



BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

INVITATION FOR BID #12-03

EIGHTH AVENUE FLOOD RESTORATION

KEY DATES:

Date Issued: October 11, 2011

Pre-Proposal Conference: N/A

Questions/Clarifications: October 18, 2011, 12:00 PM Central Time

BJCTA Response: October 19, 2011, 12:00 PM Central Time

Proposals Due: October 25, 2011, 4:00 PM Central Time

Proposal Opening: October 25, 2011, 4:30 PM Central Time

GENERAL GUIDELINES FOR COMPLETING THE REQUESTS FOR PROPOSALS PACKAGE

This document is intended as a guideline to assist prospective Proposers in successfully completing the necessary paperwork. You are strongly encouraged to read the “Notice to Proposers” section set forth below very carefully. This General Guidelines document is NOT intended to replace the more detailed instructions that are included in the attached Proposal Package.

- It is **EXTREMELY IMPORTANT** that all required forms be filled out completely. Federal and State Regulations mandate that these forms be completed properly.
- If a form does not apply to your business or proposal, please mark the form “Not Applicable,” or some other similar wording at your discretion. Please also sign and date this form. Failure to complete all forms included in this package may result in your Proposal being ruled non-responsive. Non-Responsive Proposals will not be awarded the contract.
- DBE (Disadvantaged Business Enterprise) Obligation: The Birmingham-Jefferson County Transit Authority (“BJCTA”) agrees to ensure that DBEs, as outlined in 49 CFR Part 26, as amended, have the maximum opportunity to participate in the performance of contracts. Therefore, it is imperative that you read the DBE Section and complete the necessary paperwork.
- Make sure the Proposal Response is received by the BJCTA before the designated date and time. Late proposals will not be accepted.
- Make sure that the proposal is returned in an envelope or box clearly labeled with the solicitation number and title. This information should be in the lower left hand corner. The envelope should also be labeled **PROPOSAL DOCUMENTS ENCLOSED.**
- When in doubt, contact **Jacquese Gary, BJCTA Procurement Officer**, 1735 Morris Avenue, 2nd Floor, Birmingham, AL 35203, (205) 521-0144 or jgary@bjcta.org for assistance.

NOTICE TO PROPOSERS
IFB#12-03 EIGHTH AVENUE FLOOD RESTORATION

Notice is hereby given that the Birmingham-Jefferson County Transit Authority ("BJCTA") invites bids from qualified vendors to provide restoration services resulting from Tropical Depression Lee at its Eighth Avenue Operations facility.

To view the facility, a vendor may contact Lee Jackson, Director of Maintenance, at 205-337-6487 prior to **5:00 p.m. CT, Friday, October 21, 2011.**

This **Invitation for Bid (IFB), #12-03**, outlines a description of the products or services sought and the required documents for submission. Questions or clarifications must be received by BJCTA, in writing, by not later than **12:00 p.m. CT, Tuesday, October 18, 2011.** Responses will be made available by not later than **12:00 p.m. CT, Wednesday, October 19, 2011.**

Proposals that are sent through the U.S. Postal Service should be addressed and labeled as follows:

Birmingham-Jefferson County Transit Authority
IFB 12-03 Eighth Avenue Flood Restoration
1735 Morris Avenue
Birmingham, Alabama 35203

It is suggested that a shipping method with a proof of delivery, verifying both the date and time of delivery, be utilized.

Proposals that are sent by courier or delivered by hand should be addressed and labeled as follows:

Birmingham-Jefferson County Transit Authority
IFB 12-03 Eighth Avenue Flood Restoration
1735 Morris Avenue (2nd Floor)
Birmingham, Alabama 35203

One (1) original and one (1) copy of proposal will be received by the BJCTA, located at **1735 Morris Avenue - 2nd Floor, Birmingham, AL 35203** in accordance with these instructions and specifications, until **4:00 p.m. CT, October 25, 2011**, after which time no other proposals will be accepted. All requested information shall be submitted in the required format by the stated deadline. Any proposal received after the deadline will not be considered.

To be considered, proposals must arrive at BJCTA on or before the date and time specified above or in any addendums. Contractors mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposal. Proposals received prior to the advertised hour of opening will be kept securely sealed. Any proposal received after the date and time specified above will not be considered and will be returned to the proposer unopened. All proposals must be sealed and clearly marked **"IFB 12-03 Eighth Avenue Flood Restoration."**

Proposals will be examined and publicly opened in the BJCTA's Public Meeting Room, located at 1735 Morris Avenue, Birmingham, AL 35203 on **Tuesday, October 25, 2011 at 4:30 p.m. CT**. The BJCTA reserves the right to reject any or all proposals, or to waive any irregularities or informalities in any proposal or in the proposal procedure, or to postpone the opening for good cause. No proposer may withdraw its proposal for a period of thirty (30) days after the scheduled date and time for the proposal opening. Award of this proposal shall be made to the lowest, responsive and responsible proposer, as determined through the evaluation of the proposals, and which is in the best interest of BJCTA.

This solicitation does not commit the BJCTA to award a contract, nor to pay any cost incurred in preparation of bids. The award of this proposal is contingent upon a financial assistance contract between the BJCTA and the United States Department of Transportation.

