



1600 Franklin Street
Oakland, CA 94612

**Request for Proposals (RFP)
NO. 2020-1489
Drug and Alcohol Screening Test
and Medical Exam**

March 20, 2020

Alameda-Contra Costa Transit District

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Drug and Alcohol Screening Test and Medical Exam

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ALAMEDA-CONTRA COSTA TRANSIT DISTRICT REQUEST FOR PROPOSALS

Drug and Alcohol Screening Test and Medical Exam RFP No. 2020-1489

I. SUMMARY OF PROPOSAL REQUEST/SCHEDULE OF EVENTS

1. Proposal Request.

The Alameda-Contra Costa Transit District (the “District”) is requesting proposals from qualified firms (hereafter referred to as "Proposer") to provide Drug and Alcohol Screening Test and Medical Exam services, as set out in *Part III, Scope of Work*. The District invites sealed proposals in accordance with the provisions, specifications, and instructions set forth in this RFP. Proposals will be received until the date and time specified below. Late proposals will not be considered. All Proposers are cautioned to read the *entire* RFP, noting insurance and submittal requirements, and to complete all required forms. Failure to provide all requested information may cause the proposal to be deemed non-responsive.

2. Schedule of Events.

Listed below is the *Schedule of Events* that outlines the pertinent dates of which Proposers should make themselves aware.

Solicitation Event	Date	Time*
Distribution of RFP	20 March, 2020	-
Pre-proposal meeting**	08 April, 2020	2:00p
Proposer's deadline to submit questions, requests for modifications and/or clarifications	13 April, 2020	4:00p
District's response to questions, requests for modifications and/or clarifications	20 April, 2020	4:00p
Proposals Due	20 May, 2020	1:00p

*All references in this RFP to “time” will mean Pacific Standard Time (PST).

** The District may hold a virtual conference, at its discretion. Instructions will be provided on the project page under Current Procurement Opportunities on www.actransit.org.

3. Description of the District.

The Alameda-Contra Costa Transit District is a California Special District created by the voters in 1956 and is subject to regulation under Transit District Law, as amended (*see California Public Utilities Code Section 24501 et seq.*). The District provides public transit services to riders throughout western Contra Costa County to southern Alameda County. The District has four (4) operating divisions in addition to the Central Maintenance Facility, Training Center, and the General Office. The District is financed through the receipt of transit fares, property taxes, and state and federal funding.

II. INSTRUCTIONS TO PROPOSERS

1. Proposal Submittal.

A. Questions, Requests for Modifications and/or Clarifications.

Any questions or requests for modifications and/or clarifications of the Proposal specifications shall be submitted in writing by electronic transmission to Terra Duan at tduan@actransit.org or delivered to her attention at 1600 Franklin Street, 6th Floor, Oakland, CA 94612. Questions and requests for modifications and/or clarification must be received no later than the due date and time indicated in *Part I, Schedule of Events*.

Any interpretation, change, or correction of said specifications will be issued by Addenda only, duly issued by the District. All oral modifications of these conditions or specifications are void and ineffective. The District reserves the right to reject any Proposal that contains unauthorized conditions or exceptions.

B. Proposal Due Date.

Final proposals shall be mailed in sealed envelopes to the attention of *Terra Duan, RFP 2020-1489*, 1600 Franklin Street, 6th Floor, Oakland, CA 94612 by the due date and time indicated in *Part I, Schedule of Events*, with postmark if applicable. Final proposals received after the time and date specified will not be considered. All packages shall be clearly marked with the RFP Number, Project Title, and the Due Date and Time.

Submission of a Proposal shall constitute a firm offer to the District for one hundred eighty (180) calendar days from the submission deadline for Proposals. A Proposer may withdraw its proposal any time before the date and time when proposals are due, without prejudice, by submitting a written request for its withdrawal to the email address specified in this *Section II.I.A*. A telephone request is not acceptable. The withdrawal of a proposal does not prejudice the right of a Proposer to submit another proposal within the time set for receipt of proposals. After the proposal due date, a proposal may be withdrawn only if the District fails to award the contract within the proposal validity period set forth here, or any agreed-upon extension thereof.

District staff will review all responsive Proposals received and one (1) or more finalists may be selected in the identification of the competitive range. These finalists may be invited to an oral interview if one is held.

2. Minimum Qualification

A. Proposer is able to demonstrate minimum three (3) years of experience in providing Drug and Alcohol Screening Test and Medical Examinations.

B. Medical Examiner Qualifications:

The medical examiner must be certified and trained consistent with the criteria set forth by the Federal Motor Carrier Safety Administration (FMCSA) to conduct the Department of Transportation (DOT)/Department of Motor Vehicles (DMV) commercial driver medical examinations. In accordance with FMCSA rules the medical examiner must:

- Maintain a valid State of California license to conduct medical examinations;
- Complete required training on FMCSA's physical qualification standards;
- Pass the FMCSA Medical Examiner's Certification Test to demonstrate knowledge of FMCSA's physical qualification standards; and
- Complete refresher training every five (5) years and recertification testing every ten (10) years.

"The medical examiner must be a member of the National Registry as shown below. "The National Registry of Certified Medical Examiners (National Registry) is a new Federal Motor Carrier Safety Administration (FMCSA) program. All safety-sensitive personnel

whose current medical certificate expires on or after 21 May 2014, at expiration of that certificate must be examined by a medical professional listed on the National Registry of Certified Medical Examiners (NRCME). Only medical examiners that have completed training and successfully passed a test of FMCAS's physical qualification standards will be listed on the National Registry."

<https://nationalregistry.fmcsa.dot.gov/NRPublicUI/home.seam>

C. Collection Services Personnel Qualifications:

Collection Services personnel must possess Breath Alcohol Technician (BAT) certification and be knowledgeable of FTA approved of Evidential Breath Testing (EBT) devices and Alcohol Screening Devices (ASDs) used by service provider.

In the event Contractor may be required to use own evidential breath testing (EBT) equipment it must be approved by the National Highway Traffic Safety Administration (NHTSA) as defined in the *Federal Register*, 49 CFR Part 40. The EBT must be capable of producing a printed result in triplicate of each test performed, have the capacity to provide a sequential numbering process for each test, and record the device's name, serial number, employee ID number, and time of each test on the test result.

Collection Services personnel must be knowledgeable and familiar with the requirements of the *CFR Title 49, Part 40*, the current DOT Urine Specimen Collection Procedures Guidelines and FTA regulations applicable to the testing of transit employees. Collection Services personnel are required to keep current with any modifications or changes to testing regulations and/or guidelines.

Collection Services personnel must have the training, and demonstrated proficiency, as required by *CFR Title 49, Part 40, Subpart C, Subsection 40.33* entitled, "What training requirements must a collector meet?" Collection Services personnel must also be proficient in the following areas:

- A. Steps to prepare and secure the collection site.
- B. Transmission of the Custody and Control Form (CCF).
- C. Use of the collection kit and shipping materials.
- D. Preliminary steps in collections.
- E. Role in checking specimens.
- F. Role in directly observed collections.
- G. Role in monitored collections.
- H. Role in split specimen collections.
- I. Chain of custody completion and finishing the collection process.
- J. Actions to be taken in case of refusals to take a test.
- K. Actions to be taken in case of shy bladder or shy lung.
- L. Familiar with collector errors in tests, their effects, and means of correction, e.g. fatal flaws, correctable flaws.
- M. Collection procedures if an employee refuses to cooperate with the collection process.
- N. Collection Services personnel may be called upon to provide testimony in the District's disciplinary hearings or other legal proceedings concerning the integrity of the collection of specimens or alcohol breath testing procedures, as required.

Collection Services personnel must:

Maintain the integrity of the collection process by ensuring the privacy of employees being tested, security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate.

For the purpose of this solicitation, please provide the requested information below for your Oakland/Eastbay facility(s):

- The resumes/qualifications of your certified medical examiners.
- The resumes/qualifications of your collectors, including: DOT Urine Collection Certifications and Breath Alcohol Technician Certifications.

