

***MARIN TRANSIT
Independent Year End Audit***

REQUEST FOR PROPOSAL

February 3, 2010

Responses due:

3:00 p.m., February 24, 2010

www.marintransit.org



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Appendix A: Standard Short Form Contract

1.0 Project Description

The Marin County Transit District (referred to as “Marin Transit”) is seeking proposals from qualified certified public accountant firms or individuals (referred to as “Auditor”, “Proposer”, or “Contractor”) to complete Marin Transit’s Independent Audit for fiscal years ending June 30 of 2009, June 30 of 2010, and June 30, 2011 with an option for two (2) one (1) year extensions, provided that changes in the terms and conditions of each one (1) year extension are mutually agreed upon by both parties. These audits are to be performed in accordance with U.S. generally accepted auditing standards and the U.S. Office of Management and Budget (OMB) Circular A-133 *Audits of State and Local Governments and Non-Profit Organizations*.

The audit for fiscal year 2009 must be completed within 60 days of contract award. Audits for future years must be completed by September 30 of each year (90 days from close of fiscal year).

Marin Transit receives grants from a variety of federal, state and local sources for both its operating and capital needs. Marin Transit is both a direct grant recipient (Marin County “Measure A”, Federal Section 5303 Planning Funds, Caltrans Planning grants) and a recipient of “pass-through” funds under agreement with Golden Gate Transit (Transportation Development Act Article 4.0 and 4.5, Federal ARRA and Urbanized Area Capital Formula funds, State PTMISEA funds). Due to the pass through nature of Marin Transit’s funding the auditor may be required to obtain data from multiple agencies in the performance of the audit. The selected proposer must have knowledge of the specific audit requirements of each of these revenue sources, and prepare the final audit in compliance with these requirements.

2.0 Timeline

Event:	Date
Request for Proposals issued by Marin Transit	February 3, 2010
Deadline for receipt of written questions and requests for addenda	February 15, 2010
Marin Transit responses and/or addenda issued	February 17, 2010
Proposals due – 3:00 p.m. PST	February 24, 2010
Marin Transit reviews proposals	February 25-26, 2010
Marin Transit notifies short-listed firms	February 26, 2010
Letters to respondents	March 3, 2010
Appeals process deadline	March 12, 2010
Approval of contract by Marin Transit Board	March 15, 2010

3.0 General Information

3.1. Submission of Proposals

One (1) bound original and three (3) bound copies of the proposals in the form specified in this RFP must be received by Marin Transit at its offices at the address below, directed as set forth above by 3:00 PM PST, on February 24, 2010. Proposals in response to this RFP shall be considered received at the time actually received by the addressee listed below or designated agent. Proposals received after the specified date and time shall be considered late and shall not be considered for evaluation. Late proposals shall be returned to the sender unopened. Proposers should note that Marin Transit’s normal business hours are from 8:00 AM to 5:00 PM, Monday through Friday.

All proposals and other communications must be addressed, as follows:

Lauren Gradia
Senior Transit Planner
Marin County Transit District
750 Lindero Street, Suite 200
San Rafael, CA 94901
P: (415) 226-0861
F: (415) 226-0856

3.2. Inquires and Due Date

A proposer may submit to Marin Transit a written request for an interpretation or clarification of, or any addenda to, this RFP. Any such request must be received by Marin Transit no later than February 15, 2010. The request must be submitted in writing (including by facsimile) to the Marin Transit contact or by email at lgradia@co.marin.ca.us. Marin Transit's responses to questions will be mailed to interested proposers and posted to www.marintransit.org by February 17, 2010.

Marin Transit is not bound by any oral interpretations, clarifications, or changes made to this RFP by any Marin Transit representative. Any clarification or change to the RFP must be provided in writing pursuant to this Section.

