

29-225

REQUEST FOR PROPOSAL

29-225

LAMP & LIGHTS

October 16, 2009

Utah Transit Authority
3600 South 700 West
P.O. Box 30810
Salt Lake City, Utah 84130-0810

(THIS PAGE NOT USED)

**REQUEST FOR PROPOSAL
29-225**

The Utah Transit Authority (UTA), Salt Lake City, Utah, is requesting sealed proposals for Lamps and Lights.

This contract may be financed, in part, with financial assistance from the Federal Transit Administration (FTA) of the United States Department of Transportation. The contract awarded will be subject to the financial assistance contract between the UTA and the U.S. Department of Transportation.

To the extent applicable, all offerors will be required to sign the following certifications as attached: Affirmative Action and Disadvantaged Business Enterprise Statement; the Buy American Certification; the Certification of Restrictions on Lobbying; and the DBE Certifications in Appendix A.

Any correspondence, questions, or requests for proposal packages should be directed to the Purchasing Department, Attention: Tim Burgert, Utah Transit Authority, P.O. Box 30810, 3600 South 700 West, Salt Lake City, Utah 84130-0810, telephone: (801) 262-5626, Extension 3019 or at "tburgert@uta.co.ut.us".

Sealed proposals marked "Lamp & Lights" should be sent to the Utah Transit Authority, Attention: Lee Childress/Purchasing Department, P.O. Box 30810, 3600 South 700 West, Salt Lake City, Utah 84130-0810 no later than 5:30 P.M., November 20, 2009. Any proposals received thereafter may be considered non-responsive and may not be evaluated. This procurement is a Request for Proposal (RFP). Proposals will be opened in private after the date and time stated above. A public opening will not be held.

Complete instructions to offerors are included in the proposal. No oral, telephone, telegraphic, or facsimile proposals or modifications will be considered. Award will be based on the following criteria in descending order of importance: Compliance with specifications; product performance during testing (if required); and availability of product. Cost will be the last factor to be considered. UTA reserves the right to award contracts to more than one supplier. Award will be to the offer deemed most advantageous and of the best value to UTA. Discussions or negotiations may be conducted under this proposal, however, the Authority reserves the right to award a contract based on the initial proposal without discussions or negotiations.

Issuance of this RFP does not commit the UTA to award any contract, to pay any costs incurred in preparation of a proposal, or to procure or contract for services or supplies. The UTA reserves the right to waive any irregularities and informalities or to reject any and all proposals, to re-advertise and to make contract awards in the best interest of the UTA. Award will be to the offer deemed most advantageous and of the best value to UTA.

The contractor shall be required to comply with all applicable equal employment laws and regulations. The UTA in accordance with Title VI of the Civil Rights Act of 1964, as amended, and 49CFR Part 26, will afford Disadvantaged Business Enterprises (DBE's) full opportunity to respond and will not discriminate against any interested firm or person on the basis of race, color, sex, or national origin in the review of qualifications or contract award. Firms will submit documentation on the utilization of DBE's with their bids. The UTA's DBE goal for this bid is 12.2%.

John M. English
General Manager

TABLE OF CONTENTS

Request for proposal 29-225 LAMPS & LIGHTS

	page
Intro Letter	3
Table of Contents	4
Notices	5
Instructions to Offerors/Special Provisions Bid Data	6-11
Status of Contractor Certifications	13-14
Contractor's Offer/Signature	15
Certifications	17-20
Part I – Terms and Conditions	21-23
Part II – General Provisions	24-31
Part III – FTA Required Clauses	32-38
Appendix A – Disadvantaged Business Utilization	39-50
Solicitation Statistics	51
Attachments	Number of Pages
1 – Bid Schedule	48

NOTICES

UTA WEB SITE SOLICITATION DOCUMENTS: This solicitation is available for download on UTA's web site www.rideuta.com under ***Doing Business/Open Bid Documents***. The solicitation is available in PDF format only. Contractors are responsible to revisit the web site from time-to-time for any amendments to the solicitation; failure to acknowledge the receipt of amendments may render offers non-responsive. These documents are available on the web site for your convenience only; UTA can not accept offers through the internet.

QUESTIONS OR CONCERNS: Questions or concerns regarding this solicitation should be addressed to the following individuals:

Lee Childress
Contract Buyer
801-287-3052
lchildress@rideuta.com

Mary Kay Bonica, C.P.M.
Manager of Purchasing and Material
801-287-3015
mbonica@rideuta.com

NOTE: For the purpose of this Solicitation, "Bid", "Proposal" and "Offer" and "Bidder", "Proposer" "Offeror" and "Contractor" are synonymous.

INSTRUCTIONS TO OFFERORS/SPECIAL PROVISIONS

PROPOSAL 29-225 Lamps and Lights

INSTRUCTIONS FOR BIDDING: Proposals must be on the form furnished by the UTA and must be enclosed in a sealed envelope and endorsed, "Lamps & Lights". The UTA will not accept proposals through the fax machine.

Requirements for this proposal are:

1. The Bid Schedules (Attachment 1) filled out completely including: **MANUFACTURERS NAME, PRODUCT NUMBER, AND UNIT PRICE DELIVERED TO THE UTA** for each product offered.
2. The data and acknowledgments required on pages 9-11.
3. The Certifications (located on the pages noted) signed and returned with the Bid Schedule.
 - Contractor Status/Signature Page (pages 13-14)
 - DBE/Affirmative Action Statement (page 17)
 - Buy America Certification (page 18)
 - Certification of Restrictions in Lobbying (page 19)
 - Certification regarding Debarment (page 20)
 - DBE Certifications (Appendix A)
4. Material Safety Data Sheet (MSDS) shall be included for each item that an MSDS is available.
5. The UTA has established a DBE goal of 12.2% for this contract. The utilization of DBE's to meet this goal will be a consideration in the Award of Contract; therefore, offerors shall explain in their proposal how they plan to meet this goal. (see Appendix A)

CONTRACT PERFORMANCE PERIOD: Contract performance will commence on or about December 15, 2009 for three (3) years.

REQUIREMENTS: This is a requirements contract for the supplies or services identified herein and effective for the time stated. The quantities that may be indicated in the Bid Schedule are estimates only and shall not be read or interpreted so as to obligate UTA to purchase such amounts. Except as otherwise provided, if the UTA's requirements do not result in orders in the quantities described as "estimated" quantities, that fact shall not constitute the basis for a price adjustment or claim against UTA.

Delivery or performance shall be made only as authorized by orders issued in accordance with the ordering provision of the contract. Subject to any limitations stated herein, the contractor shall furnish to UTA any supplies or services specified in the Schedule as ordered in accordance with the ordering procedures. The UTA may issue orders requiring delivery to multiple locations or performance at multiple locations.

Any order issued during the effective period of this contract and not completed within that period shall be completed by the contractor within the time specified in the order.

COST AND PRICING: The cost submitted by the offeror on the Bid Schedule shall be the full and total cost for the materials listed on the Bid Schedule as identified in the RFP. All applicable costs, charges or fees shall be included.

Shipping and handling will be FOB destination.

UTA will not be responsible for or pay for any costs, charges or fees not included or identified in the offer.

PRICE ESCALATION: UTA will consider price adjustments (increases and reductions) one time during the term of this contract, after February 1, 2011. The Contractor must submit their request for price adjustments in writing and provide written documentation from their suppliers to support any adjustments. The Contractor should address all of the items affected by a specific price change at the same time. Price adjustments will not be retroactive; ordering prices will not be changed until the adjustments are approved by UTA by written change order. UTA warrants it will consider requests for price adjustments within a reasonable time from date of receipt; contractor warrants that it will not delay delivery of items pending price changes. If price increases are not mutually acceptable, the contract will be canceled. Requests shall be delivered to the UTA Purchasing Department, attention Tim Burgert.

DBE PARTICIPATION: The following applies to all contractors and subcontractors, at all tiers, doing business with UTA:

It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE), as defined in 49 CFR 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the DBE requirements of 49 CFR 26 apply to this agreement. The UTA or its contractor agrees to ensure that Disadvantaged Business Enterprises, as defined in 49 CFR 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, the UTA and its subrecipients, contractors, and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. The UTA and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT assisted contracts.

The UTA's Disadvantaged Business Enterprise (DBE) Plan is hereby incorporated by reference. This program shall be treated as a legal obligation and failure to carry out the DBE Program requirements shall be treated as a violation of this contractual agreement, and may result in termination of the agreement or contract, or such remedy as UTA deems appropriate.

A copy of the UTA DBE Plan may be obtained by contacting the UTA Purchasing Department or the UTA DBE Liaison Officer at 801-262-5626, ext. 3538.

CHANGE ORDERS/ADDITIONS TO THE CONTRACT: The UTA reserves the right to add items to the contract after award, as new items are identified and required.

QUANTITY: Any quantities shown on the Bid Schedule are estimated quantities only. It shall be understood that these quantities are variable and UTA reserves the right to purchase an amount more or less should UTA's requirements increase or decrease during the term of the Contract. Those items showing zero usage were not purchased in the last year; however, they are still active items in the UTA system and may be required under the new contract. (See also "Requirements")

PURCHASING AND ORDER PLACEMENT PROCEDURES: During the term of the contract, items will be ordered on an "as needed" basis according to the UTA order point formula. The UTA reserves the right to order more or less should the UTA's requirements increase or decrease during the term of the contract.

