

**Southeastern Regional Transit Authority**  
**Request for Proposals**  
**Licensed Site Professional Services**  
**601 and 631 Brayton Avenue, Fall River Massachusetts– RTN 4-12558**

**Introduction.** Southeastern Regional Transit Authority (SRTA) is seeking proposals from qualified firms to provide Licensed Site Professional (LSP) services associated with a release of petroleum product, including Light Non-Aqueous Phase Liquid (LNAPL), at two contiguous properties owned and operated by SRTA in Fall River, Massachusetts. SRTA seeks qualified firms with demonstrated experience in evaluating and achieving closure of sites with LNAPL petroleum under the Massachusetts Contingency Plan (MCP).

**Site Description and Response Actions to Date.** RTN 4-12558 is associated with releases of petroleum hydrocarbons and petroleum-related semi-volatile organic compounds (SVOCs) and volatile organic compounds (VOCs) to soil and groundwater. Light non-aqueous phase liquid (LNAPL) petroleum is present in the subsurface. The petroleum hydrocarbons were released at 601 Brayton Avenue. Impacted soil and groundwater extends onto 631 Brayton Avenue and into the public right of way (ROW) on Brayton Avenue.

The property has been used to support railway and /or trucking activities including fuel storage since the 1940s. The property at 601 Brayton Avenue has been used for bus maintenance and storage by SRTA since 1976, when SRTA purchased the property. SRTA purchased the 631 Brayton Avenue ("Leal") property in 2000.

In 1996, during installation of a utility trench at 631 Brayton Avenue, petroleum product was encountered on the groundwater. Following notification and submittal of an Immediate Response Action (IRA) plan and supplemental plans by Prime Engineering (Prime) on behalf of SRTA, assessment activities conducted between November 1996 and January 1997 identified soil and groundwater contamination on the SRTA property at 601 Brayton Avenue.

IRA activities were conducted to remove multiple underground petroleum storage tanks in July 1997 through October 1997. At that time, observations indicated that the USTs and the associated piping formerly located in the eastern and southern sections of the Site were the likely source of the petroleum contamination. Seven USTs, formerly used for storage of diesel fuel, motor oil, gasoline, heating oil, waste oil, and unknown materials were removed from two excavations. The excavations were expanded to remove contaminated soil, based on the results of field screening, until there was no evidence of contamination or until adjacent structural support of buildings or roadways might have been compromised. 4,453 tons of contaminated soil were recycled off-site. 382,600 gallons of groundwater were treated and discharged during excavation dewatering operations. During the investigation and excavation, free-phase product was identified and a total of 2,550 gallons of free phase product and associated water were collected and disposed of off-site.

Between 1998 and 2003, a groundwater depression and product collection system was installed and operated but was discontinued due to limited recovery of product and iron fouling. In 2003, an oil skimmer trench system was installed within the garage to extract LNAPL from the soil under

the building but oil collection was discontinued after seven months because of low recovery. Product monitoring and bailing have continued since that time. In 2008, monitored natural attenuation (MNA) and product removal were selected and implemented following evaluation of groundwater extraction and treatment technologies. Monitoring for MNA parameters has been discontinued pending reduction in the thickness of NAPL. The site has been in Remedy Operation Status (ROS) since 2008.

Between 1997 and the current time, investigation activities were conducted to evaluate the extent of LNAPL and related chemical constituents in soil, groundwater. The potential for contamination in subslab soil vapor and indoor air in the maintenance garage was also evaluated. MCP Phase I Initial Site Investigation, Phase II Comprehensive Site Assessment, Phase III Remedial Action Plan and Phase IV Remedy Implementation Plan, as well as IRA plans and reports and ROS reports document these activities and are available at the MassDEP site files website.

The available reports document that the initial removal of leaking tanks, piping, and contaminated soil removed the majority of the release of oil. The extent of NAPL and dissolved groundwater contamination is generally understood, based on extensive monitoring conducted over the last 17 years; contamination appears to impact the north portion of the property and the Brayton Avenue right of way, although it is not clear if preferential migration pathways exist and are facilitating NAPL migration within Brayton Avenue.