3.3. Addendum

Marin Transit reserves the right to make modifications or addenda to this RFP. If Marin Transit determines it is appropriate to revise any portion of this RFP, either at the request of a proposer or upon Marin Transit's own initiative, Marin Transit will issue, and make available to all prospective proposers who have identified themselves to Marin Transit, a written addendum setting forth this revision. Addenda will also be available on Marin Transit's website. It is the responsibility of the proposer to ensure that they have received all addenda. Proposers shall acknowledge receipt of addenda by written notice accompanying their proposal submission. Where addenda require changes in the work to be performed under the Contract, the date set for receipt of proposals may be postponed by such number of days as Marin Transit determines are appropriate in order to enable prospective proposers to revise proposals.

3.4. Protest Procedures

After award notification, firms wishing to file a protest must do so in writing. All protests must be sent to Marin Transit General Manager by certified mail by the appeals process deadline listed in the Timeline. The protest must include the name and contact information for the person representing the protesting firm, a full and complete written statement specifying in detail the ground for the protest, and facts supporting the protest. The protest shall also clearly state the relief sought. If a protest is filed, Marin Transit shall issue a written decision on the protest to the protestor.

Upon receipt of any protests on the specific selection process, a review of the protest(s) shall be conducted by a secondary review committee.

3.5. Restrictions of Lobbying and Contacts

Restrictions on Lobbying and Contacts with Marin Transit's Board of Directors

During the period beginning on the date of the issuance of this RFP and ending on the date of the award of the contract, no person (or entity) submitting a proposal in response to this RFP, nor any officer, employee, representative, agent, or contractor representing such a person (or entity) shall contact through any means or engage in any discussion regarding this RFP, the evaluation or selection process, or the award of the contract with any member of the Marin Transit Board of Directors or his or her personal staff. Any such contact shall be grounds for the disqualification of the proposer.

Restrictions on Lobbying and Contacts with Marin Transit Staff

During the period beginning on the date of the issuance of this RFP and ending on the date of the award of the contract, each person or entity described in the subsection above shall limit his or her communication with Marin Transit staff to the written clarification and amendment process described. During such time period, any such person or entity is precluded from having any communications regarding this RFP, the evaluation or selection process, or the award of the contract with a member of the Marin Transit Evaluation Committee, other than communications initiated by such member during interviews or discussions. Any such unauthorized communication shall be grounds for the disqualification of the proposer.

3.6. Ownership of Proposals

The proposals received become the exclusive property of Marin Transit. At such time as a contract award is approved by the Marin Transit Board of Directors, all proposals submitted in response to this RFP shall become a matter of public record and shall be regarded as public records, with the exception of those elements of each proposal which are trade secrets as that term is defined in California Government Code 6254.7 and which are so marked as "TRADE SECRET," "CONFIDENTIAL" or "PROPRIETARY." Marin Transit shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, without limitation, those so marked if disclosure is deemed required by law or by an order of a court. Proposals that indiscriminately identify all or most of the proposal as exempt from disclosure without justification may be found technically unacceptable.

3.7. Procurement Guidelines

Costs Incurred by Proposer

Any costs incurred by proposers in responding to this Request for Proposals shall be the proposer's sole expense and will not be reimbursed by Marin Transit.

Cancellation of Procurement

Marin Transit reserves the right in its discretion to cancel this Request for Proposals in whole or in part.

Proposal Rejection

Marin Transit reserves the right in its discretion to accept or reject any and all proposals submitted in response to the RFP, or refuse to enter into any contract resulting from any proposal submitted, without expense to Marin Transit.

Proposal Withdrawal

The proposer's authorized representative may, prior to the date and time set as the deadline for receipt of proposals, modify or withdraw a proposal in person, in writing, or by facsimile (415)

226-0855 to the Marin Transit contact listed in Section 3.1. If proposals are modified or withdrawn in person, the authorized representative shall make his or her identity known and shall sign a receipt for the proposal. Written or facsimile notices shall be received in Marin Transit's offices, 750 Lindero Street, Suite 200, San Rafael, CA 94901 no later than the date scheduled as the proposal receipt deadline. After the proposal receipt deadline, proposals may not be withdrawn for one hundred twenty (120) calendar days.

