



SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive, P.O. Box 12688
Oakland, CA 94604-2688
(510) 464-6000

2021

Mark Foley
PRESIDENT

Rebecca Saltzman
VICE PRESIDENT

Robert Powers
GENERAL MANAGER

December 30, 2020

Subject: Request for Proposals No. 6M2075
Independent Audit Services 2021–2025

DIRECTORS

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1ST DISTRICT

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2ND DISTRICT

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3RD DISTRICT

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6TH DISTRICT

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7TH DISTRICT

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8TH DISTRICT

Bevan Duffy
9TH DISTRICT

To All Interested Parties:

The San Francisco Bay Area Rapid Transit District (herein "District" or "BART") is requesting proposals for Consulting services to provide Independent Audit Services. The Scope of Services and associated requirements are contained in the attached Request for Proposals (RFP).

The request for Independent Audit Services shall be for a five (5)-year period beginning with Fiscal Year ending June 30, 2021, and ending on June 30, 2025.

A Pre-Proposal Meeting and Networking Session will be held on Tuesday, January 19, 2021. The Pre-Proposal Meeting will convene at 10:00 AM, local time via WebEx Presentation. All interested parties must RSVP via email to: bartprocurementsupport@bart.gov by 5:00 p.m. on January 15, 2021 in order to participate in this Pre-Proposal Meeting. All emails must include RFP 6M2075, Independent Audit Services.

Instructions on attending the WebEx Presentation will be emailed upon receipt of RSVP. At the Pre-Proposal Meeting, the District's Equity Program(s) will be explained. Prospective Proposers are requested to make every effort to participate in this only scheduled Pre-Proposal Meeting and Networking Session. The District may only respond to questions at the submitted Pre-Proposal Meeting by prospective Proposers that have RSVPed to the Pre-Proposal Meeting. In order for the District to consider responding those questions at Pre-Proposal Meeting, those questions shall be submitted until the day prior Pre-Proposal Meeting by 10:00 a.m. local time, via email to bartprocurementsupport@bart.gov, with the email header being RFP 6M2075, Independent Audit Services.

All questions regarding the DBE and SBE participation should be directed to Mr. Javierree Pruitthill, Office of Civil Rights, at: (510) 464-7534 or e-Mail at jpruit2@bart.gov.

Cordially yours,

Rhonda Lockhart

Rhonda Lockhart
Contract Administrator

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

REQUEST FOR PROPOSALS

TO PROVIDE

INDEPENDENT AUDIT SERVICES

FOR

BART'S OFFICE OF THE CONTROLLER/TREASURER

BART RFP NO. 6M2075

2021

Pre-Proposal Meeting:

10 AM, Local Time

January 19, 2021

Proposal Submission Date:

2:00 PM, Local Time

February 2, 2021

ISSUE DATE:

December 31, 2020

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EXHIBITS FOR ALL TECHNICAL SERVICES RFPS:

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REQUEST FOR PROPOSALS
FOR
INDEPENDENT AUDIT SERVICES

I. INTRODUCTION

- A. The San Francisco Bay Area Rapid Transit District (hereinafter referred to as “BART” or “District”) intends to engage the services of a firm (“CONSULTANT”) to provide Independent Audit Services hereinafter described. The District presently intends to enter into a (5) year Agreement with the consultant selected.
- B. Accordingly, the District is now accepting proposals from proposers (“Proposers”) for consideration for the selection of a CONSULTANT to implement the Scope of Services specified in Section II below of this Request for Proposals (“RFP”).

C. REQUIRED REGISTRATION ON BART PROCUREMENT PORTAL

In order for prospective Proposers to be eligible for award of an Agreement being solicited on the BART Procurement Portal, such Proposers are required to be currently registered to do business with BART on the BART Procurement Portal on-line at <https://suppliers.bart.gov> and have obtained Solicitation Documents, updates, and any Addenda issued on-line so as to be added to the on-line Planholders List for this solicitation.

If a prospective Proposer is a joint venture or partnership, such entity may register on the BART Procurement Portal with the entity’s tax identification number (TIN) and download the Solicitation Documents so as to be listed as an on-line planholder under the entity’s name prior to submitting its Proposal. If such entity has not registered on BART Procurement Portal in the name of the joint venture or partnership prior to submitting its Proposal, provided that at least one of the joint venturers or partners registered on line on the BART Procurement Portal and downloaded the Solicitation Documents so as to be added to the on-line Planholders List for this solicitation, such entity will be required to register with the entity’s TIN as an on-line planholder following the submittal of Proposals, in order for the entity to be eligible for award of this Agreement.

PROPOSERS WHO HAVE NOT REGISTERED ON THE BART PROCUREMENT PORTAL PRIOR TO SUBMITTING A PROPOSAL, (OR FOR A JOINT VENTURE OR PARTNERSHIP AS DESCRIBED ABOVE PRIOR TO AWARD) AND DID NOT DOWNLOAD THE SOLICITATION DOCUMENTS FOR THIS SOLICITATION ON LINE SO AS TO BE LISTED AS AN ONLINE PLANHOLDER FOR THIS SOLICITATION, WILL NOT BE ELIGIBLE FOR AWARD OF THIS AGREEMENT.

- D. Proposer should note that this Agreement is subject to the District’s Small Business Program that includes a preference of 5% of the lowest responsible Proposer’s price, up to a maximum of \$150,000, for a certified Small Business Prime Contractor submitting a Proposal on this Agreement. Proposer’s attention is directed to Sections G and H below which set forth the District’s Small Business Program requirements. Inquiries regarding the District’s Small Business Program shall be directed to the District’s Office of Civil Rights, 300 Lakeside Drive, 16th Floor, Oakland, CA 94612, Telephone at (510) 464-6100, or to BART’s Website at: www.bart.gov/ocr.

- E. The CONSULTANT selected will be required to enter into a written agreement with the District. The Agreement is specified in Section VI below.
- F. This RFP does not commit BART to award an agreement, to pay any costs incurred in the preparation or presentation of a proposal, or to procure or contract for services.
1. BART reserves the right, at its sole discretion, to reject any and all proposals and to waive informalities and irregularities in proposals received.
 2. BART also reserves the right, at its sole discretion, to negotiate with all qualified sources, or to cancel this RFP in part or in its entirety.
 3. BART also reserves the right, at its sole discretion, to award an agreement on the basis of initial offers received, without further negotiation. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.
 4. BART may require some Proposers to participate in negotiations and to submit such cost or technical data or other revisions of its proposals as may result from the negotiations. Upon completion of discussions, the District may issue to all Proposers still within the competitive range a request for best and final offers.
 5. BART may request Proposer(s) to extend the period of time specified by written agreement between BART and Proposer(s) concerned.
 6. BART intends to make one (1) award resulting from this RFP to the responsible Proposer offering the best value to the District.
- G. Declaration of Eligibility for Small Business Preference: Proposers that seek to qualify for the Small Business preference shall complete the Declaration of Eligibility for Small Business Preference included in the Price Proposal Form (Exhibit 4). Small Business Proposers that fail to complete the Declaration of Eligibility for Small Business Preference may not be eligible for the Small Business preference.
- H. Small Business Preference: Proposers who are certified as a Small Business by the California Department of General Services (DGS) will be considered for eligibility for a Small Business preference during evaluation for determining Award of the Agreement. Such Small Businesses will be granted reduction in their Proposal Prices, for evaluation purposes only, of five percent (5%) of the Proposal Price of the lowest responsible Proposer, up to a maximum of \$150,000. Following such a reduction, all proposals will be compared, and Award will be made to the responsible Proposer offering the best value to the District. The Agreement Award will be for the amount of the original proposal.
- I. **PROPOSERS MAY OBTAIN INFORMATION ON THE STATUS OF THE AWARD OF THIS AGREEMENT BY CHECKING THE BART WEBSITE:**
<http://www.bart.gov/about/bod/meetings.aspx>
FOR AGREEMENTS SCHEDULED TO BE PRESENTED BY STAFF TO THE BART BOARD FOR AWARD CONSIDERATION.
- J. This RFP and any material submitted by the Proposer are subject to public inspection under the California Public Records Act (California Government Code Section 6250 et seq.), unless exempted by law.
1. Public Disclosure: The District is subject to the California Public Records Act set forth above and any documents submitted except Statements of Qualifications and Business References, which are exempt from public inspection pursuant to California Public Utilities Code Section 99154, shall be subject to public inspection and copying

pursuant to the California Public Records Act. In addition, Proposers should specifically identify any portion of their Proposals which they deem to contain confidential, proprietary information or trade secrets and will be required to provide, upon request, justification and defense of Proposer's position that such material should not be disclosed by the District under the California Public Records Act.

In the event there is a Public Records Act request filed with BART seeking disclosure of information that has been designated as Confidential Information by Proposer pursuant to the Proposal, BART agrees to give Proposer prompt written notice of such request, and Proposer agrees to assist BART in responding to the request by reviewing the documents requested and confirming that Proposer wishes that they not be made public by BART. In addition, Proposer agrees to hold BART harmless and, at BART's option, provide legal defense for BART from all claims and demands including attorneys' fees asserted against BART that may result from BART refusing to make public documents that Proposer has designated as proprietary. Proposer also agrees that, if any action is filed in court seeking disclosure of the information declared proprietary by Proposer, BART may deposit the documents with the court and Proposer will defend its designation of the information as proprietary.

- K. Special attention is directed to Division 2, Part 7, Chapter 1, Article 2 of the California State Labor Code, including Section 1774 and Section 1775, concerning the payment of prevailing wages. Consultant and each Subconsultant shall pay not less than the appropriate prevailing wages to all workers performing work that is subject to the prevailing rate of wages as determined by the Director of the State Department of Industrial Relations. Pursuant to Section 1773 of the State Labor Code, the District has obtained from the Director of the State Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality(ies) in which the Work is to be performed and has copies available upon request from the Procurement Department, 300 Lakeside Drive, 17th Floor, Oakland, CA 94612. The prevailing rates of wages are also available at the following website: www.dir.ca.gov/dlsr/pwd. For crafts or classifications not shown on the prevailing wage determinations, Consultant may be required to pay the wage rate of the most closely related craft or classification shown in such determinations for Contract work. The Contractor may contact the Division of Labor Statistics and Research, Prevailing Wage Unit, P.O. Box 420603, San Francisco, CA 94142, (415) 703-4774, for questions concerning job classifications not found in the general prevailing wage determinations." The Consultant shall comply with the provisions of State Labor Code Section 1776 and Section 1812 and shall be responsible for compliance by its Subconsultants. The penalties specified in subdivision (f) of State Labor Code Section 1776 for noncompliance by the Consultant or any of its Subconsultants of every tier may be deducted from any monies due or which may become due to the Consultant. Among other things, the Consultant shall comply with the requirements of State Labor Code Section 1777.5 applicable to Apprentices. A certified copy of payroll records shall be provided by the Contractor in accordance with State Labor Code Section 1776 and shall be furnished to the District each week and shall be provided within seven (7) Days after the regular payment date of the payroll period. Failure to comply with these requirements may cause suspension of progress payments during the period of noncompliance or may delay final payment.

II. SCOPE OF SERVICES

The services sought in this RFP are described in Attachment A of Exhibit 1, SAMPLE FORM OF AGREEMENT FOR TECHNICAL SERVICES, of this RFP. In addition, all services shall be in conformance with all applicable State and Federal statutes and regulations, as they may be revised from time to time, including those pertaining to confidential information. In brief, the services include the following: Perform an annual independent audit of the San Francisco Bay Area Rapid Transit District's financial records for the purpose of issuing an opinion as to the fair presentation of the

District's financial position, as more particularly described in Exhibit 1, Attachment A, Scope of Services.

III. COMPENSATION

The administrative procedures for compensation and method of payment are set forth in Article 3.0, Compensation and Method of Payment, of Exhibit 1, AGREEMENT FOR TECHNICAL SERVICES.

IV. CONFLICT OF INTEREST, DISTRICT CONTRACTOR CODE OF CONDUCT, AND FINANCIAL CONTRIBUTION LIMITATION

A. Conflict of Interest

1. Depending upon the nature of the services performed, District consultants are subject to the same conflict of interest prohibitions which apply to District employees. These include, but are not limited to, the conflict prohibitions of the Federal Transit Administration (FTA) (see FTA's Circular 4220.1F, "Third Party Contracting Guidance") and the requirements of California law (including Government Code Sections 1090 et seq. and 87100 et seq., and Title 2, Division 6 of the California Code of Regulations.) Notwithstanding subsection 2 below, the District reserves the right to disqualify any Proposer under this RFP if the District, in its sole discretion, deems that the potential for conflicts of interest is likely to impair or restrict the Proposer's ability to furnish services contemplated within the Scope of Services.
2. Proposers should be aware that in order to avoid any potential conflicts of interest, a successful Proposer and its affiliates may be precluded from subsequently participating as a vendor or consultant on projects for which they are providing services pursuant to this RFP. Specifically, and without limitation, an awardee of this RFP may be precluded from performance as a subconsultant on any other Agreement which may be awarded under this RFP and for any projects in which awardee provided similar corresponding services.
3. As part of the RFP process, Proposers are required to disclose all work performed by the Proposer (or any of its affiliates) within five (5) years of the date of receipt of proposals for this RFP which is related to a BART project. Additionally, Proposers may be required to disclose financial interests so that the District may be assured that the potential for conflicts of interest under state or federal law and regulations is not likely to impair the Proposer's ability to furnish services contemplated within the Scope of Services.
4. A conflict-of-interest review will be performed by the District during evaluation of the proposals.
5. The District does not provide general advice or assurances regarding potential conflict of interest.

A. District Contractor Code of Conduct:

All Proposers shall comply with the requirements of the District Contractor Code of Conduct which has been adopted by The Board of Directors of the San Francisco Bay Area Rapid Transit District. This Code of Conduct is posted at the District's website: <http://www.bart.gov/about/business/procurement/>. The purpose of the District Contractor Code of Conduct is to protect the integrity of the procurement process, and to provide a comprehensive statement of pertinent regulations and obligations governing the conduct of Consultants and their Subconsultants doing business with the District so they will be able to compete fairly and perform their work and services in an ethical manner.

B. Financial Contribution Limitation

1. The District adopted a Board rule limiting financial contributions to Board members and candidates for Director (Rules of the Board of Directors, Chapter V, Section 5, as amended from time to time, hereinafter referred to as "the rule"). In regard to any agreement award requiring authorization of the Board, the rule prohibits all Proposers and any proposed first tier subcontractor whose subcontract exceeds \$100,000 from making any monetary or in-kind contribution (including loans) in excess of \$1,000 to a BART Director or to any candidate for Director. For purposes of the rule, the term "contribution" shall have the same meaning as defined in California Government Code Section 82015 and implementing regulations adopted by the Fair Political Practices Commission.
2. The Rule shall be effective from the date proposals are opened by the District and continue until the award of the Agreement. The Rule will continue to apply in regard to the successful Proposer awarded the Agreement, and each first-tier subcontractor whose subcontract exceeds \$100,000, for three (3) months following award. Proposers shall require each proposed subcontractor whose subcontract exceeds \$100,000 to comply with the Rule.
3. Attention is directed to Exhibit 6, CERTIFICATION REGARDING FINANCIAL CONTRIBUTIONS of this RFP. Proposer, and each proposed first tier subconsultant whose subcontract exceeds \$100,000, shall be required to execute this Certification. Proposer is responsible for collecting the Certification from each first-tier subconsultant whose subcontract exceeds \$100,000 and submitting it along with its own Certification to the District with the proposal on the proposal due date. Proposer is advised that if all Certifications are not submitted on the proposal due date, they must be submitted within five (5) calendar days thereafter. Failure to submit all Certifications within five (5) calendar days following the proposal due date may render the proposal non-responsive.
4. Certifications submitted after the proposal due date shall be submitted to:

San Francisco Bay Area Rapid Transit District
Contract Administration Division
300 Lakeside Drive, 17th Floor
Oakland, CA 94612
Attn: Rhonda Lockhart, E-Mail rlockh2@bart.gov
5. Email transmission of the Certifications will be acceptable by the above deadlines subject to subsequent receipt of originals by express or U.S. mail. Please direct any questions regarding the rule to Contract Administrator, Rhonda Lockhart, E-Mail Rlockh2@bart.gov.

V. TERM OF AGREEMENT

The term of the Agreement entered into pursuant to this RFP will be for five (5) years, commencing upon receipt of a Notice to Proceed, subject to termination as provided for in the Agreement.