PAYMENTS/INSPECTION AND ACCEPTANCE: UTA shall pay the Contractor, upon submission of proper invoices, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in the contract, payment will be made on individual orders placed against the contract as accepted by UTA. Unless otherwise specified herein, final acceptance of supplies shall be with the UTA Shipping and Receiving Department or the UTA Parts Department responsible for placing orders against the contract. Final acceptance of services will be with the specified UTA Program Manager. (See also "Prompt Payment Discounts").

CONTRACTOR EXPERIENCE: Offerors must provide evidence of at least **five (5) years** experience in the manufacture and/or distribution windshields and/or vehicle safety glass. Offerors shall furnish the name, address and duration of services of previous customers as part of their proposal. Failure to provide this information may render the offeror non-responsive.

SPECIFICATIONS: Products under this proposal are as specified on the Bid Schedule. Manufacturers and product numbers indicated have been approved for use and are provided for information. Contractors may propose alternate products that are of equal or better quality. Should the bidder offer other than what is specified, the bidder must provide manufacturer data sheets and specifications for each alternate bid for evaluation by the Authority. Failure to submit data may render the proposal non-responsive. The Authority reserves the right to test all products for quality and compatibility with equipment and current colors. The decision of the Authority as to the acceptability of a product is final. (The Authority reserves the right to test alternates submitted for an extended period to evaluate performance etc. Extended testing will not preclude contract award for items already approved; results of extended testing will be used for future contracts).

SPECIFICATION MODIFICATIONS: Detailed specifications are not available on every item listed in the Item Schedule; therefore, it may not be possible to verify if every item bid will meet the Authority needs. Comments are included on some items to help identify the product, however, should a problem develop when a new brand or style is used, the Contractor will be notified as to the problem and asked to suggest a replacement. Price changes will be negotiated at that time if an acceptable replacement can be identified. The Contractor agrees to accept return of the unusable products with full credit to the Authority and without a restocking fee.

FAILURE TO COMPLY WITH SPECIFICATIONS: During the term of the contract, products delivered to the Authority that are not in compliance with the Authority specifications will be deemed unacceptable and the Contractor will be notified immediately. The Contractor will accept the return of the product and will replace the shipment within 48 hours with the product that does meet the Authority specifications, at no additional cost to the Authority.

ENVIRONMENTAL MANAGEMENT SYSTEM: UTA is ISO 14001 Environmental Management System (EMS) certified. Contractors who do business with UTA must be aware that their activities, products or services may affect UTA's ability to maintain the obligation of the EMS. A partial list of these activities, products or services is available at the UTA website, www.rideuta.com. If your business with UTA has the potential to impact the environment you may have to submit additional environmental documents.

SAFETY AND CONTRACTOR SAFETY ORIENTATION TRAINING: The Contractor shall comply with all OSHA, EPA, DOT and all other local, State and Federal regulations, rules and guidelines pertaining to safety and will be solely responsible for any fines, citations or penalties it may receive while working on this project.

DELIVERY:

- a. Locations for Delivery: All deliveries will be made to the UTA Receiving Department located at 3600 South 700 West, Salt Lake City, Utah 84119.
- b. Time of Delivery: All materials shipped to the UTA must be shipped FOB the UTA Shipping and Receiving Dock. Deliveries will be accepted not earlier than 7:00 a.m. and not later than 5:00 p.m. on weekdays only. Deliveries will not be accepted on Saturdays, Sundays or legal holidays observed by the Authority.
- c. Lead time: Orders are placed with an estimated 15 calendar day lead time; however, if the Contractor's delivery affects the Authority's ability to repair buses in a timely manner, the Authority reserves the right to order from another source.
- d. Verification of Orders: The Contractor will include a packing slip with each order that details; the quantity ordered, quantity delivered, the Authority part numbers, description, contract price and Contract Number.

The Authority receiving clerk will verify each order for accuracy in all areas. Should discrepancies occur, the Contractor will be notified immediately. The Contractor will correct any errors within 48 hours from the time of notification.

MATERIAL SAFETY DATA SHEETS (MSDS): Any and all Material Safety Data Sheets (MSDS) applicable to any item or product called for under this proposal, or required for use on UTA property as a result of this proposal, must be submitted either with the contractor's proposal, or prior to the bid opening date under a separate cover letter, for approval. No product will be delivered to UTA or used on UTA property without prior approval by UTA; no contract will be awarded without this approval. A contractor's failure to submit an MSDS with their proposal may render their proposal non-responsive for that item.

MSDS's must be complete; products or materials will be approved or disapproved for use by UTA or on UTA property as a result of their review.

HOLD HARMLESS: The Contractor shall hold harmless and indemnify the Authority, its employees, and/or agents against any and all liability and expenses as a result of any accident, personal injury, or property damage caused by or incurred by the staff, employees, officers, participants, or representatives of the Contractor. Contractor also agrees to indemnify and hold harmless the Authority from any and all claims, actions, losses, suits, and demands arising in any way from the actions or negligence of Contractor's staff, employees, officers, or representatives.

The Authority shall hold harmless and indemnify the Contractor, its employees, and/or agents against any liability in respect to any accident, personal injury, or property damage caused by or incurred by the staff, employees, or representatives of the Authority. The Authority also agrees to indemnify and hold harmless the Contractor from any claims or actions arising in any way from the actions or negligence of the Authority staff, employees, officers or representatives.

BID ACCEPTANCE PERIOD: In compliance with this proposal, the offeror agrees, if this offer is accepted within 90 calendar days (unless a different period is indicated below by the offeror) from the date specified in the solicitation for receipt of bids, to furnish any or all items bid at the price indicated, within the time specified. ("Acceptance period" as used herein means the number of calendar days available to UTA for awarding a contract from the date specified in this proposal for receipt of offers). By

submitting an offer under this proposal, the offeror certifies their proposal is good and valid for the period required.

_____ calendar days (offeror insert number of days if other than 90 calendar days).

NOTICES OR DEMANDS: Any notice or demand to be given by one party to the other shall be given in writing per personal service, telegram, express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States Mail, postage prepaid, certified, return receipt requested and addressed to such party as follows:

If to UTA:

Utah Transit Authority
 Attn: Lee Childress
 3600 South 700 West
 P.O. Box 30810
 Salt Lake City, Utah 84119

If to the Contractor:

Either party may change the address at which such party desires to receive notice on written notice of such change to any other party. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

CONTRACTOR EXPERIENCE

Enter the names, telephone numbers and number of years of service of your customers in accordance with the paragraph entitled "Contractor Experience".

NAME & ADDRESS OF CLIENT	TELEPHONE	YEARS SERVED

PROMPT PAYMENT DISCOUNT

Enter the prompt payment discount that will apply to all billings under this contract. Do not leave blank. If not stated, invoices will be processed Net 15th Prox (15th of the month following the date of the invoice).

Discounts will be calculated from the date of final receipt of the materials, or final acceptance of the services, invoiced for, or, date of receipt of the original and correct invoice, whichever is later.

PROMPT PAYMENT DISCOUNT	_____ % _____ DAYS (OR) _____
--------------------------------	--------------------------------------

ACKNOWLEDGMENT OF AMENDMENTS

Amendments may have been issued during the bidding period that changed the RFP in some manner. If any were issued, the bidder must acknowledge their receipt by either returning a copy of the amendment with their proposal or by initialing the appropriate block below. Failure to acknowledge amendments may render the proposal non-responsive.

AMENDMENTS ACKNOWLEDGED	#1	#2	#3	#4	#5
------------------------------------	----	----	----	----	----

(this page not used)

STATUS OF CONTRACTOR: The undersigned bidder/offeror certifies that it and each of its subcontractors possess an adequate supply of workers qualified to perform the work specified herein; that there is no existing or impending dispute between it and any labor organization; and that it is prepared to comply fully with prevailing wage requirements, minimum wages, maximum hours of work, and equal opportunity provisions contained in the general conditions of the contract.

This bid/proposal is submitted upon the declaration that neither I (we) nor, to the best of my (our) knowledge, none of the members of my (our) firm or company have either directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this bid/proposal.

If an **Individual:** _____ doing
business as _____.

If a **Partnership:**
_____, (General Partner)
_____, (General Partner).

If a **Corporation:**
a corporation incorporated in the state of _____

If a **Joint Venture:** A joint venture comprised of

Name:

And

Name:

Business Address

Bidder/Offeror:

Telephone Number: (_____) _____

FAX Number: (_____) _____

The undersigned understands that any conditions added to this bid/proposal, clarifications, or information submitted with this form, other than that requested, may render the bid/proposal non-responsive.

JOINT VENTURE: The undersigned bidder/offeror is a joint venture comprised of the following persons, firms, or corporations. Enclose a copy of the Joint Venture Agreement entered into between the parties. Disadvantaged owned companies must be indicated in the column marked by a "D". Indicate N/A if this does not apply.