Acceptance of Proposals

Each proposal shall be submitted with the understanding that it is subject to the evaluation procedure set forth in Section 6.0, and to negotiation at the option of Marin Transit. Upon acceptance in writing by Marin Transit of the final offer to furnish any and all of the services described herein, the parties shall promptly execute the final contract documents. The written contract shall bind the proposer to furnish and deliver at the price proposed and in accordance with conditions of said accepted proposal and this Request for Proposals, as negotiated. Marin Transit reserves the right to make the award under this RFP based upon the initial proposals submitted.

Notice of Informal Solicitation

Notwithstanding any other provision of this RFP, all proposers are hereby specifically advised that this RFP is an informal solicitation for proposals only, and is not intended and is not to be construed as an offer to enter into an agreement or engage into any formal competitive bidding or negotiation pursuant to any statute, ordinance, rule or regulation.

Method of Response

Responses to the RFP shall be made according to the specifications and instructions contained herein. Failure to adhere to instructions may be cause for rejection of any proposal.

Acceptance of Terms and Conditions

Proposers understand and agree that submission of a proposal will constitute acknowledgment and acceptance of, and a willingness to comply with, all the terms, conditions, and criteria contained in this RFP, except as otherwise specified in the proposal. Any and all parts of the submitted proposal may become part of any subsequent contract between the selected Contractor and Marin Transit.

False, Incomplete, or Unresponsive Statements

False, incomplete, or unresponsive statements in connection with a proposal may be sufficient cause for rejection of the proposal. The evaluation and determination of the fulfillment of the above requirement will be Marin Transit's responsibility and its judgment shall be final.

Clear and Concise Proposal

Proposals shall provide a straightforward, concise delineation of the proposer's capability to satisfy the requirements of this Request for Proposals (RFP). Each proposal shall be submitted in the requested format and provide all pertinent information, including but not limited to information relating to capability, experience, financial resources, management structure and key personnel, and other information as specified in Section 4.0 and otherwise required in this RFP. A duly authorized officer of the company shall sign each proposal in ink.

Equal Employment Opportunity

“Contractor will be required to comply with all applicable Equal Employment Opportunity laws and regulations.”

Disadvantaged Business Enterprises (DBE) and Women Business Enterprises (WBE)

Marin Transit hereby notifies all bidders that it will affirmatively ensure that in regard to any contract entered into pursuant to its advertisement, Disadvantaged Business Enterprises (DBE) and Women Business Enterprises (WBE) will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, gender, color, or national origin in consideration for an award.

Ineligible Bidders

“All bidders will be required to certify that they are not on the Comptroller General’s List of Ineligible Contractors.” The successful bidder shall be required to comply with Marin Transit’s Affirmative Action Plan. Marin Transit reserves the right to reject any proposal if the contractor fails to comply.

4.0 Proposal Requirements

Proposers shall provide a written proposal that includes the required elements set forth in this Section. Each section of the Proposal as described herein shall be segregated to identify the item being addressed in the Proposal. A Proposal may be rejected and not reviewed by Marin Transit if it modifies or fails to conform to each of the requirements set forth in this Section.

Cover Letter

Each proposer shall submit a maximum two-page letter providing pertinent information on the firm and its qualifications (size, experience, organization, philosophy) This letter should include the name and address of the organization submitting the proposal; whether the organization is an individual, partnership, corporation or joint venture; and the name, address and telephone number of the contact person who will be authorized to make representations for the organization, and acknowledgement of addenda.

Section 1: Project Understanding

Proposers shall describe their understanding of Marin Transit and the audit services to be provided by the proposer in response to this RFP.

Section 2: Proposer Experience

References

Proposers shall submit a minimum of three references with contact information, description of work performed, and dates of service. Services provided to references should be similar in scope to those in this RFP. Marin Transit reserves the right to contact any or all of the listed references regarding the audit services performed by the proposer.

Public Transit Experience

Since Marin Transit is a public transit agency with industry specific funding sources and expenditures, proposers are required to have public transit experience along with experience dealing with federal, state, and local governments. Resumes of the staff members to be assigned to the Marin Transit audit must include the following: position in firm; years of experience; experience in the type of audit to be performed for Marin Transit; educational background.