VI. AGREEMENT

A. Exhibit No. 1

The Agreement for technical services to be signed by CONSULTANT is included as Exhibit 1, AGREEMENT FOR TECHNICAL SERVICES, of this RFP, attached hereto. Exhibit 1 is a sample document and shall not be filled-in, executed or submitted with proposals.

B. Article 6.0, Insurance

Proposer's attention is directed to Article 6.0, INSURANCE, of Exhibit 1 which sets forth the insurance requirements which the selected CONSULTANT shall comply with during the duration of the Agreement.

1. Insurance coverage shall be maintained throughout the term of the Agreement.
2. The successful Proposer must be prepared to submit a valid certificate of insurance which meets the requirements of Article 6.0 of Exhibit 1 for approval by BART prior to proceeding with the services.

C. Agreement Acceptance and Proposed Changes

1. In order to meet BART's schedule requirements, it is critical that the Agreement be executed immediately following selection of a Proposer as CONSULTANT. Proposer shall be prepared to accept the terms and conditions of the Agreement.
2. If a Proposer desires to propose any changes in the Agreement, the Proposer must clearly identify each and every proposed change, the reasons therefor and the specific alternative language proposed, in the proposal submitted in response to this RFP. Proposals which take substantial exceptions to the Agreement may be determined by BART, in its sole discretion, to be unacceptable and no longer considered for award (see Section VIII.A.4 below).

VII.A. NON-DISCRIMINATION PROGRAM FOR SUBCONTRACTING

It is the policy of BART to ensure that Proposers who contract with the District do not discriminate or give a preference in the award of subcontracts on the basis of race, national origin, color, ethnicity, or gender. A Proposer is not required to subcontract any portion of the Work. This Non-Discrimination Program for Subcontracting shall not apply if Proposer does not subcontract a portion of the Work. If a Proposer subcontracts a portion of the Work, this Non-Discrimination Program for Subcontracting shall apply. Attention is directed to Exhibit 1, Attachment C, NON-DISCRIMINATION PROGRAM FOR SUBCONTRACTING, of this RFP. As described in Attachment C, the Minority Business Enterprise (MBE) Availability Percentage for this Agreement is 5.5% and the Women Business Enterprise (WBE) Availability Percentage for this Agreement is 2.8%.

VII.B. DESIGNATION OF SUBCONTRACTORS AND MBE/WBE PARTICIPATION

Proposers shall comply with the requirements of Attachment C Section E related to the designation of Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) on the Designation of Subcontractors and MBE/WBE Participation Form. (This Form is part of Attachment C).

VII.C. SMALL BUSINESS PROGRAM

It is the policy of the San Francisco Bay Area Rapid Transit District to encourage the participation of Small Businesses in BART Agreements. The purpose of the Small Business (SB) Program is to encourage and facilitate full and equitable participation by Small Businesses in competitively Bid Construction, Procurement and Services Contracts and Agreements financed solely with local and state funds. The SB Program seeks to achieve these objectives on three levels: (1) BART's award of Contracts and Agreements to SBs; (2) the award of First-Tier Subcontracts to SBs by Prime Contractors, Suppliers

and Consultants; and (3) the award to Lower-Tier SB Subcontractors by First or Other Tier Subcontractors.

This Agreement is subject to the District's Small Business (SB) Program that includes a preference for Proposers who are certified Small Businesses of 5% of the total Proposal Price excluding Allowances and Option Proposal items, established for this Agreement.

Proposers, who are certified SBs by the California Department of General Services, will be eligible for a Proposal preference of 5% of the Proposal Price of the lowest responsible Proposer's total Proposal price up to a maximum of \$150,000, only during evaluation for determining Award of the Agreement. However, the actual Agreement awarded will be for the amount of the original Proposal. Proposers that are not certified SBs will not be eligible for the preference.

Inquiries regarding the District's Small Business Program shall be directed to the District's Office of Civil Rights, 300 Lakeside Drive, 16th Floor, Oakland, CA 94612, Telephone at (510) 464-6100, or to BART's Website at: www.bart.gov/ocr.

- C.1 **Definition:** "Small Business" "SB" – a business that is listed in the State of California Department of General Services in its database for SBs at www.dgs.ca.gov prior to the submission of the Bid or Proposal, including Disabled Veteran Business Enterprises (DVBES), as indicated by the DGS, or Lesbian, Gay, Bisexual, or Transgender Business Enterprises (LGBTBEs), certified by the National Lesbian and Gay Chamber of Commerce or the California Public Utilities Commission and certified as a SB by the State of California, Department of General Services, and found in the DGS database for SBs at www.dgs.ca.gov.
- C.2 Declaration of Eligibility for Small Business Preference: Proposers that seek to qualify for the Small Business preference shall complete the Declaration of Eligibility for Small Business Preference included in the Price Proposal Form (Exhibit 4). Small Business Proposers that fail to complete the Declaration of Eligibility for Small Business Preference may not be eligible for the Small Business preference.

VIII. PROPOSAL SUBMISSION – BEST VALUE METHOD

A. Proposal Requirements

The information requested in Section VIII.A.1 below will be utilized to assess whether the Proposer has met the minimum technical requirements specified in Section IX.C., Evaluation Criteria, below. The information requested in Sections VIII.A.2. and 3., below will be utilized to assess and score the qualifications of the Proposer's firm or organization and the qualifications of the Proposer's Key Personnel in accordance with Section IX.C., Evaluation Criteria, below.

1. Minimum Technical Requirements Questionnaire
 - a. Proposals shall include the following:
 - b. Completed Proposer Minimum Technical Requirements Questionnaire attached hereto as Exhibit 7 to this RFP. A separate completed Exhibit 7 Questionnaire shall be submitted for the Proposer and/or each firm of a joint venture.

- c. In the event that the firm submitting a proposal is a joint venture, the joint venture agreement must also be submitted as part of the proposal.
- d. In order to be evaluated with respect to meeting minimum technical requirements as described in Section IX.C., Evaluation Criteria, a Proposer must provide complete information (as applicable to the Proposer) and respond to all requests for information and all questions as set forth in Exhibit 7 Questionnaire.

2. Organization and Experience of Proposer's Firm

Proposals shall include the following:

a. Organization

- (1) Proposed organization chart of relevant/key team members showing the contractual and reporting relationship of each member and his or her associated firm. Show the firm and office location of the proposed staff and the estimated percentage of its involvement in the Agreement.
- (2) Rationale of Proposer's Organization, i.e., staffing plan, allocation of personnel/time.
- (3) Identification of Business Components of Team (if more than one) and capabilities.
- (4) Identification of Key Personnel and support staff. At a minimum, Proposer shall provide the following Key Personnel: Engagement Partner, Engagement Manager, and Engagement Senior.
- (5) Please note that during the term of the Agreement, CONSULTANT must maintain an office located within 100 miles of the District's administrative offices at 300 Lakeside Drive, Oakland, California 94612. The District's administrative offices will be located at 2150 Webster, Oakland, California 94612 beginning July 1, 2021.

b. Experience

- (1) Describe experience on the audits of the financial statements of rail transportation and public agencies. Include in the discussion the firm's experience on the audits and implementation of General Accounting Standards Board (GASB) Statements Nos. 68 Statement No. 75, and Statement 87, if applicable.
- (2) If the Team includes joint ventures or minority partners, describe the experience of the joint ventures or minority partners on the audits of the financial statements of rail transportation and public agencies. Include in the discussion the firm's experience on the audits and implementation of General Accounting Standards Board (GASB) Statement No. 68 Statement No. 75, and Statement No. 87, if applicable.
- (3) Describe experience in conducting Single Audit as required by the audit requirements of Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).

- (4) Describe experience in conducting audit of National Transit Database Report as required by the Federal Transit Administration.
 - (5) Describe experience in conducting compliance audit related to the following:
 - a. Compliance with the laws and regulations governing Transportation Development Act Funds.
 - b. Compliance with the requirements described in the Proposition 1B Public Transportation Modernization, Improvement and Service Enhancement Account (PTMISEA) guidelines published by the California Department of Transportation.
 - c. Compliance with the requirements described in the Measure B and BB Mass Transit Funds Agreement between the District and Alameda County Transportation Commission, or audit of similar nature performed in compliance with the requirements of agreement entered between the client and the administering organization.
- c. Qualifications of Proposer's Firm or Organization
- (1) Identify total number of years your firm has been in business.
 - (2) Provide the following information on the firm's audit services provided of which a minimum of 5 years' experience were in a lead capacity on audits of the financial statements, at a minimum for three (3) public agencies, which must include at least one (1) transit agency, and each agency having a total asset of at least \$1 billion. Provide also similar information on all audit services performed that will meet the minimum technical requirements outlined in the evaluation criteria shown on item c on page 18.
 - (a) Name and location;
 - (b) Description;
 - (c) Cost and duration;
 - (d) Client's name, address, telephone number and contact person;
 - (e) Total billable hours worked;
 - (f) Duration of Proposer's involvement in the project;
 - (3) List and describe Proposer's experience in providing these types of audit services described in this RFP, under similar contractual arrangements to public agencies on related projects within California, or alternatively, in the United States, with emphasis and an appropriate level of detail on the following:
 - (a) Disciplines provided and scope of their engagement; and
 - (b) Demonstrated availability of key personnel to respond to client's needs.

3. Qualifications of Proposed Project Key Personnel

Proposals shall include the following:

- a. Identification of Proposed Project Personnel and Support Staff
 - (1) Engagement Partner;
 - (2) Engagement Manager;

- (3) Engagement Senior; and
 - (4) Administrative Support.
- b. The resumes of all Key Personnel proposed, including those of a joint venture, if any, for filling the above listed positions, describing their experience and expertise including summary resumes for each individual. Additionally, Proposers are to present, separate from the resumes, a chronological summary of experience for everyone listed above, complete for the past five (5) years.
- c. With respect to the Proposer's Key Personnel and technical support staff, or joint venture personnel, describe in detail their experience including the following:
 - 1. Management/performance of auditing services and dates of performance;
 - 2. Management/performance of auditing services and dates of performance for public agencies. A public agency is defined as a political subdivision of a State or the Federal Government;
 - 3. Management/performance of auditing services and dates of performance related to rail transportation agencies;
 - 4. Individual's work activities over the past year as well as Proposer's plans for that individual for the next six months. This description shall also indicate the degree to which these activities, past or future, require traveling distances of more than 100 miles; and
 - 5. Provide a detailed audit plan describing method, staffing, timing, tools, procedures, and scheduling to demonstrate the timely and accurate completion of the audit work with the least interference to the District's day-to-day operations.
- d. Describe in detail the experience of the Key Personnel related to audits of and implementation of GASB Statements Nos. 68, 75 and 87.
- e. Proposer shall submit a Price Proposal Form for services to be provided (Exhibit 4 to this RFP) and a rate schedule setting out hourly rates to be used as a basis in negotiating change orders to this Agreement, if any should arise. Only net values will be evaluated.

4. Exceptions to the Agreement

- a. As stated in Section VI.C. and V1.C.2., above, Proposers shall be prepared to accept the terms and conditions of the Agreement. If a Proposer desires to take exception to the Agreement (Exhibit 1 to this RFP), Proposer shall provide the following information as a section of the proposal identified as "Exceptions to the Agreement":
 - (1) Proposer shall clearly identify each and every proposed change to the Agreement included herein as Exhibit 1 to this RFP, including all relevant attachments.
 - (2) Proposer shall furnish the reasons therefor as well as specific recommendations for alternative language.

- b. The above factors will be taken into account during BART's evaluation of the proposals and/or during negotiations of fair and reasonable compensation. The District may develop cost-related factors to be applied to any exceptions taken. Proposals which take substantial exceptions to the Agreement or proposed compensation terms may be determined by BART, in its sole discretion, to be unacceptable and no longer considered for award.

5. Potential Conflict of Interest

Proposers shall provide a statement setting forth all work performed by the Proposer (or any of its affiliates) within five (5) years of the date for receipt of proposals for this RFP which is related to any BART project.

6. Other Required Proposal Submittals

- a. Exhibit 2, STATEMENT OF QUALIFICATIONS AND BUSINESS REFERENCES – Proposers (or each firm of a joint venture) shall include a Statement of Qualifications and Business References fully completed by Proposer together with all requested financial statements (as set forth in Exhibit 2 to this RFP).
- b. Exhibit 3, KEY PERSONNEL LIST – Identification of Key Personnel and support staff. At a minimum, Proposer shall provide the following Key Personnel: Engagement Partner, Engagement Manager and Engagement Senior.
- c. Exhibit 4, PRICE PROPOSAL FORM – The only submittal that shall be placed in the Price Proposal envelope is the Price Proposal Form (Exhibit 4 to this RFP) including the Declaration of Eligibility for Small Business Preference, if applicable.
- d. Exhibit 5, NON-DISCRIMINATION PROGRAM FOR SUBCONTRACTING - Proposals shall include information regarding MBE/WBE participation required by Exhibit 5 to this RFP, including completion of the "MBE/WBE Participation Form", and completion of Form A, "APPLICATION FOR CERTIFICATION AS A MINORITY OR WOMAN OWNED BUSINESS ENTERPRISE (M/WBE) FOR NON-DISCRIMINATION PROGRAM FOR SUBCONTRACTING" for a business not currently certified as a MBE/WBE.
- e. Exhibit 6, CERTIFICATION REGARDING FINANCIAL CONTRIBUTIONS - A separate completed Exhibit 6 to this RFP form shall be submitted for the Proposer and/or each firm of a joint venture or first tier subconsultant whose subcontract exceeds \$100,000, and to submit such Certifications along with its own to the District on the date proposals are due.
- f. Exhibits 7, PROPOSER MINIMUM TECHNICAL REQUIREMENTS QUESTIONNAIRE – Proposer shall complete this questionnaire and incorporate it in its proposal. Proposer shall print in ink or type the information requested in the spaces provided. Proposer shall attach supporting documentation to this questionnaire, organized with labeled tab dividers in the order of the respective questions in the questionnaire.
- g. Exhibit 8, PROPOSER'S CONSULTANT TEAM - Proposers shall provide information concerning the Proposer's Consultant Team by completing and executing Exhibit 8 to this RFP. Proposer is reminded that it is the District's goal to encourage MBE/WBE and small business participation related to its work.

Accordingly, Proposers are encouraged to develop multiple subcontracts in areas of work concentration to diversify firms participating under the Agreement.

- h. Exhibit 9, SURVERY FORM REGARDING THIS RFP - Proposers are requested to complete and submit Exhibit 9 to this RFP with its Proposal.
- i. BART reserves the right, at its sole discretion, to require the submission of additional information and/or documentation with respect to Proposer and/or Proposer's subconsultant(s).

B. Proposal Format and Execution

Proposals shall conform with the following requirements:

- 1. Proposals shall be typewritten on paper 8-1/2" x 11" in size with a minimum font size of 10. Any larger sheets included must be folded to that size. Pages shall be consecutively numbered within each section or part. The proposal shall be clearly labeled: "Proposal No. **6M2075, INDEPENDENT AUDIT SERVICES from [FIRM NAME]**."
- 2. Proposals shall include firm name (and, in the event the Proposer is a joint venture, the names of the individual firms comprising the joint venture), business address, and the name, title and business address of the responsible individual(s) representing the joint venture principals, with their telephone and facsimile (fax) numbers, who may be contacted during the proposal evaluation period for scheduling oral presentations as well as for receiving notices from BART.
- 3. Proposals shall be signed by an official authorized to bind the Proposer and shall constitute a firm offer for at least one hundred and eighty (180) calendar days from the last date for submission of proposals set forth herein. BART may request Proposer(s) to extend the period of time specified herein by written agreement between BART and the Proposer(s) concerned.
- 4. Proposers are instructed to submit technical and price proposals in separate sealed envelopes clearly labeled "Technical Proposal" and "Price Proposal". Proposers shall also submit electronic versions via two thumb/flash/USB drive or CD – one marked "**[FIRM NAME] 6M2075 Technical**", containing the entire technical proposal materials and one marked "**[FIRM NAME] 6M2075 Price**", containing only the price proposal materials. The only submittal that shall be placed in the Price Proposal envelope is the Price Proposal Form (Exhibit 4 to this RFP). Proposer shall furnish Seven (7) copies of the technical proposal and seven (7) copies of the price proposal. One of the seven copies of both the technical and price proposals shall be clearly marked "ORIGINALS" and MUST BE UNBOUND. One (1) additional copy of the technical and price proposals shall be furnished, identical to the other seven with the exception that Exhibit 2, STATEMENT OF QUALIFICATIONS AND BUSINESS REFERENCES, shall be excluded. This copy shall be marked "PUBLIC RECORD COPY."

