Rio Metro Regional Transit District
New Mexico Rail Runner Express

REQUEST FOR PROPOSALS

Positive Train Control Implementation

RMRTD PROCUREMENT NO.: 2018-03

ISSUED: JANUARY 29, 2018

PRE-PROPOSAL CONFERENCE: FEBRUARY 16, 2018

PROPOSAL DUE DATE/TIME: MARCH 12, 2018, 2:00 PM (MST)
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1.0 INTRODUCTION

1.1 Purpose of this Request for Proposals

The Rio Metro Regional Transit District (RMRTD), in cooperation with the New Mexico Department of Transportation (NMDOT) invites individuals and firms (Offerors) to submit proposals for the development, procurement, installation, testing, safety certification, staff training and maintenance of a Positive Train Control (PTC) system on the New Mexico Rail Runner Express (NMRX) Territory and NMRX commuter rail system in accordance with the specifications contained in this Request for Proposal (RFP), the Rail Safety Improvement Act of 2008 (RSIA08), PTC Enforcement and Implementation Act of 2015 and Title 49, the United States Code of Federal Regulations (CFR) Part 236 subparts H, I; 49 CFR 229.135 and other CFR requirements relative to the implementation of PTC.

The purpose of this procurement is to select a qualified Offeror that will deliver a fully compliant PTC system commissioned by the Federal Railroad Administration (FRA). These services shall be delivered in accordance with the requirements put forth in this RFP, the Rail Safety Improvement Act of 2008 (RSIA08), PTC Enforcement and Implementation Act of 2015, and 49 CFR 236 subparts H, I; 49 CFR 229.135 and other CFR requirements relative to the implementation of PTC.

This procurement may be funded in part through federal funds. As such, applicable federal laws, regulations and guidelines shall be adhered to by the Offerors as part of the contract.

1.2 Scope of Work

Contractor shall design, construct, implement, test, provide personnel training and commission a fully compliant PTC system for the NMRX territory and the NMRX commuter rail service. Warranty and perform all warranty maintenance of the entire PTC system during the life of project implementation and testing, and for one year after system commissioning and final certification by the FRA. Maintain the PTC system for up to 4 years after project completion including an appropriate technology refresh during year 3. Prepare, submit, update and ensure approval of all required documentation and submittals necessary to implement PTC in compliance with FRA policy, the Rail Safety Improvement Act of 2008 (RSIA08), the Positive Train Control Enforcement and Implementation Act of 2015 and 49 CFR 236 subparts H, I, 49 CFR 229.135 and other CFR requirements relative to the implementation of Positive Train Control to result in PTC system commissioning and final certification by FRA. Train RMRTD personnel and NMRX O&M contract personnel on system operations and maintenance. A more detailed Scope of Work with cost categories and project cost templates is included in Appendix 7 attached to this RFP.

1.3 Scope of Procurement

The scope of the procurement shall encompass the defined scope of work and
any extensions or renewals thereof, as part of a multi-year Contract. A detailed Scope of Work with cost categories and project cost templates is included in Appendix 7 herein.

1.4  Procurement Manager

The RMRTD has designated a Procurement Manager who is responsible for the conduct of this procurement. The Procurement Manager is:

  Kim Monjaras  
  Procurement Officer  
  809 Copper N.W.  
  Albuquerque, NM 87102  
  Phone : 505-247-1750, Fax : 505-247-1753  
  E-mail: kmonjaras@mrcog-nm.gov

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other RMRTD employees do not have the authority to respond on behalf of the RMRTD.

1.5  Definitions

This section contains definitions and abbreviations that are used throughout this RFP.

"Close of Business" means 5:00 PM local time.

"Contract" means a written agreement for the procurement of items of tangible personal property or services.

"Contractor" means a successful Offeror who enters into a binding contract.

"Determination" means the written documentation of a decision by the Procurement Manager or Procurement Officer including findings of fact supporting a decision. A determination becomes part of the procurement file.

"Desirable" The terms "may", "can", "should", "preferably", or "prefers" identifies a desirable or discretionary item or factor (as opposed to "mandatory").

"Evaluation Committee" means a body appointed by the RMRTD Executive Director to evaluate Offerors proposals.

"Finalist" is defined as an Offeror whose offer complies with all the mandatory specifications of this RFP and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.
"Mandatory" The terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor (as opposed to "desirable"). Failure to comply with a mandatory item or factor will result in the rejection of the Offeror's proposal.

"MRCOG" means the Mid-Region Council of Governments of New Mexico.

"RMRTD" means the Rio Metro Regional Transit District

"Offeror" is any person, corporation, or partnership who submits a proposal.

"Procurement Manager" means the person or designee authorized by the Executive Director of RMRTD to manage and administer procurements and contracts.

"Procurement Officer" means the person or designee designated by the RMRTD to oversee all RMRTD procurement.

"Request for Proposals" or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

"Responsible Offeror" means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

"Responsive Offer" or "Responsive Proposal" means an offer or proposal that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.

1.6 Background Information

In 2005 the Mid-Region Council of Governments (MRCOG), in conjunction with the NMDOT, solicited proposals to provide Passenger Rail Services between Belen, New Mexico and Santa Fe, New Mexico. A contract was awarded and initial service began in 2006, with eventual full service between Belen and Santa Fe.

The Rio Metro Regional Transit District (RMRTD), a New Mexico Regional Transit District formed in 2005, replaced MRCOG as the responsible entity in providing and contracting for NMRX commuter rail service on the NMRX territory. NMRX commuter rail service operations, Maintenance of Way (MOW), Maintenance of Signals (MOS) and Maintenance of Equipment (MOE) is provided by RMRTD under a Memorandum of Agreement (MOA) between RMRTD and NMDOT. NMDOT owns the territory (right of way, track, signals and structures) and rolling stock. RMRTD contracts for all Operations
and Maintenance (O&M) activities through a third-party O&M provider. The NMDOT agreed to assign the lead role for PTC implementation to RMRTD in March 2016 by letter agreement signed by both parties in accordance with the MOA.

The NMRX rail corridor is a shared use facility supporting mixed-use traffic including commuter rail, freight transport and long-haul intercity passenger rail service. Separate interagency joint use agreements have been executed among and between NMDOT, the BNSF Railway Company, the National Railroad Passenger Corporation (Amtrak) and the Santa Fe Southern Railway for the purpose of delineating service rights, dispatching priorities and maintenance responsibilities of the participating entities.

Additional background information is included in Appendix 7 herein.

A copy of this solicitation and related appendices and exhibits may be found at the following websites:

http://www.riometro.org  
http://www.mrcog-nm.gov

2.0 PROCUREMENT CONDITIONS

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

2.1 Sequence of Events

The Procurement Manager will make every effort to adhere to the Procurement Schedules shown in this RFP. The time frames shown however may be subject to change at the discretion of the RMRTD.

Issue RFP – January 29, 2018  
Pre-Proposal Conference – February 16, 2018  
Proposals Due – March 12, 2018  
Evaluation Committee – March 14-15, 2018  
Orals (if Necessary) - March 21-22, 2018  
Best and Final Offers – March 26, 2018  
Rio Metro Board Approval – March 30, 2018  
Notice to Proceed (Phase 1) – April 13, 2018

2.2 Explanation of Events

2.2.1 Pre-Proposal Conference

A non-mandatory pre-proposal conference is scheduled for February 16, 2018, 3:00PM MST to be held at the RMRTD address noted herein. Potential Offerors are encouraged to submit written question in advance of the conference to the Procurement Manager
designated herein. The identity of the organization submitting the question(s) will not be revealed. All written questions received beforehand will be addressed at the conference. A public log will be kept of the names of potential Offerors that attend the pre-proposal conference. In conjunction with the pre-proposal conference, site visits of NMRX including hi-rail of the territory may be scheduled for February 17-18, 2018 upon request.

2.2.2 Deadline to Submit Additional Questions

Potential Offerors may submit additional written questions as to the intent or clarity of this solicitation to the Procurement Manager. All written questions must be emailed to the Procurement Manager at the address specified in this solicitation. The Procurement Manager will provide a written response only to written requests that are received at least twelve (12) working days prior to the submittal due date.

2.2.3 Reference Documents and Notification of Written Responses and Amendments

In order to receive the reference documents listed in Appendix 7 section (1) h, notification of written responses to written questions and solicitation amendments, if any, potential Offerors must complete and submit Appendix 1 Acknowledgement of RFP Receipt as contained herein. The Acknowledgement of RFP Receipt may be hand-delivered, electronically mailed, returned by facsimile, registered or certified mail to the Procurement Manager. Offerors must include an email address on the Acknowledgement of Receipt. The Acknowledgement of RFP Receipt must be received at least twelve (12) working days prior to the proposal submittal due date in order for a potential Offeror to be placed on the procurement distribution list.

2.2.4 Procurement Distribution List for Reference Document and Written Responses and Amendments

Only Offerors who submit the Acknowledgement of RFP Receipt as provided in Appendix 1 will be included on the procurement distribution list. Reference Documents listed in Appendix 7 section (1) h, written responses to written questions and any solicitation amendments will be emailed to all potential Offerors whose organization appears on the procurement distribution list (Reference Documents will be next day delivered to address indicated on the Acknowledgement of RFP Receipt).

2.2.5 Submission of Proposal

All proposals must be received by the Procurement Manager or designee no later than by the time on the date shown on the cover page of this Request for Proposals. Proposals received after this deadline will not be accepted.
The date and time will be recorded on each proposal as it is received. Proposals must be addressed and delivered to the Procurement Manager at the address listed herein. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the name of the procurement on the cover sheet. Proposals submitted by facsimile or electronic mail will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing Offerors prior to contract award.

2.2.6 Proposal Evaluation

An Evaluation Committee will evaluate proposals. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. The Offerors SHALL NOT initiate discussions. Potentially responsive proposals are proposals that are reasonably susceptible of being made responsive.

2.2.7 Selection of Finalists

The Procurement Manager will provide the list of finalists to the Executive Director. The Procurement Manager will notify the finalist Offerors of their selections. Only finalists will be invited to participate in the subsequent steps of the procurement. The final schedule for the oral presentations (if necessary) will be determined at this time.

2.2.8 Oral Presentation by Finalists (Optional)

Finalist Offerors may be required to present their proposals to the Evaluation Committee. The Procurement Manager will schedule the time for each Offeror presentation. All Offeror presentations will be held at the RMRTD address noted herein. Each presentation will be limited to thirty minutes with an additional forty-five minutes for questions and answers.

2.2.9 Best and Final Offers from Finalists

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers.
2.2.10 Contract Negotiations

The contract will be negotiated with the most advantageous Offeror(s). In the event that mutually agreeable terms cannot be reached within a reasonable time, defined herein as within fifteen (15) calendar days from the date that the Finalist Offeror is notified of the award, the RMRTD reserves the right to negotiate a contract with another Finalist Offeror without undertaking a new procurement process.

2.2.11 Contract Award

The contract shall be awarded to the Offeror or Offerors whose scores on the evaluation factors specified herein is sufficiently high and who negotiates a Contract of mutually agreeable terms with the RMRTD within a reasonable time as defined in this solicitation. Contracts are not valid until signed by the Executive Director of the RMRTD.

2.2.12 Protest of Award

An Offeror who has submitted a responsive Offer on this RFP may protest the award of a contract resulting from the RFP. The protest must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The protest period will begin on the day following the contract award and will end at close of business on the following fifteenth calendar day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the Procurement Officer. The protest must be delivered to the Procurement Officer.

Kim Monjaras
Procurement Officer
809 Copper N.W.
Albuquerque, NM 87102
Phone : 505-247-1750, Fax : 505-247-1753
E-mail: kmonjaras@mrcog-nm.gov

Protests received after the deadline will not be accepted.

2.3 General Requirements

This procurement will be conducted in accordance with the RMRTD procurement policy, the New Mexico Procurement Code and applicable Federal regulations.
The RMRTD requires that all Offerors agree to be bound by the "General Requirements" contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Manager.

2.3.1 Acceptance of Conditions Governing the Procurement

Offerors should indicate their acceptance of the "Conditions Governing the Procurement" section in the letter of transmittal.

Submission of a proposal constitutes acceptance of this solicitation's governing conditions and the evaluation factors contained herein.

2.3.2 Incurring Cost

Any cost incurred by the Offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

2.3.3 Prime Contractor Responsibility

Any Offeror awarded a contract as a result of this RFP will be solely responsible for fulfillment of the contract with RMRTD. The RMRTD will make contract payments to only the prime contractor.

2.3.4 Subcontractors

Intended use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime contractor shall be solely responsible for the entire performance of the contract whether or not subcontractors are identified in the proposal or used in the performance of the contract.

2.3.5 Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The RMRTD personnel will not merge, collate, or assemble proposal materials.