<u>Percent of Contract</u>	<u>"D"</u>	<u>Firm Name</u>	<u>Address</u>
----------------------------	------------	------------------	----------------

SUBCONTRACTORS: The undersigned bidder/offeror proposes to have the following work performed by subcontractors. Disadvantaged owned companies must be indicated in the column marked by a "D". Indicate 'none' if sub-contractors will not be used. (See Appendix A)

LIST OF SUBCONTRACTORS

<u>Work</u>	<u>Percent of Contract</u>	<u>"D"</u>	<u>Proposed Subcontractor & Address</u>
-------------	----------------------------	------------	---

The participation of disadvantaged owned companies as shown above will be incorporated into any contract awarded as a result of this invitation.

The undersigned bidder/offeror does hereby certify that the above listed subcontractors have full knowledge that their names have been offered as subcontractors for the work, and the bidder/offeror further certifies that these subcontractors have consented to listing their names.

CONTRACTOR'S OFFER/SIGNATURE: In the event of Contract award, and if the offer is accepted within the Bid Acceptance period specified in the RFP, by signing this offer the Contractor agrees to deliver all supplies and/or perform all services or construction as set forth in the Terms and Conditions, the Specifications and/or Bid Schedule, and any Amendments to this Request For Proposal (RFP). It is understood that UTA may award more than one contract as a result of the RFP as set forth in the RFP. Signature must be by an officer of your company authorized to bind your company in contractual matters.

(Contractors Name and Address)

(If Joint Venture or Partnership)

(Signature and Title & Date)

(Signature and Title If Joint Venture or Partnership)

ACCEPTANCE OF OFFER/AWARD OF CONTRACT: This confirms the acceptance of your offer on Request For Proposal 29-225 as accepted in our Notice of Contract Award. Contract award is for the items listed below or on the attached Price Schedule. This award consummates the Contract which consists of the Terms and Conditions of the RFP, any Amendments to the RFP and your Offer. No other contractual document is necessary.

No member, officer, or employee of UTA during their tenure or one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

The Contract Administrator for this contract is Lee Childress. The Program Manager for this contract is Mary Kay Bonica. All correspondence regarding this contract should be addressed to Lee Childress at 801-287-3052.

UTAH TRANSIT AUTHORITY:

By: _____
Kenneth D. Montague, Jr.
Treasurer

By: _____
John M. English
General Manager

Approved as to Form
UTA Legal Counsel

(this page not used)

CERTIFICATION A

AFFIRMATIVE ACTION AND DISADVANTAGED BUSINESS ENTERPRISE STATEMENT

ALL PROSPECTIVE CONTRACTORS MUST COMPLETE AND SIGN THIS CERTIFICATION. FAILURE TO SUBMIT THIS CERTIFICATION MAY RENDER YOUR BID/OFFER NON-RESPONSIVE

The Utah Transit Authority UTA will not discriminate on the basis of race, color, national origin, age, religion, or sex in the award or performance of any contract. By submitting an offer, the Contractor certifies that they shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. UTA and the Contractor shall both adhere to all relevant federal and state regulations in fulfilling this contract, including those promulgated by the U.S. Department of Justice and the U.S. Department of Transportation. Absence of any specific regulatory reference, however, does not eliminate or reduce the Contractor's responsibility to adhere to all pertinent laws and regulations.

The Bidder/Offeror has given, or will give, prior to the commencement of an approved UTA project, notice to all pertinent personnel, i.e., managers, supervisors, employees, unions, subcontractors, etc. of the contractor's EEO and DBE policies and procedures and its intent and effort to realize such procedures in connection with the EEO and DBE requirements that UTA is required to follow as a Federal Transit Administration Grantee.

Bidder/Offeror designates -- Name _____
Title _____

as the person assigned the responsibility for securing compliance with and reporting progress to the Bidders/Offerors and UTA's office of EEO on all affirmative action efforts initiated and taken.

Bidder/Offeror will cooperate fully with UTA and ensure equal employment opportunity to the maximum extent possible during the term of this contract. UTA will further be kept fully informed of any refusals by unions or others to cooperate with UTA's and the contractor's EEO and DBE requirements.

Bidder/Offeror agrees to make every reasonable good faith effort to utilize disadvantaged and/or women owned business enterprises in the performance of this contract. Bidder/Offeror will take affirmative steps to meet the DBE contract goals for disadvantaged businesses.

Company Name: _____

Printed Name _____

Title: _____

Signature _____

Phone Number: _____ Fax Number _____

E-Mail address: _____

CERTIFICATION B**BUY AMERICA**

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 pick-up trucks and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content. A bidder or offeror must submit to the UTA the appropriate Buy America certification (below) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

Certificate of Compliance with 49 U.S.C. 5323(j)(1) The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1) The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

CERTIFICATION C

CERTIFICATION REGARDING LOBBYING

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)] (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. [Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

Signature of Contractor's Authorized Official _____

Name and Title of Contractor's Authorized Official _____

Date _____

CERTIFICATION D

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
INELIGIBILITY AND VOLUNTARY EXCLUSION FROM TRANSACTIONS
FINANCED IN PART BY THE U.S. GOVERNMENT**

This certification is made in accordance with Executive Order 12549, 49 CFR Part 29, 31 USC §6101 and similar federal requirements regarding debarment, suspension and ineligibility with respect to federally-funded contracts.

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 the Federal Transit Administration. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Federal Transit Administration, 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.

If the bidder or proposer is unable to certify to the statement above, it shall attach an explanation, and indicate that it has done so, by placing an "X" in the following space _____.

Signature of the Bidder or Proposer Authorized Official

Name and Title of the Bidder or Proposer Authorized Official

Date

PART I
TERMS AND CONDITIONS

These General Conditions and Instructions apply to all bidding and/or proposing, except insofar as they may be modified by the specifications or bidding/proposing documents.

DEFINITION OF TERMS: Whenever in the bid/proposal or contract documents the following terms or pronouns in place of them or abbreviations are used, the intent and meaning shall be interpreted as follows (See also the General Provisions for specific definitions):

"Utah Transit Authority", "Transit Authority", "Authority", or "UTA" means Utah Transit Authority, body corporate and politic created pursuant to Section 17-A-2-1001, Utah Code Annotated 1953, as amended, relating to public transit districts.

"Board", "Directors", "Board of Directors" or "Board of Trustees" means Utah Transit Authority's Board of Trustees or members thereof.

"General Manager" means general manager of the Utah Transit Authority.

"Contractor" means the successful bidder or offeror to whom a contract is awarded.

"Contract" means a written agreement, resulting from this proposal, signed by the Contracting Parties or their properly authorized representative or agent, mailed to the contractor at the address designated in their bid/proposal or to such other address as may be designated in writing as their official place of business.

"Division" refers to specific UTA operating locations.

"Bid/Proposal Documents" means the Notice to Contractors, Notice to Bidders/Offerors, General Conditions and Instructions for Bidders/Offerors, Specifications, Invitation for Bid, Request For Proposals, Bid/Proposal, Contract and Addenda/Amendments, if any.

"Notice" means notice requesting bids/proposals published pursuant to Section 17-A-2-1016, Utah Code annotated 1953, as amended.

"Disadvantaged business" or "DBE" means a small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals (see definition below) or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

"Best Value" is the selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality and experience of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine the offer deemed most advantageous and of greatest value to the UTA.

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are: Women; Black Americans (persons having origins in any of the Black racial groups of Africa); Hispanic Americans (persons of Mexican, Puerto Rican, Cuban, Central or South American or of the Iberian Peninsula, including Portugal); Native Americans (persons who are American Indians, Eskimos, Aleuts or Native Hawaiians); Asia-Pacific Americans (persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and Northern Marianas); and, Asian-Indian Americans (persons whose origins are from India, Pakistan and Bangladesh). Section 106 (C) (2) B provides that women, like Black Americans, Hispanic Americans, and other groups currently designated in the regulations, are presumed to be "socially and economically disadvantaged individuals" for purposes of the DBE program.

INTERPRETATION OF BIDDING/PROPOSAL DOCUMENTS: If any person submitting a bid/proposal is in doubt as to the true meaning of any part of the bid/proposal specifications or finds discrepancies or omissions from the specifications, they may submit a request for interpretation or correction to UTA. Requests may be by telephone or in written format. Written request must be clearly marked as such on the outside of the envelope and be in the office of the Contracts Buyer in the Purchasing Department, prior to the scheduled bid/proposal opening.

LATE BIDS/PROPOSALS: Bids/proposals received in the office designated by UTA after the exact time set for opening are considered "late". Late bids/proposals are normally considered when received before contract award, and:

- o when sent by registered or certified mail to the location specified by UTA not later than five (5) calendar days before the bid/proposal receipt date specified;
- o when sent by mail not later than five (5) calendar days before the bid/proposal receipt date specified and to the location specified by UTA and it is determined by UTA that the late receipt was due solely to mishandling by UTA after receipt at UTA facility; or
- o when sent by U.S. Postal Service Express Mail Next Day Service to Addressee or by UPS Overnight Next Day Delivery Services, or Federal Express Over Night Next Day Delivery Service not later than 5:00 PM at the place of mailing two (2) working days prior to the date specified for receipt of bids/proposals. The term "working days" excludes weekends and holidays observed by UTA.