The successful Proposer agrees to comply with any and all provisions and regulations relative to that financial assistance contract. Proposers will be required to certify that they have not been suspended or debarred from participation in federally-funded contracts. Proposers must also disclose lobbying activities. Full compliance with all applicable Safety and Health Standards, DBE requirements, Equal Employment Opportunity, and Americans with Disabilities Act laws and regulations will be required of the successful Proposer.

BJCTA is exempt from the payment of all state taxes as well as federal excise taxes and use tax. These taxes shall not be included in the proposal. BJCTA will furnish a tax exemption number upon request.

For more detailed information and a complete copy of this solicitation, please visit www.bjcta.org or email Jacquese Gary, BJCTA's Procurement Officer, at jgary@bjcta.org or phone at (205) 521-0144.

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SECTION I – SCOPE OF SERVICES

The Birmingham-Jefferson County Transit Authority (“BJCTA”) invites bids from qualified vendors to provide restoration services resulting from Tropical Depression Lee at its Eighth Avenue Operations facility. Restoration of the facility includes a total of twenty-two (22) areas, all located on the first floor of the building. Seventeen pages of an insurance company’s adjuster’s report are attached in Exhibit 1. Please refer to this report to provide the requested information in Attachment A – Price Proposal Form.

SECTION II – GENERAL INFORMATION FOR PROPOSERS

2.1 The general information contained in this Section II is intended to provide prospective contractors with information to enable them to prepare and submit proposals for consideration by the Birmingham-Jefferson County Transit Authority (BJCTA), for the purpose of providing the Scope of Services set forth in Section I for the BJCTA.

2.2 Definition of Terms

The terms "Contractor" and "Proposer," used in this IFB means the business organization or its duly authorized representatives submitting a proposal to provide the services covered by the Scope Services set forth in Section I.

The term "Purchaser" or "BJCTA" or "Recipient" used in this IFB means the Birmingham-Jefferson County Transit Authority or its duly authorized representative involved in the purchase, inspection, testing, accepting or rejecting of the service called for in the Scope of Services set forth in Section I.

2.3 Type of Contract

Services covered under this Contract are to begin upon notice of award of Contract. It will be a fixed price contract, not to exceed the submitted proposal amount.

2.4 Proposal Form

INFORMATION REQUIRED FROM THE PROPOSER

Proposals must be submitted in the format outlined below:

1. **Business Organization.** State the full name and address of your organization and if applicable, the branch office or division that will perform or assist in performing the work. Indicate whether it is licensed to operate in the State of Alabama.
2. **Management Summary.** Include a description or specification of the product that will be delivered.
3. **Cost and Price Analysis.** The information requested in this section is required to support the reasonableness of your proposal and is for internal BJCTA use only.

The data will be held in confidence and will not be revealed to or discussed with competitors.

4. **Additional Information and Comments.** Include any other information that is believed to be pertinent but not specifically asked for elsewhere.

All proposals must state the full and correct name, address, phone number and capacity of the Proposer. If the Proposer is a partnership, limited liability company, limited partnership, or joint venture, please state the full names and addresses of all partners, members, or joint ventures, and the address of the entity shall be given, and the authority of the person signing on its behalf. If the Proposer is a corporation, an authorized officer shall sign the proposal in the corporation's name or agent of said corporation. The person signing the proposal must initial any erasures, corrections, or other changes appearing on the proposal form.

BJCTA may request that the Proposers with the lowest bids complete a Statement of Qualifications and Business References for the purpose of demonstrating the Proposers' ability to satisfactorily perform the contract. BJCTA reserves the right to reject any and all proposals received as a result of this IFB or to negotiate separately with any source whatsoever in any manner necessary to serve the best interests of BJCTA.

2.5 **Certification**

Each Proposer will be required to certify, by signing the proposal form, that it is not included on the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations of Various Contracts Incorporating Labor Standards Provisions.

2.6 **Conditional Proposals**

Conditional proposals and any proposal taking exception to these instructions or conditions or to the General Conditions or Scope of Services, or to other contract requirements, will be considered non-responsive and may be subject to rejection.

2.7 **Addendum**

Any change in these instructions, the General Conditions or Scope of Services, or other requirements will be valid only if included in an addendum in writing, posted or delivered in the same manner as this IFB. All such addenda shall become a part of the Contract. Each prospective Proposer is required to acknowledge receipt of all addenda in writing. Failure to acknowledge receipt of all addenda may cause the proposal to be considered non-responsive, and therefore, rejected.

2.8 **Equipment**

The Proposed contractor shall at its own expense furnish all labor, supplies, equipment and machinery necessary to service this contract.

2.9 **Work Duties**

The Contractor agrees to perform all work as outlined by BJCTA in accordance with Section I, Scope of Services set forth above.

2.10 **Force Majeure**

Neither party shall be liable in damages or have the right to terminate an agreement arising out of this IFB for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God (including, fire, flood, earthquake, hurricane, or other natural disaster), Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. Further, no party will have a right to terminate under Clause 21 (Termination) in any such circumstance described above.

