



## **REQUEST FOR PROPOSALS # 10-02**

### **LEGAL SERVICES**

FOR THE BIRMINGHAM-JEFFERSON COUNTY TRANSIT  
AUTHORITY

#### **KEY DATES:**

|  |  |
|--|--|
| <b>Date Originally Issued:</b>                         | Friday, December 7, 2009                         |
| <b>Pre-Proposal Conference:</b>                        | None Scheduled                                   |
| <b>Questions, Clarifications Due:</b>                  | Friday, December 18, 2009                        |
| <b>BJCTA Response to<br/>Questions/Clarifications:</b> | As submitted                                     |
| <b>Proposals Due:</b>                                  | <b>Thursday, January 8, 2010, 12:00 pm (CST)</b> |

## **NOTICE TO PROPOSERS**

**NOTICE IS HEREBY GIVEN** that sealed proposals will be received in the Procurement Office of the Birmingham-Jefferson County Transit Authority (“BJCTA”) either by U.S. Postal Service or by courier or personal delivery to 1735 Morris Avenue - 2nd Floor, Birmingham, AL 35203, in accordance with these instructions and specifications, on **January 8, 2010**, until **12:00 p.m. Central Daylight Savings Time**, at which time all proposals must be received. Proposers should provide one (1) original and four (4) copies of their sealed proposals with their packages clearly marked **"RFP #10-02 Legal Services"** and plainly endorsed with the Proposer’s name and address.

BJCTA is soliciting sealed proposals from qualified firms to provide legal services as outlined and described in this solicitation. A vendor registration form is required to be completed and returned in order for your proposal to be considered.

**Requests for Approved Equals or Clarification of Specifications** must be received by BJCTA in writing by not later than close of business (**5:00 p.m. CDT**), **December 18, 2009**. Please note that no requests will be considered or answered after this time. Responses will be provided via email and will also be posted on BJCTA’s website at [www.bjcta.org](http://www.bjcta.org).

This Request for Proposals does not commit the Authority to award a contract, or pay any cost incurred in preparation of bids, or to produce or contract for services. To be considered, proposals must arrive at BJCTA on or before the date specified. If mailing proposals, please allow normal mail delivery time to ensure timely receipt of your proposal. Proposals received prior to the advertised hour of opening will be kept securely sealed. Any proposals received after the time to which reference is made will not be considered and will be returned to the Proposer unopened.

The award of this proposal is contingent upon a financial assistance contract between the Birmingham-Jefferson County Transit Authority 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.

Proposals will be examined and reported to the BJCTA’s Board of Directors within ninety (90) days after the proposals have been opened. 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 his proposal for a period of ninety days (90) after the scheduled time for the proposal opening. Award of this proposal shall be made to the most responsive and responsible Proposer as determined through the evaluation of the proposals, and which is in the best interest of BJCTA. Each Proposer will be notified, in writing, of award of contract, if award is made.

The Proposal documents are available for download on the BJCTA’s website, [www.bjcta.org](http://www.bjcta.org). A Vendor Registration Form is required to be completed and returned to BJCTA in order for

your proposal to be considered and to ensure that your name is listed on the “List of Potential Proposers.” This will ensure that you receive timely notification of addenda to this solicitation. Ultimately, however, it is the responsibility of the Proposer to check the BJCTA’s website for addenda that may be issued relative to this solicitation.

For additional information, you may contact Collina Washington, Manager of Procurement, at (205) 521-0144 or [cwashington@bjcta.org](mailto:cwashington@bjcta.org).

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Collina D. Washington  
Manager of Procurement

Dated at Birmingham, this 7th day of December, 2009.



# BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

## Request for Proposals #10-02 Legal Services

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**THE BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY  
REQUEST FOR PROPOSALS #10-02  
LEGAL SERVICES**

The enactment of Act No. H-993 in 1971 by the Alabama State Legislature authorized the creation of the Birmingham-Jefferson County Transit Authority ("BJCTA"). Operations began in 1972, providing fixed route and demand response service (Paratransit). While our service area covers the cities of Birmingham, Bessemer, Fairfield, Homewood, Mountain Brook, Tarrant, Hoover, Vestavia Hills and unincorporated portions of Jefferson County, the BJCTA is a separate entity from its' Funding Partners and is governed by a nine-member Board of Directors.

The BJCTA is soliciting qualified firms to provide Legal Services as outlined in this solicitation.

**SECTION 1: INSTRUCTIONS TO PROPOSERS**

This information provides prospective contractors with information to enable them to prepare and submit proposals for consideration by the Birmingham-Jefferson County Transit Authority (BJCTA).

**1. Definition of Terms.**

The terms "Contractor" and "Proposer," used in this specification means the concern or its duly authorized representatives proposing to provide the services covered by the scope of services covered by the scope of services/specifications.

The term "Purchaser" or "BJCTA" or "Recipient" used in this proposal means the Birmingham-Jefferson County Transit Authority or its duly authorized representative having to do with the purchase, inspection, testing, accepting or rejecting of the service called for in the scope of services.

**2. 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:

Executive Director  
Birmingham-Jefferson County Transit Authority  
Post Office Box 10212  
Birmingham, Alabama 35202-0212

**3. Type of Contract.**

Services covered under this contract are to begin upon Notice of Award and shall extend for a period of three (3) years with two (2) – twelve (12) month options. It is proposed that, this be a fixed rate per hour contract, not to include secretarial fees.

#### **4. Certification**

Each Proposer will be required to certify, by signing the proposal form, that he 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.

#### **5. Eligibility**

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

#### **6. Award of Contract**

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

1. The contract will be awarded based upon an evaluation of the proposals received.
2. 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.
3. BJCTA reserves the right to issue separate contracts if deemed in the best interest of BJCTA.
4. BJCTA reserves the right to negotiate with one or all Proposers.
5. BJCTA reserves the right to cancel solicitation or issue subsequent requests for proposal.

#### **7. News Release**

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

#### **8. Inspection**

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

## **9. Pre-Proposal Conference/Information for Proposers**

No Pre-Proposal Conference has been scheduled in relation to this solicitation.

## **10. Questions & Clarifications**

At any time during this procurement up to the time specified in the **Notice to Proposers**, Proposers may request, in writing, a clarification or interpretation of any aspect, or a change to any requirement of the RFP or any addenda to the names, which whenever used in this solicitation shall mean the brand name or approved equal. Such written requests shall be made to the contact person. The Proposer making the request shall be responsible for its proper delivery to the BJCTA as identified in the Notice to Proposers. Any request for a change to any requirement of the Contract documents must be fully supported with any pertinent information, technical data, or test results evidencing that the exception will result in a condition equal to or better than that required by the RFP, without substantial increase in cost or time requirements.

Any requests for clarifications, modifications or corrections of the Proposal specifications shall be submitted in writing to the Manager of Procurement by **Friday, December 18, 2009, 5:00 p.m., Central Daylight Savings Time**. Any interpretation, change or correction of said specifications will be made by Addenda only, duly issued by the Manager of Procurement by no later than **Tuesday, December 22, 2009**. All oral modifications of these conditions or specifications are void and ineffective. Only written responses provided as addenda shall be official and all other forms of communication with any officer, employee or agent of the BJCTA shall not be binding on the BJCTA. The BJCTA reserves the right to reject any Proposal that contains unauthorized conditions or exceptions.

Please note that all correspondence, communication and/or contact in regard to any aspect of this solicitation or offers shall only be in the manner described in, and with the contact person identified in the Notice to Proposers. Proposers and their representatives shall not make any contact with or communicate with any member of the BJCTA, its Board of Directors, or its employees and consultants, other than the contact person in regard to any aspect of this solicitation or offers.