WITHDRAWAL OF BIDS/PROPOSALS: A bidder/offeror may withdraw their bid/proposal before the expiration of the time during which bids/proposals may be submitted, without prejudice to themselves, by contacting the Manager of Purchasing and/or submitting a written request for its withdrawal to the Purchasing Department.

ALTERNATIVE BID/PROPOSAL: Submission of alternative bids/proposals, except as specifically called for or allowed under the specifications or bid/proposal forms, will render it informal and may cause its rejection.

NON-COLLUSIVE AFFIDAVIT: The bidder/offeror shall represent and warrant that such bid/proposal is genuine and not fraudulent or collusive or made in the interest of or in behalf of any person not named and that the bidder/offeror has not, directly or indirectly, induced or solicited any other bidder/offeror to put in a counterfeit bid/proposal or sought by collusion, to secure to the bidder/offeror, an advantage over any other bidder/offeror.

If at any time it shall be found that a person, firm, or corporation to whom a contract has been awarded has in presenting any bid/proposal or bids/proposals colluded with any other party or parties, then the contract so awarded shall be null and void and the contractor shall be liable to UTA for all loss or damage which UTA may suffer and UTA may advertise for a new contract for said labor, supplies, materials, or equipment.

Nothing in this section shall limit or restrict the provisions of the warranty of fitness as set forth in these general conditions and instruction for bidders/offerors.

BRAND NAME OR EQUAL: Whenever a brand, manufacturer or product name is indicated in these specifications, they are included only for the purpose of establishing identification and a general description of the item. Wherever such names appear, the term "or approved equal" is considered to follow.

When bidding "an equal or substitute brand", bidder shall clearly indicate so on the bid document and shall supply technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirement.

It should be understood that specifying a brand name, components and/or equipment in this specification shall not relieve the supplier from his responsibility to produce the product or supply merchandise in accordance with the performance warranty and contractual requirements.

AGREEMENT: Agreement to be executed between UTA and successful bidder/offeror will be in the form of a formal contract for the services as authorized by UTA.

ASSIGNMENT OF CONTRACT: Unless approved in writing, UTA does not authorize the contractor to assign this contract or any portion of the contract or to make payments to another party on the behalf of UTA.

APPROVAL BY UTA'S DESIGNEE (PROGRAM MANAGER): Contract performance shall be monitored by an agent or agents designated by the Manager of Purchasing and Materials. This designee shall be responsible for inspection and acceptance of all products or performance under the contract.

FAILURE TO COMPLETE CONTRACT: In case of failure on the part of the contractor to complete their contract within the specified time or within authorized extensions, the contract may be terminated and UTA shall not pay or allow to the contractor any further compensation for any labor, supplies, or materials furnished. UTA may proceed to complete such contract by completing the contract with UTA personnel or by contracting with another contractor to complete the unfinished work as deemed necessary. The contractor shall be liable to UTA for all loss, damage or additional costs which UTA may suffer on account of the contractor's failure to complete the contract.

DEFECTIVE OR DAMAGED WORK: All loss or damage arising from any unforeseen obstruction or difficulties, either natural or artificial, that may be encountered in the execution of the work or the furnishing of the work or supplies, materials or equipment, or from any act or omission not authorized by these specifications on the part of the contractor or any agent or person employed by him, shall be sustained by the contractor.

Any material or equipment found to be damaged or defective at the time of delivery shall be repaired, replaced, or corrected by the contractor hereunder without additional cost to UTA.

PROPOSED CHANGES BY THE CONTRACTOR: Any proposed change in the contract must be submitted to UTA in writing for its prior written approval and UTA will make the change, if approved, by a contract change order.

It is understood, however, that the amount of work, materials, or equipment required by the contract shall not be so increased or diminished as to substantially alter the general character or extent of the contract.

TERMINATION: See FTA Required Clauses

PAYMENT OF TAXES: The supplies, materials, or equipment called for under the specifications will be used by UTA in the performance of a government function and are exempt from taxation by the United States Government. UTA will, if requested, furnish a Tax Exemption Certificate and any and all affidavits

and documents that may be necessary to establish such exemption. UTA is exempt from payment of Federal, State and local sales and use taxes, and such taxes must not be included in the priced bid/proposal. UTA will furnish necessary exemption certificates, if requested.

PART II

GENERAL PROVISIONS

This Part will be incorporated by reference in the contract to be awarded.

1. **Definitions.** As used in this Agreement:

- a. Agreement means any Agreement, Cooperative Agreement, Contract, or Subcontract.
- b. Approval, Authorization, Concurrence, Waiver means a conscious written act by an authorized official of UTA granting permission to the Contractor to perform or omit an action required pursuant to this Agreement, which action may not be performed or omitted without such permission. An approval, authorization, concurrence, or waiver permitting the performance or omission of a specific action does not constitute permission to perform or omit other similar actions unless such permission is clearly stated. Oral permission or interpretations have no legal force or effect.
- c. Federal Transit Act, as amended, is the current designation of the former Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. app. § 1601 note. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Act of 1964, as amended, shall be deemed a reference to the Federal Transit Act, as amended.
- d. Federal Transit Administration is the current designation of the former Urban Mass Transportation Administration. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration shall be deemed a reference to the Federal Transit Administration.
- e. Federal Transit Administrator is the current designation for the Urban Mass Transportation Administrator. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administrator shall be deemed a reference to the Federal Transit Administrator.
- f. FTA is the acronym for the Federal Transit Administration, one of the operating administrations of the U.S. Department of Transportation (U.S. DOT). FTA replaces the acronym "UMTA".
- g. FTA Directive includes FTA circulars, notices, orders or guidance providing information about the FTA's programs, application processing procedures, and project management guidance. In addition to FTA directives, certain U.S. DOT directives may also apply to the Project.
- h. Government means the United States of America and any executive department or agency thereof.
- i. Local Government includes a public transit authority as well as a county, municipality, city, town, township, special district, council of governments (whether or not incorporated as a private nonprofit organization under state law), regional or interstate government entity, or any agency or instrumentality thereof.

- j. Mass Transportation means transportation by bus, rail, or other conveyance, either publicly or privately owned, that provides general or special transportation service (but not school bus, charter or sightseeing service) to the public on a regular and continuing basis. The term "mass transportation" also includes "transit" and "public transportation".
- k. Project means the tasks or set of tasks set forth in the Bid or Proposal which the Contractor carries out pursuant to this Agreement with UTA.
- l. Contractor or Subcontractor means any entity that receives assistance from UTA for the accomplishment of the Project.
- m. Secretary means the U.S. DOT Secretary or his or her duly authorized designee.
- n. U.S. DOT is the acronym for the U.S. Department of Transportation, including its operating administrations.

2. Accomplishment of the Project.

- a. General Requirements. The Contractor agrees to carry out the Project in a sound, economical, and efficient manner, and in accordance with the provisions hereof, the Bid or Proposal, and all applicable laws and regulations. In general, the terms of the U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (common grant management rule), 49 C.F.R. Part 18, and "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations", 49 C.F.R. Part 19, apply to the Project.
- b. Application of Federal, State, and Local Laws and Regulations.
 - (1) Federal Laws and Regulations. The Contractor understands that Federal laws, regulations, policies, and related administrative practices applicable to this Agreement on the date the Agreement was executed may be modified from time to time. The Contractor agrees that the most recent of such Federal requirements will govern the administration of this Agreement at any particular time, except if there is sufficient evidence in the Agreement of a contrary intent. New Federal laws, regulations, policies and administrative practices may be established after the date the Agreement has been executed and will apply to this Agreement, unless determined otherwise by the Governing Authority. To achieve compliance with changing Federal requirements, the Contractor agrees to include in all subcontracts financed with Government (FTA) assistance specific notice that Federal requirements may change and the changed requirements will apply to the project as required. All limits or standards set forth in this Agreement to be observed in the performance of the Project are minimum requirements.
 - (2) State or Territorial Law and Local Law. Except to the extent that a Federal statute or regulation preempts State or territorial law, nothing in the Agreement shall require the Contractor to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State or territorial law; however, if any of the provisions of the Agreement violate any applicable State or territorial law, or if compliance with the provisions of the Agreement would require the Contractor to violate any applicable State or territorial law, the Contractor agrees to notify UTA immediately in writing in order that UTA and the Contractor may make appropriate arrangements to proceed with the Project as quickly as possible.
- c. Funds of the Contractor. Unless approved otherwise by UTA, the Contractor agrees to complete all proceedings necessary to provide the Project costs at or before the time that such funds are needed to meet Project expenses.

- d. Changed Conditions of Performance (Including Litigation). The Contractor agrees to notify UTA immediately of any change in local law, conditions, or any other event that may significantly affect its ability to perform the Project in accordance with the terms of this Agreement. In addition, the Contractor agrees to notify UTA immediately of any decision pertaining to the Contractor's conduct of litigation that may affect UTA's interests in the Project or UTA's administration or enforcement of applicable Federal laws or regulations. Before the Contractor may name UTA as a party to litigation for any reason, the Contractor agrees first to inform UTA; this proviso applies to any type of litigation whatsoever, in any forum.

