**Anaheim Transportation Network**

**REQUEST FOR PROPOSALS (RFP)**

**RFP# 2017-005**

**FOR**

**Development of a Mobility Application for ATN Ridership**



***NOTE:*** *The Table of Contents in this document is automated and contains hyperlinks to appropriate pages. Other portions of this document are also automated and hyperlink to referenced areas of the document.*

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# SECTION 01: NOTICE TO PROPOSERS

## SUMMARY

The Anaheim Transportation Network’s mission is to enhance transportation options by delivering reliable and efficient transportation solutions. Our commitment to customers consists of integrity, customer service, can-do spirit, communication, and partnerships.

The Anaheim Transportation Network (ATN) provides a menu of transportation services for the general public in the Orange County region. These programs include Anaheim Resort Transportation (ART), a network of 23 lines that serve popular destinations within The Anaheim Resort® and Orange County areas. Our goal is to provide transportation programs and services to foster a positive environment for everyone who lives, works or visits the greater Anaheim area.

The ATN ridership is growing and more connected than ever to their mobile devices. Our ridership demands instant access to transit alternatives that provide cost and travel duration. In addition, our ridership primarily utilizes public transportation to access events, theme parks, restaurants and hotels and requires the ability to purchase tickets for theme park or parking access prior to arrival. ATN is seeking a proven app developer that can provide a solution that meets our existing and future ridership’s needs, through an integrated, seamless mobile application connecting travel choices with payment options.

It is ATN’s intent that the successful proposer will provide transportation and travel information and the ability to purchase services through a mobile application. When users purchase transit and travel services through the application, the successful proposer may retain a fee for those services and share a portion of the fee collected with ATN. It is ATN’s intent that the resulting profit-sharing will over time reimburse the proposer for the app development resulting from this RFP, will allow the proposer to continue/sustain the application and will provide a revenue stream for ATN to sustain or to deploy additional transit services. Therefore, each proposer should carefully analyze the revenue potential from the application deployment, and within the cost section of the proposal, if needed, propose an ATN financial contribution. It is ATN’s intent that the proposer will finance most if not all of the app development; however, if the proposer requires an ATN financial contribution, then that amount justification should be clearly identified in the cost proposal and will have an impact on the evaluation factor (Section 04).

This RFP represents Phase II of the procurement process to select a firm with the capability, capacity, and experience to perform the requested Scope of Work (Section 03).

## PROPOSAL SUBMISSION

Notice is hereby given that the deadline for a proposal submission to the Anaheim Transit Network (ATN) at 2626 East Katella Avenue, Anaheim, CA 92806, or electronically at **artinfo@atnetwork.org** prior to **3:00 p.m. Pacific Standard Time (PST) on Monday October 9, 2017**. ATN will receive proposals from firms already qualified through the RFQ process completed June 23, 2017, in which, qualified firms were notified on July 12, 2017 of their approval to participate in this RFP. Qualified Proposers shall submit an application development proposal and project plan in accordance with the instructions outlined in this RFP.

Attachment A: Project Storyboard is a descriptive, desired outcome of this project, and proposers are to utilize this document to validate their proposed solution; however, Attachment A it is not intended to be a comprehensive description, and proposers are not limited by the description contained therein. The intent of this RFP is to allow qualified proposers to build upon the project plans submitted during the RFQ process and provide the means whereby ATN has the ability to select a single proposer and enter into a contract for the development of the application.

**Federal funds may be utilized in the performance of this Agreement.**

## NON- MANDATORY PRE-PROPOSAL CONFERENCE

**Pre-Proposal Conference:** Proposers are strongly encouraged to attend the Pre-Proposal Conference held on Thursday August 24, 2017 **at 1:00 p.m.** at 2626 East Katella Avenue, Anaheim, CA 92806. The Pre-Proposal Conference is not mandatory and arrangements will be made to accommodate participation by electronic means.