2.3.6 Offerors' Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative addressed to the
Procurement Manager.

2.3.7 Proposal Offer Firm

Responses to this RFP will be considered firm in that revisions, alteration or changes will not be considered, other than Best and Final Offers solicited by the Evaluation Committee, for a period of ninety (90) calendar days after the due date for receipt of proposals.

2.3.8 Disclosure of Proposal Contents

The proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

Confidential data is normally restricted to confidential financial information concerning the Offerors organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Procurement Officer shall examine the Offerors request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential or proprietary data.

2.3.9 No Obligation

This procurement in no manner obligates the RMRTD to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

2.3.10 Termination of RFP

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the RMRTD determines such action to be in the best
interest of the RMRTD.

2.3.11 Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Sending written notice to the contractor will affect such termination. The contractor will accept the RMRTD's decision as to whether sufficient appropriations and authorizations are available as final.

2.3.12 Governing Law

The laws of the state of New Mexico shall govern this procurement and any agreement with Offerors that may result.

2.3.13 Basis for Proposal

Only information supplied by the RMRTD in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

2.3.14 Contract Terms and Conditions

The contract between the RMRTD and a contractor will follow the format specified by the RMRTD and will include language similar to that put forth in Appendix 8 of this RFP. An Offeror may review the form of contract at the office of the Procurement Manager. However, the RMRTD reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP.

Should an Offeror object to any of the RMRTD's terms and conditions, as contained in this Section, that Offeror must propose specific alternative language. The RMRTD may or may not accept the alternative language. General references to the Offerors terms and conditions or attempts at substantive or complete substitutions are not acceptable to the RMRTD and will result in disqualification of the Offerors proposal. Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

2.3.15 Approval of Contractor Personnel

Personnel proposed in the Contractor's written proposal to the procuring agency are considered material to any work performed under this RFP and subsequent contract.

During the course of this procurement and after the contract has been signed, no
changes of personnel will be made by the Contractor without prior written consent of the Procurement Manager. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive immediately upon receiving assignments.

Approval of the replacement personnel shall not be unreasonably withheld.

The RMRTD shall retain the right to request the removal of any of the Contractor's personnel at any time.

2.3.16 Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the RMRTD and the selected Offeror and shall not be deemed an opportunity to amend the Offerors proposal.

2.3.17 Offeror Qualifications

The Procurement Manager may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Procurement Manager will reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.

2.3.18 Right to Waive Technical Irregularities

The Procurement Manager reserves the right to waive technical irregularities. The Procurement Manager also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the RMRTD.

2.3.19 Project Team Prohibited Activities

RMRTD employees or RMRTD committee or board members or volunteers are prohibited from participating directly or indirectly in the preparation of this procurement when the employee knows that the individual or any member of the individual's family has a financial interest in the business seeking or obtaining a contract.

2.3.20 Notice - Civil and Criminal Penalties

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes
civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

2.3.21 RMRTD Rights

The RMRTD reserves the right to accept all or a portion of the proposal of an Offeror selected for award.

2.3.22 Right to Publish

Throughout the duration of this procurement process and contract term, potential Offerors, and contractors must secure from the RMRTD written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Offerors proposal or termination of the contract.

2.3.23 Ownership of Proposals

All documents submitted in response to this RFP shall become the property of the RMRTD. However, any technical or user documentation submitted with the proposals of non-selected Offerors shall be returned upon written request after the expiration of the protest period: Offerors not selected for award of a contract that request return of materials within the time frame specified above may pick up the documentation at the RMRTD office within a fifteen-day period following the protest period.

2.3.24 Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence.

2.3.25 Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the RMRTD, the version maintained by the RMRTD shall govern.

2.3.26 Insurance

The contract between the RMRTD and contractor will include insurance requirements similar to those represented in Appendix 8 of this solicitation. The RMRTD, however, reserves the right to negotiate with a successful Offeror provisions in addition to those
2.4 Special Provisions

This procurement may be supported in part or in whole from time to time with federal, state and local public funds. The RMRTD requires that all Offerors agree to be bound by the Special Provisions contained in this RFP.

2.4.1 Prohibition Against Use of Federal Funds for Lobbying

Neither the Contractor nor any subcontractor may use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation pending before Congress. An executed Certification of Restrictions on Lobbying is required as provided in Appendix 3 of this solicitation.

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

2.4.2 Debarment and Suspension

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

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

The Contractor shall provide certification required by Department of Transportation regulations, Government-wide Debarment and Suspension, 49 C.F.R. Part 29 and otherwise comply with the requirements of those regulations. Certification is required as provided in Appendix 4 of this solicitation.

2.4.3 Campaign Contribution Disclosure

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978,13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective Contractor seeking to enter into a Contract with any state agency or local public body for
professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. Certification is required as provided in Appendix 5 of this solicitation.

2.4.4 Affirmative Action/Civil Rights Compliance

All proposals must include a certification for Affirmative Action/Civil Rights Compliance as provided in Appendix 6 of this solicitation.

2.4.5 No Government Obligations to Third Parties

1. The RMRTD and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the RMRTD, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

2.4.6 Incorporation of Federal Transit Administration (FTA) Terms

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

2.4.7 Program Fraud and False or Fraudulent Statements and Related Acts

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

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

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

2.4.8 Access to Records and Reports

1. The Contractor agrees to provide the RMRTD, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

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

3. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

2.4.9 Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between RMRTD and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.
2.4.10 Energy Conservation Requirement

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

2.4.11 Buy America

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

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

Certification is required as provided in Appendix 6.1 of this solicitation.

2.4.12 Breaches and Dispute Resolutions

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

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

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

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

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

2.4.13 Clean Air

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

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

2.4.14 Clean Water

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

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

2.4.15 Cargo Preference

The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment,
material, or commodities by ocean vessel.

2.4.16 Fly America

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2.4.17 Access Requirements for Individuals with Disabilities

The Contractor shall, at all times, be in compliance with all statutory requirements imposed by or pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990 at 49 CFR Parts 27, 37 and 38, as well as any additional requirements which may be placed into effect during this Contract.

2.4.18 Drug and Alcohol Testing

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of New Mexico or the RMRTD, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before January 1 and to submit the Management Information System (MIS) reports before March 1 to the RMRTD Drug and Alcohol Program Manager. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.
2.4.19 Recycled Products

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

2.4.20 Disadvantaged Business Enterprise

1. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. A list of certified Disadvantage Business Enterprises can be obtained from the New Mexico Department of Transportation, Office of Equal Employment Opportunity Programs’ website: https://nmdot.dbesystem.com. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency’s overall goal for DBE participation is 6.08%. A separate contract goal has not been established for this procurement.

2. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as RMRTD deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

3. The contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance. For this purpose, the Contractor will create and maintain a subcontractors list, as referenced in Appendix 6.2, consisting of information about all DBE and non-DBE firms that are a part of this contracting opportunity.

4. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work from the RMRTD. In addition, the contractor is required to return any retainage payments to its subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

5. The contractor must promptly notify RMRTD, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of RMRTD.

2.4.21 Civil Rights Compliance

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42
U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
   a. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
   b. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
   c. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

2.4.22 Text Messaging While Driving

In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Contractor is encouraged to comply with the terms of the following Special Provision.
A. Definitions. As used in this Special Provision:
(1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.
(2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

B. Safety. The Contractor is encouraged to:
(1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving-
   (a) Contractor owned or rented vehicles or Government-owned, leased or rented vehicles;
   (b) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or
   (c) Any vehicle, on or off duty, and using an employer supplied electronic device.
(2) Conduct workplace safety initiatives in a manner commensurate with the Contractor’s size, such as:
   (a) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
   (b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
(3) Include this Special Provision in its subcontracts with its subcontractors and third party contracts and also encourage its subcontractors, lessees, and third party contractors to comply with the terms of this Special Provision, and include this Special Condition in each subcontract, lease, and third party contract at each tier financed with Federal assistance provided by the Federal government.

2.4.23 Davis-Bacon and Copeland Anti-Kickback Acts

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any
contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside, in a separate account, assets for the meeting of obligations under the plan or program.

(v) (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - The RMRTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [insert name of grantee] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records –

   (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or
trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the RMRTD for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure
to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees –

(i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the
journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements –

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts –

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment –

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements –

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards –

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the
contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility –
   (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
   (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

2.4.24 Contract Work Hours and Safety Standards Act

1. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for unpaid wages and liquidated damages - The RMRTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Davis-Bacon Wage Rate Determination is included in Appendix 6.3 attached hereto.
2.4.25 Bonding Requirements

A. Performance and Payment Bonding Requirements

The successful bidder will be required to furnish RMRTD with Performance Bonds in the amount equal to 100% of the bid price for the Positive Train Control System development, procurement, installation, testing, safety certification and implementation, including all warranty services as specified therein (Phase 1 and Phase 2) within five (5) calendar days from the date of receiving RMRTD’s Notice of Intent to Award Contract to bidder.

B. Performance and Payment Bonding Requirements (Warranty of the Work and Maintenance Bonds)

(1) The Contractor warrants to the RMRTD that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by RMRTD, free from faults and defects and in conformance with the Contract documents. All work not so conforming to these standards shall be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

(2) The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the RMRTD.

2.4.26 Seismic Safety

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

2.4.27 Termination

1. Termination for Convenience - The RMRTD 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 RMRTD to be paid the Contractor. If the Contractor has any property in its possession belonging to the RMRTD, the Contractor will account for the same, and dispose of it in the manner the RMRTD directs.
2. Termination for Default - If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the RMRTD may terminate this contract for default. The RMRTD shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If it is later determined by the RMRTD that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the RMRTD, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

3. Opportunity to Cure The RMRTD in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to RMRTD's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from RMRTD setting forth the nature of said breach or default, RMRTD shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude RMRTD from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

2.4.28 Privacy Act

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

3.1 Number of Responses

Offerors shall submit only one proposal for each Contract listed in this RFP.

3.2 Number of Copies

Offerors shall deliver: one (1) original, four (4) identical copies and one (1) digital copy: one complete copy and one electronic copy without "Proprietary" information in PDF format to the location specified herein on or before the closing date and time for receipt of proposals.

3.3 Proposal Format

All proposals must be typewritten on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. Proposals shall be no longer than 45 pages (single sided) excluding tabs and front and back covers.

Pages shall be single spaced with a font of no less than number 10.

3.3.1 Proposal Organization

The proposal must be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated.

Tab 1. Proposal Form: Appendix 2
Tab 2. Project Understanding and Technical Approach
Tab 3. Quality Assurance/Quality Control Plan
Tab 4. Qualifications and Resources
Tab 5. Experience Providing Equivalent Products/Services and Client References
Tab 6. Schedule
Tab 7. Project Cost (Price sheet – sealed separately)
Tab 8. Forms and Certifications
   Appendix 3: Certification Restriction on Lobbying
   Appendix 4: Certification Debarment Suspension
   Appendix 5: Campaign Contribution Disclosure Form
   Appendix 6: Certification Affirmative Action/Equal Employment Opportunity
   Appendix 6.1: Certification of Buy America
   Appendix 6.2: Subcontractors List (DBE)

Within each section of the proposal, Offerors shall address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal.
Forms and certifications included in Tab 8 are required to ensure that an Offeror has completed a responsive proposal. The completed certifications will not count toward the page limits for this solicitation.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

3.3.2 Proposal Form

Each proposal must contain - as the first item in the organized and indexed sequence – the fully executed Proposal Form as contained in Appendix 2. Failure to provide the form with all the information indicated to be inserted will result in rejection of the proposal as non-responsive.

4.0 SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each mandatory specification. The narratives along with required supporting materials will be evaluated and awarded points accordingly.

4.1 Project Understanding and Technical Approach

Offerors shall provide a thorough narrative of their project understanding and technical approach to the proposed work. The description must include a detailed overview of the proposed approach and specialized problem-solving skills that may be required in order to implement and commission PTC on the NMRX territory and commuter rail system as outlined in this RFP and for each of the phases identified in Appendix 7, Scope of Work. Offerors should discuss sole source needs & justifications and anticipated “Buy America” issues & solutions.

4.2 Quality Assurance/Quality Control Plan

Offerors shall provide a description of quality control/quality assurance measures, standards, and processes in the project methodology that will ensure high-quality project deliverables that meet or exceed the specifications outlined in this RFP and for each of the areas identified in Appendix 7, Scope of Work.

4.3 Qualifications and Resources

Offerors shall provide a general description of individual qualifications and associated administrative and technical resources that will be applied to this work effort. This description also shall include specific experiences and relevant education and licensure for each of the key individuals named in the proposal. Additionally, offerors shall list the railroads and territories that key individuals have worked on and their specific areas of contributions as they relate to all segments of PTC implementation and for each of the areas identified in Appendix 7, Scope of Work.
4.4 Experience Providing Equivalent Products/Services and Client References

Offerors shall provide a narrative to include the previous experience of the company. This narrative must demonstrate directly-related involvement of the company in all segments of PTC implementation and for each of the tasks identified in Appendix 7, Scope of Work.