The data indicates that the NAPL and the dissolved groundwater plume have been stable or have diminished during that period. There is not a critical exposure pathway, imminent hazard or current condition of significant risk to human receptors on the property. In addition, the documents indicate that no significant indoor air impact is posed by the presence of the NAPL.

LSP services, to date, have been provided by Prime Engineering, Inc. Electronic copies of reports prepared by Prime Engineering, Inc. and submitted to MassDEP are available to the public at the MassDEP-Bureau of Waste Site Cleanup Searchable Sites website:

<http://public.dep.state.ma.us/SearchableSites2/Search.aspx>

**Scope of Work.** It is the goal of SRTA to achieve a Response Action Outcome (RAO), consisting of a Permanent Solution (RAO A-2), Permanent Solution with an Activity and Use Limitation (RAO A-3) or a Temporary Solution (RAO C-1), in a timely and cost-effective manner. It is understood that continued ROS Status may be appropriate if it is determined that the current activities or alternate activities will achieve a Permanent Solution in a timely manner.

SRTA anticipates that the selected consultant will use scientific principles of multiphase fluid flow in porous media to assess the stability of NAPL and the need for continued or alternate remedial actions to achieve SRTA goals.

The most recent ROS submittal was on June 7, 2013. It is the goal of SRTA to submit the RAO or ROS Document by the time the next submittal is due, December 7, 2013, however, if this is not possible, the proposal should present a timeline to complete the scope in a reasonable period.

LSP services are sought to complete the following tasks:

1. **Evaluate Existing ROS Activities and Propose Alternative Remedial Actions to Achieve RAO.**  
Review the site documents and current site conditions and evaluate whether the currently applied remedial program or alternative remedial actions will lead to a Permanent Solution

or Temporary Solution in a timely manner (i.e. less than 5 years) and whether ROS Status is appropriate. This evaluation shall be documented in a report describing:

- The effectiveness of the current MNA and product removal activities and other currently available in situ technologies with respect to achieving a Permanent Solution or Temporary Solution in a timely manner;
  - An assessment of the cost vs. benefit (such as risk reduction or migration control) associated with continued MNA if NAPL cannot be removed in a timely manner.
  - The feasibility of achieving a Permanent Solution based on NAPL stability as may be allowed by the draft MCP Regulatory Reform Package issued in March 2013.
  - The potential presence of utilities providing preferential pathways from the release site to Brayton Avenue.
  - Whether a Permanent Solution (RAO A), Temporary Solution (RAO C), or ROS status is appropriate for the site, considering the timeliness of achieving a Permanent Solution.
  - Usability, representativeness, and completeness of the existing data and risk characterization to support ROS or RAO.
  - Recommendation for: no further remedial response actions, alternative Remedial Response Actions, or continuation of current MNA and product removal, to achieve a Permanent or Temporary Solution in the most timely and cost-effective manner.
  - Scope and cost estimate for collection of additional field investigation and chemical or physical testing, if necessary, to assess risk, select alternative remedial actions and/or to document NAPL stability to achieve a Permanent or Temporary Solution.
2. **Site Investigation (If Warranted).** Perform data collection and evaluation as per the scope and cost estimate developed in Task 1, following approval by SRTA. The additional information shall be incorporated into the document prepared under Task 1 to support the recommended alternative.
3. **Report.** Prepare and submit LSP opinion and all required documentation supporting one of the following outcomes. The documents shall reflect the regulations in place at the time of the work :
- Continued ROS demonstrating that the recommended remedial actions will result in a Permanent Solution.
  - Permanent Solution (RAO-A2 or RAO-A3) and Termination of ROS
  - Temporary Solution (RAO-C1) and Termination of ROS

Prepare a draft and final version, coordinate eDEP submittal to MassDEP, and provide public notices associated with these submittals.

4. **Activity and Use Limitation.** If appropriate, prepare and record an Activity and Use Limitation (AUL) to restrict potential exposure to subsurface contamination, based on anticipated future use.