3. Technical Proposal Content

Proposals shall be prepared simply and economically, providing a straightforward and concise description of the Proposer's capabilities and approach for meeting the requirements of this RFP. The Technical Proposal shall be sectionalized with index tabs and cover pages identifying the contents of the sections. The Proposer shall submit one (1) original and seven (7) copies of the Technical Proposal, along with one (1) set of Flash Drives with a PDF version, containing the following information, at a minimum. The original shall be loose-bound and suitable for photocopy reproduction.

Proposal shall be organized as follows. Each section shall be clearly labeled with pages numbered and separated by tabs. Failure to provide ALL the required submittals may render the proposal non-responsive. Proposers must comply with the page limits indicated for each tab. Page limits are applicable to original work and exclude any requested forms or resumes.

A. Tab 1, Required Forms

Proposers must submit all required forms, specifically:

- i. Attachment A – RFP Cover Page
- ii. Attachment B – Proposer's Statement of Qualifications and Business References
- iii. Attachment C - Prime Contractor and Subcontractor/Supplier Report
- iv. Attachment D – Certification Regarding Lobbying

B. Tab 2, Staff Qualifications (*Limit 3 pages, excluding resumes*)

- i. At a minimum, discuss the experience, qualifications and skills of any key personnel.
- ii. Identify roles and responsibilities specific to the work to be performed for each key personnel. Also include percentage of time to be spent for each functional role per employee.
- iii. Provide an organizational chart and an explanation should more than one function be performed by an individual.
- iv. Submit abbreviated resumes featuring experience, qualifications and skills for each staff member that is most directly relevant to the District's requirements, including: DOT, BAT and FMCSA certifications. Resumes should include dates, number of years of experience and other relevant information.

C. Tab 3, Firm Qualifications (*Limit 10 pages*)

- i. Indicate whether the proposer can comply with the SCOPE OF SERVICES as outlined in this RFP. If the proposer is unable to perform a specific service, please indicate which service cannot be performed and the reason(s) the service cannot be performed.
- ii. The length of time the firm has been in business of providing alcohol and drug collection, physical agility testing and DOT Medical Examinations.
- iii. How will you inform AC Transit of any relevant federal, state and/or local regulatory amendments or requirements?
- iv. What is your preferred method of communicating with AC Transit?
- v. Provide a list of offices/locations that would be available to perform alcohol and drug collection, physical agility testing and DOT Medical Examinations for AC Transit. Include the hours of operations for the locations proposed.
- vi. Are appointments required for alcohol and drug collection, physical agility testing and DOT Medical Examinations? If so, what is the scheduling process? Typically, within how many days can our employee expect to be seen for the pre-employment DOT exam?
- vii. What is the average wait time at the clinic?
- viii. How do you report results?
- ix. What is the turnaround time for reporting results?
- x. How do you monitor the quality of the work done in the locations that you propose?
- xi. Have any of your facilities been audited by an employer/client for compliance with DOT regulations within the last twelve (12) months? If so, what were the results?

D. Tab 4, Transition/Implementation Plan Proposed Schedule (Limit 5 pages)

- i. Proposer shall state that it is capable of entering into a service agreement, begin service as detailed in the Scope of Services and ensure an orderly transition. Proposer shall state that its company is financially capable of providing required services and has all necessary resources to be successful in the delivery of these services.
- ii. If awarded this account, outline in detail your transition plan and timeline implementation of the services outlined in the scope of work.

4. Price Proposal Content (Please see Attachment E-Price Proposal Form)

- i. The Price Proposal shall be submitted in a separate sealed envelope.
- ii. The price proposed for the Drug and Alcohol Screening Test and Medical Examinations shall include all costs for services provided.
- iii. The Proposer shall submit one (1) original and one (1) copies of each Price Proposal, along with one (1) set of Flash Drives with versions in Microsoft Excel or pdf. The original shall be loose-bound and suitable for photocopy reproduction.

5. Exceptions to Sample Contract.

A sample contract (*Exhibit 2*) is attached to this solicitation that will be finalized and issued to the Awardee determined at the conclusion of proposal evaluations and negotiations.

If a Proposer desires any modification of these terms, a redlined sample contract should be submitted with the proposal. Otherwise, the Proposer will be deemed to have accepted the form of Contract without modification. Attention is directed in particular, to the Indemnification and Insurance requirements.

6. Evaluation Process.

A. Evaluation Process.

The District intends to award a contract with fixed fees/rates to the most qualified, responsible firm submitting a responsive Proposal. The District may not consider any Proposal in which the technical approach, qualifications, or costs are not deemed to be within a competitive range. The District may seek clarifications or additional information from any or all Proposers regarding their Proposals and may request modified Proposals or best and final offers. In evaluating the Proposal, the District will consider the Proposal material submitted, oral interviews (if applicable), client references, and any other relevant information about a given Proposer.

Each Proposer in the competitive range may be invited for an interview with the District to discuss answers to written or oral questions, clarifications, and/or any other aspect of its proposal.

No information will be provided to any Proposer about any of the other Proposals submitted prior to Contract Award and without a Freedom of Information Act (FOIA) request.

The District, in its sole discretion, may afford Proposers in the competitive range the opportunity to amend the proposal and make their best and final offer (BAFO). The District's Evaluation Panel will evaluate the BAFO using the same criteria used to evaluate the original Proposals. If a Proposer does not submit a BAFO upon request, the District will deem its immediate previous offer to be its BAFO.

B. Evaluation Criteria.

Proposals will be evaluated based on each reviewer's determination of the match between the needs of the District, scope of work outlined in this solicitation and the proposal. The evaluation criteria set forth below will be applied in the determination of competitive range, final evaluation. Based upon individual evaluations of the non-price criteria below, the District's Procurement staff will record and calculate the raw evaluation scores of the Evaluation Panel for each proposal, calculate composite raw scores and apply the

established weights shown below. The following weighted method of scoring will be used in evaluating proposals:

WEIGHT ASSIGNMENT FOR PROPOSAL EVALUATION CRITERIA	
Evaluation Criteria	Weight
Responsiveness and Responsibility to Request for Proposal	Pass/Fail
1. Technical:	
a. Certification for Medical Examiners and Collection Services personnel in accordance with the requirements under the Scope of Services herein.	Pass/Fail
b. Identify the EBT or ASD that are currently being used	
c. Qualifications and Experience of Personnel	25
d. Expertise and experience of proposing firm with respect to full scope of potential services identified in RFP	25
e. Implementation Plan	10
2. References and Past Performance:	
a. References and Past Performance	10
3. Price	30
TOTAL POSSIBLE WEIGHT	100

If a proposal is deemed non-responsive or non-responsible, the proposal will not be evaluated further.

If a proposer fails to provide required certification and identify the EBT or ASD that are currently being used, the proposal will not be evaluated further.

For the evaluation of cost/fee, raw points will be assigned by the Contracts Specialist to the Proposal with the lowest overall cost/fee. The Proposal offering the lowest contract cost/fee for the services required will receive the maximum points (in this case twenty-five percent - 25% of all available points) allocated for cost/fee. Other cost/fee proposals will be allocated points on a pro-rata basis, such that a proposal that is twice as costly as the lowest cost/fee proposal would receive half the points (in this case twelve and half percent - 12.5%) allocated to cost/fee.

- $(\text{Low Price/Proposer's Cost/Fee}) \times 5 = \text{Total Raw Cost/Fee Points}$
- The Total Raw Cost/Fee Points are then multiplied by the Cost/Fee Weight to yield the Total Weighted Cost/Fee Points.
- The Total Weighted Cost/Fee Points are added to the Total Weighted Technical Points to yield the grand total score of each Proposer.
- The minimum Total Score needed to be achieved for any finalist is 60 points.

7. Recommendation of Award.

The District's Evaluation Panel will recommend the proposal that best measures up to the weighted criteria set forth above. The results of the evaluations and the selection of a proposal for an award will be documented. The Evaluation Panel's selection will be recommended to the District's Board of Directors for approval if required. The District's Board of Directors has the option of accepting the recommendation or re-soliciting the work/project if it determines that it is in the best interest of the District.