4.5 Schedule

Offerors shall provide a detailed project schedule to implement and commission PTC on the NMRX territory and commuter rail system. Offeror shall use Critical Path Method (CPM) techniques to prepare the schedule. The schedule shall identify all Critical Path tasks and all necessary tasks (technical, administrative, implementation), task durations, task relationships to each other, task start and end dates and identified float for non-critical path tasks. The schedule shall be submitted in Gannt Chart form with sufficient narrative to demonstrate a clear understanding and ability to deliver the project. RMRTD critical dates are included in Appendix 7, Scope of Work.

4.6 Project Cost

Offerors shall provide project costs in accordance with the cost categories and project cost templates included in Appendix 7, Scope of Work, attached to this RFP. Cost shall be evaluated by mathematical formula and applied consistently to all responsive proposals.

5.0 EVALUATION

5.1 Evaluation Point Summary

The following is a summary of evaluation factors with point value assigned to each. These factors, along with the general requirements and special provisions, will be used in the evaluation of Offeror proposals.

<table>
<thead>
<tr>
<th>Evaluation Factor</th>
<th>Points</th>
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<tbody>
<tr>
<td>1. Project Understanding and Technical Approach</td>
<td>30</td>
</tr>
<tr>
<td>2. Quality Assurance/Quality Control Plan</td>
<td>20</td>
</tr>
<tr>
<td>3. Qualifications and Resources</td>
<td>20</td>
</tr>
<tr>
<td>4. Experience Providing Equivalent Products/Services and Client References</td>
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<tr>
<td>5. Schedule</td>
<td>30</td>
</tr>
<tr>
<td>6. Project Cost</td>
<td>30</td>
</tr>
</tbody>
</table>

SUBTOTAL 150

5. Oral Interview (If Necessary) 30
6. Best & Final Offers (If Necessary) 20

TOTAL AVAILABLE 200
5.2 Evaluation Process

The evaluation process will follow the steps listed below:

5.2.1 Proposal Compliance

All Offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.

5.2.2 Contacting Offerors

The Procurement Manager may contact the Offeror for clarification of the response as specified herein.

5.2.3 Finalist Selection

Responsive proposals will be evaluated on the factors detailed in this solicitation that have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors based upon the proposals submitted. The Evaluation Committee may then make a recommendation to RMRTD Executive Director for award or solicit Oral Interviews from the finalists. Finalist Offerors may then be asked to participate in Oral Interviews. At the conclusion of the Oral Interviews additional points may be awarded in accordance with the evaluation process specified herein. The Evaluation Committee may then make a recommendation to RMRTD Executive Director for award or solicit Best and Final Offers from any or all of the finalists. If Best and Final Offers are solicited, the Evaluation Committee will award additional points as specified herein and then make a final recommendation for award to the RMRTD Executive Director. A serious deficiency in the response to any one factor, however, may be grounds for rejection regardless of overall score.
APPENDIX 1
ACKNOWLEDGEMENT OF RFP FORM
RFP#: 2018-03

In acknowledging the receipt of this Request for Bid, the undersigned agrees that a complete solicitation has been received, beginning with the title page and table of contents, and ending with Appendix 8, and including the Microsoft Excel file titled RFP2018_03 Positive Train Control Cost Forms RMRTD. Additionally, in executing this form, the undersigned agrees and acknowledges that the information provided in the Reference Documents listed in Appendix 7 Section 1(h) are proprietary and confidential safety sensitive documents. The undersigned agrees to receive and is permitted to use the Reference Documents in preparing a response this Request for Proposal. The undersigned agrees to protect the information as proprietary and confidential. Additionally, the undersigned agrees to return all the information including all paper copies and shall delete any electronic copies at the conclusion of the proposal process.

The acknowledgement of receipt should be signed and returned to the Procurement Officer. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a bid for the procurement checked below at least ten (10) working days prior to the bid due date, will receive copies of the Reference Documents listed in Appendix 7 Section 1(h), all potential Offeror written questions and the RMRTD's written responses to those questions as well as solicitation amendments, if any, that are issued.

* Formal signature required - e-mail transmittal with scanned signature is acceptable.

This name and address will be used for all correspondence related to the Request for Bids.

Appendix 7 Reference Documents will be shipped next day parcel upon receipt of form.

Firm □ does □ does not (check one) intend to respond to this Request for Bids

Return to: Kim Monjaras
Procurement Officer
809 Copper Ave. N.W., Albuquerque, NM 87102
Phone: 505-247-1750; Fax: 505-247-1753
E-mail: kmonjaras@mrcog-nm.gov
1. I (We) am submitting on the procurement titled: ________________________
2. I (We) accept the Conditions Governing the Procurement stated in Section 2.3.1.
3. I (We) acknowledge receipt of any and all amendments to this RFP, Nos. ______ to ______.

Signature of Officer _________________________________ Date _______________
CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

To be submitted with each bid or offer exceeding $100,000.

I, ___________________________ hereby certify on (name and title of official)

behalf of ________________ (name of Contractor) 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 and officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontract, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

For purposes of this Certification, this Agreement shall be considered a federal contract. This certification is a material representation of fact upon which reliance is 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 section 1352, title 31, U.S. Code. 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.

Executed this _______ day of _________, 20___.

By ___________________________
(Signature of authorized official)

__________________________
(Title of authorized official)
APPENDIX 4
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS
RFP#: 2018-03
To be submitted with each bid or offer exceeding $25,000.

The Contractor, certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

(4) Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this proposal.

THE CONTRACTOR, _____________________________________, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. sub- section 3801 ET SEQ. ARE APPLICABLE THERETO.

Executed this_________ day of_______________, 20___.

By
___________________________
(Signature of authorized official)

___________________________
(Title of authorized official)
Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a bid or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars ($250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

The following definitions apply:

“Applicable public official” means any person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed bid or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive bid.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to statewide or local office. “Campaign
“Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for bids and ending with the award of the contract or the cancellation of the request for bids.

“Prospective contractor” means a person or business that is subject to the competitive sealed bid process set forth in the Procurement Code or is not required to submit a competitive sealed bid because that person or business qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or Officer of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Official(s) if any: __________________________
RMRTD Name(s) of Applicable Official(s):

<table>
<thead>
<tr>
<th>Larry</th>
<th>Abraham</th>
<th>Charles</th>
<th>Eaton</th>
<th>David</th>
<th>Heil</th>
<th>Klarissa</th>
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**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

Contribution Made By: __________________________
Relation to Prospective Contractor: __________________________
Date Contribution(s) Made: __________________________
Amount(s) of Contribution(s) __________________________
Nature of Contribution(s) __________________________
Purpose of Contribution(s) __________________________

_________________________ _______________  __________________
Signature    Title (Position)               Date

-OR-

**NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS ($250) WERE MADE TO AN APPLICABLE PUBLIC OFFICIAL BY ME, A FAMILY MEMBER OR REPRESENTATIVE:**

_________________________ _______________  __________________
Signature    Title (Position)               Date
APPENDIX 6
CERTIFICATION REGARDING
AFFIRMATIVE ACTION/EQUAL EMPLOYMENT OPPORTUNITY
AND NONDISCRIMINATION
AHRO Form CC 2
RFP#: 2018-03

The Bidder hereby acknowledges and agrees to abide by the Special Provisions for Affirmative Action/Equal Employment Opportunity and Nondiscrimination and all other provisions, regulations and/or requirements of the Owner for Affirmative Action/Equal Employment Opportunity and Nondiscrimination.

The Bidder has participated with any agency in a previous contract or subcontract subject to any Equal Employment Opportunity and Nondiscrimination in Employment requirements. Yes ( ) No ( )

Compliance reports were required to be filed in connection with such contract or subcontract. Yes ( ) No ( )

The Bidder has filed all compliance reports due under applicable instructions. If this does not apply, leave blank. Yes ( ) No ( )

Company Name of Bidder ____________________________________________________________

Title __________________________ Date ____________________________

Address __________________________________________________________________________

City/State/Zip Code __________________________________________________________________

Telephone Number __________________________ Fax No. ____________________________

Signature __________________________________________________________________________

Printed Name __________________________ Email Address ____________________________
Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The Contractor, _________________________________, certifies to the best of its knowledge and belief, that it and its principals will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Executed this _______ day of ___________________________, 20__.

By __________________________________
(signature of authorized official)
__________________________________
(title of authorized official)

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The Contractor, _________________________________, certifies to the best of its knowledge and belief, that it and its principals cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Executed this _______ day of ___________________________, 20__.

By __________________________________
(Signature of authorized official)
__________________________________
(Title of authorized official)
## APPENDIX 6.2
### SUBCONTRACTOR LIST
RFP#: 2018-03

<table>
<thead>
<tr>
<th>Business Name</th>
<th>Contact Name</th>
<th>Address</th>
<th>Phone #</th>
<th>Description of Work</th>
<th>DBE Y/N</th>
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</table>
APPENDIX 6.3
Davis-Bacon Wage Rate Determination
RFP#: 2018-03

General Decision Number: NM180047 01/05/2018 NM47 Superseded General Decision Number: NM20170047 State: New Mexico
Construction Type: Highway

Counties: Bernalillo, Sandoval, Torrance and Valencia Counties in New Mexico.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number Publication Date 0 01/05/2018

* SUNM2011-001 08/25/2011
Rates Fringes
CARPENTER (Including Form Work)
Bernalillo..........................................................$ 13.73 0.44
Sandoval, Torrance, and Valencia....................$ 13.70 0.44

CEMENT MASON/CONCRETE FINISHER
Bernalillo...........................................................$ 15.35 0.26
Sandoval, Torrance, and Valencia....................$ 15.58 0.26

ELECTRICIAN (Including Traffic Signalization & Installation) .........................$ 25.91 9.45

44
<table>
<thead>
<tr>
<th>Position</th>
<th>Rate</th>
<th>Hours</th>
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<tr>
<td><strong>IRONWORKER, REINFORCING</strong></td>
<td>$22.61</td>
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<tr>
<td>LABORER (Common or General)</td>
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<tr>
<td>Bernalillo, Torrance, and Valencia</td>
<td>$11.82</td>
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<tr>
<td>Sandoval</td>
<td>$11.85</td>
<td>0.35</td>
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<tr>
<td>TRAFFIC CONTROL (Includes Flagger and Cone Setter)</td>
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<td><strong>POWER EQUIPMENT OPERATOR:</strong></td>
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<tr>
<td>Backhoe</td>
<td>$20.92</td>
<td>3.62</td>
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<tr>
<td>Bobcat/Skid Loader</td>
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<tr>
<td>Bernalillo</td>
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<td>0.26</td>
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<tr>
<td>Sandoval, Torrance, Valencia</td>
<td>$14.91</td>
<td>0.26</td>
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<tr>
<td>Broom Sweeper</td>
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<td>1.57</td>
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<td>Excavator/Trackhoe</td>
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<tr>
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<tr>
<td>Bernalillo</td>
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<td>Water Truck</td>
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</table>

**WELDERS** - Receive rate prescribed for craft performing operation to which welding is incidental.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting
from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four-letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing
the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

----------------------------------------------------------------

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W. Washington, DC 20210
2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W. Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W. Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

==== END OF GENERAL DECISION
(1) **Background**

The New Mexico Rail Runner Express (NMRX) is owned by the State of New Mexico through the New Mexico Department of Transportation (NMDOT). NMDOT contracts with the Rio Metro Regional Transit District (RMRTD) to oversee the day-to-day operations of the railroad, to include dispatching, track and signal maintenance, maintenance of equipment and the operation of the Rail Runner commuter service. RMRTD is the legal entity responsible for ensuring FRA safety regulatory compliance including PTC implementation. RMRTD in turn contracts with a third party to operate the commuter rail service and maintain the infrastructure.

NMRX is primarily single main track with passing sidings spaced approximately every ten to fifteen miles. There is an approximately five-mile segment of two main tracks through the City of Albuquerque. The state-owned territory includes three subdivisions. The NMRX system consists of two subdivisions.
a. Albuquerque Subdivision

The segment between Belen (MP 932.2) and Isleta (MP 915) is operated under Centralized Traffic Control (CTC) with maximum passenger speed of 79 mph and maximum freight speed of 60 mph on Class 4 track. BNSF and NMRX operate on this segment.

The segment between Isleta (MP 915) and CP Abajo (MP 903.8) is operated under CTC at a maximum passenger speed of 79 mph and maximum freight speed of 70 mph (under certain train-handling conditions) on Class 5 track. BNSF, NMRX and Amtrak operate on this segment.

The segment between CP Abajo (MP 903.8) and MP 901.1 is Two Main Tracks and operated under Restricted Limits with an Automatic Block System (ABS) at a maximum speed of 20 mph (both passenger and freight) on Class 2 track. This segment is also equipped with Automatic Train Stop (ATS) from Albuquerque (MP 902.4) to MP 901.1. BNSF, NMRX and Amtrak operate on this segment.