2.11 **Loss/Damages**

The Contractor shall be responsible for any loss or damage to property including money, documents, securities, fixtures and equipment belonging to BJCTA or any other person or organization to such extent as BJCTA is legally liable for loss or damage, if any such loss or damage was caused by an employee or agent of the Contractor.

2.12 **Eligibility**

In order to be eligible for award of a contract, the Proposer must be responsive in complying with all material aspects of this solicitation. In addition, the Proposer must be responsible, and at a minimum must:

1. Have adequate financial resources or ability to obtain resources as required for performance of the contract.
2. Have a satisfactory record of past performance.
3. Have necessary management and technical capability to perform.
4. By signing and submitting a proposal, the Proposer certifies that it is not on the United States General Services Administration's "List of Parties Excluded from Federal Procurement Programs."
5. Be qualified as an established firm regularly engaged in the type of business necessary to fulfill the contract requirements.
6. Be otherwise qualified and eligible to receive an award under applicable federal, state and local laws and regulations.

2.13 **Inspection**

All work equipment and supplies furnished in performance of the Scope of Services, Section I shall be subject to inspection at any and all times by the Executive Director or his duly authorized representatives.

2.14 **Work Hours**

The schedule of work hours for accomplishment of this contract shall conform to the requirements of BJCTA. The Contractor shall observe all BJCTA's legal holidays. The Contractor will arrange schedule with designated BJCTA officials to ensure proper level of security.

2.15 **Notice**

In any clause or provision of the contract, or any circumstance arising under the contract, that calls for notice to a party to the contract, such notice shall be in writing, addressed as follows:

*Birmingham-Jefferson County Transit Authority
1735 Morris Avenue
Post Office Box 10212
Birmingham, Alabama 35202-0312*

2.16 **Personnel**

The Contractor represents that he/she has, or will secure at his/her own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any contractual relationship with BJCTA. All the services required hereunder will be performed by the Contractor or under his/her supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized, if applicable, under state and local law to perform such services. None of the work or services covered by this contract shall be sub-contracted without prior written approval of BJCTA.

2.17 **References**

The Contractor may, but is not required to, submit with its proposal references from customers previously serviced. A customer's name and contact information should be submitted with the proposal.

2.18 **Proposals Received**

Proposals that are sent through the U.S. Postal Service should be addressed and labeled as follows:

**Birmingham-Jefferson County Transit Authority
IFB 12-03 Eighth Avenue Flood Restoration
1735 Morris Avenue
Birmingham, Alabama 35203**

It is suggested that a shipping method with a proof of delivery, verifying both the date and time of delivery, is utilized.

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**Birmingham-Jefferson County Transit Authority
IFB 12-03 Eighth Avenue Flood Restoration
1735 Morris Avenue (2nd Floor)
Birmingham, Alabama 35203**

One (1) original and one (1) copy of proposal should be received by the BJCTA at the applicable address noted above in accordance with these instructions and specifications, until **4:00 p.m. CT, October 25, 2011**, at which time all proposals must be received. All requested information shall be submitted in the required format by the stated deadline. Any proposal received after the deadline will not be considered.

To be considered, proposals must arrive at BJCTA on or before the date and time specified above or in any addendums. Contractors mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposal. Proposals received prior to the advertised hour of opening will be kept securely sealed. Any proposal received after the date and time specified above will not be considered and will be returned to the proposer unopened. All proposals must be sealed and clearly marked "**IFB 12-03 Eighth Avenue Flood Restoration**".

2.19 Withdrawal of Contract Proposals

- a) Proposals may be withdrawn by written request to BJCTA prior to the time fixed for the proposal opening. The proposal security of any Proposer withdrawing his/her proposal, in accordance with the foregoing condition, will be returned promptly.
- b) No proposal may be withdrawn for a period of thirty (30) days after the time set herein for the public opening and reading of proposals.

2.20 Postponement

BJCTA reserves the right to postpone proposal opening for its own convenience and to reject any or all proposals.

2.21 Approved Equals

Request for approved equals or clarification of specifications must be received by BJCTA in writing by not later than **12:00 p.m. CT, October 18, 2011**. Responses will be made available by not later than **12:00 p.m. CT, October 19, 2011**.

2.22 Award of Contract

- a) The contract will be awarded based upon an evaluation of the proposals received. The evaluation criteria are outlined in Section 2.31 of this IFB.
- b) BJCTA reserves the right to reject any or all proposals submitted and to waive any formalities when necessary for the protection of the interest of BJCTA. Any such waivers by BJCTA must be in writing and may not otherwise be implied by any action or inaction by BJCTA.

- c) BJCTA reserves the right to issue separate contracts if deemed in the best interest of BJCTA.
- d) BJCTA reserves the right to negotiate with one or all Proposers.
- e) BJCTA reserves the right to cancel solicitation or issue subsequent solicitations.

This Invitation For Bid does not commit the BJCTA to award a contract or pay any costs incurred in preparation of a proposal.