A. Form of Contract.

The firm selected by the District to perform the services based on the Cost/Fee (if negotiated) outlined in this RFP will be required to execute a contract, a sample of which is attached as Exhibit 2.

B. Signature Requirements.

Proposals must be signed by a duly authorized officer(s) eligible to sign contract documents for the Proposer (the "Authorized Signer"). If the Proposer is an individual, the Contract shall be executed by the individual personally. If the Proposer is a co-partnership, it is

desirable that the Contract is executed by all of the partners, but it may be executed by one (1) of them. If the Proposer is a corporation, this Contract must be executed by two corporate officers, consisting of (1) the president, vice president or chair of the board; and (2) the secretary, assistant secretary, chief financial officer or assistant treasurer. In the alternative, this Contract may be executed by a single officer or a person other than an officer provided that evidence satisfactory to the District is provided demonstrating that such individual is authorized to bind the corporation (e.g. a copy of a certified resolution from the corporation's board or a copy of the corporation's bylaws). If the Proposer is a joint venture, the Contract must be executed on behalf of each participating firm by officers or other authorized individuals. If the Proposer is an LLC, the Contract must be executed by an officer or member who is authorized to bind the LLC.

Consortiums, joint ventures, or teams submitting proposals, although permitted and encouraged, will not be considered responsive unless it is established that all contractual responsibility rests solely with one Proposer or one legal entity. The submittal should indicate the responsible entity. Proposers should be aware that joint responsibility and liability will attach to any resulting Contract and failure of one party in a joint venture to perform will not relieve the other party or parties of total responsibility for performance.

III. Scope of Work

Vendor shall perform the following services on an as needed basis:

- A. Urine Specimen Collection
- B. Breath Alcohol Test
- C. BAT Confirmation
- D. Physical Agility Testing
- E. DOT Medical Examination and Recertification.

Services shall be performed at vendor's facilities. The vendor will supply all equipment, testing supplies and forms necessary for completion of medical examinations, drug screen collections and alcohol screening testing.

Vendor shall provide required reports by Department of Transportation (DOT) and Federal Transit Administration (FTA) as requested and maintain all records related to the DOT medical examinations, urine specimen collections and alcohol screenings.

Vendor shall maintain documentation showing that it meets all DOT and FTA requirements.

Vendor shall be able to administer a Physical Agility Test to identify whether or not an individual has the physical ability required to perform the position for which he or she is being considered. This test shall be administered after an offer of employment has been made, but before the candidate officially begins work in the capacity of his or her new position. The types of Physical Agility Testing are the Manual Lift Test, Pulmonary Function Test and Respirator Fit Test.

A. AC TRANSIT PHYSICAL AGILITY TEST PROCEDURE AND CRITERIA

1) Manual Lift Test

Lift testing will screen candidates for employment for pre-existing injuries or limitations that would hinder their ability to perform essential job functions. This test focuses on the actual physical demands of the job that the candidate would be doing and the ability of the candidate to meet those demands.

Completing the Test

Safely lifting actual parts of equipment from the job, or performing a simulation using weights, lift boxes or carts.

Criteria for Passing the Test

Candidates **MUST** successfully lift the required weight to perform the essential job functions. The test is scored for a PASS/FAIL basis. Failing will result in disqualification from the remaining exam/hiring processes.

2) Pulmonary Function Test

Pulmonary function test will measure how well a potential candidate's lungs work. It includes how well they can breathe and how effective their lungs can bring oxygen to the rest of their body. This will determine any limitations that would hinder the ability perform essential job functions.

Completing the Test

The PFT test should be completed while the patient in standing, unless otherwise directed by the medical provider. If directed, the PFT may be performed while sitting in a chair. Potential candidates will breathe into a spirometry while following respiratory technologist instructions. If the PFT test is performed while sitting, such event must be documented.

Criteria for Passing the Test

Candidates **MUST** successfully meet the predicted normal value which shall be determined by review and approved by a Licensed Healthcare Provider indicating no pulmonary pathology.

The respiratory technologist calculates the predicted normal value for the test. The predicted value is based on age, height, race and gender. The test is scored on a PASS/FAIL basis. Failing will result in disqualification from the remaining exam/hiring processes.

3) Respirator Fit Test

The respirator fit test will determine if a potential candidate can properly wear a respirator.

Completing the Test

A medical evaluation completed by a healthcare provider to determine if the prospective candidate can safely wear a respirator should be completed prior to performing a respirator fit test. If the prospective candidate is cleared to wear a respirator, they will go through the following fit tests:

A Qualitative Fit Test (QLFT)

The respirator user will perform seven exercises for one minute each:

- Normal breathing
- Deep breathing
- Moving head side to side
- Moving head up and down
- Bending over
- Talking
- Normal breathing again

If the candidate does not detect any odor or irritation during these exercises, the fit test is passed, and the candidate is safe to wear their respirator.

A Quantitative Fit Test (QNDT)

The respirator will perform the same seven (7) exercises as the qualitative test, with an additional grimace test where the worker smiles or frowns for fifteen (15) seconds.

The leakage measurement on the test, or the fit factor, determines whether the candidate is safe to use their respirator. A fit factor according to the current protocols for fit testing is needed for half-mask respirators, while a fit factor according to the current protocols for fit testing is needed for full-face piece negative-pressure respirators.

Criteria for Passing the Test

- Candidates **MUST** successfully pass the medical evaluation
- Candidate **MUST** pass qualitative fit test
- Candidate **MUST** pass quantitative fit test

Failure to pass all three criteria will result in disqualification from the remaining exam/hiring processes.

Contractor must assure that its providers will perform services in accordance with the generally accepted principles and practices applicable to the medical profession, and that said providers are properly licensed, registered and/or certified employees as may be required under any applicable federal, state and local laws, statutes, ordinances, rules and regulations.

B. REPORTING PROCESS

A summary of services report shall be submitted by electronic means monthly to the District's Drug and Alcohol Program Manager by the tenth (10th) calendar day of each month. The vendor shall be responsible for ensuring confidentiality of transmitted information. This report shall summarize:

- Number of DOT Medical Examinations.
- Number of Manual Lift Test Examinations.
- Number of Pulmonary Function Tests.
- Number of Respirator Fit Tests.
- Number of Pre-employment breath tests.
- Number of Pre-employment urine specimen collections.
- Number of Reasonable Suspicion breath tests.
- Number of Reasonable Suspicion urine specimen collections.
- Number of Random breath tests.
- Number of Random urine specimen collections.
- Number of Post-Accident breath tests.
- Number of Post-Accident urine specimen collections.
- Number of Return-To-Duty breath tests.
- Number of Return-To-Duty urine specimen collections.
- Number of Follow-Up breath tests.
- Number of Follow-Up urine specimen collections.

IV. STANDARD CONDITIONS

1. Reserved Rights.

All Proposers are notified that the Contract for these services is contingent upon funds appropriated by the District and local, regional, state and federal governments. In the event funding is eliminated or decreased, the District reserves the right to terminate any Contract or modify it accordingly. The District makes no representations that any Contract will be awarded to any Proposer responding to the RFP.

The District reserves the right to waive any immaterial irregularities in any and all proposals.

The District reserves the right, in its sole discretion, to reject all proposals and re-solicit or cancel this procurement if deemed by the District to be in its best interest.

The District reserves the right to select the proposal that, in its judgment, will best measure up to the weighted evaluation criteria set forth in Part II above.

The District reserves the right to negotiate a contract that covers selected parts of a proposal, or a contract that will be interrupted for a period or terminated for lack of funds.

The District reserves the right to award in whole or in part, by line item or group, or to make multiple awards or no award, whatever is in the best interests of the District.

