RFQ #2023-3
Architectural, Engineering, and other Technical Services

Released September 15th, 2023
REQUEST FOR QUALIFICATIONS (RFQ) OVERVIEW

SECTION 1: AGENCY DESCRIPTION

1.1 General

The San Miguel Authority for Regional Transportation, (hereinafter referred to as SMART), is a Regional Transportation Authority serving the greater Telluride Colorado region. This includes the towns of Telluride, Mountain Village, Sawpit, Norwood (San Miguel County), Nucla, Naturita, Montrose (Montrose County), Ridgway (Ouray County) and Rico (Dolores County) with fixed route, commuter, vanpool, and paratransit Services. In 2028, SMART services will also include the operations and maintenance of the gondola services between the Town of Telluride and the Town of Mountain Village. Currently, SMART provides 65,487 trips per year on fixed route services and an additional 4040 in commuter van pools. SMART operates seven days a week (12 hours a day). SMART currently utilizes gas and diesel vehicles in either transit buses, cutaways, or vans (all ADA compliant).

The gondola was originally built to improve air quality in the region by providing a transportation alternative to driving between the Towns of Telluride and the Mountain Village. The gondola started operating in 1996 and now transports over 3 million riders (similar ridership to RTD’s Colfax Avenue Bus Rapid Transit route in Denver) annually between Telluride and Mountain Village. During peak seasons, over 20,000 riders per day use the gondola making it one of Colorado’s busiest transit lines. With more than 137,000 hours in operation, no other gondola system in the world has moved as many riders or operated as many hours. The free gondola is a critical piece of the regional transit system for residents, workforce and visitors alike. Seventy percent of gondola riders are non-residents, according to the BBC Economic Impact Analysis cited below, which substantially reduces cars and vehicle traffic between and within Telluride and Mountain Village. Additionally, nearly one-third of trips are work- or school-related for local residents.

The gondola is the first and only free public transportation system of its kind in the United States. Development of the gondola was required as part of the Planned Unit Development (PUD) approval process to develop the Town of Mountain Village. The current operating agreement for the gondola will expire on December 31, 2027, at which point the gondola will be operated by SMART.

More information is available in this Summary Memo and at www.OurGondola.org.
SECTION 2: OVERVIEW OF PROJECT

2.1 General

SMART is soliciting Statements of Qualifications (“SOQs”) from qualified firms to provide Architectural and Engineering (A&E) Services. A&E Services shall include the Architectural Design, Civil/Structural/Mechanical Engineering, Environmental Assessments, Planning, Project Development and Support, and Technical Assistance necessary to assist with planning for and implementing a replacement gondola system connecting the Town of Telluride to the Town of Mountain Village. A&E Services shall also include system-wide transit improvements including but not limited to bus stops, transit hubs, and future system expansion and enhancements on an on-call basis.

2.2 Type of Procurement

This solicitation is a qualifications-based procurement utilizing a request for qualifications (RFQ) process. SMART will evaluate firms based on qualifications in specific categories, taking into consideration the evaluation factors set forth in this RFQ. Firm selection will be qualifications-based in accordance with the Brooks Act as defined by FTA Circular 4220.1F. SMART intends to contract with up to two (2) multi-disciplinary teams, and up to five (5) specialty area firms.

2.3 Solicitation Terminology

Business Day: Monday – Friday (not including holidays).

The San Miguel Authority for Regional Transportation: (also referred to as “SMART”, “RTA”, “Authority”, “Contractor”, “Buyer” or “Purchaser”): the government entity who is soliciting submissions for qualifications with the RFQ.

Procurement (also referred to as “Solicitation”): SMART’s process for selecting a Firm for this Project.

Fixed guideway, Aerial Tramway (AT) and Gondola are interchangeable.

Transit Services: include fixed route, commuter, vanpool, paratransit, micro transit, and gondola.

Projects of Similar Scope and Complexity: projects that had completion dates within the last 5 years and that have many or all of the following characteristics:

- Complex projects that require coordination with multiple stakeholders and/or regulatory agencies
- Projects that require complex scheduling with minimal disruption to a facility that operates, in part, year-round 18+ hours a day.
- Projects that utilize an integrated delivery method that requires strong coordination and integration of the design and construction professionals and early involvement of the construction professionals during design.
- Projects that demonstrate phased implementations over multiple construction seasons

2.4 Solicitation Schedule
The following is the Solicitation Schedule. SMART reserves the right to modify this Schedule via Addenda issued prior to the Questions deadline date set forth below.

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>RFQ Issue Date</td>
<td>9/15/2023 at 3:00 PM</td>
</tr>
<tr>
<td>Questions/Requests for Clarifications</td>
<td>9/22/2023 by 4:00 PM</td>
</tr>
<tr>
<td>Deadline Date</td>
<td></td>
</tr>
<tr>
<td>SOQ Due Date</td>
<td>10/14/2023 by 3:00 PM</td>
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<tr>
<td>Follow-up Interviews with Short-Listed</td>
<td>TBD (as needed)</td>
</tr>
<tr>
<td>Firms</td>
<td></td>
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<tr>
<td>Recommendation to Board</td>
<td>11/9/2023</td>
</tr>
<tr>
<td>Award of Contract - Notice to Proceed</td>
<td>11/10/2023</td>
</tr>
</tbody>
</table>

2.5 **Scope of Work**

See Appendix A

2.6 **Questions and/or Requests for Clarification**

Questions and/or Requests for Clarifications regarding this solicitation shall be made by emailing amber.kyle.blake@smarttelluride.com by the time and date specified in the solicitation schedule. The project manager will review all questions and/or requests for clarification that are received by the submission deadline and will post responses via Addenda on the solicitations page of SMART’s website.
SECTION 3: PROCUREMENT PROCESS

3.1 General Information

1. Compliance with Legal Requirements: This Procurement will be in accordance with the Federal Transit Administrations Third Party Contracting Guidance (Circular 4220.1F) and all other applicable federal, state and local laws and Agency policies and procedures.