The segment between MP 901.1 to CP Hahn (MP 899.1) is also Two Main Tracks and operated under Track Warrant Control (TWC) with ABS and ATS at a maximum speed of 50 mph (both passenger and freight). BNSF, NMRX and Amtrak operate on this segment.

The segment between CP Hahn (MP 899.1) and CP Madrid (MP 858) is operated under CTC and ATS at a maximum track speed of 79 mph for passenger and 60 mph for freight on Class 4 track. BNSF, NMRX and Amtrak operate on this segment.

The segment between CP Madrid and West Lamy (MP 836.26) is a Non-Commuter segment and is operated under TWC with ABS and is also equipped with ATS at a maximum passenger speed of 79 mph and 60 mph for freight on Class 4 track. This segment currently carries two regular Amtrak Southwest Chief Trains daily.

The segment between West Lamy (MP 836.26) and MP 834 is operated under CTC (but with manual Spring Switches – Dispatch has control of signals but not switches), and is dispatched by BNSF. Only West Lamy is equipped with ATS. This segment currently carries two regular Amtrak Southwest Chief Trains daily.

b. Santa Fe Subdivision

The segment between CP Madrid (MP 858, 0) and CP Hondo (MP 17.9) is operated under CTC at a maximum speed of 79 mph for passenger on Class 4 track. Only NMRX operates on this segment.
The segment between CP Hondo (MP 17.9) and CP Alarid (MP 21.8) is operated under CTC at a maximum speed of 35 mph for passenger and freight on Class 4 track. NMRX and SFS operate on this segment (SFS has not operated service in the last several years).

The segment between CP Alarid (MP 21.8) and Santa Fe (MP 22.3) is operated under Restricted Limits at a maximum of 15 mph for both passenger and freight. Within this segment are main tracks and a yard lead. The NMRX PTCIP has designated this a non-mainline track segment and received an MTEA from FRA; PTC installation is not required on this segment. NMRX and SFS operate on this segment (SFS has not operated service in the last several years).

c. Eldorado Subdivision

The Eldorado Subdivision is owned by NMDOT, but is not part of the NMRX territory, is not subject to PTC implementation and does not carry any regularly scheduled passenger service.

d. Rolling Stock

The Rail Runner commuter service fleet consists of nine MP36PH-3C diesel-electric locomotives built by Motive Power International, nine bi-level cab cars and 13 bi-level coaches built by Bombardier. Train consists range from one locomotive paired with one coach and one cab car to two locomotives paired with four coaches and one cab car. Locomotives are always on the south end of the train, and cab cars may serve as intermediate coaches on longer trains. Coaches have 151 seats, and cab cars have 131 seats. The rolling stock was purchased in 2005-2006 (five locomotives, three coaches, and six cab cars) and 2007-2008 (four locomotives, ten coaches, and three cab cars).

e. Dispatch

RMRTD provides 24/7 dispatch for the NMRX territory (the segment from West Lamy to MP 834 is dispatched by BNSF from Fort Worth) out of its Albuquerque facility. The NMRX Dispatch system is WABTEC Train Management Dispatch System (TMDS). The current system includes both onsite and hosted servers. RMRTD is contemplating moving to a hosted dispatch service and anticipates co-location of a hosted back office for PTC.

f. Signal and Voice Communication - Territory to Dispatch

NMRX signal / control point data communications with dispatch is facilitated by a 900Mhz backhaul system running through 3 towers. The towers have T1 connections to dispatch with wireless cellular for redundancy. In addition to data, the system also supports voice communication on the territory and dispatch. One
additional tower is used to support voice communication and it uses point to point microwave to one of the T1 connected towers as primary communication with wireless cellular backup.

g. NMRX On Board Wi-Fi

Details on the existing Wi-Max system are provide in the “RailRunner Wireless System Systems Engineering Report” contained in the Reference Documents listed in Section 1(h) herein. The system uses Alvarion Breezmax hardware on 24 tower locations throughout the NMRX territory to provide public facing Wi-Fi on the rolling stock and to provide two Virtual Private Network (VPN) data paths for NMRX operational data. The towers are wirelessly interconnected to form a backhaul network with T1 connectivity from both the southern and northern towers on the territory. Additionally, there is a point to point primary wireless connection from the Downtown Albuquerque Tower to the RMRTD headquarters building located at 809 Copper Avenue NW. The primary Point of Presence (POP) for the network resides at the headquarters. In addition to the backhaul network, each tower hosts two wireless radios that provide territory coverage to the track. RMRTD believes the tower locations are more than sufficient to support the 220Mhz PTC Communication Network. RMRTD is including a potential bid addition in the RFP to completely refresh the existing, currently unsupported, Wi-Fi System from Alvarion Wi-Max to a non-proprietary 4G LTE network. This refresh will provide passenger facing Wi-Fi connectivity on board and at stations as well as VPN connectivity for Operations and a VPN redundant path for PTC communications to the rolling stock.

Additional background information and NMRX PTC implementation specific information is contained in the NMRX PTC Implementation Plan (PTCIP) Version 6 dated January 26, 2016 included in the reference documents identified in Section 1(h) herein. Further information necessary for responding to this RFP (including the rescinding of previous MTEA approval detailed in Section 13.2 of the PTCIP, the PTCDP and other FRA correspondence) is available at www.Regulations.gov under Docket ID: FRA-2010-0045 at the following link:

https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=N%2BFR%2BPR%2BOM&D=FRA-2010-0045

h. Reference Documents

  a. NMRX PTC Implementation Plan (Version 6)
  b. NMRX Time Table (version 5)
  c. NMRX Track Charts (9/1/2017)
  d. NMRX Signal Plans
Reference Documents will be presented to offerors that complete the “Acknowledgement of RFP” form contained in Appendix 1 of this solicitation.

(2) Overview of Scope of Work

RMRTD is looking for an offeror that can provide all necessary work resulting in the delivery of a turnkey PTC system capable of being in revenue demonstration service by October 31, 2020, and approved for revenue service as soon as possible thereafter. The successful offeror will design, construct, implement, test, train RMRTD personnel and train NMRX O&M contractor personnel on system operations & maintenance, and commission a fully compliant PTC system for the NMRX territory and the NMRX commuter rail service. Additionally, the offeror will warranty and perform all warranty maintenance of the entire PTC system during the life of project implementation and testing, and for one year after system commissioning and final certification by the FRA. The successful offeror will also maintain the PTC system for up to 4 years after project completion including a technology refresh during year 3. Finally, the offeror will prepare, submit, update and ensure approval of all required documentation and submittals necessary to implement PTC in compliance with FRA policy, the Rail Safety Improvement Act of 2008 (RSIA08), the Positive Train Control Enforcement and Implementation Act of 2015 and 49 CFR 236 subparts H, I, 49 CFR 229.135 and other CFR requirements relative to the implementation of Positive Train Control to result in PTC system commissioning and final certification by FRA.

The current NMRX PTCIP and PTCDP detail the delivery of an I-ETMS system. RMRTD is open to technologies other than I-ETMS so long as the systems have received type approval from FRA. However, RMRTD has concerns relative to project delivery, interoperability and project financing as follows:

- The Purchase Agreement/Joint Use Agreement between NMDOT and BNSF stipulates that the NMDOT must pursue installation of I-ETMS. The agreement also identifies PTC costs as an NMDOT responsibility.
- RMRTD received $3.6M in an FTA PTC Grant opportunity it applied for in 2017; The Grant Application detailed the delivery of an I-ETMS system.
• Schedule Impacts due to technology changes and FRA approval of completely new PTCIP and PTCDP documents

• Interoperability with tenant railroads BNSF and Amtrak, and potential financial liability based on NMDOT/BNSF Joint Use Agreement

A copy of the Joint Use Agreement and the 2017 FTA PTC Grant Application is included in the Reference Documents listed in Section 1(h) herein.

Offerors that propose PTC technologies other than I-ETMS must provide detailed information on interoperability, including potential risks, delays and costs associated with technology differences and the equipping of tenant railroads rolling stock given the stipulations in the NMDOT/BNSF purchase/joint use agreement. Additionally, offerors will need to account for FRA approvals of new PTCIP and PTCDP documents in their project schedule. Finally, offerors will need to demonstrate how the project will be able to utilize the 2017 FTA PTC Grant funds in project delivery.

RMRTD is seeking proposals to complete all tasks and work necessary to provide a fully FRA compliant PTC system. Any Contract resulting from this request will be awarded as a single Contract and executed in three phases (based on available funding). RMRTD plans to issue a separate Notice to Proceed (NTP) for phase 1, phase 2 and, if required by RMRTD, Phase 3. Phase 1 includes all initial surveys, studies, mapping, and implementation planning/design necessary to implement PTC. Phase 1 will also include updates to the NMRX PTCIP and PTCDP per the Request for Amendment (RFA) procedural requirements of 49 CFR 236.1009. RMRTD believes planning and theoretical work is important, but believes a good balance between theory/planning/design and acceptable risk is healthy. Offerors should propose a Phase 1 level of effort that they believe provides for a balance between theory and acceptable level of risk. Offerors should identify Phase 1 risks and their potential impacts on Phase 2 Implementation; RMRTD recognizes that risk may translate to a higher contingency rate for Phase 2 work and encourages offerors to include discussion in this area. Phase 2 includes all work necessary to install, test, implement and commission a fully compliant PTC system (including submittal of a PTC Safety Plan and all necessary PTC training for NMRX related personnel). Phase 3 includes 4 years maintenance of the entire PTC system.

In parallel to implementation of PTC, RMRTD is working with FRA to prepare a “Risk Mitigation Plan” prepared and signed on to by all railroads operating on the NMRX territory to allow continued operation after the PTC deadline of December 31, 2018. FRA has indicated that any such plan could be approved by FRA on a temporary basis providing that Risk Analysis and Risk Mitigation provides for a satisfactory level of safety. The Risk Mitigation Plan must be accompanied by an updated PTCIP with implementation milestone dates acceptable to the FRA. Therefore, RMRTD is requesting offerors include schedules with key milestones
that result in FRA approval of an updated PTCIP as soon as practicable and include NMRX being in revenue demonstration service by October 31, 2020. RMRTD anticipates needing to implement risk mitigation measures included in its “Risk Mitigation Plan.” This RFP contemplates implementing risk mitigation measures by the end of calendar year 2018 and asks offerors to provide scope, schedule and cost as potential additional work that may be added to the base contract for the following as part of phase 1:

- Upgrading the NMRX Signal System to CTC system between CP Hahn (MP 899.1) and CP Abajo (MP 903.8) in Downtown Albuquerque (Design/Implementation)
- Upgrade approximately 18 mainline switches to include electric locks (Design/Implementation)
- Ensure these measures are compatible with Offerors PTC implementation

This RFP also contemplates upgrading the current NMRX on-board passenger facing Wi-Fi system with VPN provisions to provide for redundant PTC communications. RMRTD asks offerors to provide scope, schedule and cost as an alternative add to the base contract for the following as part of phase 2:

- Upgrade the existing Alvarion Wi-MAX onboard passenger Wi-Fi System to a non-proprietary 4G-LTE System (minimum) with VPN and security provisions that will provide a secure redundant communications path for PTC communications on the NMRX in addition to the public facing passenger Wi-Fi System and NMRX Operations related VPN. This will be a complete technology upgrade from the current system and involve both fixed tower locations and rolling stock refresh.

3. Detailed Scope of Work

3.1 Phase One – Railroad Surveys, Studies, Mapping, Planning, Design and Amendment of PTCIP and PTCDP.

- Upon NTP for Phase 1, the Contractor shall perform the tasks necessary to amend the NMRX PTCIP and PTCDP with updated schedules and other information necessary due to variations in the Contractor’s proposed system from the system documented in previous submittals to the FRA for NMRX. The Contractor shall amend NMRX submitted documents to the FRA, through the RFA process as stated in 49 CFR 236. The Contractor shall develop all RFAs to FRA approved and referenced documents submitted for the NMRX. These documents include the PTCIP and the PTCDP. The RFAs shall be prepared by the Contractor for submittal to FRA by RMRTD. In addition, the Contractor shall be responsible for all responses to the FRA for submitted PTC related documents. The
Contractor shall provide all services necessary to provide and obtain FRA approvals and certifications on PTC related documents, plans and processes. The Contractor shall prepare all responses to FRA questions and requests for clarifications and any FRA requested re-submission of documents and plans.

