

FEDERAL PROVISIONS FOR PROCUREMENTS IN EXCESS OF \$100,000 (FEDERAL TRANSIT ADMINISTRATION)

All references to "Contractor" herein shall refer to "Consultant" as defined in the Agreement. As a Federal Transit Administration (FTA) grantee, the San Diego Association of Governments (SANDAG) is required to inform the Contractor of the following information:

I. BUY AMERICA - APPLICABLE TO PUBLIC WORKS, ACQUISITION OF GOODS, OR ROLLING STOCK PROCUREMENTS EXCEEDING \$100,000

The Contractor's attention is directed to the "Buy America" requirements set forth in Section 165 of the Federal Surface Transportation Act of 1982, and the FTA regulations implementing Section 165 (49 C.F.R. 661). Information on "Buy America" requirements (49 C.F.R. 661) is available for review at the SANDAG office.

Any steel or manufactured product used in projects supported by FTA funds must be produced in the United States unless the Secretary of Transportation determines that one of the following exceptions applies:

- A. Applying this provision would be inconsistent with the public interest
- B. The materials and products required for a project are not produced in the United States either in sufficient quantity or not of the quality required for this Project
- C. Including domestically produced material will increase the cost of the contract by more than 25 percent (25%)

Note: In calculating the cost of components under the terms of this provision, labor costs involved in the final assembly are not to be included.

- D. Where an FTA grantee is purchasing buses or other rolling stock (including train control, communication, and traction power equipment), the cost of components produced in the United States is more than 60 percent of the cost of all the components of the rolling stock or equipment, and final assembly of the stock or equipment has taken place in the United States.
- E. In reference to exception C above, FTA requires that the bid for nondomestic items must be adjusted by the appropriate differential (ten percent [10%] or twenty-five percent[25%]) and then the adjusted overall bid prices compared to determine if the inclusion of domestic materials will increase the "overall Project contract." When both "rolling stock" and "nonrolling stock" are being procured in a single contract, the appropriate differentials will be applied to the different items only and not to the overall bid price.
- F. Thus, the foreign purchased components of the individual bid items will be adjusted upward, for purposes of determining Buy America compliance only, by ten percent (10%) for rolling stock and twenty-five percent (25%) for nonrolling stock, thereby increasing the contractor's cost proposal item by the adjusted amount, thereby adjusting the overall total bid price.

- G. The revised bid amount will be the basis for determining the lowest bid.
- H. Within five (5) days of written notification, the Contractor shall provide the necessary information to substantiate the cost of nondomestic items and the factual basis for the claim of exception to the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982 and the regulations in 49 C.F.R. 661.
- I. In the Buy America Certificate (FTA) – RFP Attachment 8, Alternative 'A' or 'B,' must be completed and submitted with the proposal. A proposal which does not include either Alternative 'A' or 'B' or which includes both Alternative 'A' and Alternative 'B' may be considered nonresponsive.
- J. A waiver from the Buy America provision may be sought by the Contractor if grounds for the waiver exist. Inclusion of the Alternative 'B' certificate in a bid constitutes an application by the Contractor for an exception to the Buy America requirement applicable to this type of contract. If a bid includes the Alternative 'B' certificate and an exception is not granted by FTA, the bid will be considered nonresponsive.

II. ENVIRONMENTAL VIOLATIONS

For all contracts and subcontracts in excess of \$100,000, Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857H), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11378 (Johnson, 1968), and Environmental Protection Agency (EPA) regulations (40 C.F.R. 15) which prohibit the use under nonexempt federal contracts, grants, or loans of facilities included on the EPA list of Violating Facilities. Contractor shall report violations to FTA and to the USEPA Assistant Administrator for Enforcement (ENO329).

III. ENVIRONMENTAL REQUIREMENTS

The successful Contractor recognizes that many federal and state laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major federal laws that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq.; the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., and scattered sections of 29 USC; the Clean Water Act, as amended, scattered sections of 33 U.S.C. and 12 U.S.C.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601 et seq. Contractor recognizes that United States EPA, Federal Highway Administration (FHWA), and other agencies of the federal government have issued and are expected in the future to issue regulations, guidelines, standards, orders, directives, or other requirements that may affect the Project. Thus, Contractor agrees to adhere to, and impose on its subcontractors and third-party contractors, any such federal requirements as the federal government may now or in the future promulgate. Listed below are requirements of particular concern to FTA and SANDAG. Contractor acknowledges that this list does not constitute Contractor's entire obligation to meet all federal environmental and resource conservation requirements.

