTAL OF OPTIONAL WORK ITEMS, VESSEL 1

Provide the total cost for all Optional Work Items as calculated from the "Optional Work Items" form. The Optional Work Items are derived from the Contract Ship Work Breakdown Schedule (SWBS). Every line item relates to a SWBS section, or group of SWBS sections as identified in the SWBS section referenced in the Optional Work Items.

ROW 3, TOTAL SCHEDULE OF VALUES, VESSEL 2

Provide a total cost for all base contract scope of work as calculated from the Schedule of Values form for Base Vessel 2. The Schedules of Values line items are derived from the Contract Ship Work Breakdown Schedule (SWBS).

ROW 4, TOTAL OF OPTIONAL WORK ITEMS, VESSEL 2

Provide the total cost for all Optional Work Items as calculated from the "Optional Work Items" form. The Optional Work Items are derived from the Contract Ship Work Breakdown Schedule (SWBS). Every line item relates to a SWBS section, or group of SWBS sections as identified in the SWBS section referenced in the Optional Work Items.

ROW 5, TOTAL SCHEDULE OF VALUES, OPTION VESSEL

Provide a total cost for all base contract scope of work as calculated from the Schedule of Values form for the Option Vessel. This amount should reflect the cost for one additional complete vessel, identical in all respects to Base Vessel 2, but with pricing for 2021.

Proposers to note that Optional vessel is not currently funded. In pricing this option, please assume that WETA will exercise the option prior to December 31, 2021.

ROW 6, TOTAL OF OPTIONAL WORK ITEMS, OPTION VESSEL

Provide the total cost for all Optional Work Items as calculated from the "Optional Work Items" form. The Optional Work Items are derived from the Contract Ship Work Breakdown Schedule (SWBS). Every line item relates to a SWBS section, or group of SWBS sections as identified in the SWBS section referenced in the Optional Work Items.

ROW 7, TOTAL OF SPARE EQUIPMENT ITEMS

Provide the total cost for all Spare Equipment Items as calculated from the "Spare Equipment Items" form. The Spare Equipment Items are derived from the Contract Ship Work Breakdown Schedule (SWBS). Every line item relates to a SWBS section, or group of SWBS sections as identified in the SWBS section referenced in the Spare Equipment Items.

ROW 8, TOTAL PRICE, INCLUDING ALL APPLICABLE TAXES AND FEES

The total cost equals the sum of lines 1-7 This is the total cost of the project including all options, taxes and fees (except California State sales or use taxes). This total cost will form the basis for RFP scoring.

SHIPYARD RATE SCHEDULE

Proposers must commit to pricing the Shipyard Rate Schedule for work items that may apply in the event WETA issues changes orders during the project. The Proposer shall fill in the unit prices in column 4 for the Shipyard Rate Schedule that will apply for the duration of this project.

SCORING FORMULA

WETA will evaluate Price Proposals based on the Total Price using the following formula

$$S = 400 \times L/P$$

Where:

S is the score

P is the proposed Total Price being ranked

L is the lowest Total Price proposed

Although the Total Price on the Price Proposal Form will be used for purposes of evaluating proposals, WETA reserves the right to award a Contract that does not include all items in the Price Proposal, including option items, depending upon budgetary constraints.

Completed Forms

Complete and submit only the following forms provided in Part D:

- Form WETA-1 Schedule of Values
- Form WETA-2 Price Proposal
- Form WETA-3 Performance Bond
- Form WETA-4 Acknowledgement of Insurance Requirements
- Form WETA-5 Buy America Certificate
- Form WETA-6 Lobbying Certification
- Form WETA-7 DBE Report
- Form WETA-8 DBE Selection Process
- Form WETA-9 SBE Affidavit of Size
- Form WETA-10 Vessel Metrics

WITHDRAWAL OF PROPOSAL

Submission of a proposal shall constitute a firm offer to the OWNER for 180 calendar days from the submission deadline for proposals.

A Proposer may withdraw their proposal any time before the date and time when proposals are due, without prejudice, by submitting a written request for withdrawal to the OWNER. A telephone or email request is not acceptable.

PROPOSAL EVALUATION PROCESS

Owner Evaluation Committee

The OWNER will establish an evaluation committee appointed by the Executive Director with responsibility for reviewing all proposals and conducting the evaluation process described in this RFP. The OWNER reserves the right to reject or accept each proposal, to waive any minor irregularities in proposals or procedures, and to request additional information from Proposers at any stage of the evaluation process.