2. Conflict of Interest
   a. Consultants who assisted the SMART in the RFQ/RFP preparations may not propose or participate with any Firm on this project.
   b. SMART may make a written determination to waive a potential conflict of interest if the following apply:
      i. The role of the Consultant was limited to provision of preliminary design, reports or similar “low-level” documents that will be incorporated into the Procurement and did not include assistance in development of instructions to Offerors or evaluation criteria; or
      ii. Where all documents and reports delivered to SMART by the Consultant are made available to all Offerors
   c. SOQ Format Requirements
      The SOQs shall comply with the following format requirements:
      • In searchable .pdf format.
      • Substantive portions organized into the parts and subparts outlined below. Each part must be clearly labeled and identifiable.
      • Contain a Table of Contents and pagination
   d. SOQ Organization

SOQs shall consist of the following parts:

1. PART 1: Cover Letter, Company Overview, Statement of Work and Approach, Minimum Qualifications, Experience and References
   Proposals that omit any information or do not use the format requested may result in disqualification. At a minimum, all submittals should include the following (75-page limit).
   a. Cover Letter
      • The cover letter addressed to SMART’s Executive Director should state the proposer’s understanding of the services to be provided. Any additional information should also be added that the firm believes is necessary but is not included in other sections of the document.
      • Must be signed by an official of the Firm with responsibility to bind the Firm contractually.
      • Must contain a summary of the Firm’s qualifications and a commitment to provide the requested Services.
      • Must contain the contact information of the Firm’s RFQ Point of Contact.
b. Company Description
   • Introduce your Firm and provide all locations (if multiple offices)
   • Must include a brief overview of the Administration, organization and staffing of the Firm

c. Statement of Work and Project Approach
   • Provide a description of the understanding and approach to the project and anticipated project deliverables. Describe the type and level of support required / expected from SMART throughout the project. Include an explanation of any variances to the proposed scope of work as outlined in the RFQ, which could be accepted if they will result in a more effective, innovative, or accurate final product.

d. Minimum Qualifications
   • Explain how your Firm (and any subcontractors) meets each of the minimum qualifications as specified in the Scope of Services of this solicitation
   • Must include a statement confirming the Firm’s ability to provide insurance

e. Direct Experience
   • Provide three (3) to five (5) recent project examples that are evidence of your Firm’s (and any subcontractor’s) direct experience and collaborative experience with transit/government agencies in performing services of similar scope and complexity
   • Ideally this experience should be within the last 5 years and must include the following information:
     o Total Value of the Project
     o Firm’s role and responsibilities (Prime Contractor, etc.)
     o Location of Project
     o Year Each Project Began and was Completed

f. References.
   5 References from the transit/government agencies cited in the Direct Experience section, including the following:
   • Reference Contact Name and Job Title
   • Reference Contact Phone Number and Email Address
   • Project Name
   • Role of Contact in the Project

2. PART 2: Understanding of the RFQ
   • Provide a summary of your Firm’s understanding of the Scope of Services.
   • Include any additional tasks or deliverables your Firm believes are necessary to meet this Scope as outlined.
   • Include any strategies or information demonstrating how your Firm would exceed performance metrics, if applicable.

3. PART 3: Project Team
   a. Organizational Chart and Key Personnel
      • Provide an organizational chart of the proposed project personnel and all the sub-contractor’s lead personnel.
• Identify the key members of both the Firm’s personnel and the subcontractor’s personnel, including their qualifications, certifications, previous experience, specialties, etc.
• For each team member, list the person’s name, role, education, experience, years employed at the Firm, and relevant experience. For each person’s relevant experience projects, list the owner’s name, project type, project budget, date of completion, project role, and a project reference.

List at a minimum the following that align with the Project team in your proposal (some individuals may fulfill more than one role). Should there be a change in personnel submitted in the SOQ, submitters are required to notify SMART.

• **Principal in Charge** - this will be a person in an ownership position who will be responsible for the project.
• **Project Manager** - the person who will be the primary owner’s contact in the Firm, this is the person responsible for managing the other team members.
• **Project Designer** - the person responsible for design issues and progress.
• **Project Architect** - the person responsible for the architectural drawings and specifications.
• **Civil Engineer** - the primary contact for civil issues and civil drawings and specifications.
• **Structural Engineer** – the primary contact for structural issues and structural drawings and specifications.
• **Transportation Engineer** - the primary contact for traffic and related analyses.
• **Landscape Architect** - the primary contact for site planning, design and landscape issues.
• **Mechanical Engineer** - the primary contact for plumbing, heating ventilating and air conditioning design and specifications.
• **Electrical Engineer** - the primary contact for electrical engineering. At the Proposers option, they may list a second Firm for low voltage design.
• **Security Systems Engineer** – Video systems, door-lock systems, etc.
• **Planning Lead** – the primary contact for transit/multimodal planning and planning related functions per this RFQ.
• **Other Key Staff and their roles.**

b. **Firm’s Expectations of SMART.** Outline Firm’s expectations of SMART, including communication methods and any resources required by Firm of SMART to complete all deliverables timely.

4. **PART 4: DBE Commitment and Other Requirements**
   a. **DBE Commitment.** All firms responding to this solicitation shall provide a brief narrative identifying the extent to which disadvantaged and diverse contractors or sub-contractors including small, veteran owned, minority- owned, and women-owned business enterprises would be used in the performance of this proposed Contract as well as the firm’s prior level of commitment to using these small businesses in the performance of prior contracts. A subcontracting plan is not
required with this submittal.

b. **Required Forms.** The following forms and certifications must be completed, signed and submitted with the SOQ in order to be deemed responsive:
   - Appendix B – Proposer Questionnaire
   - Attachment C – Receipt of Addenda
   - Attachment D – Lobbying Restrictions Certification
   - Attachment E – Buy America Certification
   - Attachment F – Debarment and Suspension Certification (needs to be completed by both the Firm and any sub-contractor)
   - Attachment G – Federal Transit Administration (FTA) Requirements (Federal Clauses)

5. **PART 5: Additional Information.**
   Include any additional information that is pertinent but not specifically asked for elsewhere.
SECTION IV. CONTRACT PROVISIONS

SMART estimates the potential value of this contract to be $6-10 Million. The initial period of performance for the contract will be for three (3) years. SMART reserves the right to extend the contract up to a total of two (2) years after the initial three (3) year term.

- There is no guarantee that all the task orders will be completed. SMART does not guarantee that the successful Firm will receive a specific volume of work, a specific total contract amount, or a specific task order value.

- At any time during the funding year, all projects and subsequent task orders may be subject to change if there is a change in funding levels or project priorities.