2.23 **One Proposal Situation**

In the event a single proposal is received, BJCTA may conduct a price analysis of the proposal or a cost analysis, or both. A price analysis is the process of examining the proposal and evaluating a prospective price without evaluating the separate cost elements. It should be recognized that a price analysis through comparison to their similar procurements must be based on an established or competitive price of these elements used in comparison. The comparison must be made to a purchase of similar quantity and involving similar specifications. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto. Where it is impossible to obtain a valid price analysis, it may be necessary for BJCTA to conduct a cost analysis of the proposal price. If only one proposal is received, the sole Proposer must, if a price or cost analysis is conducted, cooperate with BJCTA as necessary in order for its proposal to be considered.

2.24 **Knowledge of Conditions**

Proposers may make appointments to discuss these specifications. This, however, does not relieve them from the written documented request as required. The Proposer is also required to examine carefully the specifications and to inform himself thoroughly regarding any and all conditions and requirements that may in any manner affect the work to be performed under the contract. No allowances will be made because of a lack of knowledge of these conditions.

2.25 **Tax Exempt**

BJCTA is exempt from payment of Federal, State and local taxes, and such taxes must not be included in the proposal price. BJCTA will furnish the successful Proposer the necessary tax-exempt certificates.

2.26 **Maintenance of Records**

The Contractor shall maintain all documents, financial records and supportive documents for a period of at least three (3) years after the contract completion date.

2.27 **Assignments**

The Contractor shall not assign this contract, wholly or in part, without the written consent of BJCTA. Any such assignment shall be recognized by BJCTA only after proper written notice have been received, only to the extent permitted by law, and in any event subject to any set-offs that BJCTA shall or may have against the supplier or any

intermediate assignor. No assignment shall relieve the contractor of any obligation under this contract.

2.28 **Contract Changes**

No order for alteration, modification, or extra work which shall increase or decrease the cost of the work. The original proposal cost of work shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing and approved by BJCTA. No oral statement of any person whosoever shall, in any manner or degree, modify or otherwise affect the terms of this contract or the requirements of the Scope of Services, Section I.

2.29 **Prime Proposer Responsibilities**

The selected Contractor will be required to assume responsibility for all services offered in his proposal regardless of who provides them. Further, BJCTA will consider the selected contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the Contractor.

2.30 **News Release**

News releases pertaining to this IFB will not be made without prior BJCTA written approval.

2.31 **Evaluation of Proposals**

The BJCTA will initially review the proposals for responsiveness and responsibility related criteria as set forth in Section I. Firms meeting the aforementioned criteria will then be scored technically according to the following:

1. Cost of Restoration
2. Time of Completion

The BJCTA will enter into contract or negotiations with the highest ranked Proposer. Should the terms offered not be desirable to the BJCTA, negotiations with the next highest ranked Proposer will follow until mutual agreement has been reached.

2.32 **Competition**

The technical portion of this specification is based upon accurate descriptions of the work to be performed and is not intended to contain features that unduly restrict competition.

2.33 **Omissions in Specifications**

No advantage shall be taken by the Proposer in the omission of any part or detail which goes to make the execution complete even though such part or detail is not named in the Scope of Services, Section I.

2.34 **Indemnification**

The Contractor hereby expressly agrees and covenants that it will defend, hold and save harmless and indemnify the officers, servants, agents, and employees of BJCTA and members of the Board of Directors of BJCTA from liability of any nature or kind in connection with the work to be performed hereunder, arising out of any act or omission of the contractor, or of any employee or agent of the contractor, including any person, firm associated with the contractor including any person, firm or corporation having the status of any independent contractor, or engaged by the contractor to perform any work required by or in connection with the work required by this agreement.

2.35 **Pre-Award Inspections**

The Purchaser reserves the right to perform a pre-award inspection of any Proposer. The purpose of the evaluation will be to assure that the following items, if applicable to the stated services, exist:

1. Service personnel to satisfy any service problems that may arise during the warranty period.
2. The necessary facilities and financial resources, or the capability to obtain such facilities and resources, to complete the contract in a satisfactory manner within the required time.
3. Adequate quality control to assure that workmanship will comply with Scope of Services

2.36 **Terms of Payment**

The BJCTA will make payment within thirty (30) days of acceptance of delivered product. BJCTA is not liable for any costs incurred by the contractor prior to issuance of a contract.

2.37 **Warranties**

The Contractor shall assume responsibility for the products whether the same are made by the Contractor or purchased from an outside source.

2.38 **Proposal Familiarity**

Each Proposer shall thoroughly examine and be familiar with all the contract documents, including, but not limited to, the legal and procedural documents, proposal conditions, scope of work and addenda, if any, as well as any related requirements of these proposal conditions and scope of services. The submission of a proposal shall constitute an acknowledgement that the Proposer has thoroughly examined and is familiar with the contract documents and scope of services in every detail.

2.39 **Protests**

The purpose of this protest provision is to establish procedures for processing pre-proposal evaluation complaints of an interested party on the award of a contract or specification and requirements.

Filing Instructions

A protest must be submitted in writing and include the following information:

1. The name and address of the protester.
2. The name and telephone number of the protester contact.
3. A complete statement of the grounds of the protest with full documentation of the protester's claims.