2. Protest Procedures.

A link to the District's protest procedures is listed below. You may also find it on the District's website (actransit.org) by clicking on "*Board Policies / Notices*" on the right-hand side of the home page, and then scrolling down to Board Policy 468.

http://www.actransit.org/wp-content/uploads/board_policies/BP%20468%20-%20Procurement%20Protest-1.pdf

3. DBE Program/SBE Goal. There is no DBE or SBE goal for this contracting opportunity.

4. Vendor Registration.

Online Vendor Registration is required prior to the contract award. Proposers can register here: <http://www.actransit.org/purchasing/vendor-registration-and-log-in/>

Have ready your business tax identification information.

5. Cost of Proposal and Pre-Contractual Expenses.

The District shall not be liable for any pre-contractual expenses incurred by any Proposer. Proposers shall not include any such expenses as part of the Proposal. The District shall be held harmless and free from any and all liability, claims, or expenses whosoever incurred by, or on behalf of, any person or organization responding to this RFP. Pre-contractual expenses are defined as expenses incurred by Proposer in:

- i. Proposals in response to this RFP (including copies or other expenses of any submitted documentation).
- ii. Costs associated with interviews and meetings (including travel expenses) incurred in responding to this RFP.
- iii. Other expenses incurred by a Proposer prior to the date of award and formal Notice to Proceed for any contract.

6. Waiver.

By submitting a Proposal, the corresponding Proposer represents and warrants that it has sufficiently informed itself in all matters affecting the performance of the work or the furnishing of the labor, supplies, material, or equipment called for by the envisioned Contract; that Proposer has checked its Proposal for errors and omissions; that the prices stated in its Proposal are correct and as intended

by it and are a complete and correct statement of its prices for performing the work or furnishing the labor, supplies, materials, or equipment required by the Contract.

7. Public Records Act/Confidentiality.

The *California Public Records Act (Cal. Govt. Code Sections 6250 et seq.)* mandates public access to government records. Therefore, unless the information is exempt from disclosure by law, the content of any request for explanation, exception or substitution, response to these specifications, protest or any other written communication between the District and the Proposer shall be available to the public.

If the Proposer believes any communication contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer shall request that the District withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. The Proposer may not designate its entire Proposal as confidential. Additionally, Proposer may not designate Proposal Forms as confidential.

If the Proposer requests that the District withhold from disclosure information identified as confidential, and the District complies with the Proposer's request, the Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify, defend, and hold harmless the District from and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the Proposer information), and pay any and all cost and expenses related to the withholding of the Proposer information. The Proposer shall not make a claim, sue or maintain any legal action against the District or its directors, officers, employees or agents in connection with the withholding from the disclosure of Proposer information or in connection with the disclosure of Proposer Information in the event the District determines such information is subject to disclosure.

If the Proposer does not request that the District withhold from disclosure information identified as confidential, the District shall have no obligation to withhold the information from disclosure and may release the information sought without liability to the District.

8. Conflict of Interest.

By submitting a Proposal, the Proposer represents and warrants that no director, officer or employee of the District is in any manner interested directly or indirectly in the Proposal or in the Contract which may be made under it or in any expected profits to arise there from, as set forth in *Article 4, Division 4, Title I (commencing with Sec. 1090) of the Government Code of the State of California*.

The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under *California Government Code Sections 1090 et seq. or Sections 87100 et seq.* during the performance of services under this Contract. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of this Contract. Violation of this provision may result in this Contract being deemed void and unenforceable.

Depending on the nature of the work performed, the Proposer may be required to publicly disclose financial interests under the District's Conflict of Interest Code. The Proposer agrees to promptly submit a Statement of Economic Interest on the form provided by the District upon receipt. No person previously in the position of director, officer, employee or agent of the District may act as an agent or attorney for, or otherwise represent, the Proposer by making any formal or informal appearance, or any oral or written communication, before the District, or any officer or employee of the District, for a period of twelve (12) months after leaving office or employment with the District if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, awards or revocation of a permit, license, grant or Contract.

The Proposer warrants that it has no organizational conflicts of interest at this time. Alternatively, the Proposer must disclose all known organizational conflicts of interest. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable,

or potentially unable, to render impartial assistance or advice to the District; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other agreement.

9. Insurance

See Exhibit 1.

10. Ex-Parte Communications.

Proposers and Proposers' representatives may not communicate orally with an officer, director, employee, or agent of the District, with the exception of the Procurement Staff or DBE Program Administrator regarding this RFP until after a Notice to Proceed has been issued by the District. Proposers and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of the District during a public meeting.

In the context of this RFP, an "ex-parte communication" is any communication between a Proposer (or the Proposer's representative) and the District's General Manager, Board Member, officer, employee or consultant, regardless of who initiates the communication, other than as part of the procurement process specified herein, before the District issues a Notice to Proceed, unless it is in writing and available for disclosure to the general public.

V. ATTACHMENTS AND EXHIBITS:

ATTACHMENTS *(to be completed and returned with the proposal):*

- Attachment A - RFP Cover Page
- Attachment B - Proposer's Statement of Qualifications and Business References
- Attachment C - Prime Contractor and Subcontractor/Supplier Report
- Attachment D - Certification Regarding Lobbying
- Attachment E - Cost Proposal Form (submitted in a separate envelope)

EXHIBITS *(to be reviewed prior to proposal submission):*

- Exhibit 1 - Insurance Requirements
- Exhibit 2 - Sample Contract

**ATTACHMENT A
RFP COVER PAGE**

Name of Business: _____

Type of Business: ☐ Sole Proprietor ☐ Partnership ☐ Joint Venture ☐ Corporation (Incorporated under the State of ____)

Primary Business Address: _____

Contact Name: _____ Title: _____

Email: _____ Phone #: _____

Registered at www.sam.gov? ☐ YES ☐ NO; If YES, provide DUNS # _____ or CAGE# _____Are you a Small Business Enterprise (SBE)? ☐ YES ☐ NO; If YES, provide a copy of all Certificates.☐ Receipt of _____ (insert/list #) Addenda

The Proposer warrants and represents that it has received all Addenda issued by the District in connection with this solicitation.

☐ Proposal Validity

Proposal shall remain valid for a period of not less than 180 calendar days from the date of submittal.

☐ Insurance

The Proposer agrees to comply with the insurance requirements.

☐ Non-Collusion

The Proposer has made this proposal independently, without consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to Request for Proposals with any other firm or with any other competitor.

☐ Non-Conflict:

The Proposer covenants that it presently has no interest, direct or indirect, which would conflict in any manner or degree with the performance of the services called for under this agreement. The Proposer further covenants that in the performance of this agreement, no person having any such interest shall be employed by the Proposer, and that the Proposer receives no commissions or other payments from parties other than the District as a result of work performed.

☐ Equal Employment Opportunity:

The Proposer agrees to comply with the Civil Rights Act and agrees to have a complaint procedure where violations of the Act can be reported and appropriately adjudicated. The Proposer agrees to comply with applicable Federal laws, implementing regulations, and other implementing requirements the FTA may issue. In addition, the Proposer agrees to provide workforce data reports as may be periodically requested by the District.

☐ Drug Free Workplace:

The Proposer certifies, pursuant to the definitions regarding a Drug Free Workplace provided in the Federal Acquisition Regulation System ("FAR"), Procedures for Transportation Workplace Drug & Alcohol Testing Programs, 49 CFR 40, and Prevention of Alcohol Misuse & Prohibited Drug Use in Transit Operation, 49 CFR 655, as amended, to the best of its knowledge and belief that it and its principles maintain a workplace(s) safe and free from "controlled substances" as described in the Controlled Substances Act (21 U.S.C. 812) and as further described in regulations 21 CFR 1308.11 - 1308.15.

The undersigned agrees to comply with the above referenced provisions and certifies that all information included in your proposal is, to the best of your knowledge, true, accurate and complete. Furthermore, upon execution of a Contract, to furnish the District with services and/or goods, in accordance with the terms outlined in this solicitation (including all addenda) and in the manner and at the prices proposed.