## **11. Addenda to RFP**

The BJCTA reserves the right to amend the RFP at any time. Any amendments to or interpretations of the RFP shall be described in written addenda. The BJCTA shall provide copies of Addenda to all prospective Proposers officially known to have received the RFP. Prospective Proposers, or their agents, shall be responsible to collect the addendum at the address provided in the Notice to Proposers. Notification of or the addendum will also be distributed to such prospective Proposers officially known to have received the RFP. Failure of any prospective Proposer to receive the notification or addendum shall not relieve the Proposer from any obligation under its Proposal as submitted or under the RFP, as clarified, interpreted or modified. All addenda issued shall become part of the RFP. Prospective Proposers shall acknowledge the receipt of each individual addendum in their Proposals on **Attachment D Acknowledgement of Addenda**. Failure to acknowledge in

their Proposals receipt of addenda may, at the BJCTA's sole option, disqualify the Proposal.

If the BJCTA determines that the addenda may require significant changes in the preparation of Proposals, the deadline for submitting the Proposals may be postponed by the number of days that the BJCTA determines will allow Proposers sufficient time to revise Proposals. Any new Due Date shall be included in the addenda.

## **12. 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.

## **13. Conditions, Exceptions, Reservations or Understandings**

Proposers are required to include with their proposal all requests for deviations from either the Specifications/Scope of Work or any legal term and condition. Failure to request such deviation will be deemed acceptance of all Specifications, Terms or Conditions. Proposers are cautioned to limit exceptions, conditions or limitations to the provisions of this RFP as they may be determined to be so fundamental as to cause rejection of the Proposal for not responding to the requirements of the RFP.

Any and all deviations must be explicitly, fully and separately stated in the Proposals by completing the form(s) provided as **Attachment E Form for Proposal Deviation**, setting forth at a minimum the specific reasons for each deviation so that it can be fully considered and, if appropriate, evaluated by the BJCTA. Requests for modifications to contract language will be subject to negotiation. Deviations to the BJCTA's Specifications not found by the BJCTA to be unacceptable shall be evaluated in accordance with the appropriate evaluation criteria and procedures, and may result in the Proposer receiving a less favorable evaluation than without the deviation.

## **14. Protest Procedures**

The purpose of this protest provision is to establish procedures for processing proposal evaluation complaints of an interested party regarding the award of a contract or specifications and requirements. The following procedures must be followed for all Proposal protests:

### **14.1. 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's contact person.

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, in writing, who will act as the point of contact for all protests.

#### 14.2. Review of Protests

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

1. The appropriate Department Head
2. Manager of Procurement

The Executive Director may, at his discretion, appoint other staff members to this committee based upon 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 the committee to meet that will be held no later than five (5) 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.

#### 14.3. 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 in writing which shall be received by BJCTA within ten (10) calendar days after the RFP is first advertised. The protest must clearly specify the grounds and evidence on which the protest is based. The Authority will respond in writing 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) Any Proposer may protest the recommended award on any ground not based upon the content of the RFP. Protests received before contract award will be responded to by the Authority within five (5) working days upon receipt of the protest. The protester will have five (5) working days to appeal the Authority's initial response to the protest. 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 Authority within five (5) working days after notification of award. The Authority 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 Authority's initial response to the protest. Once an appeal has been received, the Authority 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) Because this contract is federally funded, Protestors dissatisfied with the Authority's final decision may utilize the appeal procedure set forth in FTA Circular 4220.1F, as may be periodically updated. FTA's review will be limited to protests alleging that the BJCTA failed to have or follow its written protest procedures, failed to review a complaint or protest, or violated a federal law or regulation. The protest must be received by the FTA within five (5) working days of the date the Protester learned or should have learned of an adverse decision by the BJCTA.

Failure to comply with any of the requirements set forth in this written Proposal Protest Procedure may result in the rejection of the protest.

## **15. Preparation of Proposals**

### **15.1. Proposal Format Requirements**

Proposers are required to submit one (1) original and four (4) copies of the Proposal to the BJCTA. In case of any discrepancies, the original will be considered in evaluating the Proposal. Proposals should be submitted in a sealed envelope or box clearly marked, "**RFP 10-02 Legal Services,**" and plainly endorsed with the Proposer's name and address. Proposals will be sent or delivered to the following address:

**Mail to (USPS):**

Birmingham-Jefferson County Transit Authority  
P.O. Box 10212  
Birmingham, AL 35202-0212  
Attention: Collina Washington, Manager of Procurement

**Deliver to (FedEx, UPS, or Hand Delivery):**

Birmingham-Jefferson County Transit Authority  
1735 Morris Avenue, 2<sup>nd</sup> Floor  
Birmingham, AL 35203  
Attention: Collina Washington, Manager of Procurement

Proposals must be received by no later than **Friday, January 8, 2010, 12:00 p.m., Central Daylight Savings Time.** Proposals received after the time and

date specified will not be considered. The BJCTA is not responsible for deliveries delayed for any reason. The time received in the BJCTA's offices, as specified above, shall determine the official time received. Submission of a Proposal shall constitute a firm offer to the BJCTA for ninety (90) days from the submission deadline for Proposals.

15.2. Use of Proposal Forms

Proposers are advised that the forms contained in this RFP are the forms required to be used for submission of a Proposal. Each Proposal shall be on the prescribed Proposal Form(s). Failure to complete and include all forms and certifications outlined in this RFP will result in your Proposal being determined non-responsive.

15.3. Format and Required Components of Proposals

The proposal shall be complete and concise in description and must be in written form. The proposal shall demonstrate that the Proposer has the financial and management capability to implement the contract and scope of work functions and that the Proposer fully recognizes the stated purpose of the scope of work and its elements. The proposal shall reflect the Proposer's understanding of the scope of work. At a minimum, proposals must include the following specific information:

15.3.1. Cover Letter: The signed cover letter should be on company letterhead clearly stating the name of the Proposer's firm, business address, telephone and fax numbers and email address. The following information should be provided:

- a. Introduce the firm and summarize its qualifications;
- b. Names of authorized principals with the authority to negotiate and contractually bind the firm;
- c. A statement that binds the Proposer to the proposed Scope of Services and cost proposal for ninety (90) days;
- d. Indicate whether there are any conflicts of interest that would limit the Proposer's ability to provide the requested services;
- e. Provide any required disclosures

15.3.2. Qualifications and Experience of the Firm: The following information should be included:

- a. History and organizational structure
- b. Describe the nature and scope of the firm's previous experience in representing governmental clients;
- c. Provide brief biographies of partners or associates proposed by this firm and a summary of their relevant experience;
- d. The firm's Martindale-Hubbell Rating;
- e. The extent of the firm's litigation experience;

- f. Describe, in no more than three (3) pages, the firm's experience and knowledge of the United States Department of Transportation, Federal Transit Administration, Federal Third Party Contracting Guidelines and Regulations, Employment, Labor and Pension Law (particularly as it relates to Collective Bargaining Agreements), Ethics and Conflicts of Interest, Civil Rights Legislation, and any other pertinent Federal, State and Local Laws that would govern BJCTA;

15.3.3. References: Provide contact information for five (5) references for which the proposed team has provided similar services within the past three (3) years. For each client submitted, supply a brief description of the work performed.

15.3.4. Cost Proposal: In a separate, sealed envelope, along with your price proposal, please describe your policy with respect to method of compensation.

15.4. Alternate and Multiple Proposals

Proposers may submit alternate Proposals to this RFP. The BJCTA reserves the right to accept or reject any alternate Proposal.

15.5. Treatment of Proprietary/Confidential Information

Unless the information is exempt from disclosure by law, the content of any request for explanation, exception or substitution, response to these specifications, protest or any other written communication between BJCTA and Proposer shall be available to the public.

If the Proposer believes any communication contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position, if disclosed, the Proposer shall request BJCTA to withhold from disclosure the proprietary information by marking each page containing such proprietary information by marking each page containing such proprietary information as confidential. Proposer may not designate Proposal Forms as confidential.

If the Proposer requests that BJCTA withhold from disclosure information identified as confidential, and BJCTA complies with the Proposer's request, the Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless BJCTA from and against all damages (including, but not limited to attorneys' fees that may be awarded to the party requesting the Proposer information), and pay any and all cost and expenses related to the withholding of the Proposer information. The Proposer shall not make a claim, sue or maintain any legal action against the BJCTA or its directors, officers, employees or agents in connection with the withholding from disclosure of Proposer information.