This information must be submitted to the BJCTA's Executive Director who will act as the contact point for all protests.

Review of Protests

BJCTA shall establish a committee to review and evaluate a protest. This committee shall be appointed by the Executive Director and shall include, but not be limited to the following:

1. Chief Financial Officer
2. Maintenance Director
3. Procurement Officer

The Executive Director may, at his discretion, appoint other staff as members to this committee based on their technical expertise or special knowledge of the procurement.

Upon receipt of a protest, the Executive Director shall notify the protest committee and establish a time for a committee meeting that will be held no later than two (2) working days after receipt of the protest. This committee shall evaluate the material provided by the protester and shall prepare a written recommendation for the Executive Director concerning the validity of the protest and if appropriate, any corrective action to be taken.

If the initial procurement has been acted upon by the BJCTA Board of Directors, and corrective action is necessary, the recommendation of the staff shall be reported to the Board and the Board will issue a decision. In all other cases the Executive Director will make the final decision.

Time for Filing

- (a) Any potential Proposer believing that the proposal documents or drawings contain restrictive specifications or any other improprieties regarding the solicitation for proposals may file a protest with BJCTA which shall be received by BJCTA not later than seven (7) working days prior to the proposal opening and shall contain all reasons for the protest. The BJCTA will respond to the protest within five (5) working days of receipt of the protest, and the protester will

have five (5) working days to appeal BJCTA's initial response to the Authority. Once an appeal has been received, the Authority will render its final decision in writing within ten (10) working days.

- (b) Protests received before contract award will be responded to by the BJCTA within five (5) working days upon receipt of the protest by the Chairman of the Board. The protester will have five (5) working days to appeal the Authority's initial response to the BJCTA. Once an appeal has been received, the Authority will render its final decision in writing within ten (10) working days.
- (c) Protests filed after contract award must be received by the BJCTA within five (5) working days after notification of award. The BJCTA will respond within five (5) working days following the next scheduled BJCTA Board meeting provided the protest is received at least ten (10) working days before the next Board meeting. If the protest is received less than ten (10) working days before a board meeting, the response to the protest shall be received by the protestor within five (5) working days after the next scheduled Board meeting. The protestor will have five (5) working days to appeal the BJCTA's initial response to the BJCTA. Once an appeal has been received, the BJCTA will render its final decision in writing within ten (10) working days.

In all cases, if deadlines are not met, BJCTA will proceed with awards.

- (d) Protestors dissatisfied with the Authority's final decision may utilize the appeal procedure set forth in Federal Transit Administration (FTA) Circular 4220.1F.

SECTION III – GENERAL CONDITIONS

Pursuant to Federal, State, and local law, the Contractor agrees to comply with all applicable provisions of Federal, State, and local laws, regulations, and FTA directives. The terms of the most recent amendment to any Federal, State, or local laws, regulations, FTA directives, and amendments to the grant cooperative agreement that may be subsequently adopted, are applicable to the Project to the maximum extent feasible, unless FTA provides otherwise in writing.

3.1 State and Local Law

- a. **Documentation of Project Costs.** All costs charged to the project, including any approved services contributed by BJCTA or others shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and propriety of the charges.
- b. **Audit and Inspection.** The Contractor shall permit the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives to inspect all work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records, and accounts pertaining to such contracts with regard to the project.
- c. **State and Local Government Employees.** The provisions of the Fair Labor Standards Act, as amended by Pub. L. 99-150, November 13, 1985, or as may be amended further, are applicable to State and local government employees that participate in the FTA assisted project with the Recipient.
- d. **Environmental Policy.** The National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq.; Section 14 of the Federal Transit Administration Act of 1964, as amended, 49 U.S.C. 1601 et seq.; the Council on Environmental Quality regulations set forth at 40 C.F.R. Part 1500; and the FHWA/FTA regulation, "Environmental Impact and Related Procedures," set forth at 23 C.F.R. Part 771 are applicable to FTA assisted projects of BJCTA.
- e. **Compliance with Environmental Standards.** Contractors must comply with all applicable standards, orders, or requirements issued pursuant to Federal statute or regulation. The recipient and any third party contractor thereof shall be responsible for reporting any violations to FTA and to the EPA Assistant Administrator for Enforcement.
- f. **Air Pollution.** 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 BJCTA and understands and agrees that the BJCTA will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office.

3.2 **Federal Laws/Federally Required and Other Model Contract Clauses**

This is a complete listing of Standard Federal Transit Administration clauses, each clause is not applicable to all solicitations, clauses marked "N/A" do not apply to this solicitation.