When a Firm is selected to enter into negotiations with SMART, the selected Firm and subcontractors, if any, will be asked to submit a Cost Estimate on GSA Form 2630 or other mutually acceptable format. An overhead factor shall be applied to the costs appropriately and a fixed-fee (profit) proposed. These costs, once agreed to, shall form the basis for a billing/payment provision. SMART and the SMART Board of Directors reserve the right to request documentation supporting the proposed overhead rate of both the selected Firm and subcontracting Firm. Such information shall include but not be limited to:

A statement about the Firm’s accounting system indicating the following:

- An overview of the accounting system and its capability to track costs and provide financial information; and written procedures and policies concerning the accounting system, time keeping, payroll, purchased services and materials, direct and indirect cost control, asset capitalization, depreciation, and pre-contract costs.

- Chart of accounts including definition of what is included in each account.

- A statement indicating the basis for the overhead rate and whether it is historical information or projections. If it is projections, then indicate both historical and future and explain the change from historical information to the future. In executing this contract, the Firm shall certify that the overhead burden rate information.

- The Firm will separate direct and indirect charges and ensure that the indirect charges do not include any unauthorized charges per the Federal Acquisition Regulations Part 31.

- Audit rate information, audited by a cognizant Federal or State governmental agency, if available.

- Proof of adequate financial resources available to the Firm for the completion of the work hereunder. Such information could include information from the past three years, such as copies of balance sheets, profit and loss statements, changes in financial position, including footnotes and auditor’s opinions on financial statements, or annual reports to stockholders.
**Inspection of Cost Data**

SMART shall have the right to examine and audit all books, records, documents and other data of the Firm related to pricing or performing the contract in order to evaluate the accuracy, completeness and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.

Appendix G contains federal clauses that must be agreed to and included with all proposals submitted.

**INSURANCE REQUIREMENTS**

Prior to the approval of this proposal by SMART, the successful proposer shall furnish a completed Insurance Certificate to SMART, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. SMART SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER A CONTRACT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO SMART.

**Insurance Coverage Required**

SMART reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by SMART based upon changes in statutory law, court decisions, or the claims history of the industry as well as the successful firm.

Subject to the successful firm’s right to maintain reasonable deductibles in such amounts as are approved by SMART, the successful firm shall obtain and maintain in full force and effect for the duration of a contract, and any extension hereof, at the firm’s sole expense, insurance coverage written by companies approved by the State of Colorado and acceptable to SMART, in the following type(s) and amount(s):

<table>
<thead>
<tr>
<th>Type</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Worker’s Compensation Statutory</td>
<td></td>
</tr>
<tr>
<td>B. Employers Liability</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>C. Commercial General (public) Liability insurance including coverage for the following:</td>
<td></td>
</tr>
<tr>
<td>D. Premises operations Combined single limit for</td>
<td></td>
</tr>
<tr>
<td>E. Products/completed operations bodily injury and property</td>
<td></td>
</tr>
<tr>
<td>F. Personal injury damage of $1,000,000 per d. Advertising injury occurrence or its equivalent.</td>
<td></td>
</tr>
<tr>
<td>G. Contractual liability</td>
<td></td>
</tr>
<tr>
<td>H. Comprehensive Automobile Combined single limit for Liability insurance, including bodily injury and property of $1,000,000 per occurrence</td>
<td></td>
</tr>
<tr>
<td>I. Professional Liability</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>
SMART shall be named as additional insured on Auto/General Liability policies on a primary and noncontributory basis with a waiver of subrogation in favor of SMART on all coverages. All copies of the Certificates of Insurance shall reference the RFP or proposal number for which the insurance is being supplied. Copies of endorsements are required.

**Additional Policy Endorsements**

SMART shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by SMART, the firm shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.

**Required Provisions**

The firm agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions:

A. Name SMART and its officers, employees, and Board of Directors members as additional insureds, (as the interest of each insured may appear) as to all applicable coverage;

B. Name Town of Mountain Village as additional insureds, as to all applicable coverage;

C. Provide for 30 days’ notice to SMART for cancellation, nonrenewal, or material change;

D. Provide for notice to SMART at the address shown below by registered mail;

E. The firm agrees to waive subrogation against SMART and the Town of Mountain Village, its officers, employees, and Board of Directors members for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;

F. Provide that all provisions of this contract concerning liability, duty, and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

G. All copies of the Certificates of Insurance shall reference the project name or proposal number for which the insurance is being supplied.

**Notices**

The firm shall notify SMART in the event of any change in coverage and shall give such notices not less than 30 days prior the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE.

All notices shall be given to SMART at the following address:
Approval, disapproval, or failure to act by SMART regarding any insurance supplied by the firm shall not relieve the firm of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the firm from liability.

C. PROPOSAL SUBMISSION INSTRUCTIONS

SOQ’s are due by October 14 by 3:00 PM.

SOQ’s must be submitted by email or surface mail to:

Amber Kyle Blake, Sr. Project Manager  
amber.kyle.blake@smarttelluride.com  
San Miguel Authority for Regional Transportation (SMART)  
PO Box 3140, Telluride, Colorado 81435

If submitting proposals electronically and the submittal was received successfully, you will receive a confirmation from Ms. Kyle Blake. If you do not receive a confirmation email upon submittal or the file size of attachments is too large for submission by email, please contact Ms. Kyle Blake at the above email address to receive alternative submittal instructions.
SECTION VI. PROPOSAL EVALUATION PROCESS

SMART’s evaluation committee consists of staff members and other experts who will evaluate the proposals on their responsiveness to the stated criteria. During the review process, all aspects of the evaluations and any negotiations, including documentation, correspondence and meetings, will be kept confidential by the Evaluation Committee. No information regarding any proposal or its evaluation will be discussed with other Firms until after contract award.

SMART may require the selected Firm(s) to participate in contract negotiations. SMART’s requirement that the selected Firm(s) negotiate is not a commitment by SMART to award a contract.

Time is of the essence, if SMART determines that it is unable to reach an acceptable contract with the selected Firm(s), including failure to agree on a fair and reasonable cost proposal for providing services or any other terms or conditions, the SMART Executive Director may terminate negotiations with the selected Firm(s), and to and begin negotiate negotiations with any of the other qualified Firms, until such time as SMART has negotiated a contract meeting its needs.