If the Proposer does not request that the BJCTA withhold from disclosure information identified as confidential, the BJCTA shall have no obligation to withhold the information from disclosure and may release the information sought without liability to the BJCTA.

#### 15.6. Signing of Proposal Forms

Proposals shall include firm name (and, in the event the Proposer is a joint venture, the names of the individual firms comprising the joint venture), business address, and the name, title and business address of the responsible individual(s) representing the joint venture principals, with their telephone and facsimile (fax) numbers, who may be contacted during the Proposal evaluation period for scheduling oral presentations as well as for receiving notices from the BJCTA.

Proposals shall be signed by an official authorized to bind the Proposers. Proposer shall submit evidence of the official's authority to act for and bind Proposer in all matters relating to the Proposals. (In the event the Proposer is a joint venture or consortium, a representative of each of the members of the joint venture or consortium shall execute the Proposal. Each joint venture or consortium member is jointly and severally liable for the joint venture or consortium.)

#### 15.7. Modification or Withdrawal of Proposals

A modification of a Proposal already received will be accepted by the BJCTA only if the modification is received prior to the Proposal Due Date, or is specifically requested by the BJCTA, or is made with a requested best and final offer (BAFO). All modifications shall be made in writing and executed and submitted in the same form and manner as the original Proposal.

A Proposer may withdraw a Proposal already received prior to the Proposal Due Date by submitting, in the same manner as the original Proposal; to the BJCTA a written request for withdrawal executed by the Proposer's authorized representative. After the Proposal Due Date, a Proposal may be withdrawn only if the BJCTA fails to award the Contract within the Proposal validity period prescribed in the **Notice to Proposers** or any agreed upon extension thereof. The withdrawal of a Proposal does not prejudice the right of a Proposer to submit another Proposal within the time set for receipt of Proposals.

This RFP does not commit the BJCTA to enter into a contract, to pay any costs incurred in the preparation or presentation of a Proposal, or to procure or contract for equipment.

### **16. Proposal Evaluation, Negotiation and Selection**

The BJCTA intends to award a Contract to the most qualified, responsible firm submitting a responsive Proposal. An Evaluation Committee, which will include BJCTA staff and may include one or more outside experts, will review and screen the Proposals submitted,

according to the evaluation criteria set forth below. Ranking will be based on a maximum of 100 points.

In determining the number of points a Proposal will receive in each category, the BJCTA will consider the Proposal material submitted, oral interviews (if applicable), and any other relevant information about a given Proposer. The firm submitting a responsive Proposal with the highest total weighted score, based upon composite scoring of the Evaluation Committee, will be determined to be the most qualified.

The BJCTA may reject any Proposal in which the approach, qualifications or prices are not deemed to be within an acceptable competitive range. The BJCTA may seek clarifications from any or all Proposers regarding their Proposals. The BJCTA has the right to request best and final offers. The BJCTA, however, may award a contract with negotiations or without requesting best and final offers, so Proposers are encouraged to submit their best Proposal.

#### 16.1. Evaluation Procedures

##### 16.1.1. Compliance Review

Proposals will first be analyzed for conformance with the instructions and requirements of the RFP, in particular to ensure that all required elements described in the specifications or scope of work are included in the Proposal. Proposals that do not comply with these instructions and do not include the required information may be rejected as insufficient and not be considered for further evaluation. Proposers shall therefore pay close attention to and strictly follow all instructions. The BJCTA reserves the right to request a Proposer to provide any missing information and to make corrections. Submittal of a Proposal will signify that the Proposer has accepted the whole of the Contract documents, except such conditions, exceptions, reservations or understandings explicitly, fully and separately stated on the forms and according to the instructions of ***Attachment E Form for Proposal Deviation***. Any such conditions, exceptions, reservations or understanding which does not result in the rejection of the Proposal may be subject to evaluation under the criteria of ***Instructions to Proposers 16.2 Evaluation Criteria***, or it may be negotiated with the highest ranked proposer.

##### 16.1.2. Written Proposal Review

The BJCTA Evaluation Committee will review each firm's Proposal in accordance with the criteria of ***Instructions to Proposers 16.2 Evaluation Criteria***. Any extreme Proposal deficiencies which may render a Proposal unacceptable will be documented. The BJCTA will make a specific note of questions, issues, concerns, and areas requiring clarification by Proposers and to be discussed in any meetings with Proposers which the BJCTA finds to be within the competitive range.

Proposals that receive the highest scores will be found to be in the competitive range. Proposals that have been determined by the BJCTA as not in the competitive range, and cannot be reasonably made to be within the competitive range, will be notified in writing.

16.1.3. Price Proposal

The Evaluation Committee will evaluate the Price Proposals of those firms determined to be in the competitive range using the evaluation criteria set forth in ***Instructions to Proposers 16.2 Evaluation Criteria***. Please note that the Price Proposal should be submitted in a separate, sealed envelope.

16.1.4. Clarifications, Interviews, Factory/Site Visits

The Proposer whose Proposals are found by the BJCTA to be within the competitive range, or may be reasonably made to be within the competitive range, may be notified and any questions and/or requests for clarifications provided to them in writing. Each such Proposer may be invited for an interview and discussions with the BJCTA to discuss answers to written or oral questions, clarifications, and any facet of its Proposal.

In the event that a Proposal, which has been included in the competitive range, contains conditions, exceptions, reservations or understandings to any Contract requirements as provided in ***Attachment E Form for Proposal Deviation*** said conditions, exceptions, reservations or understandings may be negotiated during these meetings. However, the BJCTA shall have the right to reject any and all such conditions and/or exceptions, and instruct the Proposer to amend its Proposal and remove said conditions and/or exceptions; and any Proposer failing to do so may cause the BJCTA to find such Proposal to be outside the competitive range.

16.1.5. Best and Final Offer (BAFO)

After all interviews and factory/site visits, if any, have been completed, each of the Proposers in the competitive range may be afforded the opportunity to amend its Proposal and make its BAFO. The Request for BAFOs shall include:

- a. Notice that discussions/negotiations are concluded;
- b. A complete listing of the conditions, exceptions, reservations or understandings that have been approved;
- c. A common date and time for submission of written BAFOs, allowing a reasonable opportunity for preparation of the written BAFOs;
- d. Notice that if any modification to a BAFO is submitted, it must be received by the date and time specified for the receipt of BAFOs;

- e. Notice that if Proposers do not submit a BAFO or a notice of withdrawal and another BAFO, their immediate previous Proposal will be construed as their BAFO.

Any modifications to the initial Proposals made by a Proposer shall be identified in its BAFO. BAFOs will be evaluated by the BJCTA according to the same requirements and criteria as the initial Proposals. The BJCTA will make appropriate adjustments to the initial scores for any sub-criteria and criteria which have been affected by any Proposal modifications made by the BAFOs. These final scores and rankings within each criterion will again be arrayed by the BJCTA and considered according to the relative degrees of importance of the criteria defined in ***Instructions to Proposers 16.2 Evaluation Criteria***.

#### 16.1.6. Final Evaluation and Recommendation for Award

Upon completion of the evaluation process set forth above, the BJCTA will rank each firm in accordance with the criteria set forth in ***Instructions to Proposers 16.2 Evaluation Criteria***.

The BJCTA reserves the right to conduct pre-award negotiations with any or all Proposers, and the right to award the contract without negotiations. The BJCTA reserves the right to award the Contract without conducting interviews.

This Request for Proposals does not commit the BJCTA to awarding a Contract. Proposers shall bear all costs incurred in the preparation of the Proposal and participating in the Proposal process. The BJCTA reserves the right to reject any all Proposals, the right in its sole discretion to accept the Proposal it considers most favorable to the BJCTA's interest, and the right to waive minor irregularities. The BJCTA further reserves the right to reject all Proposals and seek new Proposals when such procedure is reasonable and in the best interest of the BJCTA.