C. Pre-Proposal Conference and Networking Session

A Pre-Proposal Conference and Networking Session will be held on Tuesday, **January 19, 2021**. The meeting will convene promptly at 10:00 AM, local time, in BART Offices located at 300 Lakeside Drive 17th Floor Conference Room 1700, Oakland, CA 94612.

D. Proposal Due Date and Submittal Requirements

Proposals must be received by 2:00 p.m., local time, on Tuesday, **February 2, 2021**.

1. Proposals shall be submitted to either of the following addresses:

District Secretary
San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, 23rd. Floor
Oakland, CA 94612

2. Envelopes or boxes containing proposals shall be clearly labeled in the same manner as specified in Section IX.D.1. (immediately above) and shall also be labeled: "Proposal No. 6M2075, Independent Audit Services."
3. The number of copies of the proposal to be furnished shall be as follows:
 - a. Seven (7) complete copies, one marked "ORIGINAL."
 - b. One (1) complete copy, excluding, Exhibit 2, STATEMENT OF QUALIFICATIONS AND BUSINESS REFERENCES. This copy shall be clearly marked on the front page with "**PUBLIC RECORDS COPY**" in conspicuous letters.

E. Questions Regarding the RFP

Questions concerning this RFP shall be directed to the District's Contract Administrator. Questions regarding MBE/WBE participation or SB Preference requirements shall be directed to the District's Senior Civil Rights Officer. All inquiries shall be made to the District at least ten (10) calendar days before the proposal due date. Inquiries received less than ten (10) calendar days prior to such date may, at the District's sole option, not be responded to.

Contract Administrator
Rhonda Lockhart
300 Lakeside Drive. 17th Floor
Oakland, CA 94612
Phone: 510-874-7318
E-Mail: rlockh2@bart.gov

Senior Civil Rights Officer
Javieere PruittHill
300 Lakeside Drive. 16th Floor
Oakland, CA 94612
Phone: 510-874-7348
E-Mail: jpruitt2@bart.gov

F. Rejection of Proposals

Proposals may be rejected if they show such items as: alteration of form; additions not called for; conditional proposals; incomplete proposals; irregularities which make the proposal incomplete, indefinite or ambiguous; improper markings and identification; or a signature by other than an authorized person.

G. Anticipated Selection Schedule

The tentative selection process schedule is as follows:

Pre-Proposal Meeting	<u>January 19, 2021</u>
Proposal Submission Date	<u>February 2, 2021</u>
Oral Interviews	<u>February 19, 2021</u>
Firm Selected for Negotiations	<u>February 23, 2021</u>

This is an anticipated/tentative schedule only, subject to change by the District without notice.

IX. CONSULTANT SELECTION – BEST VALUE METHOD

A. General

1. In this RFP, source selection will be based on both a Proposer's qualifications and price proposal. The District will first evaluate whether a proposal is responsive to the requirements of the RFP and whether the Proposer's organization is considered responsible.
2. Thereafter, proposals will be evaluated on the basis of whether they meet the District's minimum technical requirements. Only those proposals that satisfy the foregoing requirements will be evaluated on the basis of qualification, namely the qualifications of the Proposer organization and the qualifications of the proposed key personnel.
3. After all Proposers so qualified have been identified (through the evaluation procedure described below) the competitive price proposal range will be established after adjusting the Proposal Price for Proposers that are eligible for the Small Business preference as described in Section VII.C.2 Small Business Preferences above, and used to determine those Proposers who will then proceed to the Oral Interview stage.
4. After Oral Interviews are held the Selection Committee will conduct a "Best Value Analysis" (detailed below) to determine which Proposer offers the best value to the District. Final award will be based upon this analysis.

B. Evaluation Procedures

1. Proposals will be evaluated by an Evaluation Committee composed of District staff, as well as other participants that BART may deem appropriate.
2. Proposals will be first evaluated as to responsiveness to the requirements of the RFP and responsibility of the Proposer.
 - a. A proposal will be considered responsive only if it complies in all material respects to the requirements of the RFP. If the District is not able to confirm the veracity of all technical data or other information provided in the proposal, the District reserves the right to request further technical data or other information or to determine the proposal to be not acceptable. These findings will be given to the Evaluation Committee, and such findings shall be finalized at the time of award.
 - b. A Proposer's organization will be considered responsible only if it has, or has indicated that it can obtain, the financial resources to successfully fulfill the requirements of an awarded Agreement and possesses the ability to perform successfully under the terms of an awarded Agreement.
 - c. If a proposal is determined to be non-responsive, or a Proposer's organization is determined to be not responsible for the purposes of the RFP, such proposal or Proposer will not be considered for award.
3. The Evaluation Committee will review the technical proposals to determine which meet the District's minimum technical requirements (as set forth in the RFP) or could, after clarification or discussions, be made to meet such requirements, on the basis of the evaluation criteria set forth in Section IX.C below.

- a. "Clarification" meetings and communications:
 - (1) BART reserves the right to communicate with any Proposer for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes, in a Technical Proposal or statement of qualifications. In lieu of or in addition to meetings, BART may seek, by telephone, facsimile (FAX) or any other means of communication, written clarifications from the Proposer. Such clarification shall be completed before making an evaluation of a technical proposal or statement of qualifications. For the purpose of this RFP, any meetings(s) or communication(s) for the purpose of clarification shall not be considered an oral presentation by the Proposer as described in Section IX.B.7. below.
 - (2) Any written communication from a Proposer (other than a point of clarification expressly requested by BART) that is, or in BART's sole judgment appears to be, a modification to a technical proposal or statement of qualifications will not be considered for evaluation purposes and will be returned to the Proposer.
 - b. The Evaluation Committee will make a written determination with respect to each technical proposal as to whether or not it has met all the District's minimum technical requirements.
 - c. BART reserves the right to enter into discussions with any Proposer for the purpose of resolving any and all exceptions listed in the proposal. If the parties do not reach agreement on all exceptions listed in the proposal, then the proposal may be deemed unacceptable and be disqualified from any further consideration.
- 4. Following the determination of which technical proposals have met the District's minimum technical requirements the Evaluation Committee will evaluate and score the statement of qualifications from such Proposers with respect to qualification of the firm or organization and qualifications of key personnel on the basis of evaluation criteria set forth in. Section 1X.C below.
 - 5. After evaluating and scoring all qualified proposals as outlined in Section IX.B.4. above, the Evaluation Committee will determine which proposals fall within the competitive range. This phase will consist of i) tabulating the final written score for each proposal with respect to qualifications ("qualification score"); and ii) opening and reviewing the separately-sealed Price Proposals from only those Proposers whose technical proposals have been determined by the District to meet the minimum technical requirements as described in Section IX.B.3. above. Subject to adjustment of the Proposal Price of Proposers that are eligible for the Small Business Prime preference, Proposers will be ranked as being either within or outside the competitive cost range. In making the competitive range determination the District will seek to eliminate those proposals that are roughly equal in qualification score but higher in cost or roughly equal in cost but lower in qualification score. When there is doubt as to whether a Proposer is in the competitive range, the proposal will be included.
 - 6. All Proposers that are within the competitive range will be selected for Oral Interviews. The Selection Committee will, based on their evaluations, identify topics that are common to the selected proposals, of particular interest to the Selection Committee. The Selection Committee may utilize such topics in developing questions for the Oral Interview.

7. The Oral Interviews will be conducted and evaluated by the Selection Committee members. Each of the Proposers selected for Oral Interviews will be notified as to the time and place of the interviews. The Oral Interviews will be scheduled to last one hour and will be structured in two parts. The first part will be a 10-minute presentation by each Proposer. The second part will be devoted to Proposers response to the general questions and follow up questions as deemed appropriate by the Selection Committee.
 - a. The procedure for the Oral Presentations will be as follows:
 - (1) BART's Selection Committee staff will develop a scenario identifying a generic situation within the proposed RFP which may be sent to each selected Proposer one week prior to the Oral Presentation.
 - (2) Each selected Proposer will be asked the same number of questions. A typical question might be: ***Do you plan on participating in the GFOA and CSMFO award programs?***
 - b. The procedure for the Oral Interview general questions will be as follows:
 - (1) The Selection Committee will develop at least five (5) general questions that will be provided to each of the Proposers that are selected for Oral Interviews. These questions shall be based on the established evaluation criteria and are intended to determine which Proposer can the best meet BART's technical requirements.
 - (2) The Proposers will also be advised that during the Oral Interviews they may be asked follow up questions.
8. After Oral Interviews have been completed and scored, a final overall score based on written and oral scores will be tabulated for each Proposer in accordance with the evaluation scoring procedures set forth in Section IX.C. below.

For purposes of the final overall score, written statements of qualification and Oral Interviews will be weighted as follows:

*	Written statement of qualifications	65%
*	Oral Interview	35%
	Total	<u>100%</u>

9. "Best Value" Phase

Thereafter a "Best Value" analysis phase will be performed by the Selection Committee, taking into account cost and the final overall scores.

a. Price Proposals

BART may, at its sole discretion, require Proposers to participate in negotiations relating to their price proposal. Such negotiation is intended to permit the District and the Proposer to agree on a fair and reasonable price.

To conclude the negotiations, the Selection Committee shall make a determination that negotiations are reasonably complete and that it is in the District's best interest to move into the best and final offer ("BAFO") phase. At this time, a final, common cut-off date which allows a reasonable opportunity

for submission of written BAFO shall be established and all Proposers in the competitive range so notified. If oral notification is given it shall be confirmed in writing.

b. "Best Value" Analysis

The Selection Committee's recommendation will be for that Proposer whose proposal contains the combination of those criteria and price offering the best overall value to the District. This will be determined by reviewing the final overall score of the Proposer that submitted the lowest evaluated Price Proposal and determining, based on the concept of better value to the District, if it is more advantageous to the District to accept a higher Price Proposal based on added value (greater capability of the Proposer to perform, greater experience of the Proposer, or other measurable advantages). An assessment of the price vs. benefits will determine what incremental price above that of the lowest Price Proposal (if any) is justified from a business and economic standpoint. In making this comparison the District is concerned with striking the most advantageous balance between technical qualifications/oral presentation features and overall price to the District.

C. Evaluation Criteria

1. Minimum Technical Requirements:

In the Minimum Technical Requirements phase the Proposers will first be evaluated based on their responses to the minimum technical requirements listed in the questionnaire in Exhibit 7 to this RFP and attached supporting documentation to be provided by Proposers. The minimum qualifications/technical requirements will be on a pass/fail basis. No numerical scores will be assigned. Failure to pass in any one of the minimum qualifications/technical requirements as listed below, results in the Proposal being nonresponsive and therefore, excluded from further consideration. Proposer minimum technical requirements established for this RFP consist of the following:

- a. Proposer shall have a minimum of five (5) years' experience in a lead capacity on audits of the financial statements of a minimum of three (3) public agencies (which must include at least one transit agency) and each agency having total assets of at least \$1 billion for each of the past five (5) years. The audits must have been conducted in accordance with auditing standards generally accepted in the United States of America.
- b. Proposer shall have a minimum of five (5) years' experience on conducting compliance audits of Federal Grants (Single Audit) as required by the audit requirements of Title 2 U.S Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award (Uniform Guidance), for at least three (3) public agencies each of which has at least \$100 million in active approved federal grants for each of the last five (5) years.
- c. Proposer shall have a minimum of five (5) years' experience on audits and report preparation in compliance with the requirements of the Federal Transit Administration's annual National Transit Database Report. Proposer's experience must be with recipients or beneficiaries of Urbanized Area Formula Program funds which serve an urbanized area of 200,000 or more population and operates 100 or more vehicles in annual maximum service.
- d. Proposer shall have a minimum of three (3) years' experience on audits and report preparation in compliance with the latest requirements by the Government

Accounting Standards Board (GASB) which were in effect over the last five (5) years, including GASB 68 and 75.

- e. Engagement Partner must have at least ten (10) years of audit experience with a Certified Public Accounting firm which includes five (5) years of audit work with a transportation or public agency comparable in size to BART.
 - f. Engagement Manager must have at least five (5) years of audit experience with a Certified Public Accounting firm, including three (3) years of audit work with a transportation or public agency comparable in size to BART.
 - g. Engagement Senior must have at least three (3) years of audit experience with a Certified Public Accounting firm, including two (2) years of audit work with a transportation or public agency comparable in size to BART.
 - h. Proposer shall provide evidence of an average annual net worth for the previous five (5) years' of at least \$250,000 per year.
2. The evaluation and scoring of qualifications/technical proposals is to be accomplished with pre-established evaluation criteria resulting in a total point score. The following factors, listed in descending order of importance, will be considered in evaluating qualifications/technical proposals and conducting Oral Interviews:
- a. Firm experience and quality of performance in providing independent audit services for rail transit systems and public agencies.
 - b. The experience and quality of the Proposer's personnel; i.e. Engagement Partner, Engagement Manager, and Engagement Senior, in providing independent auditing services for rail transit systems and public agencies.
 - c. Management approach as reflected by Proposer's project organization and technical resources to implement the Scope of Services in Exhibit 1, Attachment A, to this RFP.
 - d. Proposer's ability to perform the Scope of Services as outlined in Exhibit 1, Attachment A, to this RFP.
3. Qualifications based on experience and quality of performance of the Proposer's firm or organization as a Lead Auditor, will be evaluated on the basis of the following factors:
- a. Years in Business:
 - (1) Providing Audits of financial statements of public agencies;
 - (2) Providing Audits of financial statements of rail transportation agencies;
 - (3) Providing Audits using generally accepted accounting principles in the United States.
 - b. Experience in Comparative Financial Statement services. This will be determined by examining the average annual dollar amount of:
 - (1) Rail Transportation auditing services Projects managed over the last five (5) years;
 - (2) Audit Report services (of public agency) projects managed over the last five (5) years; and

- (3) Billings/Revenue of the Proposer over the last (five (5) years.
- 4. Qualifications of Key Personnel, in the positions listed below, will be evaluated on the basis of the following factors:
 - a. ENGAGEMENT SENIOR
 - (1) Years of Experience in each of the following areas:
 - (a) Managing audits of rail transportation agency projects;
 - (b) GASB Statements;
 - (c) Audits involving compliance reports;
 - (d) Statement of cash flows; and
 - (e) Comparative Financial Statements of net position.
 - (2) Similar Project Experience
 - (3) Degree
 - b. ENGAGEMENT MANAGER
 - (1) Years of Experience in each of the following areas:
 - (a) Annual Independent Audit Project Management;
 - (b) Managing audits of rail transportation agency projects;
 - (c) GASB Statements;
 - (d) Audits involving compliance reports;
 - (e) Statement of cash flows; and
 - (f) Comparative Financial Statements of net position.
 - (2) Similar Project Experience
 - (3) Degree
 - c. ENGAGEMENT PARTNER
 - (1) Years of Experience in each of the following areas:
 - (a) Audits involving rail transportation agencies;
 - (b) GASB Statements);
 - (c) Internal Audit Control Structure).
 - (2) Similar Project Experience
 - (3) Degree
- 5. The Oral Presentation of each Proposers firm or organization will be evaluated on the basis of the following factors:
 - a. Presentation;
 - b. Question and Answer Phase;
 - c. Responsiveness.
 - d. Management Approach.

D. Proposal Evaluation and Recommendation for Award

The Proposal Evaluation Committee shall transmit their final ranking to the Director of Procurement, for management approval. When management approval of the final ranking has been received, a recommendation for selection will be made to BART's General Manager (GM). The RFP provides that the GM, at his sole discretion, may review either the recommended ranking of the Proposers or the recommended award; and that authority to enter into an agreement with the selected Proposer is subject to approval by BART's Board of Directors.

X. PROTEST PROCEDURE

A. Submittal of Protests

All protests must be in writing, stating the name and address of the protestor, a contact person, the RFP/Agreement Number and Title and shall specify in detail the grounds of the protest and the facts supporting the protest.

All protests must be addressed as follows:

For Special Delivery or Hand Delivery:

District Secretary
San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, 23 Floor
Oakland, CA 94612

Protests not properly addressed to the District Secretary may not be considered by the District. Copies of the District's Protest Procedures may be obtained from the District's Division of Contract Administration, P. O. Box 12688, Oakland, California 94604-2688, Telephone (510) 874-7318. Proposals will be opened, and a Notice of Award will be issued by the District only in accordance with the District's Protest Procedures.

B. Pre-Proposal Protests

Pre-proposal protests are protests based upon the content of the solicitation documents. Five (5) copies of pre-proposal protests must be received by the District Secretary no later than ten (10) calendar days prior to the proposal due date. A written decision specifying the grounds for sustaining all or part of, or denying, the protest will be transmitted to the protestor in a manner that will provide verification of receipt, prior to the submission of proposals. If the protest is sustained, the proposal submission date may be postponed and an addendum issued to the RFP document or, at the sole discretion of the District, the advertisement may be canceled. If the protest is denied, proposals will be received on the scheduled date.