- The Contractor shall provide services necessary to perform all field surveys, database development, radio frequency propagation studies, and mapping necessary for the implementation of PTC to tolerances acceptable to FRA and in compliance with PTC regulations as required for the project.
- The Contractor shall provide services necessary to perform all planning, design and appropriate level plan preparation necessary to implement the following as required:
  - Communication Systems and Components
  - Back Office Systems and Components (Shall be a hosted dispatch / PTC Back Office Solution as detailed in Phase 2)
  - Wayside Systems and Components
  - On Board Systems and Components
- The Contractor shall procure for RMRTD, all licenses required for the operations of PTC including: Dispatch/Back Office Hosting (detailed under phase 2 / Migration of dispatch to the hosting facility may be requested under phase one), third party 220 MHz spectrum, FCC licensing; Back Office Segment, Wayside Segment, Communication Segment and Rolling Stock Segment Software. The Contractor shall detail the licensing requirements, costs and detail ongoing annual fees and charges. The Contractor shall negotiate on behalf of RMRTD the terms and conditions of all resulting contracts / agreements in consultation with RMRTD and NMDOT as required.
- The Contractor shall identify all hardware / components necessary to implement PTC on the NMRX territory. The Contractor will include a price list of components and quantities categorized by PTC Subsystem. The prices shall be honored for the life of project implementation and for one year after FRA certification of the entire PTC system.
- The Contractor shall provide services necessary to develop and implement an effective document control and configuration management program for the project and for the long-term operations and maintenance of the system. The program shall be acceptable to FRA with a proven track record of enabling entry into an FRA approved field testing phase.
- The Contractor shall provide services necessary to develop, detail and implement an effective Road Worker Protection procedure/system as part of PTC Implementation.
- The Contractor shall develop and manage a comprehensive project schedule for both phase 1 and phase 2 work that identifies critical path tasks, establishes key milestone dates (including NTPs and RMRTD/NMDOT review of submittals) and identifies float for non-critical
path tasks. The schedule shall identify testing in windows that do not impact existing freight and passenger services. If sufficient track and time is not available, RMRTD will consider altering weekend service for testing.

- Contractor will detail, schedule and lead early and continuous coordination efforts with FRA, BNSF, AMTRAK, NMDOT, RMRTD, NMRX O&M Contractor and SFS relative to PTC planning and implementation. Coordination with RMRTD and the NMRX O&M Contractor will be required for all aspects of PTC installation on the NMRX territory and rolling stock. Contractor shall develop a detailed coordination plan to ensure timely review and delivery of the PTC System.

- Contractor shall provide services and be responsible for obtaining all environmental clearances and permits necessary for the implementation of the PTC System (RMRTD has done a preliminary assessment and believes this can be accomplished through a Categorical Exclusion (CE)).

### 3.2 Phase Two – Implementation, Procurement, Installation, Testing and Commissioning.

- Upon NTP for Phase 2, the Contractor shall advance the design, procurement, installation, implementation, testing and commissioning of the complete PTC System for NMRX. This work shall be completed in accordance with the Contract, State and Federal Requirements, the NMRX PTCIP & PTCDP, Phase-one (surveys, studies, mapping, design and plan development, environmental and permit requirements, project schedule, document control and configuration management, project specific licensing agreements and contracts with third parties).

- The Contractor shall provide the following:
  - A complete, interoperable PTC System compliant with 49 CFR 236 and the ITC/AAR specifications and standards that functions efficiently as a part of the overall NMRX rail network and with associated tenant railroads. The Contractor shall be responsible for the design of the PTC System and for assuring the functional integration of the various subsystems within the PTC System and the integration of the PTC System with its operating environment, including, but not limited to, interconnections with the communications network, the dispatching system, the PTC back office, the existing wayside signaling and switching systems, existing locomotives, cab cars and coach cars, and associated tenant railroad systems.
  - The Contractor shall provide all services necessary for the development of all equipment and schematics associated with the installation, validation and verification of the PTC System and PTC subsystems
The Contractor shall migrate the existing NMRX Dispatch System to a hosted facility that will integrate and host the PTC Back Office System. The Contractor/Hosting facility will be responsible for all software maintenance, upgrades, version control, of the dispatch system and the PTC Back Office System. The System and Facility should have 99.99% availability or higher, redundant communications, be hardened & secure and employ fail safe technology. The Contractor shall provide all services necessary to design, procure, install, integrate, test and place into service the PTC Back-Office Subsystem. All interfaces with the dispatch system shall be documented. The hosting agreement shall be for the life of implementation and final certification of the PTC system by FRA and for four additional years. The hosting agreement shall include all services necessary to maintain and make available for daily use both the dispatch system and PTC Back-Office System.

The Contractor shall provide all services necessary to design, procure, install, test and place into service the PTC On-Board Subsystem in all required locomotives/cab cars. All interfaces with existing locomotive/cab car/rolling stock shall be documented.

The Contractor shall provide all services necessary to design, procure, install, test and place into service the Wayside PTC Subsystem for the NMRX territory. All interfaces with the existing signal and switching equipment shall be documented.

The Contractor shall provide all services necessary to design, procure, install, test and place into service the PTC Communication Segment and ensure proper interface of the Communication segment with PTC sub-systems including Back Office, Wayside, On Board, Network Management, Roadworker Protection and tenant railroads. All interfaces between the Communication Segment and other PTC subsystems shall be documented. The Communications Subsystem shall include redundancy.

The Contractor shall provide a Host and Network Intrusion Prevention System for the PTC system to secure and protect the system from unauthorized access, damage, disruption, misuse or sabotage.

In all instances, the Contractor shall be responsible for correctly specifying interfacing equipment and ensuring compliant interaction between existing systems and the PTC System.

The Contractor shall coordinate design, procurement, installation, testing and placing into service any and all PTC subsystems with personnel from NMRX (operations, signal, dispatch, communications, maintenance of equipment and maintenance of way) as appropriate for the subsystem and as directed by RMRTD.

The Contractor shall provide “as-built” plans for all PTC Sub-Systems and Components and detailed schematics on their interface with
existing systems and the PTC communication segment. These will be provided in electronic format to the RMRTD in both native CAD and PDF formats. Contractor will provide 4 copies of viewing software for the native CAD files.

- The Contractor shall provide all services necessary for the development of the PTC Safety Plan (PTCSP); for amendments to the Rail Safety Program Plan (RSPP), the PTCIP, the PTCDP and any/all supporting documentation for submittal to the FRA.
- The Contractor shall provide viewing software for the native CAD files.
- The Contractor Shall coordinate with engineering and maintenance personnel from NMRX (operations, dispatch, signal, communications, maintenance of equipment and maintenance of way) in preparing the RSPP and PTCSP.
- The Contractor shall provide PTC train operation according to the existing NMRX operations, applicable FRA rules and regulations, operating rules and GCOR. Where existing operating rules require modification to support PTC operations and to comply with FRA PTC regulation, these changes shall be drafted by the Contractor and submitted to RMRTD for approval. The Contractor shall include operating rules for NMRX in the event the PTC system is non-functional that comply with FRA regulations.
- Post PTC installation, Contractor shall update track databases, track charts and surveys with newly installed equipment. Contractor shall generate new track charts with the same information shown in the current version updated as appropriate and supplemented to include PTC infrastructure. These will be provided in electronic format to the RMRTD in both native CAD and PDF formats. Contractor shall work with RMRTD asset management personnel to update ESRI Geo Database information to incorporate new track chart information.
- The Contractor shall develop and manage a comprehensive project schedule for phase 2 work that identifies critical path tasks, establishes key milestone dates (including RMRTD/NMDOT review of submittals) and identifies float for non-critical path tasks. The Schedule shall identify testing windows that do not impact existing freight and passenger services. If sufficient track and time is not available, RMRTD will consider altering weekend service for testing.
- Contractor will detail, schedule and lead continuous coordination efforts with FRA, BNSF, AMTRAK, NMDOT, RMRTD, NMRX O&M Contractor and SFS relative to PTC implementation. Coordination with RMRTD and the NMRX O&M Contractor will be required for all aspects of PTC installation on the NMRX territory and rolling stock.

- The Contractor shall design a PTC training program for NMRX related personnel (operations, signal, dispatch, communications, maintenance of equipment and maintenance of way). The program will be completely documented and detail NMRX Operations and Maintenance requirements for PTC, resulting in the appropriate certifications/qualifications of
employees. The program shall be transferable to RMRTD. In addition to designing and documenting the program, the Contractor will perform all training of NMRX related personnel to the level required for PTC O&M by FRA and acceptable to RMRTD. The contractor shall train two NMRX employees as trainers of the designed PTC training program.

- The Contractor shall warranty and perform all warranty maintenance of the entire PTC system during the life of project implementation and testing, and for one year after system commissioning and final certification by the FRA. The Contractor shall develop a PTC Maintenance Manual for the NMRX Territory and identify a spare parts inventory for each PTC sub-system to ensure an acceptable level of up time for the entire system, and quick resolution of problems through effective maintenance practices, troubleshooting and availability of replacement parts. The Contractor shall identify useful life of PTC Subsystem components, and subsystems that require technology refresh and the frequency of refresh. The Contractor shall provide RMRTD a price list for all PTC components, categorized by PTC Subsystem. The identified prices shall be available to RMRTD for the life of project implementation and for one year after FTA certification of the entire PTC System. The Contractor shall coordinate maintenance work with NMRX personnel and develop maintenance troubleshooting check lists for all PTC subsystems and for their interfaces with existing systems and the communication segment.

### 3.3 Phase Three – PTC Maintenance

- The Contractor shall provide all services necessary to maintain the PTC system for up to four years after the one-year warranty period after FRA certification of the PTC system. In addition to the PTC Back-Office hosting and maintenance service described in Phase Two of this document, the contractor shall provide all services necessary to maintain the following:
  - PTC Communications Sub-system
  - On-Board Sub-system
  - Wayside Sub-system

- The Contractor shall update the PTC Maintenance Manual prepared under Phase Two to incorporate territory specific information including failure rates, performance issues, repair procedures, etc. The Contractor will reassess and identify a spare parts inventory for each subsystem that results in an acceptable level of up time for the entire system, and quick resolution of problems through effective maintenance practices, troubleshooting and availability of replacement parts.

- The Contractor shall update the expected useful life of PTC Subsystem components, and update the subsystems that require technology
refresh and the frequency of refresh. The Contractor shall provide RMRTD a price list for all PTC components, categorized by PTC Subsystem. The identified prices shall be available to RMRTD for the four years of the maintenance contract (beginning one year after FRA certification of the PTC system.

4. Additional Services

In accordance with the products and responsibilities herein, additional services may be required of the Contractor at some time throughout the life of the Contract. Those additional services are itemized as follows:

- **Risk Mitigation Potential Bid Addition** – the Contractor will design, permit, environmentally clear, implement and upgrade the NMRX Signal and Switching Systems as follows:
  - Upgrading the NMRX Signal System to CTC between CP Hahn (MP 899.1) and CP Abajo (MP 903.8) in Downtown Albuquerque
  - Upgrade 18 mainline switches at various locations to include electric locks
  - Ensure these measures are compatible with proposed PTC implementation
  - Complete the work by November 30, 2018

- **Redundant PTC Communication Potential Bid Addition** – The Contractor will design, permit, implement and upgrade the existing NMRX Wi-Fi System as follows:
  - Upgrade the existing Alvarion Wi-MAX passenger Wi-Fi System to a non-proprietary 4G-LTE System (minimum) with VPN and security provisions that will provide a secure redundant communications path for PTC communications on the NMRX in addition to the public facing passenger Wi-Fi System and NMRX Operations VPNs.
  - This will include a complete technology refresh on both the rolling stock and fixed tower locations. RMRTD does not anticipate the need for additional tower locations as part of this upgrade.

- **Communication Tower / Pole Installation** – The Contractor will design, permit, implement and integrate additional communication towers as requested by RMRTD for PTC related communication.

- **Signal work** –

- **Training Support** –

Phase 1 through 3 and these additional services shall constitute the full Scope of Services contained herein.
5. **Project Cost Categories and Templates**

Project Cost Categories and Templates are included in a separate Microsoft Excel File titled RFP2018_03 Positive Train Control Cost Forms RMRTD. This file is available at the same location as the RFP.
This Agreement ("Agreement") is made and entered into on the date last entered below, by and between __________________ ("Contractor"), and the Rio Metro Regional Transit District ("RMRTD"), a New Mexico political subdivision created pursuant to the Regional Transit District Act, Sections 73-25-1 through 73-25-18 NMSA 1978, herein referred to as “Parties.”

RECITALS

WHEREAS, the RMRTD issued a Request for Proposals RFP ______- __, titled Positive Train Control Implementation , dated _____________________, which is attached hereto as Appendix A, and by this reference made part of this reference made a part of this agreement; and

WHEREAS, the Contractor submitted its proposal, dated ____________ in response to RFP ______- __, which proposal is attached hereto as Appendix B, and by this reference made a part of this agreement; and

WHEREAS, RMRTD desires to engage the Contractor to render certain services in connection therewith, and the Contractor is willing to provide such services.

NOW, THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

Section 1. Miscellaneous Representations

A. The Contractor is licensed or otherwise authorized to conduct the business activities described in this Agreement by all governmental agencies having jurisdiction over Contractor, and Contractor has the experience and expertise to perform the work or services required in this Agreement.