Typed name: _____ Title: _____

Signature: _____ Date: _____

Typed name: _____ Title: _____

Signature: _____ Date: _____

ATTACHMENT B PROPOSER'S STATEMENT OF QUALIFICATIONS & BUSINESS REFERENCES

- A. Proposer Name: _____
- B. How many years has your organization been in business as a Contractor under your present business name? _____
1. As a general contractor? _____
2. As a subcontractor? _____

C. 3-Year Annual Gross Receipts:

The firm's gross annual receipts for the most recent three (3) years or the firm's financial statement for the past three (3) years prepared in accordance with the United States Generally Accepted Accounting Principles (GAAP) and audited by an independent certified public accountant

Year:	Year:	Year:
\$	\$	\$

- D. Give information below about all your current and ongoing projects. (**Attach additional sheets if necessary**).

Client Information			
Firm Name:			
Contact Person Name and Title:			
Address, City, State, Zip Code:			
Phone and Fax Number:			
Email Address:			
Web Site Address			
Type of Work (Description of Products/Services Provided)	Value of Work	Percent Completed of Overall Project	Scheduled Completion Date

Client Information			
Firm Name:			
Contact Person Name and Title:			
Address, City, State, Zip Code:			
Phone and Fax Number:			
Email Address:			
Web Site Address			
Type of Work (Description of Products/Services Provided)	Value of Work	Percent Completed of Overall Project	Scheduled Completion Date

Client Information			
Firm Name:			
Contact Person Name and Title:			
Address, City, State, Zip Code:			
Phone and Fax Number:			
Email Address:			
Web Site Address			
Type of Work (Description of Products/Services Provided)	Value of Work	Percent Completed of Overall Project	Scheduled Completion Date

- E. List all key projects your organization has completed similar in nature to the scope of services outlined in this solicitation during at least the last three (3) years in the following tabulation.

Client Information			
Firm Name:			
Contact Person Name and Title:			
Address, City, State, Zip Code:			
Phone and Fax Number:			
Email Address:			
Web Site Address			
Type of Work (Description of Products/Services Provided)	Value of Work	Year Started	Year Completed

Client Information			
Firm Name:			
Contact Person Name and Title:			
Address, City, State, Zip Code:			
Phone and Fax Number:			
Email Address:			
Web Site Address			
Type of Work (Description of Products/Services Provided)	Value of Work	Year Started	Year Completed

Client Information			
Firm Name:			
Contact Person Name and Title:			
Address, City, State, Zip Code:			
Phone and Fax Number:			
Email Address:			
Web Site Address			
Type of Work (Description of Products/Services Provided)	Value of Work	Year Started	Year Completed

Client Information			
Firm Name:			
Contact Person Name and Title:			
Address, City, State, Zip Code:			
Phone and Fax Number:			
Email Address:			
Web Site Address			
Type of Work (Description of Products/Services Provided)	Value of Work	Year Started	Year Completed

(Attach additional sheets if necessary)

- F. Give information below about the relevant experience of the principal individuals of your present organization including those individuals to be in responsible charge of this project. Attach additional sheets if necessary.

Organization's Authorized Representative:	
Contact Person Name:	
Contact Person Title:	
Phone Number:	
Fax Number:	
Email Address:	
Years of Professional Experience:	
Type of Work:	

Principal Individuals:	
Contact Person Name:	
Contact Person Title:	
Phone Number:	
Fax Number:	
Email Address:	
Years of Professional Experience:	
Type of Work:	

Principal Individuals:	
Contact Person Name:	
Contact Person Title:	
Phone Number:	
Fax Number:	
Email Address:	
Years of Professional Experience:	
Type of Work:	

- G. References:** List Professional references for who your organization has performed work similar in nature to the scope of services outlined in this solicitation.

A. Business Reference	
Firm Name:	
Contact Person Name and Title:	
Address, City, State, Zip Code:	
Phone and Fax Number:	
Email Address:	
Web Site Address	
Dun and Bradstreet Number	

B. Business Reference	
Firm Name:	
Contact Person Name and Title:	
Address, City, State, Zip Code:	
Phone and Fax Number:	
Email Address:	
Web Site Address	
Dun and Bradstreet Number	

C. Business Reference	
Firm Name:	
Contact Person Name and Title:	
Address, City, State, Zip Code:	
Phone and Fax Number:	
Email Address:	
Web Site Address	
Dun and Bradstreet Number	
Address, City, State, Zip Code:	
Phone and Fax Number:	
Email Address:	
Web Site Address	
Dun and Bradstreet Number	

- H.** Have you or your organization, or any officer or partner thereof, defaulted on a contract?
☐ **No** ☐ **Yes** If yes, please explain below. *Attach additional sheets if necessary.*

- I.** Is any pending litigation or adverse findings against your organization?
☐ **No** ☐ **Yes** If yes, please explain below. *Attach additional sheets if necessary.*

- J.** Has your firm ever been debarred by a Federal, State or Local Government agency?

☐ **No** ☐ **Yes** If yes, please explain below. Attach additional sheets if necessary.

The undersigned proposer represents and warrants that the foregoing information is true and accurate to the best of its knowledge and the undersigned intends that the District rely thereof in awarding the attached contract.

Signature of Proposer

Name/Title

Dated: _____

ATTACHMENT C:

PRIME PROPOSER & SUB-PROPOSER/SUPPLIER REPORT

Complete All Sections of Form and Return with Bids/Proposals

The Proposer is **required** to complete the following information in accordance with the provisions of Public Contract Code Sections 4100 to 4113, inclusive. This form shall include prime contractor, all suppliers, and all subcontractors that will perform work, provide labor, or render services in connection with the project in an amount in excess of **one-half of one percent (0.5%)** of the total amount of Proposer's Grand Total Proposal/Bid Price. AC Transit reserves the right to request additional documentation to validate any and all information provided on this form. **COMPLETE ALL FIELDS OR INDICATE N/A. DO NOT LEAVE BLANKS. (DO NOT LIST ALTERNATIVE SUBPROPOSERS FOR THE SAME WORK. ATTACH ADDITIONAL SHEETS AS NECESSARY.)**

Prime/SubProposer/Supplier Name/Address/Contact Information	Type of Work or Materials	Value of Work & Materials (complete both below items)	DBE/SBE UTILIZATION <i>AC Transit reserves the right to request further documentation to validate provided information on meeting the DBE/SBE requirements for this procurement.</i>	Annual Gross Receipts <i>List annual gross receipts for last three years (i.e. 2018, 2017, 2016)</i>
Prime Contractor:		Percentage (%)	Is Prime Contractor: DBE <input type="checkbox"/> SBE <input type="checkbox"/> Not Applicable <input type="checkbox"/>	
Address:			If DBE or SBE, include the following:	
Contact Person:		Dollar Value (\$)	Certifying Agency: _____	
Phone:			_____	
Email:			Certification No.: _____	
How Many Years in Business?			Certification Date: _____	
DIR Registration #:			Expiration Date: _____	
License No (if applicable):				
Subcontractor/Supplier:		Percentage (%)	Is Subcontractor or Supplier: DBE <input type="checkbox"/> SBE <input type="checkbox"/> Not Applicable <input type="checkbox"/>	
Address:			If DBE or SBE, include the following:	
Contact Person:		Dollar Value (\$)	Certifying Agency: _____	
Phone:			_____	
Email:			Certification No.: _____	
How Many Years in Business?			Certification Date: _____	
DIR Registration #:			Expiration Date: _____	
License No (if applicable):				
Subcontractor/Supplier:		Percentage (%)	Is Subcontractor or Supplier: DBE <input type="checkbox"/> SBE <input type="checkbox"/> Not Applicable <input type="checkbox"/>	
Address:			If DBE or SBE, include the following:	
Contact Person:		Dollar Value (\$)	Certifying Agency: _____	
Phone:			_____	
Email:			Certification No.: _____	
How Many Years in Business?			Certification Date: _____	
DIR Registration #:			Expiration Date: _____	
License No (if applicable):				

**ATTACHMENT D:
CERTIFICATION REGARDING LOBBYING**

Proposers shall certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Proposers shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded to the District. Proposers shall ensure that all of its Subcontractors included in their Proposal shall certify the same.