C. Protests on the Recommended Award

All Proposers will be notified of the recommended award, if any. This notice will be transmitted to the Proposer at the address contained in its proposal in a manner that provides verification of receipt. Any Proposer whose proposal has not lapsed may protest the recommended award on any ground not specified in Section X.B. above. Ten (10) copies of a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest must be received by the District Secretary at the appropriate address set forth in Section X.A. above no later than seven (7) calendar days following receipt of such notification. A written decision stating the grounds for allowing or denying the protest will be transmitted to the protestor and the Proposer recommended for award in a manner that provides verification of receipt, prior to execution of the Agreement. Such decision shall be final.

EXHIBIT 1

AGREEMENT FOR TECHNICAL SERVICES

AGREEMENT

Between

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

And

(CONSULTANT)

To

TO PROVIDE INDEPENDENT AUDIT SERVICES

FOR

BART'S OFFICE OF THE CONTROLLER/TREASUER

BART AGREEMENT NO. 6M2075

2021

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ATTACHMENTS

ATTACHMENT A: SCOPE OF SERVICES
ATTACHMENT B: COMPENSATION SCHEDULE
ATTACHMENT C: NON-DISCRIMINATION PROGRAM FOR SUBCONTRACTING

**TECHNICAL SERVICES
AGREEMENT NO. 6M2075**

Between

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

And

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20__, by and between SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT ("BART" or "District"), a rapid transit district established pursuant to California Public Utilities Code, Section 28500 et seq. and _____("CONSULTANT"), with offices at _____.

RECITALS

This Agreement is made with reference to the following facts:

1. BART proposes to obtain Independent Audit Services for the District's Office of the Controller/Treasurer as described in Exhibit 1, Attachment A, Scope of Services ("Project");
2. The services required for the Project cannot be performed satisfactorily by the officers and employees of BART;
3. The parties hereto now wish to enter into this Agreement pursuant to which CONSULTANT will furnish Independent Audit Services in connection with the Project as hereinafter provided.

* * *

A G R E E M E N T

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1.0 SCOPE OF SERVICES

CONTRACTOR's services are described in Attachment A, SCOPE OF SERVICES, incorporated herein and by this reference made a part hereof. CONSULTANT shall be responsible to perform or secure the performance of all requested services in their entirety subject to the prior approval of a work plan by Mr. Christopher Gan, BART Assistant Controller, or a designated representative (herein called "Project Director").

This Agreement is not exclusive. BART expressly reserves the right to contract for performance of services such as those described herein through other Consultants.

1.1 FINANCIAL ADMINISTRATION

CONSULTANT and its subconsultants shall establish and maintain records pertaining to the fiscal activities of the Project. CONSULTANT's and subcontractors' accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged to the Project, including properly executed payrolls, time records, invoices and vouchers. Attention is further drawn to Article 14.0, RECORDS, and Article 15.0, AUDIT.

1.2 PROGRESS REPORTS

CONSULTANT shall submit to the Project Director a monthly progress report concerning the Scope of Services performed during the preceding month. The form of the progress report shall be subject to approval by the Project Director.

2.0 TIME OF PERFORMANCE

CONSULTANT's services hereunder shall commence on upon receipts of a Notice to Proceed and will continue for five (5) years from that date, unless earlier terminated as hereinafter provided, or if the limit on maximum compensation set forth in Article 3.0 below is met.

3.0 COMPENSATION AND METHOD OF PAYMENT

- A. Compensation for these services will be computed pursuant to Attachment B, COMPENSATION SCHEDULE, attached hereto and by this reference made a part of this Agreement.
- B. The compensation specified in Attachment B shall be full compensation for all services performed, including all applicable surcharges such as taxes (including sales taxes), insurance and fringe benefits, as well as indirect costs, overhead and profit allowance, materials and supplies.
- C. Subject only to duly executed change orders, it is expressly understood and agreed that in no event will the total compensation to be paid CONSULTANT under this Agreement exceed the sum of \$_____.
- D. During the term of this Agreement the District may, at its sole discretion, incorporate additional services into this Agreement on the same terms as set forth in Attachment A, SCOPE OF SERVICES, to this Agreement. Authorization for additional services will be incorporated into this Agreement by written change order(s).
- E. BART's allocation of funds for this Agreement is on a fiscal year basis with the fiscal year commencing July 1st and ending the following June 30th. BART reserves the right to terminate this Agreement if no funds are allocated for this Agreement during the following fiscal year.

3.1 **METHOD OF PAYMENT**

A. **Monthly Invoices/Subconsultant Payment**

Unless approved otherwise by the Project Director services shall be invoiced on a monthly basis and payment will be made within thirty (30) days of receipt of an acceptable invoice with satisfactory backup documentation, approved by the Project Director, provided a completed form W-9 is on file with BART Assistant Controller. As used herein, the term "invoice" shall include the CONSULTANT's bill or written request for payment under this Agreement for services performed. All invoices shall be made in writing and submitted with two duplicates at a minimum.

The CONSULTANT shall promptly pay any and all subconsultants by an instrument that guarantees availability of funds immediately upon deposit of said instrument. The CONSULTANT shall include in its monthly invoice submission to BART, amounts to pay for all subconsultants' acceptable invoices, no later than thirty (30) days after receipt of such invoices. Unless otherwise approved in writing by the Project Director, CONSULTANT shall, within seven (7) days after receipt of the payment made by BART, pay to each of its immediate subcontractors (or their respective assignees), for satisfactory performance of its contract, the amounts to which each is entitled, after deducting any prior payments and any amounts due and payable to CONSULTANT by those subconsultants. Any delay or postponement of payment among the parties may take place only for good cause and with the District's prior written approval. If the CONSULTANT determines the work of the subconsultant to be unsatisfactory, the CONSULTANT must immediately notify in writing the Project Director (and the Office of Civil Rights if the subconsultant is an MBE or WBE) and state the reasons therefor. Failure by CONSULTANT to comply with this requirement will be construed to be a breach of contract and may result in sanctions as specified in this Agreement.

In addition, the CONSULTANT must promptly return any retentions withheld to a subconsultant within thirty (30) calendar days after the subconsultant's work is satisfactorily completed.

B. **Invoice Procedures**

1. CONSULTANT invoices shall segregate current costs from other costs. Current costs are those costs which have been paid within the last sixty (60) calendar days and not previously submitted to BART for reimbursement. Other costs shall include, but not be limited to, the following:
 - a. Costs for which the District has requested additional justification for allowance;
 - b. Costs which have been recorded by CONSULTANT in the current accounting period and not incurred as an obligation within the last ninety (90) calendar days.
2. In no case shall CONSULTANT invoice for costs which BART has disallowed or otherwise indicated that it will not recognize

C. **Invoice Submittal Address**

All Vendors shall submit a completed Form W-9 and all invoices directly to BART's Accounts Payable (AP) Department.

Please submit all invoices to BART's Accounts Payable Department using one (1) of the following three (3) methods:

- (1) **(Preferred)** E-mail a PDF version of the invoice to: ap_supplier@bart.gov. Please save the file name using your Company name – Invoice No.
Example: ABC Company – Invoice #123456

- (2) Fax your invoice to: (510) 380-7635
- (3) Mail your invoice to: San Francisco Bay Area Rapid Transit District
Accounts Payable Department – LKS-22
Subject: Invoice Submission
300 Lakeside Drive, 22nd Floor
Oakland, CA 94612

Invoices must include: Your invoice number; Agreement Number, BART's Purchase Order Number; and Billed Line Items that correspond with the Line Items on BART's Purchase Order.

Please direct questions regarding invoice submission to your BART Agreement representative or email your request to PurchaseOrders@bart.gov. Invoice submission samples can be viewed at <https://www.bart.gov/about/business/accounts-payable>.

D. Taxpayer Identification Number

CONSULTANT represents that CONSULTANT's taxpayer identification number (TIN) XXXXX, is evidenced by a completed Federal Form W-9 on file with the Assistant Controller on the date of execution of this Agreement. CONSULTANT agrees to file such tax forms as may be reasonably requested by BART to implement Internal Revenue Code Section 3406 and to accept as a part of any compensation due, any payments made by BART to the Internal Revenue Service pursuant to that Section.

E. Subconsultant Payment Tracking System Reporting Requirements

Prior to the submittal of the first monthly invoice for work performed on this Agreement, the CONSULTANT shall comply with the District's subconsultant Payment Tracking System requirements by registering this Agreement on the District's website which can be accessed at <https://suppliers.bart.gov>. The CONSULTANT shall provide all specified information at such website about itself and all first-tier subconsultant whose subcontracts exceed \$5,000 as well as all first-tier M/WBEs and first-tier and second-tier SBs regardless of subcontract dollar value.

Information required to be provided includes, but is not limited to, specified contact person, subconsultant invoices received, subconsultant Taxpayer Identification Number (TIN), payment information for both the CONSULTANT and its subconsultants, as well as the total dollar amount of each first-tier subcontract that exceeds \$5,000 and first-tier M/WBEs and first and second-tier SB subcontract regardless of dollar value, the total dollar amount actually paid the first-tier subconsultant and second-tier SB subconsultant, the date of payment, and such other information as specified in the District's website.

CONSULTANT shall update the above information monthly, including similar information about all applicable subconsultants added to the Agreement during the period of the Contract. The monthly update shall be prepared by the CONSULTANT as specified in the District's website, and submitted electronically at <https://suppliers.bart.gov>. Such report shall be certified to be correct by the CONSULTANT. Failure to comply with these reporting requirements may be grounds for withholding payments due the CONSULTANT during the period of noncompliance.

4.0 CHANGES AND EXTRA SERVICES

BART reserves the right to order changes in the services to be performed by CONSULTANT. All such changes shall be incorporated in written change orders executed by BART and CONSULTANT, which shall specify the changes ordered and the adjustment of compensation and completion time required therefor.

Any services added to the scope of this Agreement by a change order shall be executed under all applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a duly executed change order.

5.0 TERMINATION

5.1 TERMINATION FOR CONVENIENCE

The performance of work or delivery of products under this Agreement may be terminated in whole or part by BART upon written notice to CONSULTANT in accordance with this clause whenever BART determines that such termination is in its best interest. After receipt of said notice CONSULTANT shall stop work on this Agreement on the date and to the extent specified in said notice, terminate all applicable orders and subcontracts, and complete performance of all work as shall not have been terminated by said notice. After receipt of said notice CONSULTANT shall submit to BART its termination claim setting forth CONSULTANT's actual and direct damages incurred as a result of said termination together with such information as may be required by BART to evaluate the claim. The determination of BART on the claim shall be final.

5.2 TERMINATION FOR CAUSE

If CONSULTANT should be in default and fails to remedy this default within five days from receipt from BART of notice of such default, BART may in its discretion terminate this Agreement or such portion thereof as BART determines is most directly affected by the default.

The term "default" for purposes of this provision includes, but is not limited to, the performance of work in violation of the terms of this Agreement; abandonment, assignment or subletting of this Agreement without approval of BART; bankruptcy or appointment of a receiver for CONSULTANT's property; failure of CONSULTANT to perform the services or other required acts within the time specified for this Agreement or any extension thereof; refusal or failure to provide proper workmanship; failure to take effective steps to end a prolonged labor dispute; and the performance of this Agreement in bad faith.

Upon BART's termination of this Agreement for default by CONSULTANT or any portion thereof, BART reserves the right to complete the work by whatever means it deems expedient and the expense of completing such work as well as any and all damages proximately caused by the default shall be charged to CONSULTANT.

5.3 FORCE MAJEURE

The performance of work under this Agreement may be terminated by BART, in its discretion, upon application therefor by CONSULTANT for unforeseen causes beyond the control and without the fault or negligence of CONSULTANT, including acts of God, acts of the public enemy, governmental acts, fires and epidemics if such causes irrecoverably disrupt or render impossible CONSULTANT's performance hereunder. An "act of God" shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of CONSULTANT to foresee or make preparation in defense against.

6.0 INSURANCE

At all times during the life of this Agreement to acceptance of the work covered by this Agreement, or as may be further required by this Agreement, CONSULTANT at its own cost and expense shall provide the insurance specified by this Article.

A. Evidence Required

At or before execution of this Agreement and at such other times as the District may request, CONSULTANT shall provide the District with a Certificate of Insurance executed by an authorized representative of the insurer(s) evidencing that CONSULTANT's insurance complies with this Article. The certificate shall reference the District Agreement Number and Title to which the certificate relates. In addition, a copy of all required endorsements shall be attached to and form a part of CONSULTANT's Certificate of Insurance.

B. Notice of Cancellation, Reduction or Material Change in Coverage

All policies shall be endorsed to provide the District with thirty (30) days prior written notice of any cancellation, reduction, or material change in coverage. Notices shall be sent to the Department Manager, Insurance, San Francisco Bay Area Rapid Transit District, P.O. Box 12688, Oakland, California, 94604-2688. The CONSULTANT shall annually submit to the District's Department Manager, Insurance, certifications confirming that the insurance required has been renewed and continues in place.

C. Qualifying Insurers

Policies shall be issued by California admitted companies which hold a current policyholders alphabetic and financial size category rating of not less than A VIII according to Best's Insurance Reports.

D. Insurance Required

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate as respects products/completed operations if applicable.

a. Coverages included shall be:

- (1) Premises and Operations;
- (2) Broad Form Property Damage;
- (3) Blanket Contractual Liability;
- (4) Products/Completed Operations;
- (5) Personal Injury Liability;
- (6) Cross-liability and Severability of Interest; and
- (7) Independent CONSULTANT's Liability.

b. Coverage shall be endorsed to include the following, copies of which shall be provided to the District:

- (1) Inclusion of the District, its directors, officers, representatives, agents and employees as additional insureds as respects services or operations in connection with this Agreement; and
- (2) Stipulation that the insurance is primary insurance and that no insurance or self-insurance of the District will be called upon to contribute to a loss.

2. Automobile Liability Insurance for bodily injury (including death) and property damage which provides coverage limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

a. Coverage shall be endorsed to include the following, copies of which shall be provided to the District:

- (1) Inclusion of the District, its directors, officers, representatives, agents and employees as additional insureds as respects services or operations in connection with this Agreement.

3. Statutory Workers' Compensation and Employers' Liability Insurance for not less than One Million Dollars (\$1,000,000) per occurrence applicable to Employers' Liability coverage for all employees engaged in services or operations under this Agreement. The policy shall include

broad form all-states/other states coverage. Coverage shall be specifically endorsed to include the insurer's waiver of subrogation in favor of the District, its directors, officers, representatives, agents and employees, a copy of which shall be provided to the District. Should any such work be subcontracted, CONSULTANT shall require each subconsultant of any tier similarly to comply with this Article, all in strict compliance with federal and state laws.

4. Professional Liability Insurance for damages arising out of CONSULTANT's acts, errors or omissions. The policy shall provide a coverage limit of not less than Five Million Dollars (\$5,000,000) per claim/aggregate as respects CONSULTANT's services under this Agreement. Such insurance shall be maintained for a period of not less than two (2) years following completion of services
5. Cyber Liability Insurance with a minimum limit of One Million dollars (\$1,000,000) per claim, including coverage for third party notification.

E. Special Provisions

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONSULTANT, and any approval of said insurance by the District or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The District acknowledges that some insurance requirements contained in this Article may be fulfilled by a funded self-insurance program of CONSULTANT. However, this shall not in any way limit liabilities assumed by CONSULTANT under this Agreement. Any self-insurance program must be approved in writing by the District.
3. Should any of the work under this Agreement be subcontracted, CONSULTANT shall require each of its subconsultants of any tier to provide the aforementioned coverages, or CONSULTANT may insure subconsultant(s) under its own policy(ies).
4. The District reserves the right to withhold payments to CONSULTANT in the event of material noncompliance with the insurance requirements of this Article 6.0.
5. The District reserves the right to terminate this Agreement in the event of material noncompliance with the insurance requirements of this Article 6.0.

7.0 INDEPENDENT CONTRACTOR

CONSULTANT is, and will at all times remain, a wholly independent contractor and not an officer or employee of BART. CONSULTANT has no authority to bind BART in any manner, or to incur any obligation, debt or liability of any kind of behalf of or against BART, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by BART.

The personnel performing the services under this Agreement on behalf of CONSULTANT will at all times be under CONSULTANT's exclusive direction and control. Neither BART, nor any elected or appointed boards, officers, officials, employees or agents of BART will have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees or agents, except as provided in this Agreement. CONSULTANT agrees that it will not at any time or in any manner represent that CONSULTANT or any of CONSULTANT's officers, employees or agents are in any manner officials, officers, or employees of BART. CONSULTANT shall be responsible for its own acts and those of its employees during the term of this Agreement.