## COMMUNICATIONS

All communications up to the question and answer deadline concerning any matters relating to this RFP shall be communicated in writing to **artinfo@atnetwork.org**. Answers to questions or requests for clarification will be responded to directly all participating proposers.

Proposers shall submit questions, as specified above, no later than Thursday August 31, 2017 by 3:00 p.m. PST.

Any changes to any part of this RFP, technical specifications, or requirements will be through the issuance of an Addendum provided to all participating proposers.

Proposers are cautioned that oral communications such as opinion, comments, explanations, response to questions, etc. are not binding on ATN. Proposers shall not make contact with ATN staff, other than the identified in this RFP, with regard to any aspect of this solicitation.

## RFP POINT OF CONTACT

Responsibility for this RFP has been assigned to:

Diana Kotler – Executive Director

Anaheim Transit Network

2626 East Katella Avenue

Anaheim, CA 92806

E-mail: **artinfo@atnetwork.org**

## AGREEMENT

The Proposer shall be required to execute a negotiated Agreement with ATN. This RFP contains terms and conditions which will be incorporated into the final negotiated Agreement. Due to the unique nature of this project, during contract negotiations ATN is willing for the successful proposer to present an Agreement for consideration and execution as long as the proposed Agreement contains the ATN standard terms and conditions and insurance requirements contained in this RFP. The term of the agreement will be for a three-year period, with an option to extend the agreement for an additional two years.

**ESTIMATED PROPOSAL SCHEDULE (Subject to Change)**

|  |  |
| --- | --- |
| **ACTIVITY** | **DATE** |
| Request For Proposals Start Date | Friday August 11, 2017 |
| Pre-Proposal Conference | Thursday August 24, 2017 at 1:00 p.m. PST |
| Deadline for Submission of Questions or Request for Clarification  | Thursday August 31, 2017 by 3:00 p.m. PST |
| Proposal Deadline | Monday October 9, 2017 by 3:00 p.m. PST |
| Interviews (at the option of ATN) | Thursday October 19, 2017 from 9:00 a.m. to 5:00 p.m. PST |
| BAFOs/Contract Negotiations | October 20 through November 10, 2017 |
| ATN Board Review and Approval | Wednesday November 15, 2017 at 3:00 p.m. PST |

**END OF SECTION**

# SECTION 02: GENERAL INSTRUCTIONS FOR PROPOSERS

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2.

## DEFINITIONS

Whenever, in the RFP or Agreement documents, the following words are used, the intent and meaning shall be interpreted as follows:

1. **Proposer/Proposers** - persons, consultants, or corporations providing a submission of a proposal to ATN in the response to the solicitation.
2. **Successful Proposer** - a person, consultant, corporation whose proposal was deemed to be in the overall best interest of ATN and has been recommended to the ATN Board of Directors for award of an Agreement.
3. **Agreement Documents** - all of the contents of this RFP and associated Addenda, Contract Drawings, Technical Reports, Technical Specifications, Attachments, Reports, and Documented Agreements. Said documents shall be considered as part of any agreement made pursuant to this solicitation.
4. **Days** - calendar days unless otherwise specified.
5. **Executive Director** - the Chief Executive Officer of ATN or her authorized representative or agent.
6. **Grand Total Proposal Price** - the grand total price and shall include all direct and indirect labor and material costs, taxes, duties, fees, and any other charges applicable to complete the total requirements as specified in this RFP, including all addenda, contract drawings and technical specifications. In addition, the total price shall identify if the proposer is requesting a financial contribution from ATN and that amount should be clearly identified by task, and justified in the cost proposal (Attachment B).
7. **ATN Board of Directors (Board)** - the Governing Board of ATN.
8. **ATN’s Representative** - the authorized agents or representatives of ATN designated to ensure strict conformance with the agreement Documents.
9. **Notice of Intent to Award (NIA)** – an award notification, an NIA, or a revised list of Proposers from ATN to all Proposers identifying the intent to award to the responsive, responsible Proposer, conforming to the requirements of the RFP, determined to be the “Best Value” to ATN following proposal opening and evaluation; and opens the period for protest in accordance with the provisions of this RFP.