3. Ethics.

- a. Code of Ethics. The Contractor agrees to maintain a written code or standards of conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts assisted by Federal funds. The code or standards shall provide that the Contractor's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors or anything of monetary value from present or potential contractors or subcontractors. The Contractor may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. As permitted by State or local law or regulations, such code or standards shall provide for penalties, sanctions, or other disciplinary actions for violations by the Contractor's officers, employees, board members, or agents, or by contractors or subcontractors or their agents.

It is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure an Authority contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

- (1) Personal Conflict of Interest. The Contractor's code or standards must provide that no employee, officer, board member, or agent of the Contractor may participate in the selection, award, or administration of a contract assisted by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm selected for award:
- (a) The employee, officer, board member, or agent;
 - (b) Any member of his or her immediate family;
 - (c) His or her partner; or
 - (d) An organization that employs, or is about to employ, any of the above.
- (2) Organizational Conflicts of Interest. The Contractor's code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interests. An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract, may, without some restrictions on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.
- b. Interest of Members of or Delegates to Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Project or to any benefit therefrom.

- c. Bonus or Commission. The Contractor warrants that it has not paid, and agrees not to pay, any bonus or commission for the purpose of obtaining approval of its bid or proposal submitted for this Project.
- d. Prohibition Against the Use of Federal Funds for Lobbying. The Contractor agrees to comply with the provisions of 31 U.S.C. § 1352, as amended, which prohibit the use of Federal funds for lobbying any official or employee of any Federal agency, or member or employee of Congress; and requires the Contractor to disclose any lobbying of any official or employee of any Federal agency, or member or employee of Congress in connection with the Project. The Contractor agrees to comply with U.S. DOT regulations, "New Restrictions on Lobbying", 49 C.F.R. Part 20, as modified.
- e. Employee Political Activity. The terms of the "Hatch Act", 5 U.S.C. §§ 1501 through 1508, and Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees", 5 C.F.R. Part 151, apply to State and local agencies and their officers and employees to the extent covered by the statute and regulations. The "Hatch Act" restricts the political activity of an individual principally employed by a State or local executive agency in connection with a program financed in whole or in part by a Federal loan, grant, or cooperative agreement. However, the "Hatch Act" does not apply to a non-supervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the "Hatch Act" is otherwise inapplicable.

4. Procurement.

- a. Federal Standards. To the extent applicable, the Contractor agrees to comply with the applicable Procurement Standards of 49 C.F.R. § 18.36 or 49 C.F.R. 19.40 through 19.48 and Appendix A; and with applicable supplementary directives or regulations including FTA Circular 4220.1D and any changes or revisions thereto; and other applicable guidance that the FTA, the U.S. DOT, or UTA may issue. If determined necessary for proper Project administration, UTA reserves the right to review the Contractor's technical specifications and requirements of any contracts or subcontracts pertaining to this Project.
- b. Exclusionary or Discriminatory Specifications. The Contractor further agrees that, notwithstanding the Buy America requirements of this Agreement, no Authority funds shall be used to support procurements utilizing exclusionary or discriminatory specifications for this Project.
- c. Award to Other Than the Lowest Bidder. In accordance with 49 U.S.C. 5326 (c), a Contractor may award a subcontract to other than the lowest bidder in connection with a procurement, when such award furthers objectives that are consistent with the applicable regulations guidance that the FTA or UTA may issue.
- d. Buy America. Each contract executed by UTA utilizing FTA assistance must conform with Section 165 of the Surface Transportation Assistance Act of 1982, as amended by Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and Section 1048 of the Intermodal Surface Transportation Efficiency Act of 1991, and FTA regulations, "Buy America Requirements - Surface Transportation Assistance Act of 1982", 49 C.F.R. Part 661 and applicable revisions thereto.
- e. Preference for Recycled Products. Where applicable and permissible, the Contractor agrees to give preference to the purchase of recycled products for use in this Project pursuant to the various Environmental Protection Agency (EPA) guidelines contained in 40 C.F.R. Parts 247-253.

- f. Project Management Oversight. To the extent applicable, the Contractor agrees to assist UTA in complying with FTA regulations, "Project Management Oversight", 49 C.F.R. Part 633, and any revision thereto, with respect to a major capital project.
- g. Geographic Restrictions. The Contractor agrees to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal statute, and as permitted by FTA and the State of Utah.

5. Changes.

- a. The Manager of Purchasing and Material (Manager) may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

For supplies-

- (1) Drawings, designs or specifications when the supplies to be furnished are to be specially manufactured for UTA in accordance with the drawings, designs, or specifications;
- (2) Method of shipment or packing;
- (3) Place of delivery;

or, if for services-

- (1) Description of services to be performed;
- (2) Time of performance (i.e., hours of the day, days of the week etc);
- (3) Place of performance of the services.

- b. If any change under this clause causes an increase or decrease in the Contractors cost or, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Manager shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract accordingly.
- c. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written notice. However, if the Manager decides that the facts justify it, the Manager may receive and act upon a proposal submitted before final payment of the contract.
- d. If the Contractors proposal includes the cost of property made obsolete or excess by the change, the Manager shall have the right to prescribe the disposition of the property.
- e. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

6. Protest Procedures.

Protests will be accepted only from bidders/proposers whose direct economic interest has been adversely affected by those alleged actions/omissions of the Authority that form the basis of the protest. Protests will be determined in accordance with the laws of the State of Utah including, without limitation, the Utah Procurement Code and the Utah Government Records Access and Management Act, all as amended from time to time. All protests shall be in writing and shall be submitted to the Authority as directed in these protest procedures. Protests that are not delivered to the appropriate persons or not delivered within the appropriate time limits (all as set forth in these procedures) shall be null and void and will not be considered by the Authority. A protest shall be deemed to be delivered pursuant to these procedures when actually received by the designated recipient by hand delivery, by recognized overnight courier service or by certified or registered mail.

All protests shall include:

- The name and address of the bidder/proposer;
- The appropriate contact person for the bidder/proposer to whom all protest correspondence shall be addressed;
- The solicitation or project number; and
- A detailed statement as to the nature of the protest including, without limitation, the factual and legal basis for the protest.

Protests Prior to Opening of Bids/Proposals: All protests made prior to the opening of bids/proposals, including protests based upon alleged restrictive specifications or alleged improprieties in any type or manner of the solicitation, shall be delivered to the Authority's Procurement Officer not less than seven (7) Calendar Days prior to the scheduled deadline for receipt of bids/proposals as follows:

Utah Transit Authority
3600 South 700 West
Salt Lake City, Utah 84119
Attn: Procurement Officer
CONTAINS TIME-SENSITIVE PROTEST MATERIALS

The Procurement Officer, or an agent designated by the Procurement Officer, will promptly make a determination in writing regarding the validity of the protest and whether or not the bid/proposal process should be delayed beyond the scheduled date for bid/proposal receipt. If the Procurement Officer determines that the scheduled date for bid/proposal receipt should be delayed, all respondents to the solicitation who have furnished their name and address to the Authority shall be notified (through an addendum to the IFB/RFP) of the delay and the reason for the delay. If the protest, or any portion thereof, is determined by the Procurement Officer to have merit, the Procurement Officer will take all necessary action to address each allegedly restrictive specification, alleged impropriety or other meritorious objection in a manner consistent with applicable law and will provide notice of any resulting changes to the IFB/RFP or the bid/proposal process to all respondents to the solicitation who have furnished their name and address to the Authority. In such cases, the Authority shall not proceed with the bid/proposal process until it has remedied such issues to the satisfaction of the Procurement Officer.

Protests to Award of Contract: All protests made to the Award of a Contract shall be delivered to the Procurement Officer not less than five (5) Calendar Days after the protestor received notice of the Award (unless the protestor can demonstrate that its protest is based on facts and circumstances that the protestor could not have reasonably been aware of on the date the notice of Award was delivered, in which case the commencement of the five-day period shall be tolled until the date when the protestor was or should have been aware of the facts and circumstances upon which the protest is based). All protests made to the Award of Contract shall be delivered as follows:

Utah Transit Authority
3600 South 700 West
Salt Lake City, Utah 84119
Attn: Procurement Officer
CONTAINS TIME-SENSITIVE PROTEST MATERIALS

If the protest has been timely filed, the Procurement Officer, or an agent designated by the Procurement Officer, will promptly make a determination in writing regarding the validity of the protest and whether the Authority's decision regarding the Award should be reconsidered. The Authority shall provide notice of

the protest to all bidders/proposers who submitted a bid/proposal (except, in the case of a two-step procurement, the Authority shall only provide notice of those who were deemed qualified or were "short-listed" to submit a bid/proposal for step two of the project). The Procurement Officer, or his or her designee, will respond to the protestor in writing and address each material issue raised in the protest in a timely manner. If the protest, or any portion thereof, is determined by the Procurement Officer to have merit, the Procurement Officer will take all necessary action to address the protested issues in a manner consistent with applicable law including, without limitation: (1) canceling the procurement; (2) canceling the procurement and reissuing a new IFB/RFP; (3) rescinding the Award and requesting "best and final offers" from qualified proposers; (4) determining that the objections, although meritorious, were immaterial to the decision to Award; or (5) taking such other actions as may be appropriate under the circumstances. Once the Procurement Officer becomes aware of a protest to the Award, the Authority will not take any further action to execute a Contract pursuant to the IFB/RFP until seven (7) Calendar Days after the Award is upheld by the Procurement Officer (or the Protest Committee, if the Procurement Officer's determination is appealed as set forth in the following section), unless the Procurement Officer shall make a written determination that immediately executing the Contract is necessary to protect a substantial interest of the Authority.