The Evaluation Committee shall make a recommendation to the Board of Directors. If an award of Contract is made, the Board reserves the right to award the Contract to the responsive and responsible Proposer that it deems offers the most advantageous Proposal to the BJCTA and best meets the requirements of the BJCTA, including technical approach/methodology, qualifications, and cost. Unsuccessful Proposers will be notified in writing regarding the resulting award.

#### 16.2. Evaluation Criteria

The Evaluation Committee will review proposals based on the following evaluation criteria, listed by their relative degree of importance. Each criterion may have sub-criteria identified that are also listed by their relative order of importance within the specific criterion they comprise. Also, certain sub-criteria

may have sub-criteria that are listed by their relative degree of importance within the specific sub-criterion they comprise.

- Criteria 1. Qualifications, History and Relevant Experience of Firm 0-30 points**
- Firm's experience in servicing public agencies relating to the Scope of Services outlined in this RFP
- Criteria 2. Qualifications, Background and Relevant Experience of Assigned Personnel 0-35 points**
- Qualifications of firm's staff who will execute Scope of Services outlined in the RFP;
  - Staff's experience in relation to the Scope of Services outlined in this RFP
- Criteria 3. References 0-15 points**
- Criteria 4. Cost Proposal 0-20 points**
- This portion of the proposal will be evaluated based upon the reasonableness of the proposed hourly rates. Fees will be evaluated based on (1) fees the BJCTA or other comparable public agencies have paid for similar services and (2) the industry's standard and customary fees, as submitted by the Proposer on the Cost Proposal Form. A Proposer's failure to submit a completed Cost Proposal may result in the BJCTA's determination that the proposal is non-responsive. Cost Proposals should be submitted in a separate, sealed envelope.

Please note that proposals will not be accepted from any firm that is listed on any federal and state disbarment lists. Neither will the BJCTA consider any attorney who is not duly licensed to practice law in the State of Alabama.

## **17. Response to Proposals**

### **17.1. Single Proposal Response**

If only one Proposal is received in response to this RFP and it is found by the BJCTA to be acceptable, a detailed price/cost analysis may be requested of the single Proposer. A price or cost analysis, or both, possibly including an audit, may be performed by or for the BJCTA of the detailed price/cost Proposal in order to determine if the price is fair and reasonable. The Proposer has agreed to such analysis by submitting a Proposal in response to this RFP.

A price analysis is an evaluation of a proposed price that does not involve an in-depth evaluation of all the separate cost elements and the profit factors that comprise a Proposer's price Proposal. It should be recognized that a price analysis through comparison to other similar procurements must be based on an established or competitive price of the elements used in the comparison. The comparison must be made to a purchase of similar quantity, involving similar

specifications and in a similar time frame. 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 to conduct a cost analysis of the proposed price.

A cost analysis is a more detailed evaluation of the cost elements in the Proposer's Proposal to perform. It is conducted to form an opinion as to the degree to which the proposed costs represent what the Proposer's performance should cost. A cost analysis is generally conducted to determine whether the Proposer is applying sound management in proposing the application of resources to the contracted effort and whether costs are allowable, allocable and reasonable. Any such analyses and the results therefrom shall not obligate the BJCTA to accept such a single Proposal; and the BJCTA may reject such Proposal at its sole discretion.

#### 17.2. BJCTA Rights

The BJCTA reserves the right to cancel the procurement in whole or in part, at its sole discretion, at any time before the Contract is fully executed and approved on behalf of the BJCTA.

The BJCTA reserves the right to reject any or all proposals, to undertake discussions with one or more Proposers, and to accept that Proposal or modified Proposal which, in its judgment, will be most advantageous to the BJCTA, price and other evaluation criteria considered. The BJCTA reserves the right to determine any specific Proposal which is conditional or not prepared in accordance with the instructions and requirements of this RFP to be non-responsive. The BJCTA reserves the right to waive any defects, or minor informalities or irregularities in any Proposal which do not materially affect the Proposal or prejudice other Proposers.

If there is any evidence indicating that two or more Proposers are in collusion to restrict competition or otherwise engaged in anti-competitive practices, the Proposals of all such Proposers shall be rejected and such evidence may be a cause for disqualification of the participants in any future solicitations undertaken by the BJCTA.

#### 17.3. Execution of Contract

The acceptance of a Proposal for award, if made, shall be evidenced in writing by a Notice of Award of Contract delivered by registered mail or email to the Proposer whose Proposal is accepted.

### **18. Omissions**

If it should appear to a prospective Proposer that the performance of the Work under the Contract, or any of the matters relating thereto, is not sufficiently described or explained in the RFP or Contract documents, or that any conflict or discrepancy exists between different parts thereof or with any federal, state, local or BJCTA law, ordinance, rule, regulation, or

other standard or requirement, then the Proposer shall submit a written request for clarification to the BJCTA within the time period specified above.

## **19. Conflict of Interests; Gratuities**

By submitting a Proposal, the Proposer represents and warrants that no director, officer or employee of the BJCTA is in any manner interested directly or indirectly in the Proposal or in the Contract which may be made under it or in any expected profits to arise therefrom.

The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest during the performance of services under this Agreement. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

Depending on the nature of the work performed, the Contractor may be required to publicly disclose financial interests under the BJCTA's Conflict of Interest policy. The Contractor agrees to promptly submit a Statement of Economic Interest on the form provided by the BJCTA upon receipt. No person previously in the position of Director, Officer, employee or agent of the BJCTA may act as an agent or attorney for, or otherwise represent, the Contractor by making any formal or informal appearance, or any oral or written communication, before the BJCTA, or any officer or employee of the BJCTA, for a period of twelve (12) months after leaving office or employment with the BJCTA if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, awards or revocation of a permit, license, grant or contract.

Contractor shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to the BJCTA. Contractor shall not engage the services of any Subcontractor or consultant on any work related to the Agreement if the Subcontractor or consultant, or any employee of the Subcontractor or consultant, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement Contractor becomes aware of an organizational conflict of interest in connection with the work performed thereunder, Contractor immediately shall provide the BJCTA with written notice of the facts and circumstances giving rise to this organizational conflict of interest. Contractor's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. The BJCTA will consider the conflict presented and the alternatives proposed and meet with the Contractor to determine an appropriate course of action. The BJCTA's determination as to the manner in which to address the conflict shall be final.

During the term of this Agreement, Contractor must maintain lists of its employees, and the Subcontractors and consultants used and their employees. Contractor must provide this

information to the BJCTA upon request. Submittal of such lists does not relieve the Contractor of its obligation to assure that no organizational conflicts of interest exist.

## **20. Ex Parte Communication**

Proposers and Proposers' representatives may not communicate outside the procedures set forth in this RFP with an officer, director, employee or agent of the BJCTA regarding this RFP until after a Notice to Proceed has been issued.

In the context of this RFP, an "ex parte communication" is any communication between a Proposer or their representative and the BJCTA's Executive Director, Board Member, officer or employee, regardless of who initiates the communication, other than as part of the formal procurement process specified herein, before the BJCTA issues a Notice to Proceed, unless it is in writing and available for disclosure to the general public.

## **21. Disadvantaged Business Enterprise**

The BJCTA, as a recipient of Federal financial assistance from the United States Department of Transportation ("USDOT"), is committed to and has adopted a Disadvantaged Business Enterprise ("DBE") Program for Contracts in accordance with Federal regulations 49 CFR §26.

It is the policy of the BJCTA to ensure non-discrimination in the award and administration of all contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to the BJCTA's construction, procurement and professional services activities. To this end, the BJCTA has developed procedures to remove barriers to DBE participation in the bidding and award process and to assist DBEs to develop and compete successfully outside the DBE Program. Concerning the performance of this contract, the Contractor will cooperate with the BJCTA in meeting these commitments and objectives. The BJCTA reserves the right to require the Contractor to provide additional DBE information.

Pursuant to 49 CFR §26.13, and as a material term of any agreement with the BJCTA, the Contractor hereby makes the following assurance and agrees to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

"The Contractor or subcontractor 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 §26 in the award and administration of USDOT assisted contracts. Failure by the Contractor or subcontractor 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 BJCTA deems appropriate."

