

STANDARD FEDERAL PROVISIONS (FEDERAL TRANSIT ADMINISTRATION)

Any subcontract entered into as a result of the Agreement, shall contain all the provisions of these Standard Federal Provisions. All references to "Contractor" herein shall refer to "Consultant" as defined in the Agreement. As a Federal Transit Administration (FTA) grantee, San Diego Association of Governments (SANDAG) is required to inform the Contractor of the following information:

I. No Federal Government Obligations to Third Parties - *Applicable To All Contracts*

The federal government shall not be subject to any obligations or liabilities to any third-party contractor, or any other person not a party to the relevant Grant Agreement or Cooperative Agreement between SANDAG and FTA in connection with the performance of this Agreement. Notwithstanding any concurrence provided by the federal government in or approval of any solicitation, subagreement, or third-party contract, the federal government continues to have no obligations or liabilities to any party, including Contractor or any other third-party contractor.

II. False or Fraudulent Statements or Claims - *Applicable To All Contracts*

The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. 3801, et seq., and United States Department of Transportation (DOT) regulations, "Program Fraud Civil Remedies," 49 C.F.R. 31, apply to its actions pertaining to this Agreement. Accordingly, by signing the Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the contract. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes 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, as amended, on the Contractor to the extent the federal government deems appropriate. The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government in connection with an urbanized area formula Project financed with federal assistance authorized by 49 U.S.C. 5307, the government reserves the right to impose on the Contractor the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1), to the extent the federal government deems appropriate.

III. Energy Efficiency - *Applicable To All Contracts*

Consultant agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6321 et seq.

IV. Prohibited Interests - *Applicable To All Contracts*

No member, officer, or employee of a local public body, during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. No member of or delegate to the Congress of the United States shall be admitted to a share or part of this Agreement or to any benefit arising therefrom.

If Consultant will be preparing an environmental impact statement under National Environmental Policy Act, and an awarded Agreement will include federal funding, Consultant will be required to submit a statement to SANDAG certifying that Consultant has no financial or other interest in the outcome of the Project. (40 C.F.R. 1506.5(c)).

V. Civil Rights - *Applicable To All Contracts*

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:

- A. Compliance with Regulations. The Contractor and any subcontractors shall comply with the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d); 49 U.S.C. 5332 and DOT Regulations, "Non-Discrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. 21, and any implementing requirements FTA may issue, 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.
- B. Nondiscrimination. The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, color, sex, or age, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
- C. Solicitations for Subcontractors, including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiations 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 Agreement and the regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.
- D. Contractor agrees and assures that it will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform work required under a third party contract in connection with a capital project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and will not require an employer to give a 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 a former employee.
- E. Information and Reports. The Contractor shall provide all information and reports required by the regulations or directive 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 Recipient or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information is required or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to SANDAG or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance. In the event of noncompliance, SANDAG shall impose such contract sanctions as it or FTA may determine to be appropriate, including, but not limited to:
- Withholding of payments to the Contractor under the Agreement until the Contractor complies, and/or
 - Cancellation, termination or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions. The Contractor shall include the provisions of sections A through E of this Section 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 SANDAG or FTA may direct as a means of enforcing such provisions including sanctions for non-compliance provided; however, in the event a Contractor becomes involved, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request SANDAG to enter into such litigation to protect the interests of SANDAG, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

VI. Employee Protections

A. Construction Activities

Applicable To Construction Contracts Exceeding \$2,000

For construction activities exceeding \$2,000 performed in connection with the Project, the Contractor shall comply with the following construction employee protection requirements:

1. Davis-Bacon Act, as amended (APPLICABLE TO CONSTRUCTION CONTRACTS EXCEEDING \$2,000). The Contractor shall comply and assure compliance with the requirements of 49 U.S.C. 5333(a), the Davis-Bacon Act, 40 U.S.C. 276(a) – 276(a)(7), and implementing U.S. Department of Labor (DOL) regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally-Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. 5. In addition to other requirements that may apply:
 - a. The Contractor shall pay wages to laborers and mechanics performing third-party contract work at a rate not less than the minimum wages specified in a wage determination issued by the United States Secretary of Labor and not less frequently than once a week. The SANDAG agrees to furnish the bidder a copy of the current prevailing wage determination issued by the United States Department of Labor (DOL) for third-party contract work under the Project upon request, and agrees to refrain from awarding any affected third-party contract until the third-party contractor agrees to the required wage determination.
 - b. SANDAG shall report to FTA every suspected or reported violation of the Davis-Bacon Act or its federal implementing regulations.
2. Contract Work Hours and Safety Standards Act, as amended

Applicable To Construction Contracts Exceeding \$2,000

The Contractor shall comply and assures compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 - 333; and implementing DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally-Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. 5; and DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. 1926. In addition to other requirements that may apply:

- a. In accordance with section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 - 332, the Contractor shall assure that, for the Project the wages of every mechanic and laborer will be computed on the basis of a standard work week of forty (40) hours, and that each worker shall be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. The Contractor shall ensure that determinations pertaining to these requirements will be made in accordance with applicable DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally-Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act," 29 C.F.R. 5.
 - b. In accordance with section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 333, the Contractor shall assure that no laborer or mechanic working on a construction contract shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his or her health and safety, as determined in accordance with U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. 1926.
 - c. The requirements of this Subsection do not apply to third-party contracts for the purchase of supplies, materials or articles ordinarily available on the open market.
3. Copeland "Anti-Kickback" Act, as amended

Applicable To Construction Contracts Exceeding \$2,000

The Contractor shall comply with the Copeland "Anti-Kickback" Act, 18 U.S.C. 874 and 40 U.S.C. 276(c), and DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. 3. In addition to other requirements that may apply:

- a. The Contractor will not induce, by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which that employee is otherwise entitled.
- b. SANDAG shall report every suspected or reported violation of the Copeland "Anti-Kickback" Act or its federal implementing regulations to FTA.

B. Activities Not Involving Construction - Applicable to Nonconstruction Contracts Exceeding \$2,500

For nonconstruction activities exceeding \$2,500 performed in connection with the Project, the Contractor shall comply with the following employee protection requirements:

1. In accordance with Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 through 332, Contractor shall assure that, for the Project, the wages of every mechanic and laborer will be computed on the basis of a standard work week of forty (40) hours and that each worker will be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. Contractor agrees that determinations pertaining to these requirements will be made in accordance with the applicable U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally-Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. 5.
2. The requirements of this Subsection do not apply to third-party contracts for the purchase of supplies, materials, or articles ordinary available on the open market.

C. State and Local Government Employees

Contractor shall ensure that the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. 206 - 207, apply to employees performing work involving commerce, including such state and local government employees as public transit authority employees, participating in the Project. Consequently, each participant that is a state or local government agrees to comply with the Fair Labor Standards Act's minimum wage and overtime requirements for employees performing work in connection with the Project.

D. Transit Employee Protective Arrangements - Applicable to Each Contract for Transit Operations Performed by Employees of a Contractor Recognized by FTA to be a Transit Operator

The Contractor shall comply with the following requirements applicable to transit operations performed in connection with the Project:

1. Standard Transit Employee Protective Arrangements. To the extent that transit operations are involved, the Contractor shall carry out the Project in compliance with terms and conditions determined by the Secretary of Labor to be fair and equitable to protect the interests of employees affected by the Project and to meet the requirements of 49 U.S.C. 5333(b), and U.S. guidelines at 29 C.F.R. 215, and any amendments thereto. These terms and conditions are identified in the DOL certification of transit employee protective arrangements to FTA, the date of which is included in the Grant Agreement or Cooperative Agreement. The Contractor shall carry out the Project in compliance with the conditions stated in that U.S. DOL certification. That the DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The requirements of this Subsection, however, do not apply to formula assistance Projects for the elderly and persons with disabilities

authorized by 49 U.S.C. 5310(a)(2) or to formula assistance Projects for nonurbanized areas authorized by 49 U.S.C. 5311.