Section 3: Audit Methodology

The proposal should set forth a work plan and time line, including an explanation of the audit methodology to be followed, and the services to be performed as required in Section 5.0 of this request for proposals. Proposals should include, but not be limited to, the following:

- Type and extent of analytical procedures to be used in this audit
- Approach to be taken to gain and document an understanding of the agency's internal control structure
- Approach to be taken in determining the laws and regulations that will be subject to audit test work
- Detailed audit schedule from contract execution to completion of FY2009 audit
- Assurance that future year audits can be completed by September 30 of each year

Section 5: Fee Proposal

Proposers are required to submit a separate sealed fee proposal (marked with the name of the proposer) for all services outlined in the Scope of Services. The proposal should include a breakdown of the estimated time and rate by member of the audit team. The cost of each year's engagement should be listed separately on a "not to exceed" basis. Additionally, the portion of each year's audit costs associated with performance of the Single Audit should be identified separately. These fees will be deducted in the event that Marin Transit does not incur over \$500,000 in federal expenditures in a given audit year. All expense reimbursements will be charged against the total all-inclusive maximum price submitted in this proposal. Fee proposal should also include an hourly rate to provide additionally services over and above those requested in this RFP.

5.0 Scope of Work

General Requirements

The selected proposer will be expected to audit all revenues and expenditures of Marin Transit in accordance with auditing standards generally accepted in the United States of America and Government Auditing Standards issued by the Comptroller of the United States. The auditor will be required to assist with implementation of Governmental Accounting Standards Board statements as applicable. The audit firm will render their auditors' report on the basic financial statements. The auditor will also prepare: Management's Discussion and Analysis; the State Controller's State and Local Government Annual Financial Report for Marin Transit; and a supplemental schedule fully identifying all Marin Transit revenues by source including the original source on pass through funds from Golden Gate Transit.

The audit firm will perform a Single Audit (if required) on the expenditures of federal grants in accordance with OMB Circular A-133 and render the appropriate audit reports on Internal Control over Financial Reporting based upon the audit of Marin Transit's financial statements in accordance with Government Auditing Standards and the appropriate reports on compliance with Requirements Applicable to each Major Program, Internal Control over Compliance and on the Schedule of Expenditures of Federal Awards in Accordance with OMB Circular A-133. The single audit report will include appropriate schedule of expenditures of federal awards, footnotes, findings and questioned costs, including reportable conditions and material

weaknesses, and follow up on prior audit findings where required.

The audit firm shall issue a separate “management letter” that includes recommendations for improvements in internal control, accounting procedures and other significant observations that are considered to be non-reportable conditions. Prior to issuance of the final management letter, the auditor shall deliver a draft copy to Marin Transit for review and management’s responses.

Auditing Standards

To meet the requirements of this request for proposals, the audits shall be performed using the most current version of each of the following:

- Generally accepted auditing standards as set forth by the American Institute of Certified Public Accounts;
- The standards applicable to financial audits contained in the Government Auditing Standards issued by the Comptroller General of the United States;
- The provisions of the Single Audit Act as amended;
- The provisions of U. S. Office of Management and Budget (OMB) Circular A-133, Audits of State and Local Governments and Non-Profit Organizations;
- State of California Transportation Development Act (TDA) (if applicable);
- Special District and Transit District Reporting Requirements, as specified by the California State Controller.

Deliverables

The auditor shall prepare and submit four (4) copies of the preliminary draft of findings and recommendations, material weaknesses identified as a result of the evaluation in internal control systems, a summary of all instances of noncompliance with federal and state compliance requirements, and an identification of total amounts questioned. The preliminary draft should be submitted no later than September 15 of each year (with the exception of the initial audit year) unless otherwise authorized by the General Manager.

Concurrent with submittal of the preliminary draft the auditor shall conduct an exit conference with the General Manager, and other appropriate personnel to review the preliminary draft and discuss findings.