Evaluation Criteria

The OWNER will evaluate proposals based on a maximum of 1000 points, weighted as indicated below:

Scoring Summary	
Technical Approach, Qualifications and Experience	150
Vessel Design	200
Delivery Schedule	50
Vessel Metrics	200
Total Price	400
Total	1000

Evaluation Process

ADMINISTRATIVE REVIEW

Each Proposal will be reviewed for the responsiveness of the Proposer to the requirements set forth in this RFP. The OWNER reserves the right to reject proposals that do not conform to the RFP. The OWNER also reserves the right to waive minor irregularities and seek modified proposals at any stage in the RFP process.

PRELIMINARY EVALUATION, ESTABLISHMENT OF COMPETITIVE RANGE, AND FURTHER DISCUSSIONS

The Evaluation Committee will conduct a preliminary evaluation of Proposals based on information submitted in writing as part of the proposal package. The Evaluation Committee may also request additional information or modified proposals and may check references. The Evaluation Committee will evaluate the Technical Proposal separately from the Price Proposal.

After completing the preliminary evaluation of Technical and Price Proposals, the Evaluation Committee may establish a competitive range, which, if established, will consist only of the most highly rated proposals that the Evaluation Committee consider sufficiently viable to allow for further consideration. The Evaluation Committee may reject any proposal not in the competitive range or recommend rejection of all proposals. The Evaluation Committee may conduct further discussions with Proposers in the competitive range, or may request additional information or modified proposals from such Proposers. The Evaluation Committee may require that some or all Proposers attend an interview (may be in person or conducted via telephone per WETA's request) in order to

answer questions and provide clarification regarding their Proposals. The Evaluation Committee may also conduct site visits of firms in the competitive range.

BEST AND FINAL OFFERS (BAFOS)

WETA may, at any time after establishing a competitive range, determine that it is appropriate to request BAFOs. The request for BAFOs may identify revisions to the RFP and will specify terms and conditions applicable to the BAFOs, including identifying a time and date for delivery. Upon receipt of BAFOs, WETA will re-evaluate the Proposals as revised, and will determine Proposal ratings as appropriate following the process described above. WETA may not request a BAFO and so proposers should submit their best offer with their initial proposal.

If a Proposer does not respond to a request for BAFO, the most recent Proposal submitted will be considered to be the Proposer's BAFO. The cycle of BAFOs may be repeated until the Evaluation Committee determines that the Proposal most advantageous to WETA has been achieved.

FINAL RANKING

After preliminary evaluation of the Price Proposals, the Technical Proposals and any other information collected by the Evaluation Committee, and after BAFO(s), if necessary, the Evaluation Committee will conduct a final ranking of all firms in the competitive range using the same evaluation criteria described above.

NEGOTIATIONS

Upon completion of the evaluation process and determination of the final ranking, the OWNER may accept the highest-ranked proposal or negotiate the terms and conditions of the Agreement with the highest-ranked firm. If negotiations are unsuccessful, the OWNER 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, the OWNER may repeat the negotiations process with the next-highest-ranked firms, or, at its sole discretion, the OWNER may reject all remaining proposals.

NOTICE OF INTENT TO AWARD

If the contract is to be awarded, all Proposers will be notified of the Owner's intent to award the contract in advance of any meeting of Owner's Board at which there is a recommendation to award the contract.

MILESTONE SCHEDULE

Prior to contract award, the highest ranked Proposer must provide a milestone schedule for Owner's review and approval. The milestone schedule must include descriptions of work for each milestone. The descriptions of work must use terminology consistent with the Technical Specifications for this RFP, and where applicable, reference the specific sections in the Technical Specifications for this RFP. the milestone schedule must also at a minimum include the milestone descriptions and achievement requirements for Items thirteen (13) through sixteen (16) in the sample milestone schedule included Section 6 of the Sample Agreement in Part C of this RFP. A mutually agreed upon milestone schedule will be incorporated into Section 6 of the final Agreement.