A. Environmental Protection

Contractor shall comply with the applicable requirements of the National Environment Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 et seq., in accordance with Executive Order 12898 (Clinton, 1994), "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, FTA statutory requirements on environmental matters at 49 U.S.C. 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. 771, and 49 C.F.R. 622.

If Contractor will be preparing an environmental impact statement under National Environmental Policy Act, and an awarded Agreement will include federal funding, the Contractor will be required to submit a statement to SANDAG certifying that the Contractor has no financial or other interest in the outcome of the Project, 40 C.F.R. 1506(c).

B. Air Quality

1. Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. Specifically:
 - a. Contractor shall comply with applicable requirements of U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 USC or the Federal Transit Act," 40 C.F.R. 51(T); and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. 93. To support the requisite air quality conformity finding for the Project, Contractor shall implement each air quality mitigation and control measure incorporated in the Project. Contractor agrees that any Project identified in a State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the description of the design concept and scope of the Project described in the SIP.
 - b. United States EPA also imposes requirements implementing the Clean Air Act, as amended, which may apply to transit operators, particularly operators of large transit bus fleets. Thus, Contractor should be aware that the following United States EPA regulations, among others, may apply to this Project: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 C.F.R. 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. 600.
2. Contractor agrees to report and require each third-party contractor and subcontractor at any tier to report any violation of these requirements resulting from any Project implementation activity of a third-party contractor, subrecipient, or itself to FTA and the appropriate United States EPA Regional Office.

C. Clean Water

1. Contractor shall 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.
2. Contractor agrees to report and require each third-party contractor and subcontractor at any tier to report any violation of these requirements resulting from any Project implementation activity of a third-party contractor (at any tier), subcontractor (at any tier), or itself to FTA and the appropriate United States EPA Regional Office.

D. Use of Public Lands

Contractor agrees that no publicly-owned land from a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the federal, state, or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance may be used for the Project unless the FTA makes the specific findings required by 49 U.S.C. 303.

E. Mitigation of Adverse Environmental Effects

Contractor agrees that, if the Project should cause adverse environmental effects, the successful Contractor will take all reasonable steps to minimize those effects in accordance with 49 U.S.C. 5324(b), and all other applicable federal laws and regulations; specifically, the procedures of 23 C.F.R. 771, and 49 C.F.R. 622. Contractor agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreement, and statements required by 49 U.S.C. 303) and with any conditions the federal government has imposed in its finding of no significant impact or a record of decision. Those mitigation measures are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement between FTA and SANDAG. As soon as the federal government and Contractor reach agreement on any deferred mitigation measures, those measures will then be incorporated by reference and made part of the Grant Agreement or Cooperative Agreement between FTA and SANDAG. Contractor agrees that any mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the federal government.

F. Consultant Certification

If Contractor will be preparing an environmental impact statement on behalf of SANDAG under NEPA, Contractor certifies, as required by 40 C.F.R. 1506.5(c), by signing this Agreement, that it has no financial or other interest in the outcome of the Project.

IV. RESTRICTIONS ON LOBBYING

A. SANDAG and Contractor shall not use federal assistance funds to support lobbying.

B. In accordance with 31 U.S.C. 1352 and United States DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. 20, if the Project exceeds \$100,000, FTA will not make any federal assistance available to the Contractor until FTA has: (a) received the Contractor's certification

that the Contractor has not and will not use federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any federal department or agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal grant, cooperative agreement, or any other federal award from which funding for the Project is originally derived, consistent with 31 U.S.C 1352, and (b) if applicable, the Contractor's statement disclosing any lobbying with nonfederal funds that has taken place in connection with obtaining any federal financing ultimately supporting the Project.

- C. The Contractor agrees to provide SANDAG a copy of each lobbying disclosure statement with the accompanying lobbying certification provided by a prospective third-party contractor at any tier or subrecipient at any tier. The form is Certification of Restrictions on Lobbying – RFP Attachment 10 (Part 5).