B. RMRTD has the right and power to enter into this Agreement.

C. The RMRTD has primary responsibility to manage and operate the New Mexico Rail Runner Express (NMRX) commuter rail service between Belen and Santa Fe New Mexico.

D. The New Mexico Department of Transportation (NMDOT) owns the rail rolling stock and the railway including track, crossings, signals and related appurtenances.

Section 2. Scope of Services
A. The Contractor shall personally perform the services specified in Appendix ___ (hereinafter referred to as "Services") related to the Positive Train Control Implementation Project in a satisfactory and proper manner, and shall provide all necessary personnel, material, and facilities and perform all matters necessary or incidental to the Services as determined by RMRTD.

B. Staffing. RMRTD designates ______________ as RMRTD Project Manager. The Contractor shall keep the Project Manager fully informed on all aspects of its performance of the Services. The Project Manager will review and approve Contractor’s invoices prior to payment. In the absence of the Project Manager, the RMRTD Director shall serve as Project Manager.

C. Contractor designates _____________ as Contractor’s Project Manager. Contractor’s Project Manager shall transmit all work product and invoices to the RMRTD Project Manager. The Contractor Project Manager shall direct the technical aspects of the Services; however, the Contractor may provide additional qualified personnel to meet its obligations under this Agreement. Contractor shall provide to RMRTD a statement of qualifications for each individual performing work under this Agreement when requested to do so by RMRTD. Any change in Contractor’s appointment of its Project Manager shall not be allowed until approved in writing by RMRTD.

D. None of the work or Services covered by this Agreement shall be subcontracted without the prior approval of RMRTD. Any work or Services subcontracted hereunder shall be specified by written agreement and shall be subject to each provision of this Agreement.

Section 3. Total Contract Price

A. The Base Contract pricing includes the amounts described in line item ___ through ____ of Appendix ___. The total contract price for phase 1 and phase 2 Services as identified in Appendix ___ shall not exceed $____________, exclusive of applicable taxes. No Services or purchases may occur on any of the phase 1 or phase 2 elements in Appendix ____ without a specific work authorization from RMRTD.

B. The contract price for phase 3 Services as identified in Appendix ___ shall not exceed $__________, exclusive of applicable taxes, for the first 2 years of maintenance. Years 3 through 4 shall be based on Appendix ___, allowing reasonable cost of living escalations as detailed in Appendix ___. No Services or purchases may occur on any of the element in Appendix ____ without a specific work authorization from RMRTD.
C. The Option Contract pricing for Additional Services applies to options detailed in Appendix ___ and shall not exceed $__________. No Services or purchases may occur on any of the element in Appendix ____ without a specific work authorization from RMRTD.

Section 4. Compensation and Method of Payment

A. Mobilization. Compensation for Mobilization shall be $_______. Mobilization payments shall be made in ___ equal payments of $_______ each. The Contractor shall invoice the RMRTD (30) calendar days after the Notice to Proceed (NTP) for the first mobilization payment and on each month thereafter for ___ additional months.

B. Phase 1 Services. The Contractor shall invoice the RMRTD bi-weekly or monthly as agreed to by the Parties for Phase 1 Services performed and for materials procured for the project. Progress payments shall be made based on the percent complete according to the project schedule. Payments for procured materials will be based on actual material invoices plus an administrative fee of ___%.

C. Phase 2 Services. The Contractor shall invoice the RMRTD bi-weekly or monthly as agreed to by the Parties for Phase 2 Services performed and for materials procured for the project. Progress payments shall be made based on the percent complete according to the project schedule. Payments for procured materials will be based on actual material invoices plus an administrative fee of ___%.

D. Payment to Contractor. Amounts due to Contractor shall be paid to the Contractor upon receipt by RMRTD of properly documented invoices for payment as determined by the budgetary and fiscal guidelines of RMRTD and upon receipt of payment by RMRTD from the funding agency. Payments to the Contractor shall be paid within the time periods prescribed by statute.

E. Reports Required. Contractor will attach to the invoice a detailed work effort and progress report in a format mutually agreed upon by the RMRTD Project Manager and the Contractor. Payments shall be made only after verification and acceptance of the progress reports by the RMRTD Project Manager.

F. Verification of Invoices. RMRTD shall be entitled to verify the personnel time and other costs charged to RMRTD pursuant to the provisions of this Agreement.

Section 5. Time of Performance
The Phase 1 and Phase 2 Services described herein shall commence on the date this Agreement is executed and shall be completed within _______ (__) years, unless the time for completion is extended pursuant to Option to Extend Term contract clause contained herein.

Section 6. Option to Extend Term

A. RMRTD may require the Contractor to provide Phase 3 Maintenance Services and extend this Agreement for up to _______ (__) years by written notice to the Contractor. If feasible, RMRTD shall give Contractor a preliminary written notice of its intent to extend at least sixty (60) days before the Agreement expires. The preliminary notice does not commit RMRTD to an extension, and any absence of notice shall not affect the validity of any exercise of the option to extend the term of this Agreement.

B. If RMRTD exercises this option to extend the term of the Agreement, the extended Agreement shall be considered to include this option provision.

E. The total duration of this Agreement, including the exercise of any options under this clause, shall not exceed_______ (__) years.

Section 7. Independent Contractor

Neither Contractor nor its employees are considered to be employees of RMRTD for any purpose whatsoever. Contractor is considered an independent contractor at all times in the performance of the Services described herein. Contractor further agrees that neither it nor its employees are entitled to any benefits from RMRTD under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of RMRTD.

Section 8. Personnel

A. Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement. Such personnel shall not be employees of nor have any contractual relationship with RMRTD.

B. All the Services required hereunder will be performed by Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

F. None of the work or the Services covered by this Agreement shall be subcontracted without the prior approval of RMRTD. Any work or Services subcontracted hereunder shall be specified by written contract or agreement and
shall be subject to each provision of this Agreement.

Section 9. Insurance

A. General Requirements. The Contractor shall, at its own cost and expense, procure and maintain in full force and effect during the term of this Agreement, such insurance as is required in this Agreement and Section 7.1.A of the NMDOT/BNSF Joint Use Agreement. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico, and policies of insurance shall be on forms properly filed and approved by the Superintendent of Insurance, State of New Mexico. Contractor shall provide to the RMRTD, NMDOT and BNSF copies of all policies of insurance for the insurance coverage required in this Section and Section 7.1.A of the BNSF Joint Use Agreement. Policies of insurance shall be procured for all required coverage limits of such policies of insurance and shall not be reduced or replaced in part or in whole by self-insurance, including self-insurance retention amounts, except as provided hereinafter.

If the Contractor subcontracts, or assigns or otherwise transfers any interest in any part of this Agreement, the Contractor shall include any or all transferees in the Contractor's insurance policies or require such transferees to secure insurance if required by law to cover all hazards associated with Services provided hereunder that are not covered by the Contractor's insurance policies.

The Contractor shall not violate the terms or prohibitions of insurance policies required to be furnished by the Contractor. The Contractor shall promptly notify the RMRTD of any claim or loss exceeding the amount of the deductible under such insurance policies, and certify that proper notice has been given the appropriate insurance carrier.

The Contractor shall furnish the RMRTD and NMDOT with certificates of insurance, substantially the same as Exhibit D, and shall deliver said certificates to the Project Manager, RMRTD, 809 Copper Ave., N.W., Albuquerque, New Mexico 87102, NMDOT Rail Bureau Chief, P.O. Box 1149, Santa Fe, NM 87505 and All insurance certificates shall provide that thirty (30) days written notice be given to the Project Manager before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. A certificate or policy which states that the failure to give RMRTD notice imposes no liability or obligation on the insurer shall not be in compliance with this Section. For instance, certificates or policies stating that the insurance company shall "endeavor to notify" and that "failure to give such notice imposes no obligation" on the insurance company are unacceptable to RMRTD. Documents establishing the continuation or replacement of insurance shall be received by the RMRTD no less than 30 days prior to the expiration of the insurance coverage.
B. Approval of Insurance. Even though a "Notice to Proceed" may have been given, neither the Contractor nor any contractors, assignees or other transferees of the Contractor shall begin any operations pursuant to this Agreement until the required insurance has been obtained and proper certificates of insurance delivered to the Project Manager. Neither approval nor failure to disapprove insurance certificates of insurance by the RMRTD shall relieve the Contractor or any transferees of full responsibility to maintain the required insurance in full force and effect.

C. Commercial General Liability Insurance. The Contractor shall procure and maintain policies of insurance for commercial general liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum $5,000,000 each occurrence and an aggregate limit of at least $10,000,000. The policy must include coverage for, but not limited to, the following: Bodily Injury and Property Damage, Personal Injury and Advertising Injury, Fire legal liability, Pollution/Legal Liability (including sudden and accidental pollution coverage and in accordance with NMDOT/BNSF Joint Use Agreement). Said policies of insurance shall include coverage for premises, operations, the Contractor's contractual liability to the RMRTD hereunder, and claims arising out of or from the Contractor's performance of this Agreement. Contractual liability coverage shall specifically insure the indemnification provision of this Agreement. The insurance policies shall contain "products" and "completed operations" coverage and shall not be written on a "claims made" form. The insurance policies shall include coverage for all use of, activities on, or operations with respect to NMRX, NMDOT and RMRTD premises. The policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance: The employee and workers compensation related exclusions in the policy shall not apply with respect to claims related to railroad employees; The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of the railroad property; Any exclusion related to explosion, collapse and underground hazard shall be removed. No other endorsements limiting coverage may be included in the policy. RMRTD reserves the right to review and modify the limits stated above at one-year intervals to give effect to the changing risk management environment and inflationary trends.

D. Business Automobile Insurance. The Contractor shall procure and maintain policies of insurance for automobile insurance. This insurance shall contain a combined single limit of at least $5,000,000 and include coverage for, but not limited to the following: Bodily Injury and Property Damage. The insurance policies shall include coverage for the use of all owned, non-owned, hired automobiles, vehicles, and other equipment, both on and off work.

E. Railroad Protective Liability. The Contractor shall procure and maintain a policy of railroad protective liability insurance in amounts of not less than $5,000,000 per occurrence and $10,000,000 total. The named insured on the
The policy shall be RMRTD, NMDOT and BNSF. The policy shall be endorsed to include the following: The Pollution Exclusion Amendment; the Limited Seepage and Pollution Endorsement; the Evacuation Expense Coverage Endorsement. No other endorsements limiting coverage may be added.

F. Increased Limits. If, during the term of this contract, the legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (Sections 41-4-1 through 41-4-27, NMSA 1978) to an amount greater than that required for commercial general liability including auto above, the RMRTD may require Contractor to increase the limits of any insurance required herein to an amount equal to such increased Tort Claim Act maximum limits of liability.

G. Additional Insured. The RMRTD, NMDOT, and BNSF shall be named as an additional insured on each insurance policy required for commercial general liability including auto above.

H. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, the New Mexico Occupational Disease Disablement Law, and the NMDOT/BNSF Joint Use Agreement. The Contractor shall procure and maintain during the term of this Agreement Complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Such insurance shall include coverage permitted under Section 52-1-10, NMSA 1978, for safety devices. With respect to Worker's Compensation Insurance, if the Contractor elects to be self-insured, the Contractor shall comply with the applicable requirements of law. If any portion of the work is to be sublet, the Contractor shall require the subtenants similarly to provide such coverage (or qualify as a self-insured) for all the latter's employees to be engaged in such work. The Contractor hereby covenants and agrees that the RMRTD, its officers, or employees will not be liable or responsible for any claims or actions occasioned by the Contractor's failure to comply with the provisions of this subparagraph and that the indemnification provision of this Agreement shall apply to this paragraph. It is expressly agreed that the employees of Contractor are not RMRTD employees for any purpose.

I. Self-Insurance Retention/Deductibles. In the event any of the insurance policies required in this Section 7 (except as allowed by New Mexico law regarding Workers' Compensation) contain a self-insurance retention provision (whether or not in the form of a deductible) for each such amount, the Contractor shall post a bond or an irrevocable letter of credit made exclusively for the benefit of the RMRTD and held by a bank authorized to do business in New Mexico which is acceptable to RMRTD.

J. Contents Insurance. Contractor shall be solely responsible for obtaining insurance policies that provide coverage for losses of Contractor owned property.
RMRTD shall not be required to provide such insurance coverage or be responsible for payment of Contractor's cost for such insurance.

K. Professional Liability Insurance. The Contractor shall, at its own cost and expense, procure and maintain in full force and effect during the term of this Agreement, Professional Liability (errors and omissions) insurance in an amount not less than $5,000,000 combined single limit of liability per occurrence with a general aggregate of $5,000,000.

Section 10. Reports, Information and Ownership of Documents

A. Reports and Information. During the performance of this Agreement and upon the completion or earlier termination of the services required under this Agreement, Contractor shall furnish to RMRTD such statements, records, reports, data and information as requested by RMRTD pertaining to matters covered by this Agreement.