Clause	Page
1. Fly America Requirements.....	N/A
2. Buy America Requirements.....	N/A
3. Charter Bus and School Bus Requirements.....	N/A
4. Cargo Preference Requirements.....	N/A
5. Seismic Safety Requirements.....	N/A
6. Energy Conservation Requirements.....	21
7. Clean Water Requirements.....	21
8. Bus Testing.....	N/A
9. Pre-Award and Post Delivery Audit Requirements.....	N/A
10. Lobbying..... (Signature Required Page 22)	22
11. Access to Records and Reports.....	24
12. Federal Changes.....	25
13. Bonding Requirements.....	N/A
14. Clean Air.....	26
15. Recycled Products.....	26
16. Davis-Bacon and Copeland Anti-Kickback Acts.....	N/A
17. Contract Work Hours and Safety Standards Act	N/A
18. [Reserved].....	N/A
19. No Government Obligation to Third Parties.....	26
20. Program Fraud and False or Fraudulent Statements and Related Acts.....	27
21. Termination.....	27
22. Government-wide Debarment and Suspension (No procurement).....	29
23. Privacy Act.....	30
24. Civil Rights Requirements.....	30
25. Breaches and Dispute Resolution.....	31
26. Patent and Rights in Data.....	N/A
27. Transit Employee Protective Agreements.....	N/A
28. Disadvantaged Business Enterprises (DBE).....	32
29. [Reserved].....	N/A
30. Incorporation of Federal Transit Administration (FTA) Terms.....	33
31. Drug and Alcohol Testing.....	N/A

1. **FLY AMERICA REQUIREMENTS**
49 U.S.C. § 40118; 41 CFR Part 301-10

2. **BUY AMERICA REQUIREMENTS**
49 U.S.C. 5323(j); 49 CFR Parts 661

3. **CHARTER BUS REQUIREMENTS**
49 U.S.C. 5323(d); 49 CFR Parts 604

SCHOOL BUS REQUIREMENTS
49 U.S.C. 5323(F); 49 CFR Part 605

4. **CARGO PREFERENCE REQUIREMENTS**
46 U.S.C. 1241; 46 CFR Part 381

5. **SEISMIC SAFETY REQUIREMENTS**
42 U.S.C. 7701 et seq. 49; CFR Part 41

6. **ENERGY CONSERVATION REQUIREMENTS**
42 U.S.C. 6321 et seq.; 49 CFR Part 18

Energy Conservation - The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

7. **CLEAN WATER REQUIREMENTS**
33 U.S.C. 1251

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.

8. **BUS TESTING**
49 U.S.C. 5323(c); 49 CFR Part 665

9. **PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS**
49 U.S.C. 5323; 49 CFR Part 663

10. LOBBYING

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

Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

(Signature Required)

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned _____ certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [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 sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients 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

11. ACCESS TO RECORDS AND REPORTS

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

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

a. Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u>						
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
b. Contracts above \$100,000/Capital Projects	None unless ¹ non-competitive award		Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
<u>II Non State Grantees</u>						
a. Contracts below SAT (\$100,000)	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects	Yes ³		Yes	Yes	Yes	Yes

Sources of Authority:

¹49 USC 5325 (a); ² 49 CFR 633.17; ³ 18 CFR 18.36 (i)

12. FEDERAL CHANGES

49 CFR Part 18

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.

13. BONDING REQUIREMENTS

14. CLEAN AIR

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

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.

15. RECYCLED PRODUCTS

42 U.S.C. 6962; 40 CFR Part 247; Executive Order 12873

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.

16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

18. [RESERVED]

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

(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.

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

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

Program Fraud and False or Fraudulent Statements or Related Acts.

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

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

21. TERMINATION

49 U.S.C. Part 18; FTA Circular 4220.1F

a. Termination for Convenience (General Provision) The BJCTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government'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 the BJCTA to be paid the Contractor. If the Contractor has any property in its possession belonging to the BJCTA, the Contractor will account for the same, and dispose of it in the manner the BJCTA 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

BJCTA 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 BJCTA 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 BJCTA, 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 BJCTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] 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 the BJCTA 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 the BJCTA setting forth the nature of said breach or default, the BJCTA 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 the BJCTA 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 the BJCTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the BJCTA shall not limit the Birmingham-BJCTA 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 BJCTA, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the BJCTA 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 BJCTA may terminate this contract for default. The BJCTA 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 Recipient.

g. Termination for Convenience of Default (Cost-Type Contracts) The BJCTA may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the BJCTA or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the BJCTA, or property supplied to the Contractor by the BJCTA. If the termination is for default, the BJCTA may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the BJCTA and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the BJCTA, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the BJCTA determines at its sole discretion that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the Contractor, the BJCTA after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Suspension and Debarment

This contract is a covered transaction for purposes of 2 CFR Part 180 and Part 1200. As such, the Contractor is required to verify the Contractor, its principals and affiliates, are not excluded or disqualified as defined by 2 CFR Part 180 and 2 CFR Part 1200.

The Contractor is required to comply with 2 CFR Part 180 and Part 1200, Subparts C and must include the requirement to comply with 2 CFR Part 180 and Part 1200, Subparts 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 Birmingham-Jefferson County Transit Authority. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Birmingham-Jefferson County 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 2 CFR Part 180 and 1200, Subparts 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.

23. PRIVACY ACT

5 U.S.C. 552

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(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.

24. CIVIL RIGHTS REQUIREMENTS

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

Civil Rights - 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.