Assume one AUL will be provided for both properties. For purposes of scope and fee preparation, assume that survey services, if and as required for AUL submittal, identification of record interest holders, as well as filing of the AUL at the Registry of Deeds shall be provided by SRTA. Prepare a draft and final version, coordinate eDEP submittal to MassDEP, and provide public notices, legal notices, and notices to record interest holders (if any) associated with these submittals.

#### **5. LSP support to SRTA**

- Up to four (4) meetings with Client
- At least one meeting shall be held at the Site in Fall River.

**Proposal Requirements.** The proposals should include qualifications and fee information in separate envelopes.

Qualifications shall be placed in one envelope labeled:

#### **QUALIFICATIONS**

Southeastern Regional Transit Authority  
Licensed Site Professional Services  
601 and 631 Brayton Avenue, Fall River Massachusetts

The qualifications section shall include the following:

- Description of the LSP's anticipated approach to MCP closure for this site. Any exceptions to the anticipated approach and tasks or other suggested scope items to achieve closure of the site should be detailed in the proposal.
- Qualifications of the company, the LSP proposed as LSP-of-Record, and key staff proposed for the work including resumes for LSP and key staff.
- Demonstrated experience of the LSP and key staff in: assessing and remediating LNAPL MCP sites; evaluation of LNAPL stability and mobility similar to that described in draft MCP Regulatory Reform Package issued in March 2013; and use of scientific principles describing the behavior of fluid flow in porous media to support evaluation of LNAPL stability.
- Anticipated schedule of activities and anticipated end date.
- Descriptions of similar projects in which the proposed LSP or key staff have participated.
- Explanations of any disciplinary actions taken by Board of Hazardous Waste Cleanup professionals regarding the proposed LSP-of-record.
- The names, telephone numbers, and addresses of three (3) references
- Information as required and attached to this RFP

Fee information shall be placed in one envelope labeled:

#### **FEE INFORMATION**

Southeastern Regional Transit Authority  
Licensed Site Professional Services  
601 and 631 Brayton Avenue, Fall River Massachusetts

The fee information shall include the following:

- Level of effort, labor fee and reimbursable expenses by task. The services shall be provided on a not-to-exceed cost basis for each task, with the exception of Task 2. Task 2 should describe a preliminary estimated scope and cost pending completion of Task 1.
- Include a rate sheet for the personnel anticipated to support this project. If additional services are requested by SRTA, these shall be compensated on a time and materials basis, subject to prior written approval from SRTA.

Qualifications should not exceed ten (10) pages in length, excluding attachments, and should focus on the proposed approach and experience on similar projects. Resumes, example project descriptions, representations and certifications, and costs may be included as attachments. Proposals are due on or before close of day, September 6, 2013.

Proposals should be submitted in writing to:

Erik Rousseau  
Administrator  
SOUTHEASTERN REGIONAL TRANSIT AUTHORITY  
700 Pleasant Street, Suite 320  
New Bedford, MA 02740

**Questions.** Questions should be provided in writing or email to Mary Ellen DeFrias at [mdefrias@srtabus.com](mailto:mdefrias@srtabus.com). Written responses will be provided to all respondents to the RFP.

**Proposal Evaluation.** The following criteria will be used in evaluating qualifications:

- Responsiveness to all Proposal Requirements
- Clarity, detail, and adequacy of the proposed approach demonstrating:
  - A clear understanding of the scope of work and the goals of the work.
  - Understanding of use of scientific principles describing the behavior of fluid flow in porous media to support evaluation of LNAPL stability
  - Knowledge of the current MCP requirements and 2013 draft MCP requirements regarding LNAPL
- Capacity to accomplish the work using company resources or through a subcontract relationship.
- Qualifications and technical competence of proposed LSP and key staff
  - Demonstrated experience of the LSP and key staff in evaluating and closing out sites with residual LNAPL similar to that described above in compliance with the MCP. Experience may be with the Offeror or with other companies.
  - Professional qualifications, academic credentials, and registrations of the LSP and key staff.
- Record of Performance:
  - Performance on and number of previous projects similar in scope and complexity, including cost control, quality of work, and maintaining schedule.
  - The experience of the project manager on projects similar in scope

**Selection Criteria.**

- The qualifications will be ranked using the evaluation criteria. Negotiations concerning scope and fee will be conducted with the most qualified offeror. If agreement is not reached with the most qualified offeror, the negotiations will be held with the next most qualified offeror.