2. Transit Employee Protective Arrangements for Projects Authorized by 49 U.S.C. 5310(a)(2) for the Elderly and Persons with Disabilities. If the Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. 5333(b) are necessary or appropriate for public body subrecipients under the Project, the Contractor shall carry out the Project in compliance with the terms and conditions determined by the Secretary of Labor to meet the requirements of 49 U.S.C. 5333(b), and DOL guidelines at 29 C.F.R. 215, and any amendments thereto. These terms and conditions are identified in the DOL certification of transit employee protective arrangements to FTA, the date of which is included in the Grant Agreement or Cooperative Agreement. The Contractor shall carry out the Project in compliance with the conditions stated in the DOL certification. The DOL certification and any documents cited there in are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement.
3. Transit Employee Protective Arrangement for Projects Authorized by 49 U.S.C. 5311 in Nonurbanized Areas. The Contractor shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by DOL or any revision thereto.

VII. Cargo Preference - *Applicable To All Procurements Involving Equipment, Materials, Or Commodities, Which May Be Transported By Ocean Vessels*

46 U.S.C. 1241(b)(1) and 46 C.F.R. 381 which imposes the United States cargo preference requirements on the shipment of foreign made goods shall apply to this procurement.

- A. The Contractor shall utilize privately owned United States-flagged commercial vessels to ship at least fifty (50) percent of the gross tonnage (competed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flagged commercial vessels.
- B. The Contractor shall furnish within twenty (20) days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipments originating outside United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (A) above to the Recipient (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, marked with appropriate identification of the Project.

The Contractor shall insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

VIII. US AIR CARRIER PREFERENCE

A Applicability

Pursuant to Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) Contractor will use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available.

B Application to Subcontracts

The Contractor shall insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

IX. Reporting, Record Retention, Access - *Applicable To All Contracts*

- A. Reports. At a minimum, the Contractor agrees to provide SANDAG and FTA those reports required by U.S. DOT's grant management rules and any other reports SANDAG or the federal government may require.
- B. Record Retention. The Contractor shall, during the course of the Project and for five (5) years thereafter, maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as SANDAG or the federal government may require for the Project.
- C. Access to Records. Upon request, the Contractor shall permit the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its contractors pertaining to the Project. In accordance with 49 U.S.C. 5325(a), the Contractor shall require each third-party contractor whose contract award is not based on competitive bidding procedures as defined by the Secretary of Transportation to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that third-party contract and to audit the books, records, and accounts involving that third-party contract as it affects the Project.

X. Seismic Safety - *Applicable To All Construction Contracts For New Buildings or Additions To Existing Buildings*

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 C.F.R. 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 Agreement 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.

XI. Federal Changes - *Applicable To All Contracts*

The 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 (6) dated October, 1999) 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.

XII. Disadvantaged Business Enterprises

- A. SANDAG is a subrecipient of FTA funds. In conformance with 49 C.F.R. 26 is required to implement a Minority-Conscious Disadvantaged Business Enterprise (DBE) program of limited application. **The minority-conscious component of the SANDAG FTA DBE program includes all six (6) DBE groups: African American, Hispanic American, Subcontinental Asian American, Asian Pacific Islander, Native American, and Women.**

SANDAG has not set a DBE goal for this procurement.

- B. This Agreement is subject to 49 C.F.R. 26.13(b) which states:

“The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.”

Contractor shall take necessary and reasonable steps to ensure that DBEs have an opportunity to participate in the Agreement (49 C.F.R. 26).