By submitting a proposal, the Contractor is deemed to have made the foregoing assurance and to be bound by its terms. For DBE questions or assistance, contact the BJCTA's DBE Compliance Officer at (205) 521-0161.

## **22. Equal Employment Opportunity (EEO)**

In connection with the performance of the Agreement, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, gender, sexual orientation, age, marital status, pregnancy, medical condition or disability as specified in Federal, State and local laws. The Contractor shall take affirmative actions to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex, disability, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

## **23. Financial Assistance Grant**

The services in the Scope of Work/Services may be purchased with the assistance of an operating grant from the Federal Government under the Federal Transit Administration Act of 1964 as amended. The successful Proposer and all subcontractors will be required to comply with all terms and conditions prescribed for third party contracts in a grant contract between the United States Federal Government and the purchaser. This grant contract is available for examination by prospective Proposers at the Birmingham-Jefferson County Transit Authority, 1735 Morris Ave Birmingham, Alabama 35203.

## **24. Approval of U.S. Department of Transportation**

Where required, the award of a contract will be subject to the concurrence of the Federal Transit Administration (FTA).

## **25. Federal Regulations**

1. It is required that the attached non-collusion affidavit shall be executed and delivered with the proposal.
2. Proposers must certify that they are not on the U.S. Controller General's list of ineligible Proposers.

The bidder shall comply with all applicable Federal, State and local laws and their respective rules and regulations. This compliance shall be at the contractor's expense.

## **26. Termination**

The Authority shall have the right to terminate this contract by giving the contractor at least thirty (30) days notice in writing of its election to do so. Upon receipt of such notice, the contractor shall place no further orders for products to be delivered under this contract or for parts or materials therefore, and shall cancel all such orders then outstanding that the contractor is legally entitled to cancel. In the event of such termination, the contractor shall be entitled to payment for (a) products and services delivered on or before the effective date specified in the notice of termination and accepted by the Authority; (b) all products and services on the effective date designated in the said notice, that are in the process of

manufacture and preparation specifically for delivery under the contract; (c) all products, parts and materials and services therefore, that on the effective date specified in the same notice have been ordered specifically for the contract; and (d) orders that the contractor cannot legally cancel, provided that in the case of orders that can legally be cancelled subject to a cancellation charge or penalty, the contractor shall be entitled only to the amount of such charge or penalty. Any claim for payment arising from termination of the contract for the Authority's convenience provided herein shall be paid only if presented to the Authority within ninety (90) days after the effective date specified in the notice of termination.

## **27. 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.

## **28. Maintenance of Records**

Records must be maintained by the contractor to show actual time involved in accomplishment of the project and costs incurred. The contractor shall maintain all documents, financial records and supportive documents for a period of at least five (5) years after the contract completion date.

## **29. 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.

## **30. 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 whatsoever shall, in any manner or degree, modify or otherwise affect the terms of this contract or the requirements of the Performance and/or Scope of Services.

## **31. Substitution**

Written approval for any proposed substitution must be requested specifically from BJCTA's Manager of Procurement, 1735 Morris Avenue, Birmingham, Alabama 35203 using the appropriate forms.

## **32. Prime Contractor 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.

### **33. 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.

### **34. 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 Service.

### **35. 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.

### **36. Insurance**

Contractor shall not commence work until proper evidence of insurance coverage of the types and amounts specified in this section has been provided to the BJCTA. Contractor shall not violate or permit to be violated any conditions or provisions of said policies of insurance, and at all times shall satisfy the requirements of the insurer for the purpose of maintaining said insurance in effect.

If any claim is made by any third person against Contractor on account of any incident connected to the Contract, Contractor shall promptly report the fact in writing to BJCTA, giving full details of the claim.

Any person, firm, or corporation that Contractor authorizes to work upon the BJCTA's property, including any subcontractor, shall be deemed to be Contractor's agent and shall be subject to all applicable terms of this Contract. Prior to the Contractor's start of the work or entry onto the BJCTA's property, Contractor agrees to require its subcontractors to procure and maintain, at Contractor's (or its subcontractor's) sole cost and expense (and to prove to the BJCTA reasonable satisfaction that it remains in effect throughout the performance of the work under this Contract), the kinds of insurance described below. Such insurance must remain in effect throughout the term of this Contract and will be at the sole cost and expense of Contractor (or its subcontractor(s)).

Simultaneously with the execution of this transaction, the Contractor shall furnish BJCTA with certificates of insurance and any other documents which BJCTA may require, such as copies of policies or endorsements as evidence of compliance with the following insurance requirements:

36.1. Commercial General Liability Insurance

36.1.1. The Contractor shall, at its own expense, procure and maintain Commercial General Liability insurance providing bodily injury and property damage coverage with a combined limit of at least One Million Dollars (\$1,000,000) each occurrence and a general aggregate limit of at least Two Million Dollars (\$2,000,000). This insurance shall include, but not be limited to, premises and operations; contractual liability covering the indemnity provisions contained in this Contract; personal injury; products and completed operations; and broad form property damage, and include a Cross Liability endorsement. Said policy shall protect Contractor and BJCTA in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

36.1.2. Product Liability – Five Million Dollars (\$5,000,000) per occurrence; Ten Million Dollars (\$10,000,000) annual aggregate for a period of five (5) years after acceptance of the last bus delivered under this contract.

36.2. Business Automobile Liability

Contractor shall, at its own cost and expense, procure and maintain Business Automobile Liability insurance providing bodily injury and property damage with a combined single limited of at least One Million dollars (\$1,000,000) per occurrence for all owned, non-owned and hired automobiles. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

36.3. Workers' Compensation and Employers' Liability Insurance

The Contractor shall provide insurance to protect his agents, servants and employees, who are now or subsequently become, subject to the Workers' Compensation law, in conformance with the statutory limits of the State of Alabama, where applicable:

|                        |  |
|------------------------|--|
| Admitted in Alabama    | YES  |
| Employers' Liability   | Shall not be less than One Million Dollars (\$1,000,000) for each accident; not less than One Million Dollars (\$1,000,000) for each disease, with a policy limit of One Million Dollars (\$1,000,000) |
| All States Endorsement | Statutory  |
| Voluntary Compensation | Statutory  |

The Policy shall contain a waiver of subrogation in favor of the Birmingham-Jefferson County Transit Authority and its officers, directors, employees, volunteers, and agents, while acting in such capacity, and their successors and assignees, as they now or as they may hereafter be constituted, singly, jointly, or severally.

36.4. Public Liability and Property Damage

36.4.1. The Contractor shall have his/her Public Liability and Property Damage policy endorsed to include the Birmingham-Jefferson County Transit Authority as additionally insured thereunder.

36.4.2. The limits of liability of the Public Liability and Property Damage policy shall not be less than the following amounts:

- (a) \$100,000 for bodily injuries to or death of one person in any one occurrence.
- (b) \$500,000 for bodily injuries to or death of two or more persons in any one occurrence.
- (c) \$100,000 for damage to or destruction of property in any one occurrence.

36.4.3. The Contractor shall have attached to said liability policy a Contractual Liability Endorsement containing a specific reference to and designation of this contract.

36.5. Errors and Omissions Insurance

36.6. General Insurance Requirements

36.6.1. Acceptable Insurance – All policies will be issued by insurers acceptable to BJCTA. This insurance shall be issued by an insurance company or companies authorized to do business in the State of California with a *minimum* "Best's" rating of B+ and with minimum policyholder surplus of Twenty-Five Million Dollars (\$25,000,000) or a company acceptable to BJCTA, in its sole discretion. All policies shall be issued in a form satisfactory to the Executive Director of the BJCTA and shall be issued specifically as primary insurance.

36.6.2. Procure and Maintain Insurance – Contractor must, at its own expense, procure and maintain at all times during the performance of this Contract, all of the required policies specified above. The failure to procure or maintain the required insurance policies and/or an adequately funded self-insurance program acceptable to the BJCTA will constitute a material breach of the Contract.