At the conclusion of the audit the auditor shall provide:

- One (1) unbound reproducible master of each auditor prepared report
- An electronic file of each auditor prepared report, preferably Word
- Fifteen (15) bound copies of each final auditor prepared report

The auditor may be required to attend a minimum of one Board of Directors meeting for the purpose of discussing the audit and its conclusions.

Working Papers

All working papers and reports must be retained, at the auditor's expense, for a minimum of seven (7) years after the last year of the contract, unless the auditor is notified in writing by the Marin Transit of the need to extend the retention period. The audits are subject to review by the State Controller's Office, the Federal Transit Administration, and other individuals designated by Marin Transit. Accordingly, the audit working papers shall be made available upon request.

In addition, the auditor shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

Irregularities and Illegal Acts

Auditors shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the following parties: General Manager; Agency Attorney and the Finance Director.

6.0 Method of Evaluation and Criteria for Selection

Marin Transit reserves the sole right to evaluate and select the successful proposer. An Evaluation Committee will evaluate all proposals in accordance with the criteria set below. Top ranked proposer(s) may be invited for an oral interview. Marin Transit may select a proposal for award without any oral interviews.

A contract will be negotiated with the proposer judged to most successfully meet the overall objectives of the RFP while providing the best value to Marin Transit.

The following criteria will be considered in the selection of the audit firm (relative weights as shown):

Auditor Firm's Experience	70
Public transit experience of <u>staff</u> assigned to audit	20
Firm experience with public transit audits	20
Firm experience with federal Single Audits	20
Firm experience with other relevant funding sources	10
Price	30
Total	100

7.0 Standard and Special Contract Terms

Contractor must conform to all special terms and conditions listed for Compliance to FTA Third Party Contract Requirements 4220.1E and other applicable State and Federal regulations.

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.

Clean Water

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Clean Air

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

No Obligation by the 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 to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

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

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

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

Civil Rights

The following requirements apply to the underlying contract:

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

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

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

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

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

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

Incorporation of Federal Transit Administration (FTA) Terms

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

Lobbying

Please submit 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING, signed by the Contractor's authorized official (Appendix G).

Federal Changes

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

Contracts Involving Federal Privacy Act Requirements

(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.

Suspension and Debarment

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

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

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

The certification in this clause is a material representation of fact relied upon by the Transit District. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Transit District, the Federal Government

may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Access to Records

The following access to records requirements apply to this Contract:

(1) Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(2) Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

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

(5) FTA does not require the inclusion of these requirements in subcontracts.

Termination

(1) Termination for Convenience – Marin Transit by 30 days written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, Marin Transit shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(2) Termination for Default – If the Contractor fails perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, Marin Transit may terminate this contract for default. Marin Transit shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The

Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Marin Transit goods, the Contractor shall, upon direction of the Marin Transit protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and Marin Transit shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

(3) Opportunity to Cure - Marin Transit in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 15 days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

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

Breaches and Dispute Resolution

(1) 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 Marin Transit's General Manager. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

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

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

(5) Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or

failure to act by Marin Transit or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

Disadvantaged Business Enterprises

(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 national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal has not been established for this RFP.

(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 Marin Transit deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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

(4) The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Marin Transit. In addition, the contractor may not hold retainage from its subcontractors.

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

Suspension and Debarment

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

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

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

The certification in this clause is a material representation of fact relied upon by Marin Transit. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Marin Transit, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered

transactions.

APPENDIX A: SHORT FORM CONTRACT

**MARIN COUNTY TRANSIT DISTRICT
STANDARD SHORT FORM CONTRACT**

THIS AGREEMENT is made and entered into this ___ day of _____, 20__ by and between the MARIN COUNTY TRANSIT DISTRICT, hereinafter referred to as "District" and _____, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, District desires to retain a person or firm to provide the following services: _____; and _____;

WHEREAS, Contractor warrants that it is qualified and competent to render the aforesaid services;

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by District, the parties agree to the following:

1. SCOPE OF SERVICES:

Contractor agrees to provide all of the services described in **Exhibit "A"** attached hereto and by this reference made a part hereof.