25. **BREACHES AND DISPUTE RESOLUTION**

49 CFR Part 18; FTA Circular 4220.1F

Disputes - 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 the Birmingham-Jefferson County Transit Authority's Executive Director. 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 Executive Director. 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 Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the Birmingham-Jefferson County Transit Authority, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within 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 Birmingham-Jefferson County 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 in which the Birmingham-Jefferson County Transit Authority is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available there under 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 Birmingham-Jefferson County Transit Authority, 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 there under, except as may be specifically agreed in writing.

Applicable Law and Venue - The work done by the Contractor in response to these specifications shall be in complete compliance with all applicable Federal, State, and local laws and their respective rules and regulations and such compliance shall be at the Contractor's expense.

Venue for any legal action arising out of this contract and between the parties hereto shall be exclusively in Jefferson County, Alabama. The law governing any dispute between the parties to this contract shall be the law of the State of Alabama except insofar as the dispute or a part thereof, is subject to Federal law by preemption.

In the event that the Contractor is domiciled in a country other than the United States or is a controlled subsidiary of a company which is domiciled in a country other than the United States and in the future event that any litigation should arise between the parties respecting any matter of fact or law that is international in nature, the venue of litigation with regard thereto shall be in the courts of the State of Alabama or the United States of America, located in the State of Alabama, County of Jefferson.

26. PATENT AND RIGHTS IN DATA

37 CFR Part 401; 49 CFR Parts 18 and 19

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333; 29 CFR Part 215

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Disadvantaged Business Enterprises

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 18.5 %. A separate contract goal **[has not]** been established for this procurement.

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 Birmingham-Jefferson County 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)).

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

d. The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Birmingham-Jefferson County Transit Authority. In addition, **[the Contractor may not hold retainage from its subcontractors.]**

e. The Contractor must promptly notify BJCTA, 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 BJCTA.

29. [RESERVED]

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

a. **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 4220.1F, 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 Birmingham-Jefferson County Transit Authority requests which would cause Birmingham-Jefferson County Transit Authority to be in violation of the FTA terms and conditions.

31. DRUG AND ALCOHOL TESTING

49 U.S.C. §5331; 49 CFR Parts 653 and 654

SECTION IV–FORMS

Attachment A – Required
Attachment B – Required
Attachment C – Required
Attachment D – Required
Attachment E – Not Applicable
Attachment F – Not Applicable
Attachment G – Not Applicable
Attachment H – Required
Attachment I – Required

ATTACHMENT A
PRICE PROPOSAL FORM

IFB#12-03 Eighth Avenue Flood Restoration

TO: Birmingham-Jefferson County Transit Authority

The company listed below hereby submits its offer as indicated below in accordance with the terms of the Notice to Proposer, The Scope and General Conditions, Technical Specifications and Warranty Specifications, the FTA or Federally Required or Recommended Provisions, and all provisions contained in the Invitation For Bid, all of which have been furnished to the Proposer. If this proposal is accepted, this document and the referenced proposal documents shall constitute the entire agreement between the parties, and no changes will be recognized unless the parties agree in writing.

Each offer shall be made in accordance with the specifications or approved equals as described in the contract documents identified herein. I have carefully examined the Invitation For Bid (IFB) and have informed myself thoroughly regarding any and all conditions and requirements of the solicitation. Any additional information that is requested in the IFB is attached hereto.

****See Exhibit 1 for work description in each area.**

Area	Total		Area	Total
Maintenance Office			Elevator Control	
Hallway			Landing	
Admin Break Room			Copy Room	
File Room			Stairwell	
Main Dir Office			Window Well	
Quite Room			Fix Route Dispatch	
Operator Lobby			Workout 2	
Vip Dispatch			Workout 1	
Radio Room			Workout 3	
Front Lobby			Storage Room	
Elevator			ADA Office	

Total For All Areas: _____

***Price must be all inclusive and final to be considered for award.**

 Company

 Authorized Signature

 Address

 Typed/Printed Name

 City/State/Zip Code

 Title

 Phone

 Date

All applicable costs should be built into Proposal. BJCTA assumes no responsibility for costs incurred in proposal preparation. The BJCTA has the right to reject any and all proposals as deemed in the best interest of the BJCTA.

ATTACHMENT C
ACKNOWLEDGMENT OF ADDENDA

The following form shall be completed and included in the Proposal.

Failure to acknowledge receipt of all addenda may cause the Proposal to be considered non responsive to the solicitation. Acknowledged receipt of each addendum must be clearly established and included with the Offer.

ACKNOWLEDGMENT OF ADDENDA

The undersigned acknowledges receipt of the following addenda to the documents:

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Offeror:

Name

Street Address

City, State, Zip

Signature of Authorized Signer

Title

Phone

ATTACHMENT D
AFFIDAVIT OF NON-COLLUSION

I hereby swear (or affirm) under penalty or perjury:

1. That I am the bidder (if the bidder is an individual), a partner of the bidder (if the bidder is a partnership), or an officer or employee of the bidding corporation, having authority to assign on its behalf (if the bidder is a corporation); and
2. That the attached bid or bids have been arrived at by the bidder independently, and have been submitted without collusion with, and without any agreement, understanding or planned common course of action with any other vendor of materials, supplies, equipment or services described in the Invitation For Bid, designed to limit independent bidding or competition; and
3. That the contents of the bid or bids have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the proposal or proposals, and will not be communicated to any such person prior to the official opening of the proposal or proposals; and
4. That no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by _____; and
5. That I have fully informed myself regarding the accuracy of the statements made in this affidavit.