- C. To ensure there is equal participation of the DBE groups specified in 49 C.F.R. 26.5, SANDAG may have specified a goal for DBEs. When FTA funding is utilized, a DBE goal will be met through the utilization of DBE firms.
- D. Although FHWA, FRA, and FTA are DOT agencies, they have different DBE programs and requirements and SANDAG has separate goals for the three programs. Contractor will be required to comply with all applicable requirements. This exhibit contains the SANDAG DBE program requirements for FTA only. FHWA and FRA DBE program requirements, if any, are set forth in a separate exhibit to the Agreement.
- E. Contractor must make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers. It is the Contractor’s responsibility to verify that the DBE firm is certified as a DBE at date of proposal submittal. For a list of DBEs certified by the California Unified Certification Program, at www.dot.ca.gov/hq/bep/find_certified.htm.
- G. DBE Certification

SANDAG requires all DBEs listed by Contractor for participation to be certified as eligible DBEs at the time of submittal of its proposal for this Agreement [or for each Task Order]. Only participation by DBEs certified under the DOT regulations published 49 C.F.R. Part 26, or any updated version thereof, may be credited towards the Contractor’s minority-conscious DBE attainment. It is the responsibility of the Contractor to verify the DBE certification status of all listed DBEs.

SANDAG is participating as a Non-Certifying Member in the California Unified Certification Program (CUCP). Therefore, SANDAG will accept DBE certification from the certifying member agencies, which certify the eligibility of DBEs in accordance with 49 C.F.R. 26, under the CUCP or pursuant to the interstate certification process set forth in 49 C.F.R. 26.85. Listings of certifying member agencies, as well as a listing of DBEs certified by the CUCP, are available on the Caltrans Civil Rights Department website, which can be accessed at <http://www.dot.ca.gov/hq/bep>.

I. DBE Crediting Provisions

1. A DBE must be a small business concern as defined pursuant to Section 3 of U.S. Small Business Act and relevant regulations promulgated pursuant thereto. Please note that Title 49 was amended in 2011 and the personal net worth limit for a small business concern has been raised under 49 C.F.R. 26.67.
2. DBEs may participate as a prime contractor, subcontractor, joint venture partner, supplier, or trucker. A proposed DBE must be responsible for a commercially useful function (i.e., a distinct element of the actual scope of work) and must carry out its responsibility by actually performing, managing, and supervising such work; in order to be credited toward DBE participation.
3. Only work proposed to be performed by a DBE's own work forces (including cost of supplies, materials, and equipment leases) obtained by the DBE for the work of the contract, except supplies and equipment the Subcontractor purchases and/or leases from the Contractor or its affiliate may be counted.
4. When a DBE subcontracts part of its contract work to another firm, the value of the subcontracted work may be counted only if the DBE subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm cannot be credited. A DBE shall perform at least thirty percent (30%) of the total cost of its contract with its own workforce.
5. When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the Agreement that the DBE performs with its own forces towards DBE participation.
6. Contractor must calculate credit for participation of DBE vendors of equipment, materials, and supplies, as follows:
 - a) Sixty percent (60%) of expenditures(s) for equipment, materials, and supplies required under the contract, obtained from a Regular Dealer; or
 - b) One hundred percent (100%) of expenditure(s) for equipment, materials, and supplies obtained from a DBE Manufacturer.

For purposes of this section, a DBE Manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

A DBE Regular Dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a Regular Dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

Credit for materials or supplies purchased from a DBE which is neither a Manufacturer nor a Regular Dealer will be limited to the entire amount of the fees or commission charged for assistance in the procurement of the materials and supplies or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services. The cost of materials or supplies is not counted in this instance.

7. Contractor may count expenditures to trucking firms, provided that the firm is a DBE and meets the following conditions:
 - a) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of crediting DBE participation.
 - b) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract.
 - c) The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
 - d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
 - e) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 - f) A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
8. The following types of fees or commissions paid to DBE subcontractors, brokers, and packagers may be counted, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work including:

- a) Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the Agreement;
- b) Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the Manufacturer of, or a Regular Dealer in, the material and supplies.
- c) Fees and commissions charged for providing any insurance specifically required for performance of the Agreement.