36.6.3. Terms of Policies – All insurance is to remain in full force and effect until all work under the contract has been satisfactorily completed and accepted by the BJCTA. If the insurance is provided on a claims-made basis, it must remain in force for the entire term of the Contract and a minimum three (3) years thereafter.

36.6.4. Certificate of Insurance – Proposers are requested to provide a completed sample Certificate evidencing the coverage types and the minimum limits required under this Contract with their Bid. The BJCTA requires this information to facilitate completing Contract formalities in a timely manner if an award is made. The BJCTA may request additional information or clarification if necessary. Prior to commencing of work or entering onto the BJCTA's property, Contractor shall file a Certificate of Insurance with the BJCTA evidencing the foregoing coverages, including the following endorsements:

- a. The insurance company(ies) issuing such policy(ies) will provide at least thirty (30) days' notice to the BJCTA of cancellation or non-renewal.
- b. That the policy(ies) is primary insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim that contractor is liable for under this Section, up to and including the total limit liability, without right of contribution from any other insurance maintained or which may be maintained by the Birmingham-Jefferson County Transit Authority.
- c. Such insurance shall include as additional insureds the BJCTA, and its respective directors, officers, employees, and agents while acting in such capacity, and their successors or assignees, as they now or as they may hereafter be constituted, singly, jointly or severally.
- d. The policy must also contain either a Cross Liability endorsement or Severability of Interests Clause and stipulate that inclusion of the BJCTA as an additional insured will not in any way affect the BJCTA's rights as respects any claim, demand, suit or judgment made, brought or recovered against the Contractor. Said policy shall protect Contractor

and the BJCTA in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amounts or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

36.6.5. Consequence of Lapse – Should any required insurance not be procured or lapse during the term of this Contract, requests for payment originating after such lapse will not be processed until the BJCTA receives satisfactory evidence of reinstated coverage as required by the Contract. If insurance is not reinstated, the BJCTA, may, at its sole option, terminate this Contract effective on the date of such lapse of insurance.

36.6.6. Certificate of Insurance must be furnished by the Contractor for all required insurance and must be approved by BJCTA in writing before notice to proceed will be given.

### **37. Assignment of Contract**

This contract may not be assigned in whole or in part without the written consent of BJCTA.

### **38. 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. This 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.

### **39. Terms of Payment**

Payment of monthly invoices shall be net thirty (30) days. BJCTA is not liable for any costs incurred by the contractor prior to issuance of a contract.

#### **40. Warranties**

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

#### **41. Breach of Contract**

##### **DEFAULT:**

1. BJCTA may, subject to paragraphs 2 and 3 below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to
  - (a) deliver the contracted for services within the time specified in the contract or any written extension thereof;
  - (b) deliver services in conformity with the specifications of the contract, or
  - (c) perform any of the other provisions of the contract.
2. BJCTA's right to terminate this contract under paragraphs 1(b) and 1(c) above may be exercised if the Contractor does not cure such failure within ten (10) days (or more if authorized in writing by the BJCTA Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.
3. If BJCTA terminates the contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, services similar to those terminated and the Contractor will be liable to BJCTA for any excess costs for those services. However, the Contractor shall continue the work not terminated.
4. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargo, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the contractor.
5. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and Subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.
6. If the contract is terminated for default, BJCTA may require the Contractor to transfer title and deliver to BJCTA, as directed by the BJCTA Procurement Manager, any and all material parts that the Contractor has specifically produced

or acquired for the terminated portion of the contract. Upon direction of the Procurement Manager, the Contractor shall also protect and preserve property in its possession in which BJCTA has an interest.

7. The rights and remedies of BJCTA in this default clause are in addition to any other rights and remedies by law or under the contract.

#### **42. Excusable Delay/Force Majeure**

If the Contractor is delayed at any time during the progress of the Work by the neglect or failure of the BJCTA or by a cause as described below, then the time for completion and/or affected delivery date(s) shall be extended by the BJCTA subject to the following cumulative conditions:

- 42.1. The cause of the delay arises after the Notice of Award and neither was nor could have been anticipated by the Contractor by reasonable investigation before such award. Such cause may include force majeure events such as any event or circumstance beyond the reasonable control of the Contractor as determined by the BJCTA, including, but not limited to Acts of Nature, earthquake, flood and any other natural disaster; civil disturbance, strikes and labor disputes; fires and explosions; war and other hostilities, or embargo, provided Contractor notifies the BJCTA in writing of the event/cause of delay within five (5) calendar days from the beginning of any such event/delay;
- 42.2. The Contractor demonstrates that the completion of the Work and/or affected delivery(s) will be actually and necessarily delayed;
- 42.3. The Contractor has taken measures to avoid and/or mitigate the delay by the exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the cause of delay; and
- 42.4. The Contractor makes written request and provides other information to the BJCTA as described below in ***Instructions to Proposers 42.4.2.***

A delay meeting all the conditions of this section shall be deemed an excusable delay. Any concurrent delay which does not constitute an excusable delay shall not be the sole basis for denying a request hereunder.

- 42.4.1. None of the above shall relieve the Contractor of any liability for the payment of any liquidated damages owing from a failure to complete the any work or provide any services as described in this RFP. The Contractor is required to pay liquidated damages in the amount of \$100 per calendar day, per occurrence, for delays occurring prior to, or subsequent to the occurrence of an excusable delay.
- 42.4.2. The BJCTA reserves the right to rescind or shorten any extension previously granted, if subsequently the BJCTA determines that any information provided by the Contractor in support of a request for an extension of time was erroneous; provided however, that such information

or facts, if known, would have resulted in a denial of the request for an excusable delay. Notwithstanding the above, the BJCTA will not rescind or shorten any extension previously granted if the Contractor acted in reliance upon the granting of such extension and such extension was based on information which, although later found to have been erroneous, was submitted in good faith by the Contractor.

- 42.4.3. No extension or adjustment of time shall be granted unless: (1) written notice of the delay is filed with the BJCTA within five (5) calendar days after the commencement of the delay and; (2) a written application stating in reasonable detail the causes, the effect to date and the probable future effect on the performance of the Contractor under the Contract, and the portion or portions of the Work affected, is filed by the Contractor with the BJCTA within thirty (30) calendar days after the commencement of the delay. No such extension or adjustment shall be deemed a waiver of the rights of either party under this Contract. The BJCTA shall make its determination within thirty (30) calendar days after receipt of the application.



*It's time to ride!*

## **SECTION 2: 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.

### **1. 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.

### **2. 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.

### **3. Prohibition against Use of Federal Funds for Lobbying**

The Contractor shall not use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation pending before Congress.

### **4. Equal Employment Opportunity**

The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. All Contractors must insert this clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

### **5. Small, Minority and Women's Business Enterprise/Disadvantaged Business Enterprise**

#### **5.1. Policy.**

It is policy of the Department of Transportation that Disadvantaged Business Enterprises (DBE), as defined in 49 C.F.R. Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 C.F.R. Part 26 applies to this agreement.

## 5.2. DBE Obligation

The recipient and its contractors agree to ensure that disadvantaged business enterprises as defined in 49 C.F.R. Part 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 all recipients and contractors shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts assisted by the Department of Transportation.

In connection with the performance of this contract, the bidder will cooperate with BJCTA in meeting his/her commitments and goals with regard to the maximum utilization of small business enterprises owned and controlled by socially or economically disadvantaged individuals. BJCTA will take steps to assure that DBE's have the opportunity to bid on this project and that majority bidders will use their best efforts to ensure that DBE's have the maximum practicable opportunity to compete for subcontract work under this contract.

BJCTA's goal is 15% of the total bid amount to be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals (DBE's) as defined by Section 8(d) of the Small Business Act (15 U.S.C. Section 637 (d)). The bidder must demonstrate ability to attain each of these minimum amounts or a good faith effort to do so.

The bidder shall submit a "DBE Utilization Commitment" form showing each DBE to be utilized. If the bidder will be subcontracting less than the stated goal with DBEs then the bidder must complete a "Schedule of DBE Unavailability" form and demonstrate a good faith effort to achieve the goals. Any bidder responding as a small business firm owned and controlled by a socially or economically disadvantaged individual or individuals, must complete a copy of BJCTA's certification form. Copies of all of these forms are included as a part of the RFP.