B. Release of Information. Contractor shall not release any data, reports or other information of any nature whatsoever to any entity or person other than to RMRTD unless specifically authorized to do so in writing in advance by RMRTD.

C. Ownership and Use of Documents. Contractor’s work product produced pursuant to this Agreement shall become the sole property of the RMRTD. Such work product shall include but not be limited to reports, background data, drawings, calculations, technical data, data related specifically to this Agreement, specifications, manuals and/or related documents.

D. Computer Program and Radio Frequency Licensing Agreements. RMRTD shall have the option to require (at RMRTD’s cost) that the Contractor provide any and all computer licensing and/or radio frequency agreements necessary to permit RMRTD to use radio frequencies, computer programs and data related to the services performed by Contractor under this Agreement.

E. Future Use. RMRTD’s use of computer programs and computer stored data developed under the requirements of this Agreement for purposes other than the services required of Contractor as specified in this Agreement shall be at RMRTD’s risk, and Contractor shall be held harmless for such use. Contractor does not represent that the computer programs and computer data developed under this Agreement are suitable for reuse under different conditions. This paragraph shall not apply to the performance of this Agreement nor in instances where the Contractor is retained to perform subsequent services using the work product developed pursuant to this Agreement.

F. Publication, Reproduction and Use of Materials. No materials or documents produced in whole or in part under this Agreement shall be subject to copyright in
the United States or in any other country. The RMRTD shall have the unrestricted authority and right to copyright, publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials (hereafter “Materials”) prepared under this Agreement. Contractor may use Materials created under this Agreement as reference and research materials and as representations of the services performed under this agreement only after the Materials are completed and accepted by RMRTD, provided that such Materials shall not include the RMRTD’s confidential or proprietary information, to the extent the RMRTD provides Contractor with notice that such materials are considered confidential or proprietary by the RMRTD. The RMRTD shall provide professional credit for Contractor in promotional materials for services rendered pursuant to this Agreement, if so requested in writing by Contractor.

Section 11. Establishment and Maintenance of Records

Records shall be maintained by Contractor in accordance with applicable law and requirements prescribed by RMRTD with respect to all matters covered by this Agreement. Except as otherwise authorized by RMRTD, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.

Section 12. Audits and Inspections

At any time during normal business hours and as often as RMRTD may deem necessary, there shall be made available to RMRTD or the funding agency and the State Auditor for examination all of Contractor's records with respect to all matters covered by this Agreement. Contractor shall permit RMRTD, or its authorized representatives, to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. Contractor shall maintain such records at its office and provide them to the RMRTD at the RMRTD offices in Albuquerque, New Mexico, within fifteen (15) days after receiving a written request for such records by the RMRTD. In the event Contractor does not wish to make its books and records available at the RMRTD offices, then Contractor shall pay reasonable travel and accommodation expenses for the RMRTD staff or its duly authorized representatives to travel to Contractor’s offices to conduct the audit.

In addition to this section, the requirement of Section 17 (H) will also apply.

Section 13. Changes

RMRTD may, from time to time, request changes in the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of Contractor's compensation, that are mutually agreed upon by and between
RMRTD and Contractor shall be incorporated in written amendments to this Agreement.

**Section 14. Suspension**

A. Suspension of Work. RMRTD shall be entitled at any time to suspend, delay, or interrupt all or any part of the Services required of Contractor by this Agreement. Such order shall be in writing and identified as a “Suspension of Work Order”. Contractor shall incur no further costs allocable to the Services during the period of suspension, delay, or interruption. Contractor shall be reimbursed for all services performed up to the time of its receipt of the Suspension of Work Order; to the extent such services are accepted pursuant to Section 4 of this Agreement.

B. Resumption of Work. In the event RMRTD cancels a Suspension of Work Order, Contractor shall resume performing the Services in a timely manner and shall be entitled to an equitable adjustment in compensation but only if RMRTD determines that the Suspension of Work Order resulted in additional costs to Contractor in its performance of the Services and Contractor asserts a claim for such additional costs within thirty days after the cancellation of the Suspension of Work Order.

**Section 15. Termination**

See Section 17 (Z)

**Section 16. Breaches and Dispute Resolutions**

See Section 17 (L)

**Section 17. Special Provisions (Federal)**

This procurement may be supported in part or in whole from time to time with federal funds. Hence, Federal-Aid requirements and the following contractual clauses and certifications are applicable to this solicitation.

A. Prohibition Against Use of Federal Funds for Lobbying

Neither the Contractor nor any subcontractor may use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation pending before Congress. An executed Certification of Restrictions on Lobbying is required as provided in Appendix 3 of this solicitation.

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

B. Debarment and Suspension

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

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

The Contractor shall provide certification required by Department of Transportation regulations, Government-wide Debarment and Suspension, 49 C.F.R. Part 29 and otherwise comply with the requirements of those regulations. Certification is required as provided in Appendix 4 of this solicitation.

C. Campaign Contribution Disclosure

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective Contractor seeking to enter into a Contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. Certification is required as provided in Appendix 5 of this solicitation.

D. Affirmative Action/Civil Rights Compliance

All proposals must include a certification for Affirmative Action/Civil Rights Compliance as provided in Appendix 6 of this solicitation.

E. No Government Obligations to Third Parties

1. The RMRTD and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the RMRTD, Contractor, or
any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

F. Incorporation of Federal Transit Administration (FTA) Terms

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

G. Program Fraud and False or Fraudulent Statements and Related Acts

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

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

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

4. The Contractor agrees to provide the RMRTD, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

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

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

I. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between RMRTD and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

J. Energy Conservation Requirement

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

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

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

Certification is required as provided in Appendix 6.1 of this solicitation.

L. Breaches and Dispute Resolutions

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

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

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

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

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

M. Clean Air

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

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

N. Clean Water

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

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

O. Cargo Preference

The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all
subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

P. Fly America

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Q. Access Requirements for Individuals with Disabilities

The Contractor shall, at all times, be in compliance with all statutory requirements imposed by or pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990 at 49 CFR Parts 27, 37 and 38, as well as any additional requirements which may be placed into effect during this Contract.

R. Drug and Alcohol Testing

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of New Mexico or the RMRTD, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before January 1 and to submit the Management Information System (MIS) reports before March 1 to the RMRTD Drug and Alcohol Program Manager. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

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

T. Disadvantaged Business Enterprise

1. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. A list of certified Disadvantage Business Enterprises can be obtained from the New Mexico Department of Transportation, Office of Equal Employment Opportunity Programs' website: https://nmdot.dbesystem.com. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency’s overall goal for DBE participation is 10%. A separate contract goal has not been established for this procurement.

2. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as RMRTD deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

3. The contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance. For this purpose, the Contractor will create and maintain a subcontractors list, as referenced in Appendix 6.2, consisting of information about all DBE and non-DBE firms that are a part of this contracting opportunity.

4. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work from the RMRTD. In addition, the contractor is required to return any retainage payments to its subcontractors within 30 days after the subcontractor’s work related to this contract is satisfactorily completed.

5. The contractor must promptly notify RMRTD, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of RMRTD.

U. Civil Rights Compliance
1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

a. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

b. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.
V. Text Messaging While Driving

In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Contractor is encouraged to comply with the terms of the following Special Provision.

A. Definitions. As used in this Special Provision:
(1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.
(2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

B. Safety. The Contractor is encouraged to:
(1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving-
(a) Contractor owned or rented vehicles or Government-owned, leased or rented vehicles;
(b) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or
(c) Any vehicle, on or off duty, and using an employer supplied electronic device.
(2) Conduct workplace safety initiatives in a manner commensurate with the Contractor's size, such as:
(a) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
(b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
(3) Include this Special Provision in its subcontracts with its subcontractors and third party contracts and also encourage its subcontractors, lessees, and third party contractors to comply with the terms of this Special Provision, and include this Special Condition in each subcontract, lease, and third party contract at each tier financed with Federal assistance provided by the Federal government.
(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

4. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside, in a separate account, assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage
determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - The RMRTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the
work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [insert name of grantee] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records –

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the RMRTD for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
1. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees –
   (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be
greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor’s or subcontractor’s registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any
trainee performing work on the job site in excess of the ratio permitted under the
registered program shall be paid not less than the applicable wage rate on the
wage determination for the work actually performed. In the event the Employment
and Training Administration withdraws approval of a training program, the
contractor will no longer be permitted to utilize trainees at less than the applicable
predetermined rate for the work performed until an acceptable program is
approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees
and journeymen under this part shall be in conformity with the equal employment
opportunity requirements of Executive Order 11246, as amended, and 29 CFR part
30.

(5) Compliance with Copeland Act requirements –

The contractor shall comply with the requirements of 29 CFR part 3, which
are incorporated by reference in this contract.

(6) Subcontracts –

The contractor or subcontractor shall insert in any subcontracts the clauses
contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal
Transit Administration may by appropriate instructions require, and also a clause
requiring the subcontractors to include these clauses in any lower tier
subcontracts. The prime contractor shall be responsible for the compliance by any
subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR
5.5.

(7) Contract termination: debarment –

A breach of the contract clauses in 29 CFR 5.5 may be grounds for
termination of the contract, and for debarment as a contractor and a subcontractor
as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements –

All rulings and interpretations of the Davis-Bacon and Related Acts
contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this
contract.

(9) Disputes concerning labor standards –

Disputes arising out of the labor standards provisions of this contract shall
not be subject to the general disputes clause of this contract. Such disputes shall
be resolved in accordance with the procedures of the Department of Labor set forth
in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include
disputes between the contractor (or any of its subcontractors) and the contracting
agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility –
(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).


2.4.23 Contract Work Hours and Safety Standards Act

5. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

6. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

7. Withholding for unpaid wages and liquidated damages - The RMRTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

8. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.
X. Bonding Requirements

C. Performance and Payment Bonding Requirements

The successful bidder will be required to furnish RMRTD with Performance Bonds in the amount equal to 100% of the bid price for the Positive Train Control System development, procurement, installation, testing, safety certification and implementation, including all warranty services as specified therein (Phase 1 and Phase 2) within five (5) calendar days from the date of receiving RMRTD’s Notice of Intent to Award Contract to bidder.

D. Performance and Payment Bonding Requirements (Warranty of the Work and Maintenance Bonds)

(1) The Contractor warrants to the RMRTD that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by RMRTD, free from faults and defects and in conformance with the Contract documents. All work not so conforming to these standards shall be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

(2) The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the RMRTD.

Y. Seismic Safety

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

Z. Termination

1. Termination for Convenience - The RMRTD 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 RMRTD to be paid the Contractor. If the Contractor has any property in its possession belonging to the RMRTD, the Contractor will account for the same, and dispose of it in the manner the RMRTD directs.

2. Termination for Default - If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the RMRTD may terminate this contract for default. The RMRTD shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If it is later determined by the RMRTD that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the RMRTD, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Notwithstanding the above, Contractor shall not be relieved of liability to RMRTD for damages sustained by RMRTD by virtue of any breach of this Agreement by Contractor, and RMRTD may withhold any payment to Contractor for the purposes of set-off until such time as the exact amount of damages due RMRTD from Contractor is determined.

3. Opportunity to Cure - the RMRTD in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to RMRTD's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from RMRTD setting forth the nature of said breach or default, RMRTD shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude RMRTD from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

5. Non-Funding - The performance of this Agreement is contingent upon the necessary appropriations and authorizations forthcoming for the performance of this Agreement. If sufficient appropriations and authorizations are not made, this Agreement may be terminated by RMRTD by giving notice to Contractor. Such event shall not constitute an event default by RMRTD. All payment obligations of the RMRTD shall cease upon the date of termination. The RMRTD's decision as
to whether sufficient appropriations are available or sufficient shall be binding on Contractor and shall be final. The date of termination issued pursuant to this paragraph shall be the date a notice of termination is received by Contractor.

6. Work Product. In the event of termination under the provisions of this section, all finished or unfinished work product and procured materials/equipment by Contractor under this Agreement shall, at the option of the RMRTD, become the property of the RMRTD, and Contractor shall deliver such work product and procured materials/equipment to RMRTD within thirty (10) days of receipt of the request of the RMRTD.

ZZ. Privacy Act

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

Section 18. General Conditions

A. Contract Interpretation.

1) Severability. In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the RMRTD or the Contractor in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

2) Waiver. No provision of this Agreement shall be deemed to
have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice which may evolve between the parties in the administration of the terms of this Agreement be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

3) Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

4) Captions and Section Headings. The captions, section headings, and table of contents contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

5) Entire Agreement. This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

6) Relationship of Contract Documents. All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all.

7) Exhibits Certificates, Documents Incorporated and Attachments. Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

8) Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of RMRTD.