For all purposes, including but not limited to the Federal Insurance Contributions Act ("FICA"), the Social Security Act, the Federal Unemployment Tax Act ("UTA"), income tax withholding requirements, California Personal Income tax Withholding ("PIT"), California Unemployment Insurance taxes ("UI"), California Disability Insurance ("SDI"), the Workers' Compensation Act ("WCA"), California Public Employees'

Retirement Law ("PERL"), and all other applicable federal, state and local laws, rules and regulations, CONSULTANT, and CONSULTANT's respective employees, if any, shall be treated as independent contractors and not as employees of BART. CONSULTANT and its personnel shall assist the District in evaluating and documenting the correct classification of CONSULTANT's personnel as independent contractors, which assistance may include, but is not limited to, reviewing and signing Work Status Evaluation form for each individual proposed to perform work under the Agreement of a Work Plan Proposal.

Neither CONSULTANT, nor any of CONSULTANT's officers, employees or agents, will obtain any rights to retirement, health care or any other benefits which may otherwise accrue to BART employees. CONSULTANT expressly waives any claim to any such rights or benefits.

In its capacity as independent contractor, CONSULTANT shall comply with any and all BART operations rules and procedures which relate to the performance of its services on BART property. Prior to commencing services, the Agreement Manager may loan CONSULTANT a copy of BART's Operations Rules and Procedures which shall be returned upon the completion or termination of Consultant's services hereunder.

7.1 CONFLICT OF INTEREST

CONSULTANT, its subconsultants and suppliers shall perform all work under this Agreement in conformance with all applicable statutes and regulations pertaining to conflicts of interest, including but not limited to, the financial reporting requirements and the conflict prohibitions of federal law (see, e.g., Federal Transit Administration Circular 4220.1F, Third Party Contracting Requirements) and California law (see, e.g., Government Code Section 1090 et seq., Government Code Section 87100 et seq. and Title 2, Division 6 of the California Code of Regulations).

When, in the judgement of BART, it is necessary in order to avoid any potential conflicts of interest, CONSULTANT, its subconsultants and suppliers may be precluded from subsequently participating as a vendor or contractor on projects for which they are providing services under this Agreement.

7.2 DISTRICT CONTRACTOR CODE OF CONDUCT:

The CONSULTANT shall comply with the requirements of the District Contractor Code of Conduct which has been adopted by The Board of Directors of the San Francisco Bay Area Rapid Transit District. This Code of Conduct is posted at the District's website: <http://www.bart.gov/about/business/procurement/>. The purpose of the District Contractor Code of Conduct is to protect the integrity of the procurement process, and to provide a comprehensive statement of pertinent regulations and obligations governing the conduct of CONSULTANTS doing business with the District so they will be able to compete fairly and perform their work and services in an ethical manner. Failure to comply with the applicable requirements of the District Contractor Code of Conduct, could lead to, among other things, direction to remove an offending subconsultant, rescinding, voiding, or terminating the Contract, or other reasonable and appropriate actions. CONSULTANT shall include in its sub agreements and require its subconsultants of every tier to include in their respective subagreements provisions incorporating the requirements of the District Contractor Code of Conduct.

8.0 INDEMNIFICATION

CONSULTANT to the extent permitted by law shall defend, indemnify and hold harmless BART, its directors, officers, agents and employees from all claims, demands, suits, loss, damages, injury and liability, direct or indirect (including reasonable attorney's fees and any and all costs and expenses in connection therewith), incurred by reason of any act, or failure to act, of CONSULTANT, its officers, agents, employees and subcontractors or any of them, under or in connection with this Agreement; and CONSULTANT agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against BART, its directors, officers, agents and employees, or any of them, arising out of CONSULTANT 's services, and to pay and satisfy any resulting judgments. Such indemnification includes without limitation any violation of proprietary rights, copyrights, rights of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this Agreement.

CONSULTANT is not an employee and will defend, indemnify and hold BART harmless for any injuries or claims suffered by CONSULTANT and/or its officers, agents, employees and subconsultants that would otherwise be subject to the Worker's Compensation Act. Further, CONSULTANT will defend, indemnify BART and hold it harmless for tax, wages, employees' benefits, pension benefits, or other liability if CONSULTANT or its employee, agent, subconsultants or other person providing services pursuant to this Agreement is found to be a common law employee of BART by the IRS, CalPERS, another government agency or a court or administrative law judge.

9.0 DATA TO BE FURNISHED BY BART

All data, reports, surveys, studies, drawings, and any other documents and materials made available to CONSULTANT by BART for use by CONSULTANT in the performance of its services under this Agreement shall be made available for information only and shall be returned to BART at the completion or termination of this Agreement.

10.0 OWNERSHIP OF WORK PRODUCTS

10.1 DOCUMENTS

All drawings, designs, specifications, manuals, reports, studies, surveys, models, software (including source code), and any other documents, materials, data and products ("Work Products") prepared or assembled by CONSULTANT or obtained from others ("Subconsultants") by CONSULTANT in connection with the services under this Agreement shall be the property of BART; and copies shall be delivered to BART promptly upon the completion of the work or upon an earlier termination of this Agreement. CONSULTANT shall be responsible for the preservation of any and all Work Products prior to transmittal to BART; and CONSULTANT shall replace any such Work Products as are lost, destroyed or damaged while in its possession without additional cost to BART.

10.2 ASSIGNMENT OF RIGHTS

CONSULTANT hereby assigns to BART all rights, title and interest including, but not limited to, copyright, patent, trademark and trade dress rights, in and to the Work Products. CONSULTANT acknowledges BART's exclusive rights to reproduce, publish, display, create derivative works from, sell, transfer or otherwise exploit ("Use"), and permit others to Use all or any part of the Work Products, and to obtain and hold in its own name patents, copyright and/or trademark registrations for the Work Products. CONSULTANT shall provide all documentation, information and assistance reasonably required by BART to obtain such registrations or patents, or with respect to claims that third parties have infringed the Work Products.

10.3 WARRANTY OF WORK PRODUCT

CONSULTANT warrants and represents that the Work Products are original to CONSULTANT or its Subcontractors and shall not infringe the copyright, trademark, trade secret, privacy, publicity, patent or other intellectual property or proprietary rights of any third party; CONSULTANT will not attempt to license or transfer to any person or entity any interest in the Work Products; and CONSULTANT shall obtain from all Subcontractors written assignment of all rights, title and interest, including copyright and other intellectual property rights, in their contributions to the Work Products.

11.0 MATTERS CONFIDENTIAL AND PRIVILEGED

All of the drawings, designs, specifications, manuals, reports, studies, surveys, models, or other data and products prepared or assembled by CONSULTANT, obtained from others by CONSULTANT or made available to CONSULTANT by BART in connection with the services under this Agreement, shall be treated as confidential by CONSULTANT. At no time shall CONSULTANT use or disclose or make available, other than in the performance of CONSULTANT 's services for BART, confidential information gained in the course of or by reason of CONSULTANT 's retention by BART and/or performance of services for BART, nor shall CONSULTANT permit such use or disclosure, without prior written approval by BART. It is the intention of BART to preserve and make use of all applicable legal privileges, and CONSULTANT shall make all reasonable efforts to cooperate with BART in this regard.

12.0 SUBCONTRACTS

CONSULTANT shall not subcontract all or any portion of its services under this Agreement without the prior written approval of the Project Director, and any attempt to do so shall be void and unenforceable. In the event that CONSULTANT enters into one or more subcontracts pursuant to this Article, it is understood and agreed that the participating subcontractors shall be solely and directly responsible to CONSULTANT, and BART shall have no obligation to them.

CONSULTANT agrees that the requirements in Articles 4.0 through 25.0, inclusive, of this Agreement will be included in every subcontract entered into relating to services under this Agreement. Upon request, CONSULTANT shall provide BART with copies of all such subcontracts within seven (7) calendar days of written request, with any changes and amendments thereto.

13.0 ASSIGNMENT OF AGREEMENT

CONSULTANT shall not assign this Agreement, or any part thereof without prior express written consent of the Project Director, and any attempt to do so shall be void and unenforceable.

14.0 RECORDS

CONSULTANT shall maintain full and adequate records to show the actual time devoted and the cost incurred by CONSULTANT with respect to the performance of services under this Agreement.

15.0 AUDIT

CONSULTANT and its subcontractors shall permit BART and its authorized representatives to inspect, examine, make excerpts from, transcribe, and copy CONSULTANT's and subconsultant's books, work, documents, papers, materials, payrolls, records, accounts, and any and all data relevant to this Agreement at any reasonable time for the purpose of auditing and verifying statements, invoices or bills submitted by CONSULTANT pursuant to this Agreement, and shall provide such assistance as may be reasonably required in the course of such inspection including, but not limited to, the following:

A. Audit Interviews

CONSULTANT shall arrange audit entrance and exit interviews in which CONSULTANT and/or its subconsultants and BART and/or its authorized representatives will participate.

B. Accessing Documents

CONSULTANT's and its subconsultants' accounting divisions shall provide instruction to BART on accessing documents.

C. Letter of Representation

CONSULTANT's management, or the management of a subconsultant, as well as the management of their appropriate units, will provide at BART's request a letter of representation concerning such matters as BART determines appropriate.

BART further reserves the right, for itself and its authorized representatives, to examine and re-examine said books, work, documents, papers, materials, payrolls, records, accounts and data during the three-year period following the final payment under this Agreement and until all pending matters are closed; and CONSULTANT and its subconsultants shall in no event dispose of, destroy, alter or mutilate said books, work, documents, papers, materials, payrolls, records, accounts and any and all data in any manner whatsoever for three years after the final payment under this Agreement, or until all pending matters are closed, whichever is later.

Pursuant to California Government Code Section 8546.7, the parties to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of BART or as part of any audit of BART by the State Auditor, for a period of three years after final payment under this Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the cost of administering this Agreement.

16.0 NOTICES

Except for invoices submitted by CONSULTANT pursuant to Article 3.0, COMPENSATION AND PAYMENT, above and insurance notices submitted pursuant to Article 6.0 B., Notice of Cancellation, Reduction or Material Change in Coverage, above, all notices required hereunder or other communications to either party by the other may be given by personal delivery, U.S. Mail, courier service (such as Federal Express) or facsimile transmission. Notices shall be effective upon receipt at the following addresses:

To BART by US Mail:	San Francisco Bay Area Rapid Transit District P.O. Box 12688 Oakland, California 94604-2688 Attention: C.Gan, Project Director
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To BART by Personal Delivery or Courier Service:	San Francisco Bay Area Rapid Transit District 300 Lakeside Drive, 22 nd Floor Oakland, CA 94612 Attention: C.Gan, Project Director
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To Consultant:	To be determined
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E-Mail Transmission: To BART:	cgan@bart.gov
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To Consultant:	To be determined
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Either party may change its address for notices by giving written notice of the new address as provided above.

17.0 NON-DISCRIMINATION

In connection with the performance of services under this Agreement, CONSULTANT shall not, on the grounds of race, religious creed, color, national origin, ancestry, handicap, medical condition, marital status, sex, sexual orientation or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal, State or local laws.

For purposes of this Article "sexual orientation" shall mean a preference for heterosexuality, homosexuality or bisexuality; or having a history of, or being identified with, any such preference.

18.0 NON-DISCRIMINATION PROGRAM FOR SUBCONTRACTING

The District's Non-Discrimination Program for Subcontracting for the Agreement is as set forth below, and as supplemented by Attachment C, NON-DISCRIMINATION PROGRAM FOR SUBCONTRACTING, attached hereto and incorporated herein by this reference. CONSULTANT assumes responsibility to be fully informed of the Non-Discrimination Program Requirements.

A. Policy

It is the policy of the San Francisco Bay Area Rapid Transit District to ensure that CONSULTANTS who enter into agreements with the District do not discriminate or give a preference in the award of Subagreements, or subcontracts, on the basis of race, national origin, color, ethnicity, or gender.

B. Applicability of Non-Discrimination Program for Subcontracting

CONSULTANT is not required to subcontract any portion of the Services to be performed under this Agreement. If the CONSULTANT does not subcontract any portion of the services, this Non-Discrimination Program for Subcontracting shall not apply. If the CONSULTANT does subcontract a portion of the services to be performed under this Agreement and if the dollar amount of the Subagreements listed for Minority Business Enterprises ("MBEs") and Women Business Enterprises ("WBEs") reflects the Availability Percentage of MBEs and the Availability Percentages of WBEs as stated in Article 18.0 C. below, it shall be presumed that the CONSULTANT has not discriminated on the basis of race, national origin, color, ethnicity, or gender.

C. MBE and WBE Participation

The Availability Percentages for this Agreement for MBEs is 5.5% and WBEs is 2.8%. The Availability Percentages shall apply to the Subcontracted portion of services to be performed under this Agreement. Such Availability Percentages for MBEs and WBEs is the level of MBE and the level of WBE Subconsultants participation that is expected for this Agreement in the absence of discrimination on the basis of race, national origin, color, ethnicity, or gender.

D. Substitution of MBE/WBE Subconsultants

CONSULTANT is required to show that it has not discriminated or has not given a preference in substituting a MBE or WBE with a non-MBE or non-WBE. Should substitution of any Subconsultant listed on the MBE/WBE Participation Form (as set forth in CONSULTANT's proposal) become necessary, CONSULTANT shall first obtain the District's consent. As used in this Article, CONSULTANT must document non-discrimination in the substitution of MBEs and/or WBEs as required in Article 18.0 C., as relevant.

E. MBE/WBE Records

To ensure that CONSULTANT does not discriminate or give a preference in the performance of this Agreement, CONSULTANT shall maintain records to verify MBE or WBE participation as set forth in CONSULTANT's proposal and as modified in any way during the course of the Agreement. Such records shall show the name, business address and Taxpayer Identification Number of each MBE and/or WBE participating in the Agreement and the total dollar amount actually paid each MBE and/or WBE and the date of payment. A monthly report based on these records and certified to be correct by CONSULTANT shall be submitted with the monthly invoice. No invoice will be approved for payment unless the current report and all required attachments have been furnished.

F. Change Orders

CONSULTANT shall not discriminate or give a preference in the performance or administration of change orders that may be issued under this Agreement.

G. Noncompliance

Failure to comply with the above requirements shall be grounds for termination of this Agreement in whole or in part, or, at the discretion of BART, for withholding payments due CONSULTANT during the period of noncompliance.

19.0 SITE SECURITY AND ACCESS

Prior to commencement of services, CONSULTANT shall comply with BART's site security requirements which include, but are not limited to, requiring photographic identification badges and submitting names and dates of birth of all personnel, including subcontractors and suppliers of any tier, working on BART property or facilities. All badges shall be returned to BART at the completion of services hereunder. In the event CONSULTANT fails to comply with BART's site security requirements, CONSULTANT's personnel, including subcontractors and suppliers, may not be allowed on BART property or facilities. No extension of time for

completion of services or additional compensation for delay claims shall be granted in the event such personnel are excluded from BART property or facilities.

20.0 LAWS AND REGULATIONS

CONSULTANT shall comply with any and all laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state or local government, and of any agency of such government, including BART, which relate to or in any manner affect the performance of this Agreement. This Agreement and any documents supplied hereunder are subject to public inspection of the California Public Records Act, California Government Code Section 6250 et seq., unless exempted by law.

A. District's Environmental Policy

The CONSULTANT and its Subconsultants shall comply with the District's Environmental Policy adopted on February 10, 2005 by the Board of Directors of the San Francisco Bay Area Rapid Transit District. The District's Environmental Policy is posted at the District's website: <http://www.bart.gov/about/planning/strategic>. The purpose of the District's Environmental policy is to preserve the environment by adopting feasible practices that, among other things, prevent pollution and preserve natural resources in its operating practices. BART will monitor and implement the Environmental Policy through its Environmental Management System. CONSULTANT shall comply with all the applicable requirements and failure to do so may be regarded as a breach of the Agreement potentially leading to rescinding, voiding, or terminating the Agreement, or other reasonable and appropriate actions. Failure of a Subconsultant to comply with the applicable requirements may lead to, among other things, direction to remove an offending Subconsultant. Any such replacement shall be undertaken in accordance with among other things, California Public Contract Code Section 4100 et seq., as applicable. CONSULTANT shall include in its Sub agreements and require its Subconsultants of every tier to include in their respective Sub agreements, provisions incorporating the requirements of the District's Environmental Policy.