Administrative Appeals: In the event that a protestor receives an unfavorable decision from the Procurement Officer to its protest of Contract Award, the protestor shall have the right to appeal the Procurement Officer's decision by submitting a written appeal to the President of the Board of Trustees of the Authority, addressed as follows:

President, UTA Board of Trustees
 c/o Utah Transit Authority
 3600 South 700 West
 Salt Lake City, Utah 84119
 Attn: Board Coordinator
 CONTAINS TIME-SENSITIVE PROTEST MATERIALS

Any appeal must be delivered within five (5) Calendar Days of the date of the Procurement Officer's decision. The President will appoint a Protest Committee to review the appeal and the decision of the Procurement Officer. The President will determine the specific procedures that will be followed by the Protest Committee, including the date of any hearing deemed necessary by the President. After considering the appeal, the Protest Committee will notify the appellant and the Procurement Officer in writing in a prompt manner of its decision regarding the appeal. If the Protest Committee reverses the decision of the Procurement Officer, it shall have broad discretion to take any action it deems necessary to correct the determined defects in the Contract Award, consistent with applicable law and Authority policies. If the Protest Committee upholds the decision of the Procurement Officer, the Authority may proceed with the execution of the Contract seven (7) Calendar Days after the Authority provides notice of the Protest Committee's decision. The Authority may proceed without regard to the seven-day waiting period if the Procurement Officer shall make a written determination that immediately executing the Contract is necessary to protect a substantial interest of the Authority. The decision of the Protest Committee constitutes a final administrative decision of the Authority.

Appeals to FTA: If the Protest Committee upholds the decision of the Procurement Officer, the protestor may continue its protest by seeking judicial relief within the State of Utah. In accordance with FTA policy, a protestor may not appeal to FTA unless the protestor claims that the Authority has failed to follow these protest procedures. Any appeal to FTA alleging that the Authority has failed to follow these procedures must be filed with FTA no later than five (5) federal government working days after the decision is rendered by the Protest Committee.

7. Labor Provisions (see Part III, "FTA Required Clauses" for construction contracts);

a. Non-construction Contracts. Pursuant to Department of Labor 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 following provisions shall be incorporated in all federally-assisted non-construction contracts or subcontracts as applicable. The Contractor agrees that the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. 206 and 207, apply to employees performing work under this contract.

(1) Non-construction contracts. The requirements of the clauses contained in 29 C.F.R. § 5.5(b) and this agreement are applicable to any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 C.F.R. § 5.1. The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three 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. The records to be maintained under this clause shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the FTA, the U.S. DOT, or the department of labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(2) Non-construction subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth herein.

b. State and Local Government Employees. The provisions of the Fair Labor Standards Act, as amended by Pub. L. 99-150, Nov. 13, 1985, and any further amendment, apply to State and local government employees that participate in the FTA assisted Project with UTA.

8. Substance Abuse.

To the extent applicable, the Contractor agrees to comply with U.S. DOT regulations, "Drug-Free Work Place Requirements (Grants)", 49 C.F.R. Part 29, Sub-part F; "Prevention of Prohibited Drug Use in Transit Operations", 49 C.F.R. 653 and other U.S. DOT and FTA regulations and guidance pertaining to substance abuse (drugs and alcohol) provisions of 49 U.S.C. 5331 that FTA or U.S. DOT may issue.

9. Severability.

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

Part III

FTA REQUIRED CLAUSES

BUY AMERICA REQUIREMENTS

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (attached) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

ENERGY CONSERVATION REQUIREMENTS 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.

CLEAN WATER (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.

LOBBYING The Contractor certifies (see attached certification), to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

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 Master Agreement between Purchaser 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.

CLEAN AIR (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.

RECYCLED PRODUCTS

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES (1) The Purchaser 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.

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 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.

TERMINATION

a. Termination for Convenience (General Provision) The Utah Transit Authority (UTA) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in UTA's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to UTA to be paid the Contractor. If the Contractor has any property in its possession belonging to the UTA, the Contractor will account for the same, and dispose of it in the manner the UTA directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the UTA may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the UTA that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the UTA, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The UTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 10 calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to UTA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from UTA setting forth the nature of said breach or default, UTA shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude UTA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that UTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by UTA shall not limit UTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) The UTA, by written notice, may terminate this contract, in whole or in part, when it is in the UTA interest. If this contract is terminated, the UTA shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the UTA may terminate this contract for default. The UTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

g. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the UTA may terminate this contract for default. The UTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the UTA may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the UTA resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the UTA in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the UTA, acts of another Contractor in the performance of a contract with the UTA, epidemics, quarantine restrictions, strike s, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the UTA in writing of the causes of delay. If in the judgment of the UTA, the delay is excusable, the time for completing the work shall be extended. The judgment of the UTA shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the UTA.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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 the attached certification, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Utah Transit Authority. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Utah Transit Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 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.

PRIVACY ACT (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

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:

(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 (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. 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.

BREACHES AND DISPUTE RESOLUTION: 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 UTA's Procurement Officer. 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 UTA's Procurement Officer. 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 UTA's Procurement Officer shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by UTA, 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 Utah Transit Authority 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 of Utah, in which UTA 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 UTA, (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.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is ___ %.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Utah Transit Authority deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Utah Transit Authority. In addition, the contractor may not hold retainage from its subcontractors.
- e. The contractor must promptly notify the Utah Transit Authority, 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 the Utah Transit Authority.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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, 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 (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

FLY AMERICA REQUIREMENTS Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

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 UTAs 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.

CARGO PREFERENCE REQUIREMENTS The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Cargo Preference - Use of United States-Flag Vessels - 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 the underlying contract 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 loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) 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.

APPENDIX A

DISADVANTAGED BUSINESS (DBE) PROGRAM DECEMBER 2007

FEDERAL REGULATIONS TO IMPLEMENT THE DBE PROGRAM

The following section contains documents that are **REQUIRED** with the submittal of the bid/proposal. Failure to complete and submit these forms may result in rejection of the bid/proposal as non-responsive. Please read the following information carefully and complete the documents as it applies to your bid / proposal / offer. This section is divided into the following areas:

Definition of Terms,

Disadvantaged Business Enterprise (DBE) Program,

Instructions to Bidders,

Requirements, Terms and Conditions,

Instructions to Contractors,

Certifications and Assurances

- Equal Employment Opportunity and Disadvantaged Business Enterprise Statement
- Disadvantaged Business Enterprise Participation Form
- Example of Letter to Subcontract with DBE firm
- Good Faith Efforts documentation form
- Nondiscrimination Affidavit
- Solicitation Statistics form

DEFINITION OF TERMS

- **Bidder / Proposer / Offeror** – identifies an entity that is responding to a bid or proposal. The terms are synonymous.
- **Disadvantaged Business Enterprise (DBE)** – firms that meet the criteria specified in 49 CFR Part 26 and are certified by the Utah Uniform Certification Program (UUCP). Utah Transit Authority's DBE webpage is located at <http://www.rideuta.com/utaInfo/businessOpportunities/dbe/default.aspx>.
- **Good Faith Efforts** means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
- **Race conscious DBE participation** includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that carries a DBE goal.
- **Race neutral DBE participation** Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE participation, providing assistance in overcoming limitations such as inability to obtain bonding or financing, providing technical assistance and other services. The bidder will submit documentation it has performed good faith efforts to solicit DBE participation with its bid / proposal. A race neutral contract DOES NOT mean the contract goal is 0%.
- **UTA** - Utah Transit Authority.
- **UUCP** – Utah Uniform Certification Program. The UUCP is the only certifying entity for the U.S. Department of Transportation Disadvantaged Business Enterprise (DBE) Program in the State of Utah. Current DBE firms are found on the UUCP DBE directory, which is located at <http://www.rideuta.com/utaInfo/businessOpportunities/dbe/default.aspx>.

The Utah Transit Authority UTA shall not discriminate in the administration of its Disadvantaged Business Enterprise Program, or the requirements of 49 CFR Part 26. UTA will take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Department of Transportation (DOT) assisted contracts. UTA's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement.

It is the responsibility of each Bidder to read, understand and comply with UTA's DBE program and 49 CFR Part 26. UTA's DBE Liaison Officer is available to help answer questions concerning UTA's DBE program. (Note: For the purpose of this Appendix, "Bidder", "Proposer" and/or "Offeror" are synonymous).

Implementation of the DBE program is a legal obligation and failure to carry out its terms will be treated as a violation of this agreement. Failure by UTA to carry out UTA's approved program may result in DOT-imposed sanctions as provided for under Part 26 and may, in appropriate cases, result in enforcement actions under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.) Bidders agree to indemnify UTA for any such sanctions received as a result of the actions and omissions of Contractor or its subcontractors.