Please choose one:

- ☐ **No, Proposer *has not* participated in lobbying activities as outlined above**
- ☐ **Yes, Proposer *has* participated in lobbying activities as outlined above**
If yes –and complete the Disclosure of Lobbying Activities form on the following page

Name of Proposer: _____

Person Completing Form: _____

Signature: _____ Date: _____

**DISCLOSURE OF LOBBYING ACTIVITIES** (Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352)

ATTACHMENT E **PRICE PROPOSAL FORM**

Instructions: Included in the prices below shall be all labor, materials, taxes, insurance, any subcontractor costs, travel expenses, telephone costs, copying costs, profit, administrative and overhead fees, and all other costs as required to perform the services listed in the Scope of Work for the term detailed.

	Year 1-2021 (\$/test)	Year 2-2022 (\$/test)	Year 3-2023 (\$/test)	Option Year 1- 2024 (\$/test)	Option Year 2- 2025 (\$/test)
Urine Collection					
Breath Alcohol Test					
BAT Confirmation					
Physical Agility Test					
DOT Medical Examination					

EXHIBIT 1 INSURANCE REQUIREMENTS

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000.00 per accident for bodily injury and property damage, \$2,000,000.00 aggregate.
3. **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease. *(Not required if Contractor provides written verification it has no employees)*
4. **Professional Errors and/or Omissions**

Contractor shall maintain professional insurance appropriate to Contractor’s profession with a limit of not less than \$2,000,000.00 per occurrence or claim.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.

5. **Other Insurance Provisions:** The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - a. **Additional Insured Status:** The District, its directors, officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).
 - b. **Primary Coverage:** For any claims related to this contract, the Contractor’s insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the District, its directors, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.
 - c. **Notice of Cancellation:** Each insurance policy required above shall state that coverage shall not be canceled, except with thirty (30) day advanced notice to the District.
 - d. **Waiver of Subrogation:** Contractor hereby grants to District a waiver of any right to subrogation which any insurer of said Contractor may acquire against the District by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.
 - e. **Self-Insured Retentions:** Self-insured retentions must be declared to and approved by the District. The District may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or District.
 - f. **Acceptability of Insurers:** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the District.

- g. **Claims Made Policies:** If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
- h. **Verification of Coverage:** Contractor shall furnish the District with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language affecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to District before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor’s obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- i. **Subcontractors:** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that District is an additional insured on insurance required from subcontractors.
- j. **Special Risks or Circumstances:** The District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

EXHIBIT 2 SAMPLE CONTRACT

THIS CONTRACT is made and entered into this ____ day of ___, 2020 (the “Effective Date”), by and between **ALAMEDA-CONTRA COSTA TRANSIT DISTRICT**, a special transit district established pursuant to California Public Utilities Code, Section 24501 *et seq.*, having its principal place of business at 1600 Franklin Street, Oakland, California 94612 (hereinafter “AC Transit” or the “District”) and _____, a [description of type of company] having its principal place of business at _____ (hereinafter “Contractor”).

THE PARTIES AGREE AS FOLLOWS:

1. Scope of Work

Contractor shall provide services in full accordance with **Request for Proposals No. 2020-1489** prepared and issued by the District, a copy of which is attached hereto and incorporated by this reference. The Contractor agrees to undertake, carry out and complete all work established herein in a professional and efficient manner satisfactory to District standards.

2. Time for Performance and Term

The Contractor shall commence work on 01 January 2021 and continue until 31 December 2023, unless this Contract is terminated sooner pursuant to **Section 21- Termination**. Services shall be performed at the District’s direction and within the term/deadline set forth above hereto unless otherwise mutually agreed upon by the District and the Contractor.

This Contract may be extended for one additional annual period through December 31, 2024 if notice thereof is given to Contractor by 30 November 2023. Further, at the District’s sole discretion, this Contract may be further extended for a second annual option period through 31 December 2025 if notice thereof is given to Contractor by 30 November 2024.

3. Compensation

The Contractor agrees to perform all of the services included in **Section III** of the RFP (*Scope of Work*) in accordance with the fees as accepted by the District set forth in **Attachment E- Price Proposal** hereto. The total not to exceed cost/fee shall include all labor, materials, taxes, profit, overhead, insurance, subcontractor/subconsultant costs, and all other costs and expenses incurred by the Contractor.

The Contractor shall submit invoices, with a payment term of net thirty (30) days, at the end of each month services have been provided. Invoices shall clearly describe in detail the services rendered by Contractor during the previous month and shall state the number of services. Unit rates shall be in accordance with the Contractor’s Proposal, and Best and Final Offer if any, as accepted the District. The District will endeavor to pay properly submitted, undisputed invoices within thirty (30) calendar days of initial receipt.

If the Contractor cannot submit the invoice within six (6) months after the service is provided, the District will pay the invoice in the next fiscal year (after July) if there is not enough budget in the current fiscal year.

Disputed Charges. If the District in good faith believes there is a dispute concerning the accuracy or applicability of any charge or other invoiced amount, it will notify Contractor of the nature of such dispute not later than ten (10) calendar days after receipt of invoice and will provide reasonable support for such dispute together with such notice of disputed charges. In such an event, the District may withhold such disputed charges or other invoiced amounts from payment of that or subsequent invoices. Failure by the District to identify a disputed charge or other invoiced amount prior to payment of such charge or amount will not limit or waive any of its rights or remedies with respect thereto, including its right to withhold such disputed charges or amounts from payments on subsequent invoices. Contractor shall use diligent efforts to provide any supporting documentation required by the District to resolve any such disputes.

4. **Component Parts**

This Contract shall consist of the following documents, each of which is on file with the District, and is incorporated into and made a part of this Contract by reference. In the event of a conflict these documents shall control in order of precedence as set forth below:

- Contract (*and Amendments, as applicable*)
- RFP Addenda
- RFP No. 2020-1489 and RFP Attachments A through E
- Contractor's Proposal, as accepted by the District

5. **Notices**

All communications relating to the day-to-day activities of the provided services shall be exchanged between Maria Campos, the District's Drug Alcohol Administrator, and the Contractor's Account Manager. All other notices, consent or other communication ("Notice") required or permitted under this Contract shall be in writing and either delivered in person, mailed or electronically delivered as follows:

THE DISTRICT

Terra Duan, Contracts Specialist
AC Transit
1600 Franklin Street, 6th Floor
Oakland, CA 94612
(510) 891-5449
tduan@actransit.org

CONTRACTOR

Proposer Name
Contact Name/Title
Proposer Address
Proposer Address
Proposer Phone #:
Proposer Email:

Notice shall be deemed received at the time it is personally served, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, ten (10) days after the Notice is deposited in the United States mail as above provided. Any time period stated in a Notice shall be computed from the time the Notice is deemed received. Either party may change its mailing address or the person to receive Notice by notifying the other party as provided in this section.

6. **Subcontracting**

The Contractor shall not subcontract any services to be performed by it under this Contract without the prior written approval of the District, except for service firms engaged in drawing, reproduction, typing, and printing. Any subcontractors must be engaged under written contract with the Contractor with provisions allowing the Contractor to comply with all requirements of this Contract. The Contractor shall be solely responsible for reimbursing any subcontractors, and the District shall have no obligation to them. The Contractor shall be solely responsible for subcontractor insurance requirements, prompt payment affidavits, certifications regarding lobbying, and DBE designations.

For contract monitoring and tracking purposes, the District utilizes B2GNow. This is an interactive system that requires all tiers of contractors to login and submit payment data for prompt payment compliance and subcontractor utilization purposes. If no subcontractors are being proposed, the District may waive the requirement of utilizing this system.