The _____ hereby certifies that it is/ is not included on the United States Comptroller General's consolidated list of persons or firms currently debarred for violations of various public contracts incorporated labor standards provisions.

Authorized Signature

Printed or Typed Name of Affiant

Firm Name

Firm's Employee Identification Number

Subscribed and sworn to before me this _____ day of _____, 20 _____.

Notary Public

My Commission expires _____, 20 _____.

ATTACHMENT E

DBE Letter of Intent

To: _____
(Name of Prime Proposer)

The undersigned intends to perform work in connection with the above project as a DBE in the following capacity (check one):

- | | |
|--------------------------------------|--|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Corporation |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Joint Venture |

The Disadvantaged Business status of the undersigned is confirmed:

- (a) On the reference list of Disadvantaged Business Enterprises dated _____, or
- (b) On the attached Disadvantaged Business Enterprise Identification Statement.

The undersigned is prepared to perform the following work in connection with the above project (*specify in detail the particular work items or parts thereof to be performed*):

At the following price: \$ _____

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

Items	Projected Date of Commencement	Projected Date of Completion

The above work will not be sublet to a non-Disadvantaged Business Enterprise at any tier. The undersigned will enter into a formal agreement for the above work with you, conditioned upon your execution of an agreement with BJCTA.

Date _____
Name of Disadvantaged Business Enterprise

By _____

ATTACHMENT F
DBE AFFIDAVIT

STATE OF _____ (DATE _____)

COUNTY OF _____

The undersigned being duly sworn, deposes and says that he/she is the _____
(Sole owner, partner, president, treasurer or
_____ of _____ and certifies that since the date
other duly authorized official of a corporation) (Name of DBE)
of its certification by ALDOT, BAA, *UCP or *DOT, the certification has not been revoked nor has it
expired nor has there been any change in the minority status of _____.
(Name of DBE)

(Signature and Title of Person Making Affidavit)

Sworn to before me this _____ day of _____, 20_____.

(Notary Public)

NOTE: The Offeror must attach the DBE's most recent certification letter or document to this affidavit.

*Please list other entity _____

ATTACHMENT G
DBE UNAVAILABLE CERTIFICATION

I, _____, _____ of
 (Name) (Title)

_____ certify that on _____ I contacted
 (Company Name/Prime Proposer) (Date)

the following Disadvantaged Business Enterprise to obtain a proposal/bid for the following work items.

Disadvantaged Proposer	Work Items Sought	Form of Proposal or Bid Sought (i.e., unit price, materials & labor, labor only, etc.)

To the best of my knowledge and belief, said Disadvantaged Business Enterprise was unavailable for work on this project, or unable to prepare a proposal/bid for the following reason(s):

Signature: _____ Date: _____

_____ was offered an opportunity to bid on
 (Name of Disadvantaged Business Enterprise)
 the above identified work on _____ by _____
 (Date) (Source)

The above statement is a true and accurate account of why I did not submit a proposal/bid on this project.

_____ (Date)
 (Signature of Disadvantaged Business Enterprise)

 (Title)

ATTACHMENT H CONFLICT OF INTEREST STATEMENT

Proposers shall provide a list of all entities/individual(s) with which it has relationships that create, or would appear to create, a conflict of interest with the work that is contemplated by this IFB. The list should indicate the name of the entity/individual, the relationship to the Proposer, and a discussion of the conflict.

Because Final Award of this IFB will be decided upon by the Birmingham-Jefferson County Transit Authority's Board of Directors, a listing of its members has been included below. Please also provide a description of relationships with any or all Board Members that would create, or would appear to create, a conflict of interest.

MEMBER ENTITY	BOARD MEMBER
Jefferson County	Rev. Patrick Sellers, Chairman
City of Birmingham	E. Andre Petties, Vice Chairman
City of Birmingham	Joyce Brooks, Secretary/Treasurer
City of Mountain Brook	Jack Darnall
City of Homewood	Keelon Hobbs
City of Bessemer	Johnnye P. Lassiter
City of Birmingham	Ronald Lyas
City of Birmingham	Guin Robinson
City of Birmingham	Terri Sharpley

I hereby disclose the following persons, entities, or interests and/or with which there is an interest or involvement that may result in an actual or potential conflict of interest, directly or indirectly:

Witness

Signature

Title

Date

ATTACHMENT I
VENDOR REGISTRATION FORM

IFB Number: **IFB 12-03**

IFB Description: **Eighth Avenue Flood Restoration**

Company Name/Vendor: _____

Address: _____

City: _____ State: _____ Zip: _____

Contact Person: _____

Title: _____

Office Number: () _____

Fax Number: () _____

Cell Number: () _____

Email Address: _____

Website: _____

Fax To:

BJCTA

Attn: Jacquese Gary, Procurement Officer

(205) 252-7633 Fax or

Email: jgary@bjcta.org

(205) 521-0144 direct line