SMART reserves the right to seek clarification of any information that is submitted by any Firm in any portion of its proposal or to request additional information at any time during the evaluation process. Any material misrepresentation made by a Firm may void the proposal and eliminate the Firm from further consideration.

SMART reserves the right to enlist independent consulting services to assist with the evaluation of all or any portion of the proposal responses as it deems necessary.

Proposals will not be publicly opened and will be kept strictly confidential until the Contract is awarded.

A. EVALUATION CRITERIA

SMART will evaluate each firm in accordance with the following criteria to determine the firm that it believes is best suited to meet the needs of this project. During the evaluation process, SMART reserves the right to request additional written information to assist in the valuation of proposals. Based on the scores and rankings of the written proposals, web-based interviews may be requested from firms to permit clarification of questions, based on the review of the written proposals. SMART reserves the right to reject any and all written proposals in order to serve the interests of SMART.

Proposals will also be scored on the clarity and completeness of their submittals. Points will be awarded as described below. The maximum points available do not include a potential interview, should an interview process be used the interview will be evaluated in addition to the SOQ.

Final selection and ranking will be based on the following criteria and points:

Evaluation of Qualification Statements

Qualified Firms will demonstrate a combination of corporate and staff experience in planning, designing, and delivering exemplary projects that include the above components (not limited to
SMART expects that qualified Firms will also address the specific requirements of transit capital projects that receive any combination of local, state and federal funding and are planned, designed, and built under requirements of said funders. Firms will provide specific experience with gondolas. SMART may interview a shortlist of qualified Firms based on their responses in the following categories:

**The overall experience and capabilities of the Firm and team: 35 points**

*Proof*: Experience in all phases of project development for similar facilities, designed on time and within budget, and with client references. Cover Letter (1 page), Narrative/Statement of Work, Project Experience.

**Project approach: 35 points**

*Proof*: Provision of an innovative proposal that offers a comprehensive strategy to provide long range transit solutions for the SMART region including the gondola.

**The experience of the Project Team assigned to the project: 15 points**

*Proof*: Qualifications and experience in delivering capital projects or programs similar in scope and scale to the facilities identified in the scope of work.

**Experience in delivering best practices in key project elements: 15 points**

*Proof*: Evidence of exemplary work covering the core requirements of the RFQ, as shown in the cover letter, proposal narrative, staff resumes, corporate experience, and Exemplary Case Studies (with each case study identifying the core competency, the project outcome, client reference details, and staff included in the proposal who worked on the project).

**Optional Interview: 25 points**

SMART reserves the right to award a contract without interviews or to interview any number of proposers based on the overall Proposal Evaluation Score. SMART expects to request interviews from no more than three proposers (or teams). SMART will provide instructions to shortlisted proposers in advance of interviews.

**B. INTERVIEW PROCESS**

SMART may select top-ranking proposals based on the evaluation criteria described above, the selected Firms may be invited for an interview with the Selection Committee on a date to be determined. The Selection Committee will decide on the number of Firms to be invited for an interview. Firms will be notified of the opportunity to interview and their assigned time when notified of their finalist status. The interview will be no more than one (1) hour in length. The interview will consist of a 20-minute presentation by the Firm Team to provide a summary of their proposal, followed by a question-and-answer session.

The Selection Committee will score and select the apparent successful Firm based on the written proposal, interview presentation and the responses to the interview questions presented during the interview. The Selection Committee will compile and average the interview scores given by each member of the Selection Committee, then rank the interviews based on total average scores.
received for each Proposer. The committee will make the selection pursuant to review of the interviews and overall scoring results. Negotiations will be held with the selected Firm.
SECTION VII. AWARD

A. METHOD FOR SELECTION AND PROCESS TIMELINE

SMART shall evaluate all proposals submitted and determine which proposal submittal is in the best interest of the agency. SMART, at its sole discretion reserves the right to accept or reject any and/or all proposals submitted and to waive minor informalities and irregularities to serve the best interest of SMART. SMART may enter into a contract with the successful A&E Firm within ninety (90) days of the closing date or may extend this time frame or exercise the right to reject all proposals.

SMART staff will recommend to the San Miguel Authority for Regional Transportation (SMART) Board of Directors, a consultant selection based on the evaluation criteria. The SMART Board of Directors will approve the final selection and price.

Proposals shall be valid for ninety (90) days from SOQ due date.

Cost of Proposal Preparation

Proposers are responsible for all costs associated with preparation and/or delivery of the proposals and any and all incidental costs associated with the clarification, presentation, or amendment of the proposal. SMART does not expect the written proposals to be expensive or ostentatious.

Disposition of Late Proposals

It is the responsibility of the Firm to ensure that proposals are received by the specified date and time. Proposals received after the specific deadline will not be accepted.

Withdrawal or Modification of Proposals

A modification to a proposal already received at SMART shall be considered only if the modification is requested prior to the date/time for the submittal of final proposals. All modifications shall be made in writing, executed and submitted in the same form and manner as the original proposal. Any modification of the proposal or quotation, except a modification resulting from SMART's request for a “best and final” offer, is subject to the same conditions.

Proposals may be withdrawn by written or email request received from Firms prior to the date/time for the submittal of final proposals. Proposals may be withdrawn in person by a Firm or an authorized representative if the representative’s identity is made known and the representative signs a receipt documenting the withdrawal of the proposal.

No Firms may withdraw a proposal after the time and date for submittal of final proposals, unless the resulting Contract award is delayed for a period exceeding ninety (90) days from the deadline for receipt of proposals. SMART reserves the right to request that the Firm grant an extension to the proposal validity period.

No consideration shall be given by SMART to a claim of error in a proposal unless written notice of error and supporting evidence of such claim, including cost breakdown sheets, are delivered to SMART within forty-eight (48) hours of the opening of proposals. A review by SMART of a proposal
and/or any review of such a claim of proposal error (including supporting evidence) imposes no
duty or liability by SMART to discover any other error or mistake, and the sole liability for any
proposal error or mistake rests with the Firm.

B. PROTEST PROCEDURES

A protest of a proposed award or of an award shall be filed within seven (7) business days of the
award of a contract or notice of apparent successful proposer, whichever is sooner.