7. **Changes**

If any changes to the *Scope of Work* that would require a modification of the amount of compensation or the time required for performance, are sought by the Contractor, the changes must be reviewed and approved in advance of any action to implement the change by the Project Manager. In the event that the Contractor encounters any unanticipated conditions or contingencies that may affect the scope of work or services, schedule, or the amount of compensation specified herein, the Contractor shall so advise the District immediately upon notice of such condition or contingency. The written notice shall explain the circumstances giving rise to the unforeseen condition or contingency and shall set forth the proposed adjustment in schedule or compensation. This notice shall be given to the District prior to the time that the Contractor performs work or services related to any proposed adjustment.

The District may at any time by written order, make changes to within the *Scope of Work* described in this Contract. If such changed cause an increase in the budgeted cost of or the time required for performance of the agreed upon work, the Contractor shall notify the District in writing of the amount of time and compensation adjustments that are required.

Any and all pertinent changes shall be expressed in a written supplement to this Contract prior to implementation of such changes.

8. **Indemnification**

A. Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless the District, and the agents, representatives, officers, directors and employees of the District (Indemnified Group) from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of any of the following:

1. Any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work or services in the performance of this contract, including but not limited to, work or services by any subcontractor or anyone directly or indirectly employed by or contracting with a Contractor or a subcontractor or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and subcontractor's employees or subcontractors; or
2. Any allegation that materials or services provided by the Contractor infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

B. If any claim, action or proceeding is brought against the Indemnified Group, by reason of any event that is the subject of this contract and or described herein, Contractor, at its sole cost and expense, shall pay, resist or defend such claim or action on behalf of the Indemnified Group by attorney of Contractor, or if covered by insurance, Contractor's insurer, all of which must be approved by the District which approval shall not be unreasonably withheld or delayed.

The District shall cooperate with all reasonable efforts in the handling and defense of such claim. Included in the foregoing, the District may engage its own attorney to defend or assist in its defense, and the Contractor shall pay the reasonable costs and expenses thereof. Any settlement of claims must fully release and discharge the Indemnified Group from any further liability for those claims. The release and discharge shall be in writing and shall be subject to approval by the District, which approval shall not be unreasonably withheld or delayed. If Contractor, its agents or employees, neglects or refuses to defend the Indemnified Group as provided by this contract, any recovery or judgment against the Indemnified Group for a claim covered under this contract shall conclusively establish Contractor's liability to the Indemnified Group in connection with such recovery or judgment, and if the District desires to settle such dispute, the District shall be entitled to settle such dispute in good faith and Contractor shall be liable for the amount of such settlement, and all expenses connected to the defense, including reasonable attorney fees, and other investigative and claims adjusting expenses. This indemnification shall survive the termination of this Contract.

C. Insurance provisions set forth in this contract are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

9. **Insurance Requirements**

(See RFP Exhibit 1)

10. Contractor's Status

Neither the Contractor, nor any party contracting with the Contractor shall be deemed to be and agent or employee of the District. The Contractor is and shall be an independent contractor, and the legal relationship of any persons performing services for the Contractor shall be one solely between said parties.

11. Rights in Data

The term "subject data" as used herein means recorded information, whether or not copyrighted, that is delivered under this Contract. The term includes graphic or pictorial delineation in media, text in specifications or related performance or design-type documents and machine forms. Except for its own internal use, Contractor may not publish or reproduce such data in whole or in part, nor may Contractor authorize others to do so, without the written consent of the District, until such time as the District may have either released or approved release of such data.

In the event that the *Scope of Work* in this Contract is not completed, all data generated under this Contract shall become subject data and shall be delivered as the District may direct.

All reports, designs, drawings, plans, specifications, schedules, and other materials prepared, or in the process of being prepared, for the services to be performed by Contractor shall be and are the property of the District and the District shall be entitled to access thereto, and copies thereof, during the progress of the work.

Any and all rights, title, and interest (including, without limitation, patent rights, copyright and any other intellectual-property or proprietary right) to materials prepared under this Agreement are hereby assigned to the Contractor. The Contractor agrees to execute any additional documents which may be necessary to evidence such assignment.

The Contractor represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual property or proprietary right of any third party.

12. Medical Privacy

Contractor must maintain all HIPPA protected records securely in a confidential manner consistent with local, state and federal laws. Said records are to be kept in areas that permit no unauthorized access. Contractor must also establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data stored in electronic data bases. If there is a breach of protected data, contractor must immediately take measures to secure the breach, notify the District and agrees to indemnify, defend and hold the District harmless from any claims and/or lawsuits for such a breach.

13. Release of Information

Before releasing any reports, promotional materials or information prepared in connection with this Contract, the Contractor shall provide a copy or copies for first review and approval by the District. Contractor shall not use the District's logo without specific written permission from the District Designated Representative.

14. Evaluation of Contract Performance

The District reserves the right to evaluate the Contractor's performance under this Contract, including but not limited to, compliance with all Contract flow down requirements for subcontractors, and to provide feedback and require corrective action, as appropriate. The Contractor agrees to comply, including attending and participating in periodic Contract review meetings, with any District directed Contract evaluation, project improvement plan, or corrective action for fulfillment of Contract requirements. The Contractor agrees to promptly provide the District with any supporting documentation or evidence it may request, including but not limited to, subcontracts. The failure of the Contractor to provide such documentation or adequately perform under this Contract may result in suspension, termination, debarment, or any other remedy the District deems appropriate.

15. Transition/Migration Cooperation

The Contractor agrees that upon termination of this Contract for any reason, sufficient efforts and cooperation will be provided to ensure an orderly and efficient transition of services to the customer or to a different Contractor. The Contractor shall provide full disclosure to the subsequent Contractor and to the District on the equipment, software and required processes and procedures to perform the District's services. The Contractor agrees to transfer licenses or assign agreements for any software or services used to provide the services to the District or to a subsequent Contractor. The Contractor agrees to support the transition of code, data, and environments, including virtual server images if any.

16. Notice of Labor Disputes

- A. If the Contractor or a subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor or subcontractor shall immediately give notice, including all relevant information, to the District's Project Manager and the District's Contracts Specialist.
- B. The Contractor agrees to insert the substance of this clause, including this paragraph in any subcontract under which a labor dispute may delay the timely performance of this Contract; except that each subcontract should provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor should immediately notify the next higher tier subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

17. Removal of Contract Personnel

- A. The Contractor acknowledges that any person assigned to work under this Contract must perform their duties so as to not unduly impair contract performance. By assigning a person to work under this Contract, the Contractor agrees to be responsible for the behavior of that person during contract performance.
- B. The Contractor acknowledges that the District has the right to require the removal of any Contractor and any subcontractor employee that the District determines, at its sole discretion, to be negatively effecting performance of work under the contract. Examples of such behavior include, but are not limited to: (1) conduct which poses a threat to the safety of anyone working under the contract and any District employees; (2) conduct which is disruptive to contract performance; (3) careless work; (4) conduct which is not appropriate when working with District employees under this Contract; and (5) conduct in violation of District policy or local, state or federal laws.
- C. The District will provide written notice to the Contractor that a person's behavior is unacceptable or unduly impairing contract performance. Upon receipt of written notice from the District, the Contractor agrees to remove that person from doing any further work on the Contract, and to cause that person to be removed from providing service under this Contract. The Contractor agrees that it is not entitled to any additional costs it may incur as a result of the removal of the person from the District. The Contractor agrees to find a timely replacement and in no event shall this period exceed seventy-two (72) hours from that person being removed.

18. Application of Federal, State and Local Laws and Regulations

During the Contract period of performance, the Contractor shall be subject to and comply with all current and new FTA, federal, state and/or local laws, regulations, policies, procedures, and directives, and shall adhere to all financial privacy laws and regulations, if Federal funds are used to supplement District funding. Contractor agrees that the most recent of such federal requirements will govern the administration of a contract at any particular time, except if there is sufficient evidence in the Contract of a contrary intent. To achieve compliance with changing requirements, the Contractor agrees to include in all agreements with subcontractors a statement that Federal requirements may change and that any changed requirement will apply. Federal terms and conditions will be incorporated through an amendment to the contract.