Contractors and subcontractors shall note that failure to carry out the requirements set forth in 49 C.F. R. 26.43 (a) shall constitute a breach of contract and, may result in termination of the Agreement.

## 6. Title VI Civil Rights Act of 1964

All contractors must comply with all requirements of Title VI of the Civil Rights Act of 1964 (49 U.S.C. 2000d), the regulations of the Department of Transportation set forth at C.F.R. Part 21, and the Assurance by BJCTA pursuant thereto.

## 7. Interest of Members of or Delegates to Congress

No member of or delegates to the Congress of the United States shall be admitted to any share or part of this Project or to any benefit therefrom.

## **8. Non-construction Contracts**

The requirements of the clauses contained in 29 C.F.R. 5.5 (b) or paragraphs (10) through (13) of Section 112.a of Part II Terms and Conditions of the Federal Transit Administration Agreement, are applicable in any contract subject only to 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 employees working on the contract. Such records shall contain the 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 paragraph shall be made available by the contractor and/or subcontractor for inspection, copying, or transcription by authorized representatives of FTA, DOT, or the Department of Labor, and the contractor and/or subcontractor will permit such representatives to interview employees during working hours on the job.

## **9. 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.

## **10. 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.

## **11. 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.

## **12. 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

## **13. Clean Water Requirements**

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 BJCTA and understands and agrees that the BJCTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

#### **14. Recycled Products**

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation 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 procurements of the items designated in Subpart B of 40 CFR part 247.

#### **15. Energy Conservation**

BJCTA and its third party contractors shall recognize 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, 42 U.S.C. 6321 et seq.

#### **16. Patent Rights**

If any invention, improvement, or discovery of the Recipient or any of its third party contractors is conceived or first actually reduced to practice in the course of or under this Project, which invention, improvement, or discovery may be patentable under the laws of the United States of America or any foreign country, BJCTA shall immediately notify the Government (FTA) and provide a detailed report. The rights and responsibilities of BJCTA, third party contractors and the Government with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.

#### **17. Rights in Data**

- 17.1 The term "subject data" as used herein means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, costs analysis, and similar information incidental to contract administration.
  
- 17.2 All "subject data" first produced in the performance of this Agreement shall be the sole property of the Government. BJCTA agrees not to assert any rights at common law or equity and agrees not to establish any claim to statutory copyright in such data. Except for its own internal use, BJCTA shall neither publish nor reproduce such data in whole or in part, or in any manner or form, nor authorize others to do so, without the written consent of the Government until such time as the Government may have released

such data to the public; this restriction, however, does not apply to Agreements with academic institutions.

- 17.3 BJCTA agrees to grant and does hereby grant to the Government and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, non-exclusive, irrevocable license throughout the world:
- 17.4 To publish, translate, reproduce, deliver, perform, use and dispose of, in any manner, any and all data not first produced or composed in the performance of this agreement but which is incorporated in the work furnished under this Agreement; and
- 17.5 To authorize others to do so.
- 17.6 BJCTA shall indemnify, save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by BJCTA of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this Agreement.
- 17.7 Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.
- 17.8 Part II, subsections 115.c and 115.d of the "Federal Transit Administration Agreement, Terms and Conditions" are not applicable to material furnished to BJCTA by the Government and incorporated in the work furnished under the contract; provided that such incorporated material is identified by BJCTA at the time of delivery of such work.
- 17.9 In the event that the Project, which is the subject of this Agreement, is not completed, for any reason whatsoever, all data generated under that Project shall become subject data as defined in Part II, subsection 115.a of this Agreement and shall be delivered as the Government may direct.

### **18. No Government Obligation to Third Parties.**

- 18.1 The BJCTA and the 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 BJCTA, contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

- 18.2 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.

## **19. False or Fraudulent Statements.**

- 19.1 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 regulation, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its action 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, pertinent 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 1985 on the Contractor to the extent the Federal Government deems appropriate.
- 19.2 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.
- 19.3 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.

## **20. Termination**

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 to the Contractor.

## **21. Cargo Preference-Use of United States-Flag Vessels**

The Contractor agrees

- (1) to utilize 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, materials,

or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

- (2) to furnish within 30 days following the date of loading for shipments originating within the United States, or within 30 days following the date of loading for shipment 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 paragraph (1) above to the recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the division of National Cargo, Office of Market Development, Washington, D.C. 20590, marked with appropriate identification of the project.

## **22. Buy America**

All contractors must comply with Section 165 of the Surface Transportation Assistance Act of 1982, Public Law 97-424, 49 U.S.C. 1601 note (Buy America provision), and FTA to implement this statutory provision. Each party contract resulting from a solicitation issued on or after April 2, 1987, shall conform to the requirements of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Public Law 100-17, 337, April 2, 1987, and any implementing regulations issued thereunder.

## **23. Incorporation of Federal Transit Administration (FTA) Terms**

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

### **SECTION 3: SCOPE OF SERVICES**

The BJCTA is seeking proposals from qualified firms to provide legal services. This professional services contract will be for a term of five (5) years beginning March 1, 2010. The successful firm will provide legal services to the BJCTA to assist in the conduct of its operations as outlined below:

Duties of the General Counsel are as follows:

- 1) Advise the Board of Directors with respect to individual member and collective board duties and responsibilities.
- 2) Provide legal guidance to ensure BJCTA is in compliance with all applicable agreements, laws, orders, rules, ordinances and regulations.
- 3) Draft and review all major contracts prior to execution by BJCTA.
- 4) Represent BJCTA in litigation matters, when appropriate.
- 5) Provide assistance in the collection of major property damage claims.
- 6) Provide monthly updates to the Board of Directors and Executive Management on the status of all legal issues.
- 7) Advise Staff on all local, State and Federal issues that might impact BJCTA.
- 8) Attend all official Board and Committee Meetings.
- 9) Perform other duties of similar nature, as may be required.

*It's time to ride!*

A large, light gray graphic featuring the letters 'M' and 'A' in a stylized, rounded font. The 'M' is on the left and the 'A' is on the right. Two curved arrows originate from the top of the 'A' and point outwards to the left and right.

**SECTION IV  
REQUIRED FORMS AND CERTIFICATIONS**

*It's time to ride!*

## PROPOSER'S CHECKLIST

The following items must be included in your proposal in order to receive consideration. Federal and State Regulations mandate that these forms be filled out properly. Failure to complete all forms included in this package may result in your Bid being ruled non-responsive. Non-Responsive Bids will not be awarded the contract.

If a form does not apply to your business or bid, please mark the form "Not Applicable," or some other similar wording at your discretion. Please also sign and date the form. **No proposal shall be considered unless it contains all executed certifications.**

- Vendor Registration Form (to be submitted prior to proposal submission; advises BJCTA of Proposer's interest to bid) \_\_\_\_\_  
(Date Faxed or Emailed)

### PACKAGE NO. 1:

- Cover Letter
- Proposal Submission (including information described in Instructions to Proposers, Section 15.3)
- Proposal Form (Attachment A)
- Acknowledgement of Addenda (Attachment C)
- Affidavit of Non-Collusion (Attachment E)
- Lobbying Certification (Attachment F)
- Conflict of Interest Statement (Attachment G)
- DBE Letter of Intent (Attachment H)
- DBE Affidavit (Attachment I)
- DBE Unavailable Certification (Attachment J)

### PACKAGE NO. 2: PRICE PROPOSAL

- Pricing Schedule (Attachment A1)
- Form for Proposal Deviation (Attachment D)

**ATTACHMENT A  
PROPOSAL FORM**

**RFP 10-02 Legal Services**

TO: The Birmingham-Jefferson County Transit Authority  
Birmingham, Alabama

Pursuant to the Notice to Proposers, the undersigned Proposer herewith submits a Proposal on the Proposal Form(s) attached hereto and made a part hereof, and binds itself on award by the Birmingham-Jefferson County Transit Authority under this Proposal to execute a Contract in accordance with its Proposal, the Proposal Documents and the award. The attached RFP and Addenda, if any, are made a part of this Proposal and all provisions thereof are accepted, and all representations and warranties required thereby are hereby affirmed.