Solicitation protest:

Anyone who wishes to file a protest concerning the RFQ requirements or the solicitation
procedures must do so before the opening of the proposals. SMART must receive the written
protest no later than the time set for the opening of SOQ’s, October 16, 9:00 AM

If the protest cannot be resolved by the designated time for opening, SMART shall delay the
opening until the protest is resolved. However, the decision must be issued in writing by SMART
within 10 working days from the date that the protest was received.

Pre-award protest:

If anyone who wishes to protest some aspect of the procurement other than the project
requirements or solicitation procedures or wishes to protest something about the solicitation
procedures that only becomes evident after the opening, then they must file a written protest no
later than 5:00 p.m. local time on the fifth working day after the opening of proposals.

SMART must issue its written decision within no more than ten working days from the date the
written protest was received.

Post-award protest.

If anyone wishes to protest some aspect of the procurement other than project requirements or
solicitation procedures, or wishes to protest the award of the proposal, then they must file a
written protest no later than 5:00 p.m. local time on the tenth working day after the award of the
contract by the SMART Board of Directors.

SMART must issue its written decision within no more than ten working days from the date the
written protest was received.

C. RESPONDENT CERTIFICATION

By submitting a response to this RFQ, the respondent affirms and certifies its awareness and
agreement to the content of this RFQ and all provisions contained herein. Each respondent
further certifies that its proposal has been properly executed by an authorized company officer,
and that the respondent is bound by the content of its proposal.
SECTION VIII. OTHER PROVISIONS

A. TAXES

SMART, as a local government agency in the State of Colorado, is exempt from the following taxes: State of Colorado Sales and Use Taxes, local sales and use taxes, and State and Federal fuel taxes.

B. INTERPRETATION

If any proposer is in doubt as to the intent or meaning of any part of this bid, he/she should contact the SMART Executive Director in time to receive a written reply before submitting his or her bid.

Any clarification, revisions, or additions to, or deletions from any of the contract documents will be made only by addendum and a copy of such addendum will be mailed or delivered to each person who has notified SMART of their intent to bid.

C. FINANCIAL STATEMENTS

Proposers may be requested to submit financial statements subsequent to the opening of proposals together with such other information as may be required to determine that a contemplated awardee is fully qualified to receive the award.

D. PROPOSER’S RESPONSIBILITIES

The proposer is charged with the responsibility of satisfying himself or herself as to the character of the scope of services required under a contract and all other matters, which can affect or modify the terms or obligations incorporated herein before submitting his or her proposal.

E. PROHIBITED INTEREST

No members, officers, or employees of the public body during his or her tenure or one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof. No member or delegate to the Colorado State Legislature or to the Congress of the United States shall be admitted to any share of any part of this purchase or any benefit arising there from.

D. ORAL STATEMENTS NOT BINDING

It is understood and agreed that the written terms and provisions of this contract shall supersede all oral statements of any and every official or other representative of the purchaser, and oral statements shall not be effective or be construed as entering into, or forming a part of, or altering this contract in any way whatsoever.

E. INSPECTION, ACCEPTANCE AND PAYMENT

All services furnished under this contract will be accepted by SMART to determine whether or not the services received are in accordance with the terms of the contract and associated task order.

Payment will be made when SMART agrees that all services received have been accepted.
F. TIME

All times in this RFQ and subsequent communications with prospective bidders are Mountain Standard Time (MST). This includes, but is not limited to, times set for submission, proposal openings, SMART Board of Directors meetings, site inspections, and delivery hours.
APPENDIX A: SCOPE OF WORK

Overview Purpose and Need:

The San Miguel Authority for Regional Transportation (SMART) has developed the following RFQ Scope of Work to obtain proposals from qualified Consultants and Consultant teams able to provide services for Planning, Engineering (A&E, Mechanical and Civil), Environmental, Project Development and Support, and Technical Assistance on an as-needed basis to meet a wide range of needs. This RFQ is unique in the fact that it is intended to be all-encompassing and provide consultant support services for all modes of transit in the SMART Service area including fixed guideway / aerial tramway (gondola). It is expected that the Consultant will either provide a project team that can address all the specialty areas as noted in the RFQ or clarify specific specialty areas for which the consultant is proposing. It is anticipated that the Consultant or consultants may be part of a blended, multidisciplinary group responsible for developing an overall project perspective and strategy. This group may consist of SMART staff, local agency representatives, contractors, and project stakeholders, and will occur at SMART’s discretion.

The Consultant should provide a project team consisting of professionally licensed engineers with a demonstrated ability to review, prepare and develop transit facility design documents, engineering plans, and National Environmental Policy Act (NEPA) documents. The Consultant team should also have experience in providing field support for studies, construction compliance monitoring, and inspections. The Consultant team shall demonstrate experience and abilities in the preparation of clearly written and well-organized documents and reports, preparation of grant applications, public involvement experience, design plan development and other related products that meet Local, CDOT, FTA, and USFS standards, policies, and guidelines.

The Consultant team will provide a contract manager with demonstrated contract management experience that includes the coordination of sub-consultants and vendors, knowledge of processing task orders, work hour estimation, and experience with transit, multimodal transportation and gondola (fixed guideway/aerial tramway) projects.

The selected Consultant(s) shall provide the following services on an as-needed basis as directed by SMART and pursuant to Task Orders issued by SMART. For purposes of this RFQ, Transit shall mean any public transportation mode, including but not limited to bus, van, microtransit, and gondola (fixed guideway/aerial tramway) services.

Consultants should carefully review the Scope of Services when compiling teams. SMART anticipates that a variety of these services will be required during the given contract timeframe. SMART requires that quality control and quality assurance measures are taken in preparation of all documents and submittals to local, state and federal agencies. Attendance at SMART staff and board meetings, public/stakeholder group meetings, and other planning support services meetings may be required.