## PROPOSER’S SATISFACTION

It is the responsibility of the Proposer to thoroughly examine and be familiar with the terms and conditions to be incorporated into a negotiated Agreement. The failure or omission of any Proposer to examine any Agreement Documents, instrument, addendum, or other documents shall in no way relieve any Proposer from obligations with respect to their proposal or to the agreement. The submission of the proposal shall be taken as prima facie evidence of compliance with this section.

## RFP FORM – SUBMISSION INFORMATION

Proposals must be submitted in the format outlined in this RFP. Proposals submitted in any other form will be considered non-responsive and shall be rejected. Proposals shall include a proposal regarding the information and services requested. The proposal must be signed with the name and title of the person duly-authorized to sign the offer. Any unauthorized conditions, limitations or provisions attached to a proposal may be cause for its rejection and in no event shall be a part of the Agreement Documents. The proposals submitted must not contain any erasures, interlineations, or other corrections unless each such correction is suitably authenticated by affixing in the margin immediately opposite the correction the surname or surnames of the person or persons signing the proposal. Proposals may be rejected if they show any alteration in form, are incomplete, or contain irregularities of any kind.

Proposals are required for the entire Work, unless instructed otherwise in this RFP. Proposals that are not for the entire work, or are incompletely written or compiled may be considered non-responsive and be rejected.

In the event that the Proposer is a joint venture or partnership, the Proposal certification shall be submitted with the signatures of the authorized officers of both parties to the joint venture or partnership. The name of the individual who shall sign all necessary documents for the joint venture who shall sign all necessary documents for the joint venture or partnership and should the joint venture or partnership be awarded the agreement, shall act in all matters relative to the agreement resulting therefrom for the joint venture or partnership, shall be identified in writing on the document.

**Delivery of Proposal Documents:** Proposers shall submit their Proposals either in a sealed package or via electronic submission. If proposer elects to submit their proposal via sealed package shall write/type the following identification information on the outermost sealed package or FedEx/UPS/other address label:

**Development of Mobility Application for ATN Ridership – RFP No. 2017-005**

**Attn: Diana Kotler**

**Anaheim Transit Network**

**Proposer’s** **Company Name and Address**

Each Proposal should be addressed to the Point of Contact, identified above, and shall be delivered to 2626 East Katella Avenue, Anaheim, CA 92806 on or before the day and time set for the submission deadline. **It is the sole responsibility of the Proposer to ensure that the Proposal package is delivered to ATN, as instructed in this section, prior to the submission due date/time.**

Proposals shall not to be presented to any ATN employee other than the ATN representative identified as the Point of Contact for this Solicitation. If a Proposal is not received as specified in the manner above it may be considered non-responsive.

Because Proposals can at times be ambiguous, ATN reserves the right to request additional information before making an award. ATN also reserves the right to seek clarification from any Proposer about any statement or part in its Proposal that ATN finds ambiguous.

## PROPOSERS INTERESTED IN MORE THAN ONE PROPOSAL

No person, consultant or corporation shall be allowed to make, file or be interested in, (as a principal) more than one (1) proposal for the same work unless alternate proposals are called for. A person, consultant or corporation submitting a sub-proposal to a Proposer, or who has quoted prices on materials to a Proposer, is not thereby disqualified from submitting a sub-proposal or quoting prices to other Proposers or from being a principal Proposer for the same work.

Where two (2) or more Consultants desire to submit a single proposal in response to this RFP they should do so on a prime and sub-consultant basis rather than as a joint venture. ATN intends to contract with a single consultant and not with multiple consultants doing business as a joint venture.