INSTRUCTIONS TO BIDDERS

Bidders are required to complete and return Attachments A, A-1, A-2, A-3, A-4, and A-5 of this Appendix which obligates the Bidders to assert a good faith effort to attain the specified goal for DBE participation. A Bidder may satisfy the requirements of this section by having DBE status, by subcontracting portions of the work to DBEs, by entering into a joint venture with DBEs, or by submitting adequate documentation that a good faith effort to meet the goal was explored.

The attachments are defined as follows;

- Attachment A – Affirmative Action and Disadvantaged Business Enterprise Statement
- Attachment A-1 – Disadvantaged Business Enterprise Participation Form
- Attachment A-2 – Sample Letter of Intent to Subcontract with a DBE Firm
- Attachment A-3 – Good Faith Effort Documentation form
- Attachment A-4 – (not used)
- Attachment A-5 – Employment Practices / Affirmative Action plan
- Attachment A-6 - Solicitation Statistics form (Required statistical data)

NOTE: The **Solicitation Statistics form** is a federal requirement (49 CFR 26.11) to collect statistical data of all bidders on federally assisted projects. This information is required with **ANY SUBCONTRACTOR** that is apart of your bid to UTA. Return the form from each proposer **with your bid package**.

Attachment A-3 – Good Faith Effort Documentation Form is not required when a bidder certifies that there exists no opportunity for subcontracting or when a DBE is the prime contractor.

DBE CONTRACT GOAL

As required by 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs", UTA will annually adopt an overall DBE goal for goods and services procured under UTA's federally-assisted contracts. While the expected percentage of DBE participation may vary from contract to contract, UTA sets a goal that it believes the overall goal to be realistically obtainable over the year.

The DBE goal for this procurement is as indicated in the “Instructions to Offerors/Special Provisions” section of this solicitation.

The amount of DBE participation will be determined by the dollar value of the work subcontracted to DBEs as compared to the total value of all work performed under this contract, and/or, by the percentage of the net profit which the parties agree will be shared by DBEs where a joint venture is entered into for the completion of the project.

COUNTING DBE PARTICIPATION TOWARD GOALS

When a DBE participates in a contract, UTA will count only the value of the work actually performed by the DBE toward DBE goals. This information is documented on **ATTACHMENT A-1, DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FORM**. UTA will include in this count the following:

1. The entire amount of that portion of a construction contract that is performed by the DBEs own forces. The cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate) is included in this amount.
2. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract provided UTA determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services.
3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work, only if the DBEs subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
4. When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces, is counted toward DBE goals.
5. Expenditures to a DBE contractor are counted toward DBE goals, only if the DBE is performing a commercially useful function on that contract.

A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the DBE Liaison Officer will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the DBE Liaison Officer will examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, UTA will presume that it is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided in this section, the

DBE may present evidence to rebut this presumption. UTA may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

REQUIREMENTS, TERMS, AND CONDITIONS

A Disadvantaged Business Enterprise is a firm that has been certified by the Utah Uniform Certification Program (UUCP) to meet the criteria in 49 CFR Part 26. Only firms certified by the UUCP can receive DBE credit on federally assisted projects in the State of Utah. Firms must be certified as a DBE prior to the contract award for UTA to receive credit for a DBE firm's participation on a contract.

6. Bidders who fail or refuse to complete and return the applicable certifications to this RFP shall be deemed non-responsive and will not be awarded a contract.
7. Where bidders intend to attain their goal for DBE participation by subcontracting or use of a joint venture, they must **complete and submit** the following certifications as applicable. **Attachments A, A-1, A-2, A-3, A-4, and A-5** with your bid.
8. All Bidders are required to submit written assurance of meeting contract goals in their bids/proposals and will submit: (1) names of DBE subcontractors; (2) a description of the work they are to perform; and (3) the dollar value of each proposed DBE subcontract. In order to be a responsive Bidder, a Bidder must meet the specified DBE contract goal or demonstrate sufficient good faith efforts to do so. Meeting the contract goal or making sufficient good faith efforts to do so is no less than meeting technical specifications or complying with bid or proposal procedures, is a necessary condition of responsiveness.
9. The Bidder expressed goal stated in the **ATTACHMENT A-1 – DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FORM**, shall express the commitment on part of Bidder to the percentage of DBE utilization during the term of the contract.
10. The commitment of the Bidder to a specific goal is to meet DBE objectives and is not intended to be used and shall not be used, to discriminate against any qualified company or group of companies.
11. The Bidders must actively and aggressively seek to meet the specific contract goal for the project or the overall goal if an individual contract goal has not been set. In determining whether a Bidder has made good faith efforts to ensure DBE participation if awarded the contract, UTA may consider, and the Bidder must be able to provide, evidence regarding the good faith efforts. This information is provided on **ATTACHMENT A-3, GOOD FAITH EFFORT DOCUMENTATION FORM**.

UTA will award a contract only to a Bidder who makes good faith efforts to meet the established goal. A Bidder has made good faith efforts if the Bidder does either of the following:

Documents that it has obtained enough DBE participation to meet the goal; or documents that it has made adequate good faith efforts to meet the goal, including assurances that the Bidder has done the following:

Attended any pre-solicitation or pre-bid meetings that were scheduled by UTA to inform DBEs of contracting and subcontracting opportunities;

1. Advertised information concerning the subcontracting opportunities in general circulation, trade association, and minority-focused media;
2. Provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively;
3. Followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
- 4.

- 5 Selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals (including, where appropriate, breaking down contracts into
- 6 economically feasible units to facilitate DBE participation);
- 7 Provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;
- 8 Negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;
- 9 Assisted interested DBEs in obtaining bonding, lines of credit, or insurance required by UTA or the Bidders, and;
- 10 Used the services of available minority community organizations; minority contractor's groups; local, state, and Federal minority business assistance offices and other organizations that provide assistance in the recruitment and placement of DBEs.

For further guidance and additional steps to take concerning good faith efforts, see 49 CFR Part 26. A copy is included in UTA's DBE Plan. UTA's DBE Plan is available from UTA upon request.

If UTA determines that the apparent successful Bidder has failed to meet the foregoing requirements, before awarding the contract UTA will provide the Bidder an opportunity for administrative reconsideration. As part of this reconsideration, the Bidder will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. UTA's decision on reconsideration will be made by a DBE Administrative Hearing Officer. The Bidders will be given the opportunity to meet in person with UTA's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. UTA will send the Bidders a written decision on reconsideration, explaining the basis for finding that the Bidders did or did not meet the goal or make adequate good faith efforts to do so. The result of this reconsideration process is not administratively appealable to DOT.

INSTRUCTIONS TO ALL CONTRACTORS

1. Termination of DBE Subcontractors. No contractor may terminate for convenience a DBE subcontractor listed in response to this request (or an approved substitute DBE firm) and then perform the work of the terminated subcontractor with its own forces or those of an affiliate, without UTA's prior written consent.

When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the prime contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts must be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal UTA established for the procurement.

UTA reserves the right to order completion of the work (that was subcontracted to a DBE who is unable to perform successfully), by any of the following three methods:

- Modify or renegotiate the contract to compensate for reasonable extra costs or time necessary to obtain a DBE replacement.
- Modify or renegotiate the contract to provide for the completion of the work by the prime contractor.
- Order the work completed by the prime contractor to be reimbursed as provided for in subsection 109-5, Extra and Force Account Work of the Standard Specifications.

Termination of a DBE subcontractor in contravention of these requirements will be a material breach of the contract and will result in forfeiture by the Contractor of the contract amounts that should have been accomplished by DBE participation.

This section will also apply to DBE Bidder for prime contracts. In determining whether a DBE Bidder for a prime contract has met the established contract goal, UTA will count the work the DBE has committed to perform with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

2. Prompt payment mechanisms as an inducement for DBE participation. The Contractor will pay all subcontractors for satisfactory performance of their contracts no later than thirty (30) days from receipt of each payment UTA makes to Contractor.
3. Contractor will return retainage payments to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed, unless Contractor has received its retention proceeds from UTA, then the preceding paragraph will apply. The prime contractor can not withhold retainage past 30 days. This clause applies to both DBE and non DBE subcontracts.
4. Upon notification to UTA that appropriate payments have not been made by Contractor to its subcontractors, UTA will give written notice to Contractor that it has breached the contract. If Contractor fails to immediately correct the breach, UTA may elect to withhold from future payments due Contractor monies sufficient to pay the outstanding amounts due subcontractors. Contractor will be responsible to pay interest at the statutory rate on the amounts it owes subcontractors for amounts not paid when originally due. Repeated or continued failure by Contractor to make appropriate payments to subcontractors will be a material breach of the contract and may result in termination of the contract and denial of future opportunities to bid on UTA's projects.
5. The Contractor will maintain those records and documents for three (3) years following performance of the contract which indicate compliance with these DBE requirements. These records and documents, or copies thereof, will be made available at reasonable times and places for inspection by any authorized representative of UTA and will be submitted to UTA upon request; together with any other compliance information which such representative may require.
6. Monitoring. UTA's DBE Liaison Officer will monitor the work committed to DBEs under this contract to determine what work is actually performed by the DBEs. Contractor will provide all information requested by the DBE Liaison Officer to enable UTA to keep a running tally of DBE attainments (e.g., payments actually made to DBE firms). UTA will give credit for DBE participation toward overall or contract goals only when payments are actually made to DBE firms.
7. DBE Financial Institutions. UTA continues to seek services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its geographic area. To date, no such financial institutions exist in the State of Utah. UTA will encourage prime contractors to use such institutions as they are identified.