21.0 CHOICE OF LAW

All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of the State of California applicable to agreements made and to be performed within the State, without reference to conflicts of law principles.

22.0 SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

23.0 COVENANT AGAINST CONTINGENT FEES

Consultant warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, BART will have the right to annul this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

24.0 COVENANT AGAINST GRATUITIES

Consultant warrants that it will not and has not offered or given gratuities in the form of entertainment, gifts or otherwise, to any director, officer or employee of BART to secure favorable treatment in the awarding, amending or evaluating performance of the Agreement.

25.0 CAPTIONS

The captions of the Articles and paragraphs in this Agreement are for purposes of reference only and shall not be construed to affect the meaning of any provision hereof.

26.0 BENEFIT OF AGREEMENT

This Agreement shall bind and benefit the parties hereto and their assignees, successors and permitted assigns.

27.0 STATE OF CALIFORNIA LABOR CODE REQUIREMENTS

In the event work performed under this Agreement is subject to the payment of prevailing wages, special attention is directed to Division 2, Part 7, Chapter 1, Article 2 of the California State Labor Code, including Section 1774 and Section 1775, concerning the payment of prevailing wages. CONSULTANT and each subconsultant shall pay not less than the appropriate prevailing wages to all workers performing work that is subject to the prevailing rate of wages as determined by the Director of the State Department of Industrial Relations (DIR). Pursuant to Section 1773 of the State Labor Code, the District has obtained from the Director of the State Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality(ies) in which the Work is to be performed and has copies available upon request from the Procurement Department, 300 Lakeside Drive, 17th Floor, Oakland, CA 94612. The prevailing rates of wages are also available at the following website: <https://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. For crafts or classifications not shown on the prevailing wage determinations, CONSULTANT may be required to pay the wage rate of the most closely related craft or classification shown in such determinations for Contract work. The CONSULTANT may contact the Division of Labor Statistics and Research, Prevailing Wage Unit, P.O. Box 420603, San Francisco, CA 94142, (415) 703-4774, for questions concerning job classifications not found in the general prevailing wage determinations. The CONSULTANT shall comply with the provisions of State Labor Code Section 1776 and Section 1812, and shall be responsible for compliance by its Subconsultants. Furthermore, the CONSULTANT shall post Jobsite notices, as prescribed by regulations. The penalties specified in subdivision (f) of State Labor Code Section 1776 for noncompliance by the CONSULTANT or any of its subconsultants of every tier may be deducted from any monies due or which may become due to the CONSULTANT. Among other things, the CONSULTANT shall comply with the requirements of State Labor Code Section 1777.5 applicable to Apprentices. A certified copy of payroll records shall be provided by the CONSULTANT in accordance with State Labor Code Section 1776 and shall be furnished to the District each week within seven (7) Days after the regular payment date of the payroll period. Failure to comply with these requirements may cause suspension of progress payments during the period of noncompliance or may delay final payment. In the event work performed under this Agreement is subject to the payment of prevailing wages or the registration and reporting requirements for public works projects, the CONSULTANT and all subconsultants performing work subject to the payment of prevailing wages shall comply with the requirements of State Labor Code Section 1725.5 and Section 1771.1 which, among other things, require all such CONSULTANTS and subconsultants to be registered with the State Department of Industrial Relations (DIR) in order to be qualified to perform work under this Agreement or to be listed as a Subconsultant for such work, or engage in the performance of such Work in this Agreement. Failure to comply with the DIR registration requirements may delay the issuance of a Purchase Order or acceptance of a Work Plan. Within thirty (30) Days following Award of the Agreement and issuance of a Purchase Order following the acceptance of a Work Plan, the CONSULTANT and its subconsultants performing work subject to the payment of prevailing wages shall register with State DIR at <https://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html> in order to enroll in the electronic system for monthly submittal of Certified Payroll Records. Thereafter, each month the CONSULTANT and such subconsultants shall submit electronically a copy of their respective Certified Payroll Records to DIR. CONSULTANT shall include in its subcontracts, and require its subconsultants of every tier to include in their respective subcontracts, provisions incorporating the requirements of this Article for Certified Payroll Records submittal to DIR. Failure to comply with these requirements may cause a suspension of progress payments during the period of noncompliance or may delay final payment.

28.0 **ENTIRE AGREEMENT**

This Agreement is the entire agreement of the parties, and supersedes and replaces all prior communications, written and oral, regarding the subject matter hereof. CONTRACTOR represents that in entering into this Agreement, it has not relied on any previous representations, inducements, or understandings, written or oral, of any kind or nature.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

SAN FRANCISCO BAY AREA RAPID TRANSIT
DISTRICT

(NAME OF CONTRACTOR)

By General Manager
(or designee)

By (Signature)

Name
and
Title _____

Print or Type

Exhibit 1

ATTACHMENT A

SCOPE OF SERVICES

ATTACHMENT A
SCOPE OF SERVICES

The services to be performed by CONSULTANT shall consist of services required by the Project Director including, but not limited to, the following:

1. Perform an annual independent audit of the San Francisco Bay Area Rapid Transit District's financial records for the purpose of issuing an opinion as to the fair presentation of the District's financial position, changes in financial position and cash flows in conformity with accounting principles generally accepted in the United States of America. The audit should be conducted in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States. The audit report would contain two years of comparative Financial Statements that include the statement of net assets, the statement of revenues, expenses and changes in net assets and the statement of cash flows and including, any appropriate schedules. Annual audit reports are required beginning with the Fiscal Year Ending June 30, 2021 through Fiscal Year Ending June 30, 2025.

As part of the annual audit, issue a Report to Management regarding the District's internal control structure and its operations, and on its compliance with laws and regulations.

2. Perform annual audits and issue the required Independent Auditor's Reports on the following District statements and records beginning with the Fiscal Year Ending June 30, 2021 through Fiscal Year Ending June 30, 2025. The audit should be conducted in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States.
 - (a) Audit report on Federal Grant Compliance by the District (Single Audit).as required by the audit requirements of Title 2 U.S Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award (Uniform Guidance).
 - (b) Audit report on the District's compliance with the requirements described in the Measure B Sales Tax for Mass Transit Funds Agreement between the District and the Alameda County Transportation Commission applicable to the Measure B funds allocated to the District.
 - (c) Audit report on the District's compliance with the requirements described in the Measure BB Sales Tax for Mass Transit Funds Agreement between the District and the Alameda County Transportation Commission applicable to the Measure BB funds allocated to the District.
3. Perform audits and issue the required Compliance Reports on the following District statements and records beginning with the Fiscal Year Ending June 30, 2021 through Fiscal Year Ending June 30, 2025. These agreed-upon procedures engagements should be conducted in accordance with standards established by the American Institute of Certified Public Accountants.
 - (a) National Transit Database Report as required by the Federal Transit Administration (FTA) in connection with the District's eligibility to receive grants under the Urbanized Area Formula Program Funds under the Urban Mass Transportation Act of 1964, as amended. In addition to the regular annual audit report on applying agreed upon procedures an Independent Auditor's Statement for Financial Data (IAS-FD) is required for the fiscal year ending June 30, 2021.
 - (b) Report on the travel and other business-related expenditures of the District's Board of Directors as to compliance with the governing rules and regulations established by the District's Board.

4. Perform audit and issue the required Compliance Report beginning with the Fiscal Year Ending June 30, 2021 through Fiscal Year Ending June 30, 2025 regarding the District's compliance with the laws and regulations governing the Transportation Development Act Funds covering State Transit Assistance (STA) grants, Senate Bill 1 (SB1) grants, Low Carbon Transit Operations Program (LCTOP) grants, and other grants subject to the Transit Development Act. This agreed-upon procedure engagement should be conducted in accordance with standards established by the American Institute of Certified Public Accountants. This includes the issuance of a separate Audit report on the District's compliance with the requirements described in the Proposition 1B Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) Guidelines published by the California Department of Transportation.
5. Perform an annual independent audit of the San Francisco Bay Area Rapid Transit District Retiree Health Benefit Trust financial records for the purpose of issuing an opinion as to the fair presentation of the Trust's financial position and changes in financial position in conformity with accounting principles generally accepted in the United States of America. The audit should be conducted in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States. The audit report would contain two years of comparative Financial Statements that include the statement of net assets and statement of changes in net assets and including, any appropriate schedules. Annual audit reports are required beginning with the Fiscal Year Ending June 30, 2021 through Fiscal Year Ending June 30, 2025.
6. Perform an annual independent audit of the San Francisco Bay Area Rapid Transit District Other Post Employment Benefit Trust financial records for the purpose of issuing an opinion as to the fair presentation of the Trust's financial position and changes in financial position in conformity with accounting principles generally accepted in the United States of America. The audit should be conducted in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States. The audit report would contain two years of comparative Financial Statements that include the statement of net assets and statement of changes in net assets and including, any appropriate schedules. Annual audit reports are required beginning with the Fiscal Year Ending June 30, 2021 through Fiscal Year Ending June 30, 2025.
7. Perform an annual independent audit of the Capitol Corridor Joint Powers Authority (Authority) financial records for the purpose of issuing an opinion as to the fair presentation of the Authority's financial position and changes in financial position in conformity with accounting principles generally accepted in the United States of America. The audit should be conducted in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States. The audit report would contain two years of comparative Financial Statements that include the statement of net assets and statement of changes in net assets and including, any appropriate schedules. Annual audit reports are required beginning with the Fiscal Year Ending June 30, 2021 through Fiscal Year Ending June 30, 2025.

As part of the annual audit, issue a Report to Management regarding the Authority's internal control structure and its operations, and on its compliance with laws and regulations.

8. Perform audit and issue the required Compliance Report regarding the Capitol Corridor Joint Powers Authority's compliance with the laws and regulations governing the Transportation Development Act Funds covering Senate Bill 1 (SB1) grants and other grants subject to the Transit Development Act. This agreed-upon procedure engagement should be conducted in accordance with standards established by the American Institute of Certified Public Accountants.

ATTACHMENT B

COMPENSATION SCHEDULE

ATTACHMENT B

COMPENSATION SCHEDULE - FOR INDEPENDENT AUDIT SERVICES

Item	Year Period	Description of Services					Total Proposed Maximum Annual Net Cost
		Audit Services as Described in Paragraphs 1 through 4 of Attachment A, Scope of Work	Audit Services as Described in Paragraph 5 of Attachment A, Scope of Work	Audit Services as Described in Paragraph 6 of Attachment A, Scope of Work	Audit Services as Described in Paragraph 7 of Attachment A, Scope of Work	Audit Services as Described in Paragraph 8 of Attachment A, Scope of Work	
1	Year One	\$ _____ (Net)	\$ _____ (Net)	\$ _____ (Net)	\$ _____ (Net)	\$ _____ (Net)	\$ _____
		\$ _____ (Hourly)	\$ _____ (Hourly)	\$ _____ (Hourly)	\$ _____ (Hourly)	\$ _____ (Hourly)	
2	Year Two	\$ _____ (Net)	\$ _____ (Net)	\$ _____ (Net)	\$ _____ (Net)	\$ _____ (Net)	\$ _____
		\$ _____ (Hourly)	\$ _____ (Hourly)	\$ _____ (Hourly)	\$ _____ (Hourly)	\$ _____ (Hourly)	
3	Year Three	\$ _____ (Net)	\$ _____ (Net)	\$ _____ (Net)	\$ _____ (Net)	\$ _____ (Net)	\$ _____
		\$ _____ (Hourly)	\$ _____ (Hourly)	\$ _____ (Hourly)	\$ _____ (Hourly)	\$ _____ (Hourly)	
4	Year Four	\$ _____ (Net)	\$ _____ (Net)	\$ _____ (Net)	\$ _____ (Net)	\$ _____ (Net)	\$ _____
		\$ _____ (Hourly)	\$ _____ (Hourly)	\$ _____ (Hourly)	\$ _____ (Hourly)	\$ _____ (Hourly)	
5	Year Five	\$ _____ (Net)	\$ _____ (Net)	\$ _____ (Net)	\$ _____ (Net)	\$ _____ (Net)	\$ _____
		\$ _____ (Hourly)	\$ _____ (Hourly)	\$ _____ (Hourly)	\$ _____ (Hourly)	\$ _____ (Hourly)	
A. <u>TOTAL PROPOSED MAXIMUM FIVE-YEAR COMPENSATION AMOUNT (Items 1 through 5)</u>							\$ _____

NOTE TO PROPOSERS: PROPOSERS ARE INSTRUCTED NOT TO COMPLETE THIS FORM. ATTACHMENT B IS PROVIDED TO PROPOSERS FOR INFORMATION ONLY. A FINAL ATTACHMENT B WILL BE CONFORMED PRIOR TO EXECUTION OF AN AGREEMENT.

ATTACHMENT C

NON-DISCRIMINATION PROGRAM FOR SUBCONTRACTING

ATTACHMENT C

NON-DISCRIMINATION PROGRAM FOR SUBCONTRACTING

It is the policy of the San Francisco Bay Area Rapid Transit District to ensure that CONSULTANTS who contract with the District do not discriminate or give a preference in the award of Subagreements on the basis of race, national origin, color, ethnicity, or gender.

A. Definitions For purposes of this Agreement:

1. "Minority Business Enterprise (MBE)" - a business enterprise that is at least 51% owned and controlled by a minority person(s).
2. "Women Business Enterprise (WBE)" - a business enterprise that is at least 51% owned and controlled by a woman or women.
3. "Minority Persons" - African Americans (i.e. persons having origins in any of the Black African racial groups), Hispanic Americans (i.e. Cuban, Mexican, Puerto Rican, Latin American, European Spanish (but not Portuguese), and other Hispanic origins and cultures), Asians and other minorities (i.e. Asian and Pacific Islander, ancestral groups of Asian Indians, Chinese, Japanese, Filipino, Hawaiian, and other Asian or Pacific Islander); and Native American ancestral groups of Eskimos and American Indian.

A list of available certified M/WBE firms can be downloaded from the District's website, www.bart.gov/ocr or may be obtained by contacting the District's Office of Civil Rights at 18th Floor, 300 Lakeside Drive, Oakland, California, telephone (510) 464-6100. In addition, Form A, Application for Certification as a Minority or Woman Owned Business Enterprise (M/WBE) for Non-Discrimination Program for Subcontracting, can be downloaded from www.bart.gov/ocr. All California Unified Certification Program (CUCP) certified minority and women-owned DBE firms, except brokers and manufacturers' representatives, are automatically qualified to be M/WBE firms for this Program and do not need to complete Form A. All other firms must complete the Form A. Brokers and manufacturers' representatives are not eligible for certification under this Program

4. "Availability Percentage" - MBE and WBE availability shall be equal to the percentage of MBEs and the percentage of WBEs in the pool of all Subcontractors within the relevant market area that are available to bid on Subcontractor work in the absence of discrimination or preference.
5. "Broker"— A firm that arranges or expedites transactions and does not maintain 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 contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
6. "Manufacturers' Representative"— A firm that arranges or expedites transactions and does not maintain 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 contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

B. MBE and WBE Availability Percentages - The Availability Percentages for this Agreement for MBEs and WBEs are set forth in the Agreement in Article 18.0, NON-DISCRIMINATION PROGRAM FOR SUBCONTRACTING. The Availability Percentages shall apply to the subcontracted portion of the services to be performed under the Agreement.

C. MBE and WBE Participation

1. MBE and WBE participation include agreements (other than employee contracts) between MBEs and WBEs and the Contractor for services specifically required for the completion of the services to be performed under this Agreement except for Subagreements with Brokers and Manufacturer's representatives. The Contractor assumes responsibility for accurately identifying the first-tier status of MBE and WBE firms proposed in the Designation of Subcontractors and MBE/WBE Participation Form.
2. If a firm is owned and controlled by a Minority Woman or Minority Women, then the firm may be counted towards both the MBE and WBE Availability Percentages.

EXHIBIT 2

CONFIDENTIAL

STATEMENT OF QUALIFICATIONS AND BUSINESS REFERENCES

EXHIBIT 2

CONFIDENTIAL

STATEMENT QUALIFICATIONS AND BUSINESS REFERENCES

Proposer shall complete the Statement of Qualifications and Business References below. In addition, Proposer submitting a proposal as a joint venture must have an executed Joint Venture Agreement as of the proposal due date and a copy of the Joint Venture Agreement shall be attached to this Exhibit 2. Proposers are free to attach additional material. Such material is to be attached to this Exhibit.

The information on this Proposer Sheet will be a factor in evaluating the awards.