## RFP SPECIFICATION CHANGES

ATN reserves the right to revise or amend the RFP or specifications up to the time set for the submission of proposal. Such revisions and amendments, if any, shall be issued by addenda to this solicitation. Copies of such Addenda shall be made available to all qualified proposers. In the event that an addendum setting forth material changes, additions or deletions is issued when there is seventy-two (72) hours or less to the proposal opening date, ATN will extend the proposal opening date by no less than three (3) business days. Clarification notices that do not significantly impact the Proposer's ability to submit a proposal shall not result in an extension of the proposal opening date.

## ADDENDA

The effect of all addenda to the RFP shall be considered in the Proposal Package, and said addenda shall be made a part of the Proposal Package submitted to ATN. It is the Proposer’s sole responsibility to ensure that all addenda have been acknowledged before submitting a response. Failure to acknowledge all addenda may render the proposal package nonresponsive and result in its rejection.

## WITHDRAWAL OF PROPOSALS

Prior to Proposal Closing: Any Proposer may withdraw its proposal, either personally or by written request, at any time prior to the scheduled time for opening of proposals. Any request to withdraw a proposal shall be so worded so as not to reveal the amount of the original proposals.

After Proposal Closing: No Proposer may withdraw its proposal for a period of one hundred twenty (120) days after the proposal closing date. Proposal may be subject to acceptance by the ATN Board of Directors during this one hundred twenty (120) day period.

## LATE PROPOSALS

Proposals received by ATN after the date and time specified in the solicitation shall be considered late. Late proposals shall be rejected and shall remain unopened. All late proposals shall be returned unopened to sender.

## VALIDITY OF PROPOSALS

All Proposals shall remain valid and binding for a period of one hundred twenty (120) days after the proposal closing date.

## SINGLE PROPOSAL PROCEDURES

In the event a single proposal is received, ATN may conduct a price and/or cost analysis of the proposal. The Proposer will cooperate with ATN to assist in this analysis. The analysis is the process of examining the proposal and evaluating the separate cost elements.

## REJECTION OF PROPOSAL

ATN reserves the right to reject any and all proposals and to waive any informalities or irregularities in the proposal. If all proposals received are rejected, ATN reserves the right to re-solicit the services by issuing a new RFP or to cancel the solicitation at any time prior to agreement award and not award an agreement.

## INCURRED COST

ATN will not reimburse Proposers for costs incurred in the preparation of the proposal or after submission, during agreement award, or cancellation of the procurement.

## AWARD OF AGREEMENT

The award of an agreement will be made by ATN on the basis of the evaluation criteria of the RFP documents after determinations of responsiveness and responsibility (technical and financial) has been made.

The agreement requires approval to award an Agreement by the ATN Board of Directors.

Following the award and execution of the Agreement and receipt of required insurance certificates, the Consultant shall receive a fully-executed Agreement. Commencement of work by the Consultant before receipt of the Fully Executed Agreement (FEA) is at the sole risk and expense of the Consultant who shall be fully liable for any damage or injury sustained by ATN or third parties resulting therefrom.

## PROTEST PROCEDURES

An actual or prospective Consultant who is aggrieved in connection with the solicitation or award of an agreement may submit a protest. The protest must be submitted to the following address:

|  |
| --- |
| **Anaheim Transportation Network**Diana Kotler – Executive Director2626 East Katella Avenue Anaheim, CA 92806E-mail: **artinfo@atnetwork.org**  |

1. The following information must be included in the protest:
2. Name, address, and phone number(s) of the protestor;
3. Solicitation number and project title;
4. A detailed statement of the basis for the protest;
5. Supporting evidence or documents to substantiate any arguments; and
6. The form of relief requested (e.g., reconsideration of offer).
7. Date and time of receipt of protests:
8. Protests against contract awards of procurements not subject to PCC 20216-20217. The protest shall be filed with ATN within five (5) working days after the date of award notification by way of a Notice of Intent to Award.
9. Protests submitted after the protest deadline. Protest submissions received by ATN after the time periods specified above shall be deemed by the Contracting Officer to be untimely and shall be denied on that basis.
10. All protests shall be resolved in accordance with ATN's protest policy and procedures as provided herein. A direct protest to FTA is only available if the protestor believes that ATN did not follow its protest procedures or did not review its protest when presented an opportunity to do so. Any appeal of a ATN protest decision to FTA must be made within five (5) days of receiving actual or constructive notice of ATN's decision.