Project task orders may include:

- Grant preparation (RAISE, FTA 5339, Congressionally Directed Funding, CIG Program, State Grants, etc.)
• Planning, Design, Engineering, Environmental and technical work to replace existing gondola system with a new machine (same alignment) and retrofit and or full replacement of existing stations
• Station area and multimodal integration planning
• Public Engagement
• Bus Stop Improvements
• Transit System Enhancements
• Existing Facility Repurpose
• Bus Pull-out Design
• Bus Shelter Design
• Bus Barn Expansion
• Preliminary Site Development on Vacant Land

The Consultant shall provide all labor, materials, facilities, transportation, supervision, and necessary management to provide the required Services. The Consultant(s) should have experience and be prepared to assist in disciplines to include but not limited to:

I. Architecture and Engineering
   1. Environmental Assessment
   2. Site Planning and Development including Public Outreach
   3. Facility Design
   4. Facility Planning and Development
   5. Interior Design and Space Planning
   6. Landscaping and Urban Design

II. Civil/Structural/Engineering
   1. Boundary and Topography Surveying
   2. Site Design, including Bus Shelter Site Design
   3. Conceptual, Preliminary and Final Engineering Plans
   4. Construction Management
   5. Construction Surveying
   6. Geotechnical/Material Testing
   7. Hazardous Waste Remediation
   8. Irrigation and Drainage
   9. Pavement Marking, Signage, and Resurfacing
  10. Bicycle/Pedestrian Improvements
  11. Real Estate Analysis
  12. Right-of-Way Work
  13. Street/Intersection Design Related to Transit Infrastructure
  14. Structural Design
  15. Transit Oriented Development
  16. General Transportation Engineering
  17. Working knowledge of Colorado Passenger Tramway Safety Board (CPTSB) and ANSI B.77 Rules and Regulations
III. Mechanical/Electrical/Plumbing
1. Electrical Design
2. Fire Protection / NFPA
3. Gas Systems (Propane, Natural Gas, Etc.)
4. Auxiliary Power Generation
5. Heating (Radiant), Ventilation and Air Conditioning
6. Lightning Protection / Suppression / Dissipation
7. Interior/Exterior Lighting Design
8. Code Compliance
9. IT Infrastructure Design
10. Petroleum Fuel Storage and Distribution
11. Plumbing and Piping Design
12. EV Charging Infrastructure
13. Security Systems

IV. Transit and Multimodal Planning
1. Transit Plan Development:
   e.g. Conduct transit operations plans, comprehensive operational analyses, transit improvement plans, transit expansion plans, Regional Transit Plan to implement and integrate County and Local Comprehensive plans, capital needs assessments, transit development plans, and transit ridership projections.
2. Market Analysis to understand the demand for transit use, analyze existing transit services, and identify transit gaps.
3. Operations Planning:
   e.g. Develop route planning, develop schedules, estimate service costs, and estimate associated fleet and operational support needs.
4. Strategic Planning and Facilitation:
   e.g. work with internal and external stakeholders to create visions, goals, and strategies to implement long range planning efforts.
5. Financial Planning:
   e.g. evaluate past expenditures and revenues, forecast future needs, identify potential budget risks, and develop and provide recommendations and strategies to mitigate risks.

V. Environmental
1. National Environmental Policy Act (NEPA) Studies & Document Preparation:
   Scope of work for environmental services may include:
   1. Review environmental conditions and determine required permits.
   2. Delineation and mitigation recommendations of wetlands.
   3. Prepare and/or review environmental documents for FTA, USFS, or CDOT.
4. Conduct and prepare environmental surveys and clearance reports.

VI. Supplemental Services

1. Benefit Cost Analysis
2. Bid Support Services
3. Budget Development
4. Cost Estimating
5. Construction Management Services
6. Environmental Justice:
   1. Perform analysis of impacts of transit projects and propose mitigation measures related to environmental justice and equity. Contractor shall comply with applicable federal and State executive orders and regulations.
7. Grant Writing and Management (e.g. CIG, RAISE, other discretionary grants)
   1. Grant Funding Research
   2. Grant Proposal Development includes the preparation of funding abstracts, production, and submittal ready application.
   3. Grant management - prepare required documentation and reports for (e.g., CIG Program and RAISE requirements), support SMART through the reimbursement process.
8. GHG Emissions Analysis
9. GIS Support Services: Including but not limited to map production, evaluation and simulation of environmental impacts, static and interactive displays to enhance project development and public engagement process.
10. Life Cycle Cost Analysis
11. Public & Stakeholder Meetings/Presentations
12. Renderings
13. Title VI and Equity Analysis
14. 3D Modeling

VII. Other Administration

1. Project Management and Administration: Develop scopes of work for solicitations, help with a request for a task order proposal, perform work hour estimates, develop project management plans, prepare project schedules and budgets, manage tasks, track deliverables, and provide regular updates.
2. Project Documentation: Prepare relevant materials including excel spreadsheets, design drawings, design graphics, PowerPoints or similar presentations, meeting agendas, meeting minutes, and other supporting documentation.

The successful Consultant(s) must be able to provide comprehensive resources and in any or all aspects of Architectural Services, Civil/Structural Engineering, Mechanical/Electrical/Plumbing, Planning, Environmental, Technical & Program Support, and Supplemental Services. A coordinated team effort will be required to effectively accomplish task orders assigned under this on call services contract. The consultant’s knowledge of the current transportation planning and improvement efforts in the region will be valued and is an important consideration in the Consultant selection process.
APPENDIX B – CORPORATE STRUCTURE QUESTIONNAIRE AND SUBCONTRACTOR INFORMATION

Offerors shall complete the following information for the proposed Offeror/Prime Contractor and one for each proposed subcontractors and key personnel, as applicable:

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<tr>
<th>Legal Name</th>
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<td>Street Address</td>
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<td>Fax Number</td>
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<td>Type of Business</td>
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<td>D-U-N-S Number</td>
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<tr>
<td>Federal Tax Identification Number</td>
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<tr>
<td>State Contractor’s Registration Number (if applicable)</td>
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<tr>
<td>State Business License Number (if applicable)</td>
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APPENDIX C – RECEIPT OF ADDENDA

The undersigned acknowledges receipt of the following addenda to the Documents.

(Give the number and date of each. Please submit with NA if no addendums issued)

<table>
<thead>
<tr>
<th>Addendum Number</th>
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Failure to acknowledge receipt of all addenda may cause the SOQ to be considered non-responsive to this Request for Qualifications, which will require rejection of the SOQ.

__________________________________________
Signature

__________________________________________
Title

____________
Date
APPENDIX D – LOBBYING RESTRICTIONS CERTIFICATION

LOBBYING RESTRICTIONS

31 USC § 1352
2 CFR § 200.450
2 CFR part 200 Appendix II (J)
49 CRF part 20

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

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

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for 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 sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 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.