**THE PROPOSAL BELOW INCLUDES ANY ALL LABOR, MATERIALS, TAXES, PROFIT, ADMINISTRATIVE, OVERHEAD, INSURANCE AND SUBCONSULTANT COSTS NECESSARY FOR THE PERFORMANCE OF ALL THE SERVICES CALLED FOR UNDER THE FOLLOWING CONTRACT.**

|                        |                                |
|------------------------|--------------------------------|
| Offeror: _____<br>Name | _____                          |
|                        | Street Address                 |
|                        | City, State, Zip               |
|                        | Signature of Authorized Signer |
|                        | Title                          |
|                        | Phone                          |

## ATTACHMENT A1 PRICING SCHEDULE

The company listed on the attached cover sheet hereby submits its offer as indicated below in accordance with the terms of the Notice to Proposer, The Scope and General Conditions, FTA or federally required or recommended provisions, and all provisions contained in this solicitation, 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. Pricing includes all labor, materials, parts, equipment, tools, training, travel, overhead, profit, insurance, manuals, tests, certifications, applicable sales tax, delivery charges, telephone costs, copying costs and any other required costs and expenses in the fulfillment of this Scope of Services. All pricing is in United States dollars. Submitted below is my proposal as outlined in the Scope of Services/Statement of Work. I have carefully examined the solicitation and have informed myself thoroughly regarding any and all conditions and requirements of the solicitation. Any additional information that is requested in these documents is attached hereto.

| PERSONNEL CATEGORY | HOURLY RATE |
|--------------------|-------------|
| a.                 | \$          |
| b.                 | \$          |
| c.                 | \$          |
| d.                 | \$          |
| f.                 | \$          |
| g.                 | \$          |

**OPTIONAL:**

|                              | RATE |
|------------------------------|------|
| Monthly Retainer (Flat Fee)* | \$   |
| Annual Retainer (Flat Fee)*  | \$   |

*\*These rates must include all legal services required by the BJCTA. Provide rationalization for this rate with proposal.*

\_\_\_\_\_  
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: _____<br>Name |                                |
|                        | Street Address                 |
|                        | City, State, Zip               |
|                        | Signature of Authorized Signer |
|                        | Title                          |
|                        | Phone                          |



**ATTACHMENT E**  
**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 request for proposal, 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 F**  
**LOBBYING CERTIFICATION (29 CFR Part 93)**  
*(To be submitted with offers exceeding \$100,000)*

On behalf of \_\_\_\_\_ (company name), I certify, to the best of my 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 a Federal department or District, a Member of U.S. Congress in connection with the awarding of an 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 thereof.
2. That no payment or agreement to make payment has been made to any lobbying entity or individual for the purpose of influencing or attempting to influence an officer or employee of the Birmingham-Jefferson County Transit Authority, an officer or employee of any state or local agency/governmental entity, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action.
3. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an office or employee of the Birmingham-Jefferson County Transit Authority, a Member of U.S. 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 a 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, or as amended).
4. 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, USC § 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.

**ATTACHMENT F (continued)**  
**LOBBYING CERTIFICATION (29 CFR Part 93)**

**THE PROPOSER, \_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE PROPOSER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 USC §§ 3801 ET. SEQ. APPLIES TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.**

\_\_\_\_\_  
Firm

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Note:** *The filing of Standard Form LLL (Rev. 7-97, OMB 0348-0046) and full disclosure is required pursuant to 31 U.S.C. section 1352 for each instance described above, whether or not federal monies are used. The information requested through this certification is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance is placed by the Birmingham-Jefferson County Transit Authority when the transaction referred to in this RFP/IFB is made or entered into.*

## ATTACHMENT G 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 RFP. 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 RFP 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.

| <b>MEMBER ENTITY</b>   | <b>BOARD MEMBER</b>          |
|------------------------|------------------------------|
| City of Birmingham     | <i>Vacant</i>                |
| City of Birmingham     | Ronald Lyas                  |
| City of Bessemer       | Johnnye P. Lassiter          |
| City of Mountain Brook | Frank C. Galloway, Jr., Esq. |
| City of Birmingham     | Brian Hamilton               |
| City of Homewood       | Walter R. Jones              |
| City of Birmingham     | Guin Robinson                |
| City of Birmingham     | Doris Powell                 |
| Jefferson County       | Rev. Patrick Sellers         |

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

**GOOD FAITH EFFORT**  
***(For information only – NOT TO BE RETURNED)***

1. BJCTA has established a 15% overall goal to be expended with DBE's. Therefore a Proposer must, in order to be responsible and/or responsive, make a good faith effort to meet the goal. The Proposer can meet this requirement in either of two ways. First, the Proposer can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the Proposer can document adequate good faith efforts. This means that the Proposer must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part, which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
2. BJCTA will use the good faith efforts mechanism as required by 49 CFR Part 26. It is up to BJCTA to make a fair and reasonable judgment whether a Proposer that did not meet the goal made adequate good faith efforts. BJCTA will consider the quality, quantity, and intensity of the different kinds of efforts that the Proposer had made. The efforts employed by the Proposer should be those that one could reasonably expect a Proposer to take if the Proposer were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract requirements. As emphasized by the Alabama Department of Transportation, BJCTA's determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.
3. BJCTA will not require that a Proposer meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the Proposer makes an adequate good faith effort showing. The rule specifically prohibits BJCTA from ignoring bona fide good faith efforts.
4. The following is a list of types of actions that BJCTA will consider as part of the Proposer's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
  - a. Soliciting through all reasonable and available means (e.g. attendance at pre-proposal meetings, advertising and/or written notices) the interest of all certified DBE's who have the capability to perform the work of the contract. The Proposer must solicit this interest within sufficient time to allow the DBE's to respond to the solicitation. The Proposer must determine with certainty if the DBE's are interested by taking appropriate steps to follow up initial solicitations.
  - b. Selecting portions of the work to be performed by DBE's in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

- c. Providing interested DBE's with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- d. Negotiating in good faith with interested DBE's. It is the Proposer's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBE's that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBE's to perform the work.

A Proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBE's is not in itself sufficient reason for a Proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the Proposer of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBE's if the price difference is excessive or unreasonable.

- e. Not rejecting DBE's as being unqualified without sound reasons based on a thorough investigation of their capabilities.



**ATTACHMENT I**  
DBE AFFIDAVIT *(To be completed by DBE)*

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)

Affix Seal Here:

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

\*Please list other entity \_\_\_\_\_

**ATTACHMENT J**  
**DBE UNAVAILABLE CERTIFICATION**  
*(To be completed by Prime Contractor)*

I, \_\_\_\_\_, \_\_\_\_\_ of  
 (Name) (Title)

\_\_\_\_\_ certify that on \_\_\_\_\_ I contacted  
 (Company Name/Prime Contractor) (Date)

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

| Disadvantaged Contractor | Work Items Sought | Form of Proposal or Bid Sought<br>(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.

\_\_\_\_\_  
 (Signature of Disadvantaged Business Enterprise) (Date)  
 \_\_\_\_\_  
 (Title)

**VENDOR REGISTRATION FORM**  
*This form must be received prior to proposal submission*

RFP or IFB Number:   **RFP 10-02**  

RFP or IFB Description:   **Legal Services for the BJCTA**  

Company Name/Vendor: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Title: \_\_\_\_\_

Office Number: (     ) \_\_\_\_\_

Fax Number: (     ) \_\_\_\_\_

Cell Number: (     ) \_\_\_\_\_

Email Address: \_\_\_\_\_

Website: \_\_\_\_\_

Fax To:  
**BJCTA**  
Attn: Collina Washington, Manager of Procurement  
(205) 252-7633 Fax or  
Email: [cwashington@bjcta.org](mailto:cwashington@bjcta.org)  
(205) 521-0144 direct line