A hard copy of the directory is available upon request to the UTA DBE Liaison Officer, located in UTA's Civil Rights Office.

ATTACHMENT A

EQUAL EMPLOYMENT OPPORTUNITY AND DISADVANTAGED BUSINESS ENTERPRISE STATEMENT

The undersigned states on behalf of the Bidder _____.

A. The Bidder has given or will give, prior to the commencement of an approved UTA project, notice to all pertinent personnel, i.e., managers, supervisors, employees, unions, subcontractors, etc. of the Bidder EEO and DBE policies and procedures and its intent and effort to realize such procedures in connection with the EEO and DBE requirements that UTA is required to follow as a Federal Transit Administration Grantee.

B. Bidder designates --

Name _____

Title _____

as the person assigned the responsibility for securing compliance with and reporting progress to the Bidder and UTA's Civil Rights Office on all EEO efforts initiated and taken.

C. Bidder will cooperate fully with UTA and ensure equal employment opportunity to the maximum extent possible during the term of this contract. Attachment A-4 and A-5 must be completed and submitted. If the Bidder employs 50 or more persons and, or will be entering into a contract hereunder in an amount of \$50,000 or more, then an EEO Plan for employment of minorities and women must be submitted. UTA will further be kept fully informed of any refusals by unions or others to cooperate with UTA's and the Bidder EEO and DBE requirements.

D. Bidder agrees to make every reasonable good faith effort to utilize disadvantaged and women business enterprises in the performance of this contract. Bidder will take affirmative steps to meet the DBE contract goal set for this bid.

Company Name: _____

Address: _____

Signed: _____

Title: _____

Phone Number: _____

FAX Number _____

E-Mail Address _____

ATTACHMENT A-1

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FORM

The Bidder must check the appropriate box, provide the information requested, and sign this form certifying to the accuracy of the information provided, and submit this form with its bid. Failure to complete and submit this form may result in rejection of the bid/proposal as non-responsive.

Bidder will meet or exceed the DBE goal for this contract. If awarded this contract, Bidder will subcontract with the DBEs listed below, which will be performing a total of _____ percent (____%) of the total dollar amount of the contract work. The information below should be treated as confidential information. **THIS ATTACHMENT MUST BE SUBMITTED IN THE SEALED PRICE PROPOSAL.**

Bidders shall submit and attach evidence with this form that the DBEs being submitted for work on this project are presently certified by the Utah Uniform Certification Program (UUCP).

<u>DBE Name & Address</u>	<u>Description of Work</u>	<u>\$ Amount of Participation</u>	<u>% of Total Price</u>
_____	_____	\$ _____	_____ %
_____	_____	\$ _____	_____ %
_____	_____	\$ _____	_____ %
_____	_____	\$ _____	_____ %

(Attach additional sheets if necessary)

Bidder **does not** meet the DBE goal for this contract. **Bidder certifies that it has made good faith efforts** in accordance with the bid/proposal instructions to meet the DBE goal, but, despite those efforts, has been unable to meet the goal. **The Good Faith Efforts Documentation Form (Attachment A-3) is attached to this DBE Participation Form.**

Bidder **does not** meet the DBE goal for this contract. **Bidder certifies that there exists no opportunity for subcontracting as part of this project.** It is the general practice of Bidder's firm to perform all work of this nature solely with its own work force and to do otherwise would constitute a violation of industry standards. Attachment A-3, Good Faith Effort Documentation Form, is not required under this selection.

Date: _____

Company Name: _____

Signature: _____

Printed Name: _____

Title: _____

ATTACHMENT A-2

SAMPLE LETTER OF INTENT TO SUBCONTRACT WITH DBE FIRM

(COMPANY LETTERHEAD)

(DATE)

(DBE)
(Name and Address)

Reference: (Project Name and Bid/Proposal Number)

(Appropriate Salutation)

Our firm is submitting a bid/proposal with the intent to be awarded a contract with the Utah Transit Authority for the performance of the above-referenced project and if our firm is awarded the contract, shall as act as prime contractor for this project.

Please sign this "Letter of Intent to Subcontract" to verify that you are willing to participate and enter into a subcontract with our firm to provide (specify equipment, materials, supplies, services, etc.) in the amount of \$_____, if our firm is awarded the contract with Utah Transit Authority. **A DBE company has to be certified in the State of Utah and current in its DBE certification. Please attach a copy of a recent certification letter / annual update that states your firm is presently certified as a DBE by the Utah Uniform Certification Program (UUCP).**

DBE firm has read and certifies to the above:

Prime Contractor:

Signature

Signature

Printed Name

Printed Name

Title

Title

NOTE: Submit this letter with specific information and it signed by the proposed DBE company. All equipment, materials, supplies, and services to be provided by the DBE subcontractor must be listed, and all amounts to be paid to the DBE subcontractor must be specified.

THIS ATTACHMENT MUST BE SUBMITTED IN THE SEALED PRICE PROPOSAL

THE SUCCESSFUL BIDDERS SHALL REQUIRE ALL SUBCONTRACTORS TO COMPLETE AND SUBMIT THE FEDERAL CERTIFICATION.

ATTACHMENT A-3

GOOD FAITH EFFORTS DOCUMENTATION FORM

Whether a Bidder meets or does not meet the DBE goal, the Bidder must submit this form with its DBE Participation Form (Attachment A-1). In the case of a race neutral project, the Bidder must submit their good faith efforts to contact DBE companies. The Bidder must submit a copy of the document(s) sent to DBE's. Failure to submit this form with its bid/proposal and requested additional documentation may render the bid/proposal non-responsive. UTA's DBE Liaison Officer may require that the Bidder provide additional substantiation of good faith efforts.

Firm Name	Contact Person	Area of Expertise	Date	Response
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

By submitting and signing this form, including any continuation form(s), the Bidder certifies that it has contacted the identified DBE firms in good faith (per 49 CFR 26 Appendix A or see DBE Requirements, Terms and Conditions) to discuss contracting opportunities.

Date: _____

Signature: _____

Printed Name: _____

Title: _____

ATTACHMENT A-4

**TRANSIT VEHICLE MANUFACTURER CERTIFICATION OF DISADVANTAGED BUSINESS
ENTERPRISE (DBE) COMPLIANCE**

(This attachment not used)

ATTACHMENT A-5

EMPLOYMENT PRACTICES / EEO PLAN

A) Contractors that have less than 50 employees or have a contract for less than \$50,000 yet more than \$10,000 are responsible to complete the following information outlining their employment goals on this UTA project.

Prepared By: _____
(Print name & title)

Solicitation No. _____

Name of Project _____

Location of Workforce _____

Prime Contractor _____

In keeping with UTA policy of nondiscrimination in employment practices, the _____ (Name of Company) has set as a project goal for the utilization of minorities, which is _____%. Minority goals are formulated in terms of craft work hours performed in a specific Standard Metropolitan Statistical Area (SMSA). (Name of Company) has set as a project goal for the utilization of females, which is 6.9%. The _____ (Company name), by its _____ (Title of Company Representative) assures to the UTA that good faith efforts will be used to achieve said goals. The good faith efforts proposed are described in the attached narrative.

B) Requirements Concerning The Submission Of An EEO Plan (For all construction and non-construction contractors)

If the contractor has 50 or more employees **and** a contract of \$50,000 or more is contemplated, an EEO Plan should be submitted **in lieu** of this form per the specifications noted in the Instruction to Offerors.

Signature and Title of Company Official (Contractor)



ATTACHMENT A-6
SOLICITATION STATISTICS

Dear Contractor:

The Utah Transit Authority maintains bidding statistics, regarding ALL firms bidding on prime contracts and subcontracts on DOT-assisted projects in accordance to the federal regulation 49 CFR Part 26.11. Include copies of this form with your bid package to ANY SUBCONTRACTORS. Return the form from each proposer with your bid package, both Disadvantaged Business Enterprises' (DBE) and non-DBEs (A DBE is a firm that meets the criteria in 49 CFR 26). Thank you for your assistance with this request. If you have any questions, comments or suggestions, please contact Raymond Christy, UTA's DBE Liaison Officer (801) 262-5626 extension 3537.

THIS INFORMATION WILL ONLY BE USED FOR STATISTICAL PURPOSES AS ALLOWED UNDER 49 CFR PART 26.

Firm Name: _____

Firm Address: _____

Status: Non-DBE ___ DBE ___

Company's Type of Work: _____

Month/Year firm started: _____

Company Owner(s) Ethnic Background (optional)

Form with checkboxes for African American, Asian, Male, Hispanic, Native American, Female, Polynesian, Caucasian, and Other.

Annual Gross Receipts of the Firm: (check one)

0 to \$500,000 _____ \$500,000 - \$1,000,000 _____
\$1 Million - \$5 Million _____ \$5 Million - \$10 Million _____
\$10 Million - \$16.7 Million _____ Above \$16.7 Million _____

Name of Solicitation: _____