1. Business Name of proposer: _____
 - a. Address: _____
 - b. Telephone No.: _____
 - c. Contact Person: _____ Email Address: _____

2. Form of Proposer Organization:
 - a. Is proposer a sole proprietorship? Yes ____ No ____
Name and address of Owner: _____

 - b. Is proposer a partnership? Yes ____ No ____
Name and address of Partners: _____

 - c. Is proposer a limited partnership? Yes ____ No ____
Name and address of General Partner: _____

 - d. Is proposer a corporation? Yes ____ No ____
State of Incorporation: _____
Name of Officers: _____

Corporation Number: _____
Federal Taxpayer ID Number _____ (Reference Article 3.1.D, Exhibit 1)

 - e. Is Proposer a joint venture? Yes ____ No ____ (*See Note Below)
Name of joint ventures: _____

3. Business License (documented) _____
Taxpayer ID Number (Federal) _____

***Note:** If Proposer is a joint venture, a copy of the Joint Venture Agreement shall be attached to this statement and submitted with your proposal.

4. How many years has your organization been in business under your present business name?

5. How many years of experience has your organization had? _____
6. How many years of experience has your organization had in the type of work similar to the work you are proposing? _____
7. List similar types of projects your firm has successfully concluded. Include names of individuals and telephone numbers, the District may contact including public bodies for these projects.

<u>Year</u>	<u>Contract Price</u>	<u>Project Description</u>	<u>Names of Owner and Address</u>	<u>Contact Person</u>

8. Name the key personnel who are to work on the project for which you are proposing and next to each person's name the project title of similar work to that upon which you are bidding which they have successfully participated. Attach resumes of these key people to this document. Indicate who will be the Project Manager and lead contact with BART for execution and coordination of the work.

9. How many years have the key people worked in your firm?

10. How many years of experience have the key people had working in areas similar to these projects?

11. Where is the location of offsite work to be done?

Telephone No. _____

12. Have you or your organization failed to complete a contract? If so, give details:

13. Reference is hereby made to the following bank or banks as to financial responsibility of the proposer:

Name of bank _____

Street address _____

City and state _____

Telephone No. _____

Officer familiar with proposer's account _____

Name of bank _____

Street address _____

City and State _____

Telephone No. _____

Officer familiar with proposer's account _____

Name of bank _____

Street address _____

City and State _____

Telephone No. _____

Officer familiar with proposer's account _____

14. Reference is hereby made to the following surety company or companies as to the financial responsibility and general reliability of proposer:

Name of surety company _____

Name of local agent (if different) _____

Local address: _____

City and State _____

Telephone No. _____

Person familiar with proposer's Account _____

15. Provide as a part of this Exhibit, complete and audited financial statements (including all notes thereto) for your firm for the past three tax years.

16. In what other line of business are you financially interested? _____

17. Is any litigation pending against your organization? If so, give details. _____

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, is within my personal knowledge, and if called upon to testify, I could testify competently thereto.

Executed on _____ day of _____, 20____, at

_____, _____
City State

Name of Proposer: _____

By: _____

Signature of Proposer or
Authorized Representative

Print Name and Title of Person Signing

By: _____

EXHIBIT 3

KEY PERSONNEL LIST

EXHIBIT 3
KEY PERSONNEL LIST

NAME

POSITION

EXHIBIT 4

PRICE PROPOSAL FORM
FOR INDEPENDENT AUDIT SERVICES

EXHIBIT 4
PRICE PROPOSAL FORM
FOR INDEPENDENT AUDIT SERVICES

Item	Year Period	Description of Services					Total Proposed Maximum Annual Net Cost
		Audit Services as Described in Paragraphs 1 through 4 of Attachment A, Scope of Work	Audit Services as Described in Paragraph 5 of Attachment A, Scope of Work	Audit Services as Described in Paragraph 6 of Attachment A, Scope of Work	Audit Services as Described in Paragraph 7 of Attachment A, Scope of Work	Audit Services as Described in Paragraph 8 of Attachment A, Scope of Work	
1	Year One	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____
2	Year Two	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____
3	Year Three	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____
4	Year Four	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____
5	Year Five	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____ (Net) \$ _____ (Hourly)	\$ _____
A. <u>TOTAL PROPOSED MAXIMUM FIVE-YEAR PRICE (Items 1 through 5)</u>							\$ _____

The above Item Totals and Total Proposal Price are provided by the Proposer for the convenience of the District and the District will calculate the totals on the basis of individual unit prices proposed.

FOR A PROPOSAL TO BE CONSIDERED, ALL ITEMS MUST BE PROPOSED. PROPOSERS ARE INSTRUCTED NOT TO ALTER THIS FORM IN ANY MANNER.

The District reserves the right, in its sole discretion, to waive minor irregularities in proposals received and to reject any or all proposals.

A proposal shall constitute a firm offer to the District for one hundred eighty (180) calendar days from the last day for receipt of proposals, which offer may be extended by written Agreement of a Proposer and the District.

Firm: _____

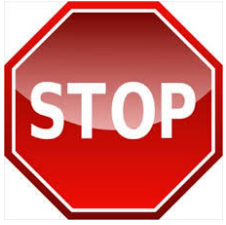
Business Address: _____

Authorized Representative's Signature

Telephone Number

Print Name and Title of Authorized Representative

Date



WARNING!!!

ALL SMALL BUSINESS PROPOSERS THAT SEEK TO BE ELIGIBLE FOR THE SMALL BUSINESS PREFERENCE AS DESCRIBED IN SECTION G OF THE RFP SHALL COMPLETE THE FOLLOWING DECLARATION:

DECLARATION OF ELIGIBILITY FOR SMALL BUSINESS PREFERENCE

IN ORDER FOR PROPOSER TO BE ELIGIBLE FOR THE SMALL BUSINESS PREFERENCE, PROPOSER,

_____, HEREBY CERTIFIES THAT IT IS
[Enter Name of Proposer]

CURRENTLY CERTIFIED AS A SMALL BUSINESS BY THE CALIFORNIA DEPARTMENT OF GENERAL SERVICES (DGS), CERTIFICATION NO.

_____.

ADDRESS: _____

CITY _____ STATE _____ ZIP _____

Length of time at above Address _____

Check all that apply:

___ SB

___ Disabled Veteran Business Enterprise (DVBE)

___ Lesbian, Gay, Bisexual, Transgender Business Enterprise (LGBTBE)

Email _____ Phone _____

BY SUBMISSION OF ITS PROPOSAL, THE ABOVE-REFERENCED SMALL BUSINESS PROPOSER HEREBY CONFIRMS THAT IT MEETS ALL OF THE DGS ELIGIBILITY REQUIREMENTS TO QUALIFY AS A SMALL BUSINESS.

EXHIBIT 5

NON-DISCRIMINATION PROGRAM FOR SUBCONTRACTING

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EXHIBIT 5
NON-DISCRIMINATION PROGRAM FOR SUBCONTRACTING

It is the policy of the San Francisco Bay Area Rapid Transit District to ensure that Proposers who contract with the District do not discriminate or give a preference in the award of Sub-agreements on the basis of race, national origin, color, ethnicity, or gender.

A. Definitions:

For Purposes of this Agreement:

1. "Minority Business Enterprise (MBE)" - a business enterprise that is at least 51% owned and controlled by a minority person(s).
2. "Women Business Enterprise (WBE)" - a business enterprise that is at least 51% owned and controlled by a woman or women.
3. "Minority Persons" - African Americans (i.e. persons having origins in any of the Black African racial groups), Hispanic Americans (i.e. Cuban, Mexican, Puerto Rican, Latin American, European Spanish (but not Portuguese), and other Hispanic origins and cultures), Asians and other minorities (i.e. Asian and Pacific Islander, ancestral groups of Asian Indians, Chinese, Japanese, Filipino, Hawaiian, and other Asian or Pacific Islander), and Native American ancestral groups of Aleut, Eskimo, and American Indian.

A list of available certified M/WBE firms can be downloaded from the District's website, www.bart.gov/ocr or may be obtained by contacting the District's Office of Civil Rights at 16th Floor, 300 Lakeside Drive, Oakland, California, telephone (510) 464-6100. In addition, Form A, Application for Certification as a Minority or Woman Owned Business Enterprise (M/WBE) for Non-Discrimination Program for Subcontracting, can be downloaded from www.bart.gov/ocr. All California Unified Certification Program (CUCP) certified minority and women-owned DBE firms, except brokers and manufacturers' representatives, are automatically qualified to be M/WBE firms for this Program and do not need to complete Form A. All other firms must complete the Form A. Brokers and manufacturers' representatives are not eligible for certification under this Program.

4. "Availability Percentage" - MBE and WBE availability shall be equal to the percentage of MBEs and the percentage of WBEs in the pool of all Subcontractors within the relevant market area that are available to bid on Subcontractor work in the absence of discrimination or preference.
5. Broker"— A firm that arranges or expedites transactions and does not maintain 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 contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
6. "Manufacturers' Representative" – A firm that arranges or expedites transactions and does not maintain 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 contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

B. MBE and WBE Availability Percentages:

The Availability Percentages for this Agreement are for MBEs 5.5% and for WBEs 2.8%. The Availability Percentages shall apply to the Subcontracted portion of Work.

C. MBE and WBE Participation:

1. MBE and WBE participation include agreements (other than employee contracts) between MBEs and WBEs and the Proposer for services specifically required for the completion of the Work under this Agreement except Sub-agreements with brokers and manufacturers' representative. The Proposer assumes responsibility for accurately identifying the first-tier status of MBE and WBE firms proposed in the Designation of Subcontractors and MBE/WBE Participation Form of this Exhibit 5.
2. If a firm is owned and controlled by a Minority Woman or Minority Women, then the firm may be counted towards both the MBE and WBE Availability Percentages.
3. MBE and WBE Participation Example

Agreement Amount	\$100,000
Percent of Work to be completed by Proposer's own Work Force (varies)	75%
Dollar amount of Work to be completed by Proposer's own Work Force (varies)	\$75,000
Subcontracted Dollar Amount (\$100,000-\$75,000)	\$25,000
Availability Percentage for M/WBE	5.5%/2.8%
MBE Availability Percentage for 1st tier Sub-agreements (\$25,000 x .055)	\$1,375
WBE Availability Percentage for 1st tier Sub-agreements (\$25,000 x .028)	\$700

D. Presumption of Non-Discrimination:

1. The Availability Percentages for MBEs and for WBEs set forth in Section B are the level of MBE and the level of WBE Subcontractor participation which would be expected in a proposal in the absence of discrimination on the basis of race, national origin, color, ethnicity, or gender.
2. Proposer is not required to subcontract any portion of the Work. If the Proposer does not subcontract any portion of the Work, this Non-Discrimination Program for Subcontracting shall not apply. If the Proposer does subcontract a portion of the Work and if the dollar amount of Sub-agreements listed for MBEs and WBEs reflects the Availability Percentage of MBEs and the Availability Percentage of WBEs, it shall be presumed that the Proposer did not discriminate on the basis of race, national origin, color, ethnicity, or gender.
3. If the dollar amount of MBEs listed for Sub-agreements is less than the MBE Availability Percentage, no presumption of non-discrimination exists and District staff shall undertake an investigation, as provided herein, to determine if the Proposer discriminated on the basis of race, national origin, color, or ethnicity.
4. If the dollar amount of WBE listed for Sub-agreements is less than the WBE Availability Percentage, no presumption of non-discrimination exists and District staff shall undertake an investigation, as provided herein, to determine if the Proposer discriminated on the basis of gender.
5. No Proposer shall be found non-responsive solely based on a Proposer's failure to list MBEs and WBEs for Sub-agreements in dollar amounts which reflect the Availability Percentages of MBEs and WBEs. A finding of non-responsiveness may be based only on a finding, made after the Proposer is afforded an opportunity for a hearing, that the Proposer discriminated on the basis of race, gender, national origin, color, or ethnicity in the selection of Subcontractors; or

on a finding that the Proposer did not provide the information or did not otherwise cooperate, as required herein, in the investigation of possible discrimination. At a hearing on the issue of discrimination, the hearing officer may consider, where deemed relevant, a Proposer's failure to list MBEs and WBEs for Sub-agreements in dollar amounts which reflect applicable Availability Percentages.

E. Information Required from Proposer Regarding Non-Discrimination:

1. If the Proposer has listed MBEs and WBEs for Sub-agreements in dollar amounts it contends are reflective of the respective MBE and WBE Availability Percentages, the Proposer shall provide the following information at the time it submits its Proposal, or where applicable, within the time permitted by Section E.3.b below:
 - a. The dollar amount of each Sub-agreement and a statement of the scope of Work to be performed under the Sub-agreement.
 - b. Separately for each Sub-agreement, the name, address, telephone number, race, national origin, color, ethnicity, or gender of the owner of each business entity that was listed for the Sub-agreement.
2. If the Proposer has not listed MBEs and WBEs for Sub-agreements in dollar amounts reflective of their respective Availability Percentages, the Proposer shall provide the following additional information not later than 2:00 p.m. on the Friday of the week following the date proposals are due. If the Proposer has listed MBEs for Sub-agreements in dollar amounts reflective of MBE but not WBE availability percentages, or vice versa, the Proposer is required to submit the information listed below only as it relates to the Availability Percentage which was not achieved:
 - a. Separately for each Sub-agreement, the name, address, telephone number, race, national origin, color, ethnicity, or gender of the owner of each business entity that bid but was not listed for the Sub-agreement.
 - b. Separately for each Sub-agreement, the name, address, telephone number, race, national origin, color, ethnicity, or gender of the owner of each business entity that expressed an interest, on the telephone or in writing, in bidding for the Sub-agreement, but did not do so.
 - c. For each Sub-agreement that did not list an MBE or WBE, copies of the Proposals submitted by the non-MBE/WBE, who was listed for the Sub-agreement, and the Proposals submitted by each MBE and WBE. The Proposal documents covered by this paragraph shall contain at least the following information: The Proposal amount and a description of the scope of Work. If no written Proposals were submitted by some or all of the Subcontractors who bid the job, the Proposer shall provide a written statement containing the amount of each oral Proposal.
 - d. Separately for each Sub-agreement that listed a non-MBE/WBE firm, a full and complete statement of the reason(s) that the non-MBE/WBE firm was listed for this Sub-agreement and not an MBE or WBE. If the reason is based on relative qualifications, the statement must address the particular qualifications at issue. If the reason is the respective dollar amounts bid, the statement must state the amounts and describe the similarities and/or dissimilarities in the scope of Work covered by the Proposals.
 - e. A statement describing any efforts made by the Proposer to ensure Non-Discrimination in Subcontracting, including a description of any advertising and any other out-reach efforts.
 - f. Such other information as may be requested by District which is relevant to the issue of possible discrimination by the Proposer in subcontracting. This information may include

the Proposer's record with respect to MBE and WBE subcontractor participation on other general agreements awarded to the Proposer in the previous 12 months.

3. Where paragraphs A and B require information on MBEs or WBEs, the Proposer shall:
 - a. Submit, at the time it submits its Proposal, a completed Designation of Subcontractors and MBE/WBE Participation Form covering those MBEs and WBEs who are currently certified as such by the District.
 - b. Submit, within the time prescribed in the notice from the District described in Section E.2., a completed Form A - Application for Certification for those businesses which are claimed to be MBEs or WBEs, but which are not currently certified as such by the District. Firms who are currently certified by the California Unified Certification Program ("CUCP") as a DBE shall be presumed to meet all requirements for qualifying as an MBE or WBE and will not be required to submit an application for certification as an MBE or WBE, provided they are a member of a Presumptive Group as defined by 49 Code of Federal Regulations Part 26. A sample Application for Certification form can be obtained from the District's Office of Civil Rights, telephone (510) 464-6100 or downloaded from the District's internet website. The website address is www.bart.gov/ocr.