Date: ________________________________________________

Signature: ________________________________________________

Company Name: ________________________________________________

Title: ________________________________________________
Certification requirement for procurement of steel, iron, or manufactured products.

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

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date __________________________________________

Signature _______________________________________

Company Name _______________________________________

Title _____________________________________________

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

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) 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.

Date __________________________________________

Signature _______________________________________

Company Name _______________________________________

Title _____________________________________________
APPENDIX F – DEBARMENT AND SUSPENSION CERTIFICATION

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

2 CFR part 180
2 CFR part 1200
2 CFR § 200.213
2 CFR part 200 Appendix II (I)
Executive Order 12549
Executive Order 12689

Debarment, Suspension, Ineligibility and Voluntary Exclusion

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Non-procurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of $25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and sub Proposers are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

a) Debarred from participation in any federally assisted Award;
b) Suspended from participation in any federally assisted Award;
c) Proposed for debarment from participation in any federally assisted Award;
d) Declared ineligible to participate in any federally assisted Award;
e) Voluntarily excluded from participation in any federally assisted Award; or
f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Date:______________________________________________________________

Signature:______________________________
APPENDIX G – FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS

The below clauses apply to all contracts entered into between SMART and Offeror.

A. Incorporation of FTA Terms

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

B. No Obligation by Federal Government

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

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.

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

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.

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.

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.

D. Audit and Inspection of Records
Contractor shall permit the authorized representatives of SMART, its member entities, CDOT, the Colorado State Auditor, the U.S. Department of Transportation, and the Comptroller General of the United States access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract, for the purpose of making audit, examination, excerpts and transcriptions until the expiration of three (3) years after final payment under this contract. Contractor further agrees to include all its subcontracts hereunder, a provision to the effect that the subcontractor agrees that SMART, its member entities, CDOT, the Colorado State Auditor, the U.S. Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to books, documents, papers and records of such subcontractor involving transactions, related to the subcontractor for the purpose of making audit, examination, excerpts and transcriptions. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding $10,000 and (2) subcontractor or purchase orders for public utility services at rates established for uniform applicability to the general public.

The periods of access and examination described above, for records which relate to (1) appeals under the "Disputes" clause of this contract, (2) litigation of the settlement of claims arising out of the performance of this contract, or (3) costs and expense of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed.

E. 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 Agreement (Form FTA MA (26)) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

F. Nondiscrimination (EEO)
Federal Requirements and Guidance. The Recipient agrees to prohibit, and assures that each Third Party Participant will prohibit, discrimination on the basis of race, color, religion, sex, or national origin, and:
3. Comply with Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 13.a of this Master Agreement, and
4. Follow Federal guidance pertaining to Equal Employment Opportunity laws and regulations, and prohibitions against discrimination on the basis of disability,

Specifics. The Recipient agrees:

1. Prohibited Discrimination. As provided by Executive Order 11246, as amended, and as specified by U.S. Department of Labor regulations, to ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their:
   i. Race,
   ii. Color,
   iii. Religion,
   iv. National origin,
   v. Disability,
   vi. Age,
   vii. Sexual orientation,
   viii. Gender identity, or
   ix. Status as a parent

2. Affirmative Action. Take affirmative action that includes, but is not limited to:
   i. Recruitment advertising, recruitment, and employment,
   ii. Rates of pay and other forms of compensation,
   iii. Selection for training, including apprenticeship, and upgrading, and
   iv. Transfers, demotions, layoffs, and terminations, but

3. Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer”

Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures that each Third Party Participant will comply, with:

G. Title VI, Civil Rights Act of 1964, Compliance

The San Miguel Authority for Regional Transportation (SMART), in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit Proposals in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

During the performance of this contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. Compliance with Regulations: The Contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of sub Short-listed Offerors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports: The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the RTA or the Federal Transit Administration (hereinafter, "FTA") to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the SMART, or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with nondiscrimination provisions of this contract, SMART shall impose contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
i. withholding of payments to the Contractor under the contract until the Contractor complies; and/or
ii. Cancellation, termination, or suspension of the contract, in whole or in part.

6. **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (E) through (F) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the SMART or the FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request SMART to enter into such litigation to protect the interests of the SMART, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**H. Americans with Disabilities Act (ADA)**

The Contractor agrees to comply with and assure that any subcontractor under this Project complies with all applicable requirements for the American with Disabilities Act of 1990 (ADA), 42 U.S.C. Section 12101 et seq. and 49 U.S.C. Section 322; Section 504 of the Rehabilitation Act of 1973, as amended., 29 U.S.C. Section 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. Section 1612, and the following regulations and any amendments thereto:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
8. Federal Communications regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
9. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609

**I. Energy Conservation**

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

If, through any cause, the Contractor shall fail to perform fully, timely and in proper manner its obligations under this contract, or if the Contractor shall breach any of the covenants, conditions or agreements contained in the contract, the Agency shall thereafter have the right to terminate this contract by giving notice in writing which shall specify the effective date thereof, to the Contractor of such termination. In such event, any goods delivered and/or installed by the Contractor under this contract shall, at the option of Agency, become the Agency's property and the Contractor shall be entitled to receive just and equitable compensation therefor, not to exceed the maximum aggregate compensation payable by Agency to contractor as stated in Blanket Purchase Order. In the event of a termination pursuant to this Article, the Agency may elect instead to remove any goods delivered and/or installed and redeliver the same to the Contractor, all at the Contractor's sole expense, including reasonable charges for any time and/or labor expended by the Agency’s employees.

Notwithstanding the above, the Contractor shall not be relieved of any liability to the Agency for damages sustained by the Agency by virtue of any breach of contract or warrants, or of both, by the Contractor for the purpose of setoff and/or recoupment until such time as the exact amount of damages due the Agency from the Contractor is determined.

K. Termination for Convenience of SMART

SMART may terminate this contract any time by a notice in writing that shall specify the effective date thereof, from the Agency to the Contractor, at least thirty (30) days before the effective date of such termination. In that event, any goods accepted by the Agency prior to the effective date of the termination shall become the Agency's property and the Contractor shall be entitled to receive just and equitable compensation therefor and for any services accepted by the Agency prior to the effective date; provided, nevertheless, that the amount of such compensation shall not, in any event, exceed the maximum aggregate compensation payable by Agency to contractor as stated in Blanket Purchase Order, properly attributable to the goods and/or services so accepted.