- Confidentiality will be maintained during the selection process.
- The offeror with whom negotiations are conducted, will be given reasonable opportunity to support and clarify its proposal.
- Unsuccessful offerors will be notified at the earliest practicable time that their proposals are no longer being considered.
- Award will be made to the offeror whose proposal will be the most advantageous to the SRTA. SRTA reserves the right not to make an award.
- Respondents are advised that the Administrator of the SRTA, as Chief Executive Officer, is solely responsible for the award of the Contract. Any respondent who communicates with any SRTA Advisory Board members, the press or engages the services of any individual or firm for the purposes of influencing the outcome of the proposal process will be disqualified from further consideration.

# Federal Clauses

## **1. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

31 U.S.C. 3801 et seq.  
49 CFR Part 31, 18 U.S.C. 1001  
49 U.S.C. 5307

(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 contract. 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. § 5307(n)(1) 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 who will be subject to the provisions.

## **2. BREACHES AND DISPUTE RESOLUTION**

49 CFR Part 18 FTA Circular 4220.1F

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the municipal corporation's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the municipal corporation's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the municipal corporation's CEO shall be binding upon contractor and contractor shall abide by the decision. Performance During Dispute - Unless otherwise directed by the municipal corporation, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the municipal corporation and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the municipal corporation or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **5. ASSIGNABILITY CLAUSE**

Any public agency (i.e., city, district, public authority, public agency, municipality, and other political subdivision or any FTA-funded entity) shall have the option of participating in any award made as a result of this proposal at the same prices, terms, and conditions. SRТА reserves the right to assign all or any portion of the items awarded under this Contract. This assignment, should it occur, shall be agreed to by SRТА and the contractor. Once assigned, each agency will enter into its own contract and be solely responsible to the contractor for obligations. SRТА right of assignment will remain in force over the 5-year period or until completion of the contract to include options, whichever occurs first. SRТА shall incur no financial responsibility in connection with contracts issued by another public agency. The public agency shall accept sole responsibility for placing orders or payments to the Contractor.

## **6. FLY AMERICA REQUIREMENTS**

49 U.S.C. §40118  
41 CFR Part 301-10

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. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## **11. SEISMIC SAFETY REQUIREMENTS**

42 U.S.C. 7701 et seq. 49  
CFR Part 41

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

## **12. ENERGY CONSERVATION REQUIREMENTS**

42 U.S.C. 6321 et seq.  
49 CFR Part 18

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 Energy Policy and Conservation Act.

### **13. CLEAN WATER REQUIREMENTS**

33 U.S.C. 1251

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### **16. LOBBYING**

31 U.S.C. 1352, 49 CFR Part 19, 49 CFR Part 20

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal 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. Each tier 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 are forwarded from tier to tier up to the recipient.

### **17. ACCESS TO RECORDS AND REPORTS**

49 U.S.C. 5325, 18 CFR 18.36 (i), 49 CFR 633.17

(1) Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(2) Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

(3) Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. (If applicable)

(4) Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection. (If applicable)

(5) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(6) The Contractor 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 same until the Purchaser, 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. Reference 49 CFR 18.39(i)(11).

(7) FTA does not require the inclusion of these requirements in subcontracts.

#### **18. FEDERAL CHANGES**

49 CFR Part 18

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 (14) dated October 2007) between City Utilities and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

#### **20. CLEAN AIR**

42 U.S.C. 7401 et seq, 40 CFR 15.61, 49 CFR Part 18

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **25. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

(1) City Utilities 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 the Purchaser, 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 who will be subject to its provisions.