F. Enforcement/Hearing Procedures:

1. If at any time during the solicitation process a Proposer fails to timely provide any requested information, including the information required by Sections E.1., E.2. and E.3., the District shall issue a Finding of Non-Compliance that sets forth the deficiencies in the Proposer's response. The Finding of Non-Compliance shall be transmitted to the Proposer in a manner that provides verification of receipt.
2. Where a Proposer submits information which it contends shows that it listed MBEs and WBEs for Sub-agreements in dollar amounts which reflect the Availability Percentages for MBEs and WBEs, the District shall determine if the Proposer is correct. If the Proposer is correct, the District shall issue a Finding of Non-Discrimination. If the District determines that the Proposer is incorrect, the District shall notify the Proposer in writing that the Proposer must provide the information set forth in Section E.2., within the time prescribed in the notice from the District.
3. A Proposer, given notice to provide additional information pursuant to Sections E.2., shall provide the information in a timely manner, even if the Proposer disputes the District's decision that the Proposer did not list MBEs and WBEs for Sub-agreements in dollar amounts which reflect the MBE and/or WBE Availability Percentages. If the Proposer does not provide all of the required information in a timely manner, the District shall issue a Finding of Non-Compliance.
4. If a Proposer does not contest the Finding of Non-Compliance within five (5) Days of the date of issuance of the Finding of Non-Compliance, the District shall issue a Final Determination of Non-Compliance and a Finding of Non-Responsiveness. If the Proposer disagrees with the District's Finding of Non-Compliance, it may, within five (5) Days of the issuance of the Finding of Non-Compliance, request, in writing, a hearing before a hearing officer appointed by the District. Unless otherwise agreed by the District and the Proposer, the hearing shall be held within fourteen (14) Days of the request. The only issue to be addressed by the hearing officer is whether the Proposer timely provided the required information. At the hearing, the Proposer and the District may be represented by counsel and may present relevant witnesses and documents. The rules of evidence need not be observed. The hearing officer shall exercise all powers relating to the conduct of the hearing. Regardless of the outcome, the Proposer and the District shall bear their own costs and attorneys' fees. The District shall pay the hearing officer's fees. The hearing officer shall issue a written recommendation within ten (10) Days of the completion of the hearing. If following receipt of the hearing officer's recommendation the District determines that the required information was timely provided by the Proposer, the

finding of Non-Compliance shall be withdrawn. However, if the District determines that the required information was not timely provided by the Proposer, the District shall issue a Final Determination of Non-Compliance and a Finding of Non-Responsiveness.

5. Where a Proposer submits, in a timely manner, the information required by Sections E.1., E.2, and E.3., the District shall review the information and any other information the District considers pertinent. In this regard, the Proposer shall not unreasonably refuse to provide additional information requested by the District. Based on this review and investigation, the District shall make a determination, within fifteen (15) Days of Bid opening, either that the Proposer did not discriminate in the award of Sub-agreements, or that a hearing is needed to determine if the Proposer discriminated. If the District determines there was no discrimination, the District shall issue a Finding of Non-Discrimination.
6. If the District determines that a hearing is needed on the issue of discrimination, the District shall notify the Proposer of this decision within five (5) Days of the date the determination is made. This written notice shall include the following: the date, time and location of the hearing; the name and address of the hearing officer; and a statement of the reasons the District has determined that a hearing is necessary.
7. Unless otherwise agreed in writing by the District and the Proposer, the hearing shall be held no later than fourteen (14) Days after the date of the notice given pursuant to Supplementary Conditions Article SC7.1.3.2F.
8. The hearing officer shall be selected by the District.
9. The only issue to be resolved by the hearing officer is whether the Proposer discriminated in its selection of one or more Subcontractors. If contested by the Proposer, resolution of this issue shall include a determination whether the Proposer's award of Sub-agreements reflected the Availability Percentages of MBEs and/or WBEs and/or whether the Availability Percentages stated in the Agreement are accurate.
10. At the hearing, the Proposer and the District may be represented by counsel and may present relevant witnesses and documents. The rules of evidence need not be observed. The hearing officer shall exercise all powers relating to the conduct of the hearing. Regardless of the outcome, the Proposer and the District shall bear their own costs and attorneys' fees. The District shall pay the hearing officer's fees.
11. The hearing officer shall issue a written recommendation within ten (10) Days of the completion of the hearing.
12. Following receipt of the hearing officer's recommendation, the District will issue a Final Determination of Non-Discrimination or a Final Determination of Discrimination, and if appropriate a Finding of Non-Responsiveness.

G. Agreement Provisions Relating to Non-Discrimination Program for Subcontracting

If this Non-Discrimination Program for Subcontracting applies to a proposal, and the District accepts such proposal, any resulting Agreement will contain the following provisions:

1. MBE and WBE Participation

The Availability Percentages for this Agreement are for MBEs 5.5% and for WBEs 2.8%. The Availability Percentages shall apply to the subcontracted portion of Work.

2. Substitution of MBE/WBE Subcontractors

The Contractor is required to show that it has not discriminated or has not given a preference in substituting a MBE or WBE with a non-MBE or non- WBE. As used in this Article, the Contractor must document non-discrimination in the substitution of MBEs and/or WBEs as required in Section E.2, as relevant.

3. MBE/WBE Records

To ensure that the CONSULTANT does not discriminate or give a preference in the performance of this Agreement, the CONSULTANT shall maintain records to verify MBE or WBE participation as set forth in the CONSULTANT's proposal and as modified in any way during the course of the Agreement. Such records shall show the name and business address of each MBE and/or WBE participating in the Agreement and the total dollar amount actually paid each MBE and/or WBE and the date of payment. A monthly report based on these records and certified to be correct by the CONSULTANT shall be submitted with the monthly invoice. No invoice will be approved for payment unless the current report and all required attachments have been furnished.

4. Change Orders

The CONSULTANT shall not discriminate or give a preference in the performance or administration of change orders that may be issued under this Agreement.

5. Noncompliance

Failure to comply with the above requirements shall be grounds for termination of this Agreement in whole or in part, or, at the discretion of BART, for withholding payments due Contractor during the period of non-compliance.

6. Protest of Award of Agreement

Award of an Agreement is subject to the District's protest procedures, as applicable. For Agreements not subject to the District's protest procedures, all findings, including the findings of the hearing officer, shall be final.

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DESIGNATION OF SUBCONSULTANTS AND
MBE/WBE PARTICIPATION FORM

Name, Address and Telephone Number of All Subconsultants	Check if MBE	Check if WBE	Work Description	Total Dollar Amount
Name _____ _____ Address _____ _____ _____ Phone Number _____ Age of Firm: _____ Annual Gross Receipt as of Last Tax Year: \$ _____				
Name _____ _____ Address _____ _____ _____ Phone Number _____ Age of Firm: _____ Annual Gross Receipt as of Last Tax Year: \$ _____				
Name _____ _____ Address: _____ _____ _____ Phone Number: _____ Age of Firm: _____ Annual Gross Receipt as of Last Tax Year: \$ _____				

EXHIBIT 6

CERTIFICATION REGARDING FINANCIAL CONTRIBUTIONS

EXHIBIT 6

CERTIFICATION REGARDING FINANCIAL CONTRIBUTIONS

Certification to be executed by Proposer and each proposed first tier Subconsultant whose Subcontract exceeds \$100,000. Make additional copies of the Certification as necessary.

Proposer must use its best efforts to collect the Certification from each first tier Subconsultant whose Subcontract exceeds \$100,000, and to submit such Certifications along with its own to the District on the proposals due date.

Proposer is advised that all Certifications must be submitted on the proposal due date unless there is reasonable cause for delay; however, Proposer is cautioned that unless all Certifications are submitted within five (5) calendar days after the proposal due date, the proposal may be considered non-responsive. See Instructions in the RFP for submitting Certifications after the proposal due date.

The undersigned certifies that:

1. It will not make any monetary or in-kind contribution (including loans) to any BART Director, or any candidate for Director, in excess of \$1,000 from the date proposals are due until Award of the Agreement.
2. It understands that the term "contribution" shall have the same meaning as defined in Government Code Section 82015 and implementing regulations adopted by the Fair Political Practices Commission.
3. If Proposer is awarded the Agreement, the undersigned shall continue to comply with this prohibition for three (3) months following the award of the Agreement.

Name of Firm

Signature and Date

Print Name and Title

EXHIBIT 7

PROPOSER MINIMUM TECHNICAL REQUIREMENTS QUESTIONNAIRE

EXHIBIT 7

CONFIDENTIAL

PROPOSER MINIMUM TECHNICAL REQUIREMENTS QUESTIONNAIRE

Proposer shall complete this questionnaire and incorporate it in its proposal. Proposer shall print in ink or type the information requested in the spaces provided below. Proposer shall attach supporting documentation to this questionnaire, organized with labeled tab dividers in the order of the respective questions in the questionnaire. Responses to the questions will be evaluated on a PASS/FAIL basis. If Proposer is a joint venture, at least one member of the joint venture must independently satisfy the minimum technical requirements in order for the Proposer to pass the minimum technical requirements.

QUESTIONS REGARDING PROPOSER'S MINIMUM TECHNICAL CAPABILITIES:

1. QUESTIONS REGARDING THE PROPOSER:

Provide the following general information with respect to the identification of the Proposer's firm, organization or joint venture (if Proposer is a joint venture, supply requested information for each firm involved). Information provided shall cover each active branch of the Proposer's organization that will be involved with work under the proposed contract.

a. Business Name of Proposer: _____

b. Street Address: _____

c. City, State, Zip Code: _____

d. Contact Person: _____

e. Telephone No: _____

f. E-Mail Address: _____

g. Form of Proposer Organization: _____

1) Is Proposer a sole proprietorship? Yes _____ No _____

Name of Owner: _____

2) Is Proposer a partnership, or joint venture? Yes _____ No _____

Name of Partner, or joint venture: _____

3) Is Proposer a limited partnership? Yes _____ No _____

Name of General Partner: _____

4) Is Proposer a corporation? Yes _____ No _____

State of Incorporation: _____

Name of Officers:

Corporation Number:

2. QUESTIONS REGARDING PROPOSER'S MINIMUM TECHNICAL CAPABILITIES:

- a. Proposer shall have a minimum of Five (5) years' experience in a lead capacity on audits of the financial statements of a minimum of Three (3) public agencies (which must include at least one transit agency) and each agency having total assets of at least One Billion (\$1,000,000,000.00) for each of the past Five (5) years. The audits must have been conducted in accordance with auditing standards generally accepted in the United States of America:

<u>Year</u>	<u>Public Agency Name, Address, Telephone No., and Contact Person.</u>	<u>Agency Total Asset (\$)</u>	<u>Supporting Documentation Attachment Ref.</u>
Year 1:	(1) _____	_____	_____
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- b. Proposer shall have a minimum of five (5) years' experience on conducting compliance audits of Federal Grants (Single Audit Act) as required by the audit requirements of Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award (Uniform Guidance), for at least three (3) public agencies each of which has at least \$100 million in active approved federal grants for each of the last five (5) years.

<u>Year</u>	<u>Public Agency Name, Address, Telephone No., and Contact Person.</u>	<u>Active Approved Federal Grants (\$)</u>	<u>Supporting Documentation Attachment Ref.</u>
Year 1:	(1) _____	_____	_____
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- c. Proposer shall have a minimum of five (5) years' experience on audits and report preparation in compliance with the requirements of the Federal Transit Administration's annual National Transit Database Report. Proposer's experience must be with recipients or beneficiaries of Urbanized Area Formula Program funds which serve an urbanized area of 200,000 or more population and operates 100 or more vehicles in annual maximum service:

<u>Year</u>	<u>Recipient/Beneficiary Agency Name, Address, Telephone No. and Contract Person</u>	<u>Agency Total Asset (\$)</u>	<u>Supporting Documentation Attachment Ref</u>
Year 1:	(1) _____	_____	_____
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- d. Proposer shall have a minimum of three (3) years' experience on audits and report preparation in compliance with General Accounting Standards Board (GASB) Statement No.68 & (GASB) No.75:

<u>Year</u>	<u>Public Agency Name, Address, Telephone No., and Contract Person</u>	<u>Agency Total Asset (\$)</u>	<u>Supporting Documentation Attachment Ref</u>
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- e. Provide evidence of at least ten (10) years' experience of the Engagement Partner of audit experience with a Certified Public Accounting firm which includes five (5) years of audit work with a transportation or public agency comparable in size to BART.

<u>Year</u>	<u>Accounting Firm Name, Address, Telephone No., and Contract Person</u>	<u>Agency Total Asset (\$)</u>	<u>Supporting Documentation Attachment Ref</u>
Year 1:	(1) _____	_____	_____
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- f. Provide evidence of at least five (5) years' experience of the Engagement Manager of audit experience with a Certified Public Accounting firm, which includes three (3) years of audit work with a transportation or public agency comparable in size to BART.

<u>Year</u>	<u>Accounting Firm Name, Address, Telephone No., and Contract Person</u>	<u>Agency Total Asset (\$)</u>	<u>Supporting Documentation Attachment Ref</u>
Year 1:	(1) _____	_____	_____

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_____	_____	_____

- g. Provide evidence of at least three (3) years' experience of the Engagement Senior of audit experience with a Certified Public Accounting firm which includes two (2) years of audit work with a transportation or public agency comparable in size to BART.

<u>Year</u>	<u>Accounting Firm Name, Address, Telephone No., and Contract Person</u>	<u>Agency Total Asset (\$)</u>	<u>Supporting Documentation Attachment Ref</u>
Year 1:	(1) _____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	(2) _____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	(3) _____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	(4) _____	_____	_____
	_____	_____	_____
	_____	_____	_____
	Year 2:	(1) _____	_____
_____		_____	_____
_____		_____	_____
_____		_____	_____
(2) _____		_____	_____
_____		_____	_____
_____		_____	_____
_____		_____	_____
(3) _____		_____	_____
_____		_____	_____
_____		_____	_____
_____		_____	_____
(4) _____		_____	_____
_____		_____	_____
_____		_____	_____

Year 3:

(1) _____

(2) _____

(3) _____

(4) _____

Year 4:

(1) _____

(2) _____

(3) _____

(4) _____

Year 5:

(1) _____

(2) _____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
(3) _____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
(4) _____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

h. Provide evidence of an average annual net worth for the previous five (5) years of at least \$250,000 per year.

Year	Net Worth (\$)
Year 1	\$ _____
Year 2	\$ _____
Year 3	\$ _____
Year 4	\$ _____
Year 5	\$ _____

Supporting Documentation
Attachment Reference

I declare under penalty of perjury that the foregoing (including supporting documentation attached hereto) are true and correct:

Executed on the _____ day of _____, at _____, _____ State.

Name of Proposer: _____

By: _____
Signature of Proposer or Authorized Representative

Print Name and Title of Person Signing

EXHIBIT 8

PROPOSER'S TEAM

EXHIBIT 8

PROPOSER'S TEAM

(To Be Completed By Proposer Only)

Name, Address and Phone Nos. of All Firms on Proposer's Team Participating on the Project (Including Prime) and Subcontractors	Indicate if MBE or WBE	Nature of Participation	% of Project Work	Anticipated Dollar Value of Participation
Name: _____ _____ Address: _____ _____ Phone Number: _____				
Name: _____ _____ Address: _____ _____ Phone Number: _____				
Name: _____ _____ Address: _____ _____ Phone Number: _____				
Name: _____ _____ Address: _____ _____ Phone Number: _____				
TOTALS				

Name – Authorized Officer of Proposer Firm (Print or Type)

Signature – Authorized Officer of Proposer Firm

Date

EXHIBIT 9

**INDICATION OF HOW PROPOSER FOUND OUT ABOUT THIS REQUEST FOR
PROPOSALS**

EXHIBIT 9
SURVEY FORM

Please indicate how you found out about this contract: (check all that apply)

_____ Through newspaper advertisement

_____ Through BART web site

_____ Through one of the plan rooms

_____ Through advance notice to Bidders

_____ Other (_____)

Company Name _____

Address: _____

Phone: _____

Contact Person E-Mail _____

EXHIBIT 10

PROPOSAL SUBMITTAL CHECKLIST

EXHIBIT 10
RFP NO. 6M2075
INDEPENDENT AUDIT SERVICES

PROPOSAL SUBMITTAL CHECKLIST

Submittal Requirement	RFP Reference	Included	Non-Applicable
Resumes of Key Personnel	VIII.A.3.b	<input type="checkbox"/>	
Organization Chart	VIII.A.2.a.(1)	<input type="checkbox"/>	
Exhibit 2 – Statement of Qualifications	VIII.A.6.a	<input type="checkbox"/>	
Exhibit 3 – Key Personnel	VIII. A.3	<input type="checkbox"/>	
Exhibit 4 – Price Proposal Form	VIII.6.c	<input type="checkbox"/>	
Exhibit 4 – Declaration of Eligibility for Small Business Preference	VII.C.2	<input type="checkbox"/>	<input type="checkbox"/>
Exhibit 5 – Designation of Subconsultants & MBE/WBE Participation Form	VIII.A.6.d	<input type="checkbox"/>	<input type="checkbox"/>
Exhibit 6 – Certification Regarding Financial Contributions	IV. B.3	<input type="checkbox"/>	
Exhibit 7 – Proposer Minimum Technical Requirements	VIII.A.1.b	<input type="checkbox"/>	
Exhibit 8 – Project Consulting Team	VIII.A.6.e	<input type="checkbox"/>	
Exhibit 9 – Survey Form	VIII.A.6.g	<input type="checkbox"/>	
Exhibit 10 – Submittal Checklist			<input type="checkbox"/>