XIII. CONTRACTOR'S DBE REPORTING REQUIREMENTS (POST-AWARD)

Contractor shall complete and submit the following DBE reporting forms and/or documents at the times specified:

- A. Contractor is advised not to count the participation of DBE Subcontractors until the amount being counted toward the DBE participation has been paid to the DBE.
- B. If subcontractor is a DBE and is decertified during the life of the Agreement, the decertified subcontractor shall notify the Contractor in writing of the date of the decertification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the Contractor in writing of the date of the certification. The Contractor shall furnish the written documentation to SANDAG in a timely manner using Disadvantaged Business Enterprises Certification Status Change Form CEM_2403(F), Standard Services Agreement – Exhibit I.
- C. Upon completion of the Agreement, Contractor must submit to SANDAG a Final Report – Utilization of Underutilized/Disadvantaged Business Enterprises (U/DBE) and Small Business (SB), First Tier Subcontractor Form, Standard Services Agreement – Exhibit H, and certified correct by the Contractor's authorized representative, and shall be furnished to SANDAG. The form shall be furnished to SANDAG within ninety (90) days from the date of completion of the Scope of Work. The amount of up to \$10,000 may be withheld from final payment to Contractor until a satisfactory form is submitted.
- D. Failure to submit required DBE reports may result in the delay of processing Contractor's invoices for payment.
- E. DBE Goal

In order to ascertain whether the SANDAG agency-wide FTA DBE goal is being achieved, SANDAG is tracking DBE participation on all of its Federal-aid contracts.

- F. Commercially Useful Function Standards
 - 1. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the

Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, SANDAG will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performed and the DBE credit claimed for its performance of the work, and other relevant factors.

2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, SANDAG must examine similar transactions, particularly those in which DBEs do not participate.
3. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, one must presume that it is not performing a commercially useful function.
4. When a DBE is presumed not to be performing a commercially useful function as provided in the previous bullet, the DBE may present evidence to rebut this presumption. SANDAG may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
5. SANDAG's decisions on commercially useful function matters are subject to review by FTA.

G. DBE "Fronts" and Frauds

Only legitimate DBEs are eligible to participate in any federally funded contract. Therefore, Contractor is cautioned against knowingly and willingly using "fronts" or doing business with DBEs in a manner, which could compromise the DBE's continued eligibility and DBE participation credit. The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations. Further, any indication of fraud, waste, abuse, or mismanagement of federal funds should be immediately reported to the Office of Inspector General, U.S. Department of Transportation toll free hotline at (800) 424-9071.

H. Substitution

1. U/DBEs must perform work or supply materials as listed in the Proposer U/DBE Commitment form – RFP Attachment 11) specified under Section VIII "Disadvantaged Business Enterprises" of this Request for Proposal and as shown in Exhibit K – Consultant Contract U/DBE Commitment Information if applicable. Consultant shall not terminate a DBE listed subconsultant for convenience and perform the work with its own forces or obtain materials from other sources without prior written authorization from SANDAG.
2. SANDAG will grant authorization to substitute other forces or sources of materials if Consultant submits a request to SANDAG that establishes any of the following justifications:

- a. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the Project.
 - b. Consultant stipulates that a bond is a condition of executing the subcontract and the listed DBE fails to meet the bond requirements.
 - c. Work requires a license and listed DBE does not have a valid license.
 - d. Listed DBE fails or refuses to perform the work or furnish the listed materials.
 - e. Listed DBE's work is unsatisfactory and not in compliance with its contract.
 - f. Listed DBE delays or disrupts the progress of the work.
 - g. Listed DBE becomes bankrupt or insolvent.
3. Consultant will need to follow the procedures below to substitute DBE subconsultants so that the DBE commitment can be met.
- a. Obtain proposed fee amounts and qualifications information for the scope of work that each proposed DBE firm could provide.
 - b. Check the CUCP database to ensure the proposed firms are DBE certified for the associated DBE categories and types of work North American Industry Classification System (NAICS) codes in the task order.
 - c. Provide SANDAG with the qualifications and fee information that was used for selection.
 - d. If a listed DBE subconsultant is terminated, Consultant must make good faith efforts to find another DBE subconsultant to substitute for the original DBE. For more detailed information, see Notice to Proposers Regarding Disadvantaged Business Enterprise Requirements and Instructions – RFP Attachment 15. The substitute DBE must perform at least the same amount of work as the original DBE to the extent needed to meet the DBE goal. The substitute DBE must be certified as a DBE at the time of request for substitution. SANDAG does not pay for work or material unless it is performed or supplied by the listed DBE, unless the DBE is terminated in accordance with this section.
4. Consultant should not substitute key personnel (Project Manager and others listed by name in the cost proposal) or subcontractors without prior written approval from SANDAG. Consultant must request and justify the need for the substitution and obtain approval from SANDAG prior to use of a different subcontractor. The proposed substituted person or firm must be as qualified as the original, and at the same or lower cost.