PRICE AND/OR COST ANALYSIS IN THE EVENT OF A SINGLE PROPOSER

The Owner will conduct a price analysis of the highest ranked proposal to support a finding that the price is fair and reasonable. In the event that there is only a single Proposer in the competitive range at the conclusion of evaluation process, the Owner reserves the right to conduct a cost analysis of the Proposer's proposal in accordance with FTA regulations to assess whether the prices offered by the Proposer are fair and reasonable. A price analysis is the process of examining and evaluating a prospective price without evaluation of the separate or underlying cost elements. A cost analysis includes the appropriate verification of cost data, the evaluation of specific elements of cost, and the projection of the data to determine the effect on price. As requested by the Owner, the Proposer must cooperate with the Owner's conduct of a price and/or cost analysis and submit all data necessary to carry out such analyses in such formats as may be prescribed by the Owner. Any such analyses, and the results from such analyses, will not obligate the Owner to accept the single proposal; the Owner retains the right to reject such proposal at its sole discretion.

CONTRACT AWARD AND EXECUTION

The Owner 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 work at any time. Formal contract award will only occur as and when, if at all, the Owner's Board takes such action. The Owner will not reimburse any firm for costs incurred as a result of preparing or submitting a proposal, including negotiating with the Owner on any matter related to this RFP.

If the Owner acts to award the contract, the selected Proposer must execute and deliver execution copies of the contract within ten (10) working days of receipt, together with all required documents, including but not limited to, the Performance Bond and the insurance certificates. If the Proposer is an individual, the contract must be executed by the individual personally. If the Proposer is a co-partnership, it is desirable that the contract be executed by all of the partners, but it may be executed by one (1) of them. If the Proposer is a corporation, this contract 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. Alternatively, this contract may be executed by a single officer or a person other than an officer provided that evidence satisfactory to the Owner 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 contract must be executed on behalf of each participating firm by officers or other authorized individuals. If the Proposer is an LLC, the contract must be executed by an officer or member who is authorized to bind the LLC.

PROTEST PROCEDURES

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

All Protests should be submitted to the Owner'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 the Owner'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. 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 the Owner's untimely handling of the protest submission. In no event will the Owner 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.

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 the Owner. The Levine Act also requires a member of the Owner's organization 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 the Owner 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 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 the Owner's Executive Director. This information, if any, must accompany your response to this RFP.

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.

EX PARTE COMMUNICATION

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

CONFLICT OF INTEREST

By submitting a proposal, the Proposer represents and warrants that no director, officer or employee of the Owner 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 the Owner's Conflict of Interest Code. The Proposer agrees to promptly submit a Statement of Economic Interest on the form provided by the Owner upon receipt. No person previously in the position of director, officer, employee or agent of the Owner 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 the Owner, or any officer or employee of the Owner, for a period of twelve (12) months after leaving office or employment with the Owner 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 the Owner; 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 in Part C for additional conflict of interest provisions that will be in effect during the contract term.

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.

FEDERAL REQUIREMENTS

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

A. FLY AMERICA REQUIREMENTS. The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America Act”) in accordance with the General Services Administration's regulations at 41 CFR Part 301 - 10, which provide that recipients and subrecipients of Federal funds and their Contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property to the extent such service is available, unless travel by foreign air carrier is a matter of necessity as defined by the Fly America Act. The Contractor 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 Contractor agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

B. CARGO PREFERENCE REQUIREMENTS. The Contractor agrees: (a) to use privately owned United States Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract by ocean vessels to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to WETA (through the Contractor in the case of a subcontractor's bill-of-lading); and (c) to include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, Material, or commodities by ocean vessel.

C. ENERGY CONSERVATION. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Federal Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.

D. RECYCLED PRODUCTS. The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with

and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

E. ACCESS TO RECORDS AND REPORTS. Contractor 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 Contractor which are directly pertinent to this Contract for the purposes of making audits, copies, examinations, excerpts and transcriptions. Contractor 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 Contractor 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.

F. FEDERAL CHANGES. Contractor 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 (26) dated October 1, 2019) between WETA and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

G. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.

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

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

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

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

2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by 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 Contractor, to the extent the Federal Government deems appropriate.

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

I. 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 Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

i. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

iii. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal

Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

J. 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 Contractor will cooperate with WETA in meeting these commitments and objectives.