2. FURNISHED SERVICES:

The District agrees to:

- A. Guarantee access to and make provisions for the Contractor to enter upon public and private lands as required to perform their work.
- B. Make available all pertinent data and records for review.
- C. Provide general bid and contract forms and special provisions format when needed.

3. FEES AND PAYMENT SCHEDULE:

The fees and payment schedule for furnishing services under this Contract shall be based on the rate schedule which is attached hereto as **Exhibit "B"** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Contract.

Contractor shall provide District with his/her/its Federal Tax I.D. number prior to submitting the first invoice.

4. MAXIMUM COST TO DISTRICT:

In no event will the cost to District for the services to be provided herein exceed the maximum sum of \$_____ including direct non-salary expenses.

5. TIME OF AGREEMENT:

This Agreement shall commence on _____, and shall terminate on _____. Certificate(s) of Insurance must be current on day Contract commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor. The final invoice must be submitted within 30 days of completion of the stated scope of services.

6. INSURANCE:

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to District. The general liability policy shall be endorsed naming the Marin County Transit District as an additional insured. The certificate(s) of insurance and required endorsement shall be furnished to the District prior to commencement of work. Each certificate shall provide for thirty (30) days advance notice to District of any cancellation in coverage. Said policies shall remain in force through the life of this Contract and shall be payable on a per occurrence basis only, except those required by paragraph 6.4. a. and b. which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation of Contractor's liability, and Contractor shall indemnify and hold the District, its employees, officers, and agents, harmless and defend the District against any and all claims, damages, losses and expense that may arise by reason of the Contractor's negligent actions or omissions. District agrees to timely notify Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Contract will constitute a material breach of the agreement. In addition to any other available remedies, District may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

A request for a waiver of any of the following insurance requirements must be set forth on **Exhibit "C"** attached hereto. A waiver must address reduced amounts of coverage or the type of coverage waived entirely.

6.1 GENERAL LIABILITY

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000.00). The District shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page.

(see sample form: ISO - CG 20 10 11 85).

Insurance Reduction or Waiver of Coverage Requested (Exhibit "C")

6.2 AUTO LIABILITY

Where the services to be provided under this Contract involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars (\$1,000,000.00).

Insurance Reduction or Waiver of Coverage Requested (Exhibit "C")

6.3 WORKERS' COMPENSATION

The Contractor acknowledges that it is aware of the provisions of the Labor Code of the State of California which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and it certifies that it will comply with such provisions before commencing the performance of the work under this Contract. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to District prior to commencement of work.

Insurance Reduction or Waiver of Coverage Requested (Exhibit "C")

6.4 OTHER INSURANCES

Contractor may be required to carry additional insurance based upon the nature of the work to be performed (scope of services). For each additional required insurance, a corresponding certificate of insurance must be provided. Claims-made policies must have a retroactive date either prior to the effective date of the Contract or the beginning of the Contract work. Claims-made coverage must extend a minimum of twelve (12) months beyond completion of Contract work or end of current Contract, whichever is later. If coverage is cancelled or non-renewed, and not replaced with another claims made policy with a retroactive date prior to the Contract effective date, the Contractor must purchase extended reporting coverage for a minimum of twelve (12) months beyond completion of Contract work. Contractor shall maintain a policy limit of not less than one million dollars (\$1,000,000) per incident, with a deductible or self-insured retention not to exceed *\$2,500 unless approved by the District.

6.4.a Professional Liability Insurance..... **(check box if required)**

*Deductibles greater than \$2,500 require Insurance Reduction/Waiver form (**Exhibit "C"**) to be completed.

6.4.b Maritime Insurance..... **(check box if required)**

7. NONDISCRIMINATORY EMPLOYMENT:

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor

understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all Federal, State and local statutes, regulations and ordinances.

8. SUBCONTRACTING:

The Contractor shall not subcontract nor assign any portion of the work required by this Contract without prior written approval of the District except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to the District evidence of same.

9. ASSIGNMENT:

The rights, responsibilities and duties under this Contract are personal to the Contractor and may not be transferred or assigned without the express prior written consent of the District.