XIV. Incorporation of Federal and State Guidelines - *Applicable To All Contracts*

- A. All relevant federal and state grant provisions and guidelines, as presently written or as changed during the life of this Agreement, bearing on this Agreement, are hereby wholly incorporated by reference herein and made a part of this Agreement and take precedence over any inconsistent terms of this Agreement. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Section.
- B. Specific guidelines shall be those prescribed by "Federal Transit Administration Master Agreement" (Form FTA-MA) 49 C.F.R. 18, and Federal Transit Administration (FTA) Circular 4220.1F, "Third-party Contracting Requirements" and OMB Circular A-102 "Uniform Requirements for Grants and Cooperative Agreements with State and Local Governments."

XV. Drug and Alcohol Program - *Applicable To All Contracts*

During the performance of this Agreement Contractor agrees to implement a drug and alcohol program that is compliant with 49 C.F.R. 653 - 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation, the California Department of Transportation, or SANDAG to inspect the facilities and records association with the implementation of the drug and alcohol testing program, as required under Parts 653 and 654, and review the testing process.

XVI. Equipment Purchases - *Applicable To All Contracts*

- A. Prior authorization in writing by the Project Manager shall be required before Contractor enters into any non-budgeted purchase order or subcontract exceeding \$3,000 for supplies, equipment, or subcontractor services. If the non-budgeted purpose will cause the Project budget to exceed the Maximum Amount of the Agreement, then prior approval from the SANDAG Executive Director is also required. Contractor shall provide an evaluation of the necessity or desirability of incurring such costs. For purchase of any item, service or consulting work not covered in the Payment or Fee Schedule and exceeding \$3,000, with prior authorization by the Project Manager, three competitive quotations must be submitted with the request or the absence of bidding must be adequately justified.
- B. Contractor shall maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of this Agreement. The inventory record of each piece of such equipment shall include the date acquired, total cost, serial number, model identification (on purchased equipment), and any other information or description necessary to identify said equipment. Non-expendable equipment so inventoried are those items of equipment that have a normal life expectancy of one year or more and an approximate unit price of \$5,000 or more. In addition, theft-sensitive items of equipment costing less than \$5,000 shall be inventoried. A copy of the inventory record must be submitted to SANDAG on request by SANDAG.
- C. At the conclusion of the Agreement or if the Agreement is terminated, Contractor may either keep the equipment and credit SANDAG in an amount equal to its fair market value or sell such equipment at the best price obtainable, at a public or private sale, in accordance with established procedures, and credit SANDAG in an amount equal to the sales price. If the Contractor elects to keep the equipment, fair market value shall be determined, at the Contractor's expense, on the basis of a competent, independent appraisal of such equipment.

Appraisals shall be obtained from an appraiser mutually agreeable to SANDAG and Contractor. If it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by SANDAG.

- D. 49 C.F.R. 18 requires a credit to federal funds when participating equipment with a fair market value greater than \$5,000, is credited to the Project.
- E. Contractor and its subcontractors will give preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247. Contractor will pass this provision through to its subcontractors. Contractor will procure only items designated in guidelines of the EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000. These requirements extend to all subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

XVII. Compliance with Executive Order 11246 - *Applicable To All Contracts*

During the performance of this Agreement, Contractor agrees as follows:

- A. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation or national origin. Contractor will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. 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. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination
- B. Contractor will, in all solicitations or advancements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order 11246 (EO 11246) (Johnson, 1965) and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. Contractor will comply with all provisions of EO 11246 and of the rules, regulations, and relevant orders of the Secretary of Labor.