#### **26. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS & RELATED ACTS**

31 U.S.C. 3801 et seq., 49 CFR Part 31 18 U.S.C. 1001, 49 U.S.C. 5307

**Program Fraud and False or Fraudulent Statements or 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 C.F.R. 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. § 5307(n)(1) 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 who will be subject to the provisions.

**27. TERMINATION**

49 U.S.C. Part 18  
FTA Circular 4220.1E

i. Termination for Convenience or Default (Architect & Engineering) the municipal corporation may terminate this contract in whole or in part, for the municipal corporation's convenience or because of contractor's failure to fulfill contract obligations. The municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature, extent and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the municipal corporation all data, drawings, specifications, reports, estimates, summaries and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the municipal corporation's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the municipal corporation may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the municipal corporation.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the municipal corporation's convenience.

**28. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

49 CFR Part 29  
Executive Order 12549

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by City Utilities. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to City Utilities, 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 49 CFR 29, 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.

Contractors and subcontractors are also subject to a continuing duty of disclosure. Contractors and subcontractors must provide immediate written notice to City Utilities of Springfield if it learns that a person involved in a covered transaction has been excluded. City Utilities of Springfield must then provide written notice to the Federal Transit Administration.

### **30. CIVIL RIGHTS REQUIREMENTS**

29 U.S.C. § 623, 42 U.S.C. § 2000, 42 U.S.C. § 6102, 42 U.S.C. § 12112  
42 U.S.C. § 12132, 49 U.S.C. § 5332, 29 CFR Part 1630, 41 CFR Parts 60 et seq.

#### **(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 American 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**

##### **(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 Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (US 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.

##### **(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 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.

(c) Disabilities

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

(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.

**31. BREACHES AND DISPUTE RESOLUTION**

49 CFR Part 18, FTA Circular 4220.1E

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

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

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

**35. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

49 CFR Part 26

(1) The Federal Fiscal Year Goal Has Been Set By City Utilities in an attempt to match projected procurements with available qualified disadvantaged businesses. City Utilities' goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by City Utilities as set forth by the Department of Transportation Regulations 49 CFR Part 26, and is considered pertinent to any contract resulting from this request for quotation/proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in the bid documents, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBEs in the work provided, City Utilities may declare the Contractor noncompliant and in breach of contract. If a goal is

not stated in the bid documents, it will be understood that no specific goal is assigned to this contract.

(a) Policy – It is the policy of the Department of Transportation and City Utilities that Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in the performance of Contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26, apply to this Contract. It is also the policy of City Utilities to:

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs; and
- Help remove barriers to the participation of DBEs in DOT-assisted contracts.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 26, have the maximum opportunity to participate in whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of City Utilities to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of City Utilities procurement activities are encouraged.

(b) DBE obligation – The Contractor and its subcontractors agree to ensure that DBEs have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform contracts.

(c) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBEs in the work provided, City Utilities may declare the contractor noncompliant and in breach of contract. Guidance concerning good faith efforts may be found in the bid documents and are also listed in City Utilities' Disadvantaged Business Enterprise Program document.

(d) The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with City Utilities' DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of City Utilities and will be submitted to City Utilities upon request.

(e) City Utilities will provide affirmative assistance, as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- Identification of qualified DBEs,
- Available listing of Minority Assistance Agencies,
- Holding bid conferences to emphasize requirements.

(2) Prime Contractors are encouraged to use the services of DBE banks.

(3) DBE Program Definitions:

(a) Disadvantaged business enterprise or DBE means a for-profit small business concern --

- i. That is at least 51 percent owned by one or individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or such individuals; and
- ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(b) Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (12 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

(c) Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is --

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- i. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;
- ii. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- iv. "Asian-Pacific American", which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of Pacific Islands (Republic of Palua), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- v. "Subcontinent Asian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- vi. Women;
- vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

### **37. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

#### FTA Circular 4220.1E

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City Utilities requests which would cause City Utilities to be in violation of the FTA terms and conditions.