WETA has established a 1.58% DBE Project Goal for this project. The Offeror must indicate in its proposal its intention to satisfy the 1.58% DBE Project Goal or provide adequate good faith effort documentation of its efforts to satisfy the 1.58% DBE Project Goal. Proposals that do not include DBE participation or adequate good faith efforts documentation to satisfy the 1.58% DBE Project Goal will be rejected. Good faith effort documentation includes but is not limited to two-way communications with DBE firms aimed at establishing a contract, verifiable reasons as to why a contract did not result and advertising of the Offeror's attempt at gaining DBE participation. Documentation must be submitted on the DBE forms contained in Part D: (1) Prime Consultant and Subcontractors/Sub-consultants/Suppliers Report; and (2) Good Faith Efforts Description. Please be sure to submit the Small Business Enterprise (SBE) Affidavit of Size for your firm, if applicable, and for any SBE subcontractors/subconsultants/suppliers proposed to perform the Services. For more information on the 1.58% Project Goal and how to find DBEs, please see <https://weta.sanfranciscobayferry.com/vessel-construction-webinar>. WETA's DBE Program is available at https://weta.sanfranciscobayferry.com/sites/default/files/weta/dbe/WETA_DBE_0816.pdf. For information and questions concerning DBE/SBE programs, contact the WETA DBE Administrator Lauren Gularte at gularte@watertransit.org or (415) 364-3188.

Title 49, Code of Federal Regulations, Part 26 ("DBE Rule") provides 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 Rule dictates payment terms and conditions (including limitations on retention) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE Rule applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection 1 flow down to subcontracts.

A substantial change to the payment provisions in this newest version of 49 CFR Part 26 concerns retention (see section 26.29). Grantee choices concerning retention should be reflected in the language choices in clause subsection 3.

Clause Language:

The following clause language is mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors.

1. 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, which may include but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

2. 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:

- i. The names and addresses of DBE/SBE firms that will participate in this contract;
- ii. A description of the work each DBE/SBE will perform;
- iii. The dollar amount of the participation of each DBE/SBE firm participating;
- iv. Written documentation of the bidder/Offeror's commitment to use a DBE/SBE subcontractor whose participation it submits to meet the contract goal;
- v. Written confirmation from the DBE/SBE that it is participating in the contract as provided in the prime Contractor's commitment; and
- vi. 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 initial proposals (see 49 CFR 26.53(b)(3)).

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

3. 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.

4. 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.

K. SAFE OPERATION OF MOTOR VEHICLES. The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or WETA. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

L. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

M. BUY AMERICA COMPLIANCE. The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661. This vessel procurement is subject to the Buy America statutory waiver for rolling stock procurements. The Contractor agrees that the cost of components and subcomponents produced in the United States must be more than 70% of the cost of all components used to rebuild the ferry and final assembly of the ferry must take place in the United States. All proposers must submit the appropriate Buy America certifications to WETA with their proposals. Proposals that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors. The Contractor agrees to comply with the applicable Buy America Audit requirements set forth in 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663.

The Contractor will cooperate with WETA in conducting all review necessary to ensure compliance with the Buy America requirements. The Contractor is required to submit documentation which lists component and subcomponent parts identified by manufacturer of the parts, their country of origin, and costs, and must cooperate in preparation of the necessary Buy America audits. Such submittal and audit may be required both before Contract award and prior to delivery of the vessels.

In light of the FTA's advice restricting the granting of Buy America waivers and the need to proceed with this project without delay, WETA will not award a contract to a proposer that does not certify compliance with the Buy America requirements on the Buy America Certificate, as such a submission will be considered nonresponsive to the requirements of this specification. Proposers should notify WETA during the request for clarifications period if they have questions regarding the Buy America requirements.

N. CLEAN WATER AND AIR REQUIREMENTS. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. The Contractor agrees to report each violation to 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 Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in part or in whole with federal assistance provided by the FTA.

O. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION. This contract is a covered transaction for purposes of 2 CFR Parts 180. As such, the Contractor is required to verify that none of the Contractor, 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 Contractor 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 proposal, Offeror 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.

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

The Proposer must complete Standard WETA form, "Disclosure of Lobbying Activities," in accordance with its instructions, in Part D.

Q. 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 March 18, 2013 as may be amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any WETA requests which would cause WETA to be in violation of the FTA terms and conditions.

R. VETERANS HIRING. To the extent practicable, the Contractor agrees that it and its subcontractors:

1. Will give a hiring preference to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and

2. Will not be required to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

S. NOTIFICATION OF LEGAL MATTERS THAT MAY AFFECT FEDERAL INTERESTS. Contractor will notify WETA, the FTA Chief Counsel and FTA Regional Counsel for Region IX if a current or prospective legal matter that may affect the Federal Government emerges in connection with this Contract.

-END OF RFP PART A-