Neither the acceptance, by the Agency, of any goods and/or services; the payment, by the Agency, for any goods and/or services; nor both acceptance and payment, shall be deemed to waive, to compromise, or to affect in any manner the liability of the Contractor for any breach of contract, of warranty, or both of contract and of warranty.

L. Debarment and Suspension

The Contractor agrees to comply with U.S. Department of Transportation regulations, "Government Debarment and Suspension (Non-procurement)", 49 CFR Part 29, and otherwise comply with the requirements of those regulations. This includes the requirement of the Short-listed Offeror to submit the Certification of Primary Contractor Regarding Debarment, Suspension, and Other Responsibility Matter for all projects when the total aggregate value of the
Contract exceeds $100,000 and to submit a Certification of Lower Tier Participation Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusions for each subcontractor which will have a financial interest in this Project which exceeds $25,000 or will have a critical influence on or a substantive control over the Project.

SMART will not make payment to the Contractor or subcontractor which 1) does not comply with this contract provision or 2) is not in compliance with the above-cited federal requirements or 3) fails to sign and agree to the language in Government-Wide Debarment and Suspension Certification (Appendix F).

M. Breaches and Dispute Resolution

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

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

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Agency 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 Agency is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency, 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.

N. Lobbying

During the term of this Contract, the Contractor agrees to comply with the provisions of 31 USC Section 1352, which prohibits the use of federal funds for lobbying by any official or employee of any federal agency, or member or employee of Congress; and requires the Contractor to disclose any lobbying of any official or employee of any federal agency, or member or employee of Congress in connection with federal assistance. The Contractor agrees to comply with U.S. DOT regulations, “New Restrictions on Lobbying,” 49 CFR Part 20 and include these requirements in
any subcontract which exceeds $50,000.

SMART will not make any payment to the Contractor or subcontractor which 1) does not comply with the contract provisions or 2) is not in compliance with the above-cited federal requirements or 3) fails to sign and agree to the language in Lobbying Certification (Appendix D) which is mandated by 49 CFR Part 19, Appendix A, Section 7.

O. Environmental Violations

Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, 42 USC (1857(h); Section 508 of the Clean Water Act, 33 USC 1368; Executive Order 11738 and Environmental Protection Agency regulations (40 CFR, Part 15) which prohibit the use under non-exempt federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. Contractor shall report violations to FTA and to the U.S. EPA Assistant Administrator.

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 Short-listed Offerors 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.

The bidder or offeror must submit to SMART the appropriate Fly America certification with its Proposal or offer. Proposals or offers that are not accompanied by a completed Fly America certification will be rejected as nonresponsive.

Q. Buy America

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provides that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than $150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content for FY2016 and FY2017, a minimum 65% domestic content for FY2018 and FY2019 and a minimum 70% domestic content for FY2020 and beyond.
A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) 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.

R. Davis-Bacon and Copeland Anti-Kickback Acts

1. Minimum wages –
   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.

1) 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.

2) 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.

e) 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.
4) 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.
5) 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.
6) 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 Recipient 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 Recipient 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. Short-listed Offerors 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.

a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Recipient 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 sub-Short-listed Offerors.

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.

e) 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 sub-Short-listed Offerors 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 sub-Short-listed Offerors) 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).
   iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

5. **Disadvantaged Business Enterprise (DBE) Participation**
   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. The Colorado Department of Transportation (CDOT) has established 2.44% DBE goal for FFY 2023-2025. A separate contract specific 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 the Recipient deems appropriate, which may include, but is not limited to:
      a) Withholding monthly progress payments
      b) Assessing sanctions
      c) Liquidated damages, and/or
      d) Disqualifying the contractor from future bidding as non-responsible
   3. The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed in its written documentation of its contract commitment to the Recipient unless the contractor obtains written consent from the Recipient.
   4. The contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the DBEs as listed in its written documentation of its commitment to the Recipient unless the contractor obtains written consent from the Recipient.
   5. The contractor will be required to report its DBE participation obtained throughout the period of performance.
   6. **Prompt Payment** - The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 10 calendar days after the contractor’s receipt of payment for that work from the Recipient. In addition, the contractor is required to return any retainage payments to those subcontractors within
For purposes of this paragraph, good cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract.
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor.
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
6. SMART determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
   i. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
   ii. Other documented good cause that compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.
9. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Recipient.
10. Before transmitting to SMART its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to SMART, of its intent to request to terminate and/or substitute, and the reason for the request.

T. Prompt Payment

We will include the following clause in each DOT-assisted prime contract:
The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory
performance of its contract no later than 15 days from the receipt of each payment the prime contractor receives from SMART. The prime contractor agrees further to return retainage payments to each subcontractor within 15 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the SMART. This clause applies to both DBE and non-DBE sub-Short-listed Offerors.

When applicable, SMART may use the following mechanisms to ensure prompt payment.

1. Language providing that prime Short-listed Offerors and sub-Short-listed Offerors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.
2. Language providing that prime Short-listed Offerors will not be reimbursed for work performed by sub-Short-listed Offerors until the prime contractor ensures that the sub-Short-listed Offerors are paid promptly for work they have performed.
3. Enforcement of public funds liens law and use of a similar mechanism for nonpublic improvement projects.
4. Other applicable mechanisms as necessary.

U. Bonding Requirements

Bid Bond Requirements

a) Bid Security
   A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

b) Rights Reserved
   In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

   It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

   It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove
inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

**Performance and Payment Bonding Requirements**

The Contractor shall be required to obtain performance and payment bonds as follows:

a) Performance bonds
   1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
   2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

b) Payment bonds
   1. The penal amount of the payment bonds shall equal:
      i. Fifty percent of the contract price if the contract price is not more than $1 million.
      ii. Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
      iii. Two and one half million if the contract price is more than $5 million.
   2. If the original contract price is $5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

V. Recycled Products

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

W. Safe Operation of Motor Vehicles

**Seat Belt Use:** The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company A-60 rented vehicles, or personally operated vehicles. The terms “company-
owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency.

**Distracted Driving:** The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

X. **Veterans Employment**

Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that Short-listed Offerors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

Y. **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.

Z. **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.
AA. Cargo Preference

The contractor agrees:

1. 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;

2. 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.)

3. 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.