19. Anti-Kickback and Gratuities

The Contractor is prohibited from receiving any kickbacks, gratuities, payments, merchandise, equipment, supplies, services or favors in exchange for directing additional billable services to any sub-contractor.

20. Assignment

The Contractor shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the District.

21. Dispute Resolution

The District and Contractor agree to attempt in good faith to resolve all disputes informally. The Parties agree that any dispute arising from this Contract, that is not resolved within thirty (30) days by the Parties' representatives responsible for the administration of this Contract will be set forth in writing to the attention of the District's General Manager for resolution. If mutually agreed, the Parties may use an alternative dispute resolution process such as mediation and/or arbitration to resolve their dispute prior to initiating any formal action in court. Unless otherwise directed by the District, the Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

22. Termination

In the event the Contractor breaches the terms or violates the conditions of this Contract, and does not within ten (10) days of written notice from the District cure such breach or violation, the District may immediately terminate this agreement, and shall pay the Contractor only its allowable costs to the date of termination. The District may terminate this Agreement, in whole or in part, at any time for the District's convenience and without cause at any time by giving the Contractor written notice of termination. The Contractor will be paid for those services performed pursuant to this Contractor to the satisfaction of the District up to the date of notice of termination. The Contractor shall promptly submit its termination claim. If the Contractor has any property in its possession belonging to the District, the Contractor will account for the same and dispose of it in the manner the District directs.

23. Records

All Contractor and any subcontractor costs incurred in the performance of this Contract will be subject to audit. The Contractor shall provide the District with copies of fully executed subcontracts. The Contractor and any subcontractors shall permit the District or its authorized representatives to, within forty-eight (48) hours of notice, inspect, examine, make excerpts from, transcribe, and copy the Contractor's books, work, documents, papers, materials, payrolls records, accounts, and any and all data relevant to the Contract at any reasonable time, and to audit and verify statements, invoices or bills submitted by the Contractor pursuant to this Contract. The Contractor shall also provide such assistance as may be required in the course of such audit. The Contractor shall retain these records and make them available for inspection hereunder for a period of four (4) years after expiration or termination of the Contract.

If, as a result of the audit, it is determined by the District's Contractor or staff that reimbursement of any costs including profit or fee under this Contract was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, the Contractor agrees to reimburse the District for those costs within sixty (60) days of written notification by the District.

24. Conflict of Interest

The Contractor warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under *California Government Code §§ 1090 et seq. or §§ 87100 et seq.* during the performance of services under this Contract. The Contractor further covenants that it will not knowingly employ any person having such an interest in the performance of this Contract. Violation of this provision may result in this Contract being deemed void and unenforceable.

Depending on the nature of the work performed, a Contractor of the District is subject to the same conflict of interest prohibitions that govern District employees and officials (*Cal. Govt. Code Section 1090 et seq. and Cal. Govt. Code Section 87100 et seq.* as well as all applicable federal regulations and laws). During the proposal process or the term of the Contract, Contractor and its employees may be required to disclose financial interests.

Depending on the nature of the work performed, the Contractor may be required to publicly disclose financial interests under the District's Conflict of Interest Code. Upon receipt, the Contractor agrees to promptly submit a Statement of Economic Interest on the form provided by the District.

No person previously in the position of director, officer, employee or agent of the District may act as an agent or attorney for, or otherwise represent, the Contractor by making any formal or informal appearance, or any oral or written communication, before the District, or any officer or employee of the District, for a period of twelve (12) months after leaving office or employment with the District if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant or contract.

The Contractor shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Contract and other solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to the District; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other contract.

The Contractor shall not engage the services of any subcontractor or independent Contractor on any work related to this Contract if the subcontractor or independent contractor, or any employee of the subcontractor or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Contract.

If at any time during the term of this Contract, the Contractor becomes aware of an organizational conflict of interest in connection with the work performed hereunder, the Contractor immediately shall provide the District with written notice of the facts and circumstances giving rise to this organizational conflict of interest. The Contractor's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the term of this Contract, the District becomes aware of an organizational conflict of interest in connection with the Contractor's performance of the work hereunder, the District shall similarly notify the Contractor. In the event a conflict is presented, whether disclosed by the Contractor or discovered by the District, the District will consider the conflict presented and any alternatives proposed and meet with the Contractor to determine an appropriate course of action. The District's determination as to the manner in which to address the conflict shall be final.

During the term of this Contract, the Contractor must maintain lists of its employees, and the subcontractors and independent Contractor used and their employees. The Contractor must provide this information to the District upon request. However, submittal of such lists does not relieve the Contractor of its obligation to assure that no organizational conflicts of interest exist. The Contractor shall retain this record for four (4) years after the District makes final payment under this Contract. Such lists may be published as part of future District solicitations.

The Contractor shall maintain written policies prohibiting organizational conflicts of interest and shall ensure that its employees are fully familiar with these policies. The Contractor shall monitor and enforce these policies and shall require any subcontractors and affiliates to maintain, monitor and enforce policies prohibiting organizational conflicts of interest.

Failure to comply with this section may subject the Contractor to damages incurred by the District in addressing organizational conflicts that arise out of work performed by the Contractor, or to termination of this Contract for breach.

25. Non-Discrimination Assurance – Title VI of the Civil Rights Act

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of *49 CFR Part 26* in the award and administration of U.S. DOT-assisted contracts. Further, the Contractor agrees to comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of *Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq.*, and with U.S. DOT regulations, *"Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21*. The Contractor shall obtain the same assurances from its joint venture

partners, subcontractors, and subconsultants by including this assurance in all subcontracts entered into under this Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the District deems appropriate, which may include, but is not limited to withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the contractor from future bidding as non-responsible.

During the performance of this Contract, Contractor and its subconsultants and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subconsultants or subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subconsultants shall comply with the provisions of the *Fair Employment and Housing Act (Gov. Code § 12990 (a-f) et seq.)* and the applicable regulations promulgated thereunder (*California Code of Regulations, Title 2, Section 7285 et seq.*). The applicable regulations of the *Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f)*, set forth in *Chapter 5 of Division 4 of Title 2 of the California Code of Regulations*, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Contract.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

26. Equal Employment Opportunity

In connection with the performance of this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The Contractor shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national origin, or any other characteristic protected under state, federal, or local laws. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

27. Attorney's Fees

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Contract or to determine the rights of the parties under this Contract, the prevailing party in said proceeding shall recover, in addition to all court costs, reasonable legal fees.

28. Waiver

Failure of any party to exercise any right or option arising out of a breach of this Contract shall not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach.

29. Applicable Law and Venue

This Contract, its interpretation and all work performed under it shall be governed by the laws of the State of California. In the event of a dispute or breach of contract, venue shall be in Alameda County, California.

30. Binding on Successors

All of the terms, provisions and conditions of this Contract shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.

31. Third-Party Beneficiaries

This Contract is not for the benefit of any person or District other than the parties.

32. Severability

If any provision of this Contract shall be deemed invalid or unenforceable, that provision shall be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Contract, and in any event, the remaining provisions of this Contract shall remain in full force and effect.

33. Entire Contract; Modification

This Contract, including any attachments, constitutes the entire Contract between the parties with respect to the subject matter hereof and may not be amended except by a written amendment executed by authorized representatives of both parties. In the event of a conflict between the terms and conditions of this Contract and the attachments, the terms of this Contract will prevail.

IN WITNESS WHEREOF, the parties have executed this Contract on the dates set forth below.

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

CONTRACTOR:

Michael Hursh
General Manager

Date

Signature

Date

Printed Name

Title

Approved as to Form and Content:

Jill Sprague
General Counsel

Date

**If the Contractor is a corporation, this Contract must be executed by two corporate officers, consisting of: (1) the president, vice president or chair of the board; and (2) the secretary, assistant secretary, chief financial officer or assistant treasurer. In the alternative, this Contract may be executed by a single officer or a person other than an officer provided that evidence satisfactory to the District is provided demonstrating that such individual is authorized to bind the corporation (e.g. a copy of a certified resolution from the corporation's board or a copy of the corporation's bylaws)*