- E. Contractor will furnish all information and reports required by EO 11246 and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. Contractor will include the provisions of paragraphs A through F in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of EO 11246, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Contractor may request the United States to enter into such litigation to protect the interests of the United States." [Sec. 202 amended by Executive Order 11375 (Johnson, 1967), 32 FR 14303, 3 C.F.R., 1966-1970 Comp., p. 684, Executive Order 12086 (Carter, 1978), 43 FR 46501, 3 C.F.R., 1978 Comp., p. 230]

XVIII. Cost Principles - *Applicable To All Contracts In Excess Of \$25,000*

- A. Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- 2. Contractor also agrees to comply with federal procedures in accordance with 2 CFR 200.
- 3. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 2 CFR 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to SANDAG..

XIX. Noncollusion - *Applicable To All Contracts In Excess Of \$25,000*

Title 23, United States Code (U.S.C.), Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that Contractor file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the noncollusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C. 1746, is attached.

XX. Debarment and Suspension - *Applicable To All Contracts Exceeding \$25,000*

- A. SANDAG and the Contractor shall comply with the requirements of Executive Orders (EO) 12549 (Reagan, 1986) and EO 12689 (Bush, 1989), "Debarment and Suspension," 31 U.S.C. 6101 note; and U.S. DOT regulations on Debarment and Suspension at 49 C.F.R. 29. Contractor shall be registered in the SAM.gov website. The System for Award Management (SAM) is an Official U.S. Government database of awardees of federal funds. There is NO fee for Contractor to register for this site.
- B. Unless otherwise permitted by FTA, SANDAG shall refrain from awarding any third-party contract of any amount to or enter into any subagreement of any amount with a party included in the "United States General Services Administration's (U.S. GSA) List of Parties Excluded from Federal Procurement or Nonprocurement Programs," implementing EO 12549 and EO 12689, "Debarment and Suspension" and 49 C.F.R. 29. The list also includes the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible for contract award under statutory or regulatory authority other than EO 12549 and EO 12689.
- C. Before entering into any subagreement with a subrecipient, SANDAG shall obtain a debarment and suspension certification from each prospective recipient containing information about the debarment and suspension status and other specific information about the subrecipient and its "principals," as defined at 49 C.F.R. 29.105(p). An example of the appropriate certification is contained in this bid package.
- D. Before entering into any third-party contract exceeding \$25,000, SANDAG shall obtain a debarment and suspension certification from each third-party contractor containing information about the debarment and suspension status of that third-party contractor and its "principals," as defined at 49 C.F.R. 29.105(p). SANDAG also shall require each third-party contractor to refrain from awarding any third-party subcontract of any amount (at any tier) to a debarred or suspended subcontractor, and to obtain a similar certification from any third-party subcontractor (at any tier) seeking a contract exceeding \$100,000. An example of the appropriate certification is contained in this bid package.
- E. SANDAG shall provide FTA a copy of each conditioned debarment or suspension certification provided by a prospective third-party contractor at any tier or subrecipient at any tier. Until FTA approval is obtained, SANDAG shall refrain from awarding a third-party contract or entering into a subagreement with any party that has submitted a conditioned debarment or suspension certification.

XX. Technical Restrictions on the Acquisition of Property and Services

If this Agreement involves the acquisition of Intelligent Transportation System (ITS) property and/or services, then the ITS property and services must comply with the national ITS architecture and standards to the extent required by Section 5307(c) of SAFETEA-LU, FTA notice, "FTA National ITS Architecture Policy on Transit Projects," 66 C.F.R. 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Third-party contracts involving ITS must also contain provisions to ensure compliance with these, just listed, Federal Requirements. (FTA Circular 4220.1F, Page IV-17, November 1, 2008.)