9) Successors. All covenants, stipulations and agreements in
this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

10) Governmental Rights and Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by RMRTD, or waiving or limiting the RMRTD's control over the management, operations, or maintenance of its property, except as specifically provided in this Agreement, or impairing, exercising or defining governmental rights and the police powers of the RMRTD.

B. Discrimination Prohibited.

1) General. In the use and occupation of the RMRTD premises, the Contractor shall not discriminate against any person or class of persons by reason of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap.

2) Civil/Human Rights Laws. In the operation and use of the RMRTD premises, the Contractor shall not on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Part 21, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act. Without limiting the generality of the foregoing, the Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. Such action shall include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. The Contractor agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

3) The Contractor, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, does hereby covenant and agree that: (1) no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, national
origin or ancestry, age, or physical or mental handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Contractor shall use the RMRTD facilities (when applicable) in compliance with all other requirements imposed by, or pursuant to, the New Mexico Human Rights Act, and 49 CFR Parts 21 and 23, and as said regulations may be amended.

4) Contractor’s violation of this section shall been deemed a material breach of this Agreement.

5) Contractor shall include the provisions of this section in every subcontract, including procurement of materials and leases of equipment (unless exempt by the above referenced regulations or orders of instructions issued pursuant thereto), in the performance of this Agreement.

C. Indemnification Agreement.

1) The Contractor agrees to indemnify and hold harmless the RMRTD and the NMDOT, including their directors, commissioners, officers, employees, agents or assigns, against all liability, claims, damages, losses or expenses, including attorney fees (hereinafter collectively referred to as “Claims”) to the percentage extent such claims are caused by malice, conscious disregard for the rights of others, fraud or other intentional acts of the Contractor or any of its subcontractors or arise out of the acts or omissions of the Contractor its officers, employees, agents or subcontractors.

2) The Contractor agrees to indemnify and hold harmless the RMRTD and the NMDOT, including their directors, commissioners, officers, employees, agents or assigns, against all Claims arising with respect to any release of hazardous or toxic materials on the Service Property or with respect to any adverse environmental conditions or environmental impairments, but limited to the percentage extent to which is created or caused by the Contractor, including its subcontractors or agents, in performing the Services under this agreement.

3) To the fullest extent permitted by law, the Contractor shall release, indemnify, defend and hold harmless BNSF and BNSF’s affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees and agents (collectively, “indemnities”) for, from and against any and all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses, including without limitation, court costs, attorneys’ fees and costs of investigation, removal and remediation and governmental oversight costs) environmental or otherwise (collectively “liabilities”) of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to, in whole or in part:

(a) Activities and operations permitted or regulated by this Contract and the BNSF / NMDOT Joint Use Agreement including without limitation its environmental
provisions;

(b) Any rights or interests granted pursuant to the BNSF / NMDOT Joint Use Agreement as they relate to this Contract;

(c) The Contractor’s occupation and use of the rail corridor including without limitation the Contractor's implementation of Positive Train Control on the NMRX and related activities;

(d) The environmental condition and status of the rail corridor caused by or contributed by the Contractor or any ; or

(e) Any act or omission of the Contractor or its officers, agents, invitees, employees, or subcontractors, or anyone directly or indirectly employed by any of them, or anyone they control or exercise control over even if such liabilities arise from or are attributed to, in whole or in part, any negligence of any indemnitee. The only liabilities with respect to which the Contractor’s obligation to indemnify the indemnities does not apply are liabilities to the extent proximately caused by the gross negligence or willful misconduct on an indemnitee.

4) To the fullest extent permitted by law, the Contractor agrees, regardless of any negligence or alleged negligence of any indemnitee, to indemnify and hold harmless the indemnities against and assume the defense of any liabilities asserted against or suffered by any indemnitee under or related to the Federal Employer's Liability Act (“FELA”) whenever employees of the Contractor or any of its agents, invitees, or subcontractors claim or allege that they are employees of any indemnitee or otherwise. This indemnity also shall extend, on the same basis, to FELA claims based on actual or alleged violations of any Federal, State or local laws or regulations, including but not limited to, the Safety Appliance Act, the Boiler Inspection Act, the Occupational Health and Safety Act, the Resource Conservation and Recovery Act, and any similar Federal or State statute.

5) Upon written notice to BNSF, the Contractor agrees to assume the defense of any lawsuit or other proceeding brought against any indemnitee by any entity, relating to any matter covered by the BNSF/NMDOT Joint Use Agreement for which the Contractor has an obligation to assume liability for or save and hold harmless and indemnitee. The Contractor shall pay all costs incident to such defense, including but not limited to, attorneys' fees, investigators’ fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments. The Contractor acknowledges and agrees that BNSF is expressly entitled to pursue the Contractor directly for any breach or violation of a Contractor requirement in this Contract.

6) The indemnity agreements shall not be construed as a waiver
of the RMRTD’s or NMDOT’s governmental immunity. The indemnity agreements shall not be construed to prohibit the Contractor from seeking contribution or indemnity from any third party which may have caused or contributed to the event for which the Contractor indemnifies the RMRTD, provided, however, that the Contractor may not see contribution from BNSF.

7) The indemnification agreements shall survive the term of this Contract.

8) Insurance. The indemnity required herein shall not be limited by the specification of insurance coverages in this Agreement.

9) Scope of Indemnification. With respect to any liability, claims, damages, losses or costs that are caused by, or arise out of, the acts or omissions of the Contractor or its officers, employees or agents, the Contractor shall: (a) investigate or cause the investigation of such liability, claims, damages, losses or costs, (b) negotiate or cause to be negotiated all claims made, even when Contractor considers such claims to be groundless, false or fraudulent in the name of the RMRTD and on behalf of the RMRTD, (c) and satisfy judgments finally establishing the liability of the RMRTD in all actions for which the Contractor is obligated to indemnify the RMRTD, including its officers, employees or agents, pursuant to this section, and (d) pay, or cause to be paid: (1) all costs assessed against RMRTD in any such legal proceeding, (2) any interest accruing up to the date of payment by Contractor, (3) all premiums charged upon appeal bonds required in such proceedings, and (4) all expenses incurred by RMRTD for investigation, negotiation, and defense, including but not limited to expert witnesses’ and attorneys’ fees incurred.

10) Miscellaneous. RMRTD shall, promptly upon receipt, give Contractor every demand, notice, summons, or other process received in any claim or legal proceeding for which Contractor is required to indemnify RMRTD. In the event RMRTD fails to give Contractor notice of any such demand, notice, summons, or other process received by RMRTD, and such failure to give said notice shall result in prejudice to Contractor in its defense of any action or legal proceeding in which Contractor is required to indemnify the RMRTD, then such failure or delay shall release Contractor of its liability as set forth in this Indemnification Agreement, but only insofar as the particular claim or legal proceeding is concerned, and only to the extent of such prejudice. Nothing in this subsection shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against the RMRTD. This section shall not be construed as a waiver of the RMRTD’s immunity. The provisions of this section shall not be construed to prohibit Contractor from seeking contribution or indemnity from any third party which may have caused or contributed to the event for which Contractor indemnifies the RMRTD.
D. Assignment and Subletting. The Contractor shall not assign or otherwise transfer, in whole or in part, any of the rights granted in this Agreement without the prior written approval of the RMRTD. The RMRTD shall not be required to approve any assignment or other transfer of this Agreement that would result in the Services required in this Agreement being performed by any other person or entity than the Contractor.

E. Ethics.

1) Conflict of Interest. As a condition of this Contract, the Contractor shall furnish the RMRTD with a Campaign Contribution Disclosure form, substantially the same as Exhibit D, and shall deliver said disclosure to the Project Manager, Mid-Region Council of Governments, 809 Copper Ave., N.W., Albuquerque, New Mexico 87102. The Contractor shall disclose whether any member of the RMRTD Board of Directors, officer or employee of the RMRTD or the Mid-Region Council of Governments (RMRTD), an administrative entity for the RMRTD, has or hereafter acquires any direct, indirect, legal, or beneficial interest in the Contractor or in any contract, lease, or agreement between the RMRTD and the Contractor, or in any franchise, concession, right, or privilege of any nature granted by the RMRTD to the Contractor in this Agreement or otherwise.

2) Fair Dealing. The Contractor covenants and warrants that the only person or firm interested in this Agreement as principal (or principals) are named in this Agreement and that no other person or firm has any interest in this Agreement, and this Agreement is entered into by the Contractor without collusion on the part of the Contractor with any person or firm, without fraud and in good faith. The Contractor also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, shall be, offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the RMRTD with a view toward securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

F. Approvals, Consents and Notices.

1) All notices, consents, and approvals required by this Agreement shall be in writing and shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested, or by personal delivery, or by facsimile transmission to the “FAX” number given below, provided that the completed transmission is electronically verified. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:
2) If notice, consent or approval is given in any other manner or at any other place, it shall also be given at the place and in the manner specified above.

3) The effective date of such notice, consent or approval shall be the date of the receipt as shown by the U.S. Postal Service Return Receipt, or the date personal delivery is certified, or the date of electronic verification of the facsimile transmission, unless provided otherwise in this Agreement.

G. Non-Liability of Agents and Employees. No member, officer, agent, director, or employee of RMRTD or Contractor shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of their execution or attempted execution of this Agreement.

H. No Partnership or Agency. Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of owner and contractor, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Contractor the general representative or agent of RMRTD for any purpose whatsoever.

I. Force Majeure. Except as expressly provided in this Agreement, neither RMRTD nor Contractor shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rentals, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of the public enemy, weather conditions and the results of acts of nature, riots, rebellion, sabotage, or any other similar circumstances for which it is not responsible or which are not within its control.
J. Forum Selection. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in a state district court located in Bernalillo County, New Mexico or in a federal district court located in New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either or both of said courts. The provisions of this section shall survive the termination of this Agreement.

K. Compliance with Law. The Contractor shall comply with all applicable laws, ordinances, regulations and procedures of federal, state, and local governments, including, but not limited to RMRTD rules. The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101) and federal regulations promulgated there under (28 C.F.R. Parts 35, 36, and 37).

L. Patents and Trademarks. Contractor represents that it is the owner or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its performance under this Agreement. Contractor agrees to defend, indemnify and hold harmless the RMRTD, pursuant to the Indemnification Agreement above, from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark, copyright, trade secret or proprietary right, or arising from any alleged or actual unfair competition or other similar claim arising out the performance of this Agreement by Contractor. In the event a claim is made that the use of materials is such an infringement, the Contractor shall either procure for RMRTD the right to continue using such materials, make modifications resulting in the elimination of the infringement (and continue to meet the requirements of this Agreement) or replace such material with non-infringing materials of a like functionality that meet the requirements of this Agreement.

M. Savings. RMRTD and Contractor acknowledge and agree that they have thoroughly read this Agreement, including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. RMRTD and Contractor further acknowledge that the Agreement is the result of negotiations between them and that this Agreement shall not be construed against either party by reason of that party’s preparation of all or part of this Agreement.
IN WITNESS WHEREOF, the Parties referenced herein have executed this Agreement on the dates specified below.

RIO METRO REGIONAL TRANSIT DISTRICT

By: ____________________________ Date: ____________________
   Executive Director

CONTRACTOR

By: ____________________________ Date: ____________________
   Title: ___________________________

   New Mexico State Taxation and Revenue
   Taxpayer I.D. Number:____________________
   Federal Taxation I.D. Number:____________________

APPROVED AS TO FORM

By: ____________________________ Date: ____________________
   RMRTD Legal Counsel
APPENDIX A

REQUEST FOR PROPOSAL

RMRTD Procurement No. __________-____
APPENDIX B

PROPOSAL FROM: ________________________

RMRTD Procurement No. __________-_____
EXHIBIT B

SCHEDULE OF FEES
# EXHIBIT C

## CERTIFICATE OF INSURANCE FORM

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<thead>
<tr>
<th>PRODUCER</th>
<th>LETTER A</th>
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<tbody>
<tr>
<td>COMPANY</td>
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### INSURED

<table>
<thead>
<tr>
<th>COMPANY</th>
<th>LETTER D</th>
</tr>
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<tbody>
<tr>
<td>COMPANY</td>
<td>LETTER E</td>
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</table>

## COVERAGES

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued for may pertain. The insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

### GENERAL LIABILITY*

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<tr>
<th>Type of Insurance</th>
<th>Policy Number</th>
<th>Policy Effective Date</th>
<th>Policy Expiration Date</th>
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<td>Commercial General Liability</td>
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<td>Claims Made</td>
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<td>Owner’s &amp; Contractor’s Protect.</td>
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<td>Self Insurance Retention</td>
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### AUTOMOBILE LIABILITY *

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<td>Garage Liability</td>
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### EXCESS LIABILITY *

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### OTHER

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<td>Employer’s Liability</td>
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### CERTIFICATE HOLDER

MODIFICATION/CANCELLATION:

The above identified policy (policies) of insurance shall not be materially changed or altered, or canceled without first giving thirty (30) days advance written notice by certified mail return receipt requested to the parties.