10. LICENSING AND PERMITS:

The Contractor shall maintain the appropriate licenses throughout the life of this Contract. Contractor shall also obtain any and all permits which might be required by the work to be performed herein.

11. BOOKS OF RECORD AND AUDIT PROVISION:

Contractor shall maintain on a current basis complete books and records relating to this Contract. Such records shall include, but not be limited to, documents supporting all bids, all income and all expenditures. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work on this Contract. In addition, Contractor shall maintain detailed payroll records including all subsistence, travel and field expenses, and canceled checks, receipts and invoices for all items. These documents and records shall be retained for at least five years from the completion of this Contract. Contractor will permit District to audit all books, accounts or records relating to this Contract or all books, accounts or records of any business entities controlled by Contractor who participated in this Contract in any way. Any audit may be conducted on Contractor's premises or, at District's option, Contractor shall provide all books and records within a maximum of fifteen (15) days upon receipt of written notice from District. Contractor shall refund any monies erroneously charged.

12. TITLE:

Any and all documents, information and reports concerning this project prepared by the Contractor, shall be the property of the District. The Contractor may retain reproducible copies of drawings and copies of other documents. In the event of the termination of this Contract, for any reason whatsoever, Contractor shall promptly turn over all information, writing and documents to District without exception or reservation.

13. TERMINATION:

- A. If the Contractor fails to provide in any manner the services required under this Contract or otherwise fails to comply with the terms of this Contract or violates any ordinance, regulation or other law which applies to its performance herein, the District may terminate this Contract by giving five (5) calendar days written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Contract for any reason by giving thirty (30) calendar days written notice to the other parties. Notice of termination shall be by written notice to the other parties and be sent by registered mail.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Contract so long as proof of required insurance is provided for the periods covered in the Contract or Amendment(s).

14. RELATIONSHIP BETWEEN THE PARTIES:

It is expressly understood that in the performances of the services herein, the Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as officers, employees or agents of the District. Contractor shall be solely responsible to pay all required taxes, including but not limited to, all withholding social security, and worker's compensation.

15. AMENDMENT:

This Contract may be amended or modified only by written agreement of all parties.d

16. ASSIGNMENT OF PERSONNEL:

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to District, as is evidenced in writing.

17. JURISDICTION AND VENUE:

This Contract shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin District, California.

18. INDEMNIFICATION:

Contractor agrees to indemnify, defend, and hold District, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's willful misconduct or negligent performance of this Contract. Nothing herein shall be construed as a limitation of Contractor's liabilities.

19. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all Federal, State and local laws (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Contract. Copies of any of the above-referenced local laws and resolutions may be secured from the District's contact person referenced in paragraph 20. NOTICES below.

20. NOTICES:

This Contract shall be managed and administered on District's behalf by the Department Contract Manager) named below. All invoices shall be submitted and approved by this Department and all notices shall be given to District at the following location:

Contract Manager: _____
Dept./Location: Marin County Transit District
750 Lindaro St, Suite 200
San Rafael, CA 94901
Telephone No.: _____

Notices shall be given to Contractor at the following address:

Contractor: _____
Address: _____
Telephone No.: _____

21. ACKNOWLEDGEMENT OF EXHIBITS

CONTRACTOR'S INITIALS

EXHIBIT A. **Scope of Services (required)** _____

EXHIBIT B. **Fees and Payment Schedule (required)** _____

EXHIBIT C. **Insurance Reduction/Waiver** _____

IN WITNESS WHEREOF, the parties have executed this Contract on the date first above written.

**APPROVED BY
MARIN COUNTY TRANSIT DISTRICT:**

By: _____
District Administrator

CONTRACTOR:

By: _____
Name: _____
Telephone No.: _____

COUNTY COUNSEL REVIEW AND APPROVAL (Only required if any of the noted reason applies)
REASON(S) REVIEW:

- Contract Requires Board of Supervisor's Approval**
- Standard Short Form Content Has Been Modified**
- Optional Review by County Counsel at Department's Request**

County Counsel: _____

Date: _____