The Executive Director, or a delegated individual, will make the final determination on all protests. The determination with regard to such protest or to proceed to award shall be final unless appealed by the protester. An informal protest resolution opportunity may be offered to the protestor prior to final determination.

**Appeal of Protest Decision**

If a protest is appealed, ATN will provide written correspondence that will identify:

1. Required submittals, including a statement of the factual and legal grounds for reversal or modification, specifying legal errors or new information
2. Designation of Appeal Official(s)
3. Contact and Address for Appeal Submittals
4. Timeframes for Submitting Appeals
5. Timeframe for Decision

**END OF SECTION**

# SECTION 03: SCOPE OF WORK

* 1. **Background**

ATN is seeking a proven app developer that can provide a solution that meets our existing and future ridership’s needs, through an integrated, seamless mobile application connecting travel choices with payment options.

* 1. **Requirements**

The following is a list of items that are desirable; however due to the unique nature of this project do not represent minimum requirements:

1. Compatible with both Android and IOS, responsive on all browsers/platform and ADA compliant
2. Application must be available for free download on ITUNES and Google Play as a minimum requirement.
3. Provide a real-time mapping feature
4. Allow users to view, connect and purchase rides from multiple rideshare providers (Lyft, Uber, Taxi) local transit agencies (OCTA, Metrolink, etc.) and private transportation operators (Mega Bus, Karmel Shuttle etc.)
5. Allow riders to purchase tickets from theme parks, conventions or special events
6. Provide a revenue reconciliation and payment processing for all items purchased through the app (tickets, transit fare media, etc.)
7. View parking options and prepay for parking
8. Accommodate demand responsive features
9. Customer questionnaire ability
10. Future applications such as Wallet, luggage concierge, links with on-line booking engines to allow trip planning on a pre-arrival basis
11. Integration with ATN’s soon to be released micro-transit application
	1. **Functionality of the Application**

There are two primary aspects of app and system functionality:

1. Ticketing: Sales function for tickets and services
2. Traveler information: Trip planning and real-time transportation service information

Each functional area includes customer-facing and agency-facing (administrative) components. Each function is listed below in **Table 1**, indicated as required (necessary for a minimum viable solution) or desired (a feature that ATN is interested in, but may or may not select as part of a solution).

For each function offered, proposals should include:

1. A description of the customer experience,
2. Relevant technical details,
3. Notes on previous implementations,
4. Any timeline/phasing
5. Additional cost requirements

**Table 1: Functional Requirements**

|  |  |  |
| --- | --- | --- |
| **Functional area** | **Function** | **Required / Desired** |
| **A. Ticketing (customer-facing functions)** | 1. Sale of ART tickets
 | Required |
| 1. Sale of other transportation services including Lyft and Super Shuttle
 | Required |
| 1. Sale of partner event and theme park tickets
 | Strongly Desired |
| 1. Web-based ticket sales, email distribution of tickets, with activation in a mobile phone app
 | Desired |
| 1. Mobile ticket sales
 | Required |
| **B. Ticketing (agency-facing / administrative)** | 1. Visual validation with fraud prevention
 | Required |
| 1. (Non-visual) contactless ticket validation, including onboard vehicles
 | Required |
| 1. Reporting functions to review transactions, sales, and activated and unused tickets. Functions to support auditing and remittance for 3rd party services sold.
 | Required |
| 1. Management function for editing products and other management of the ticketing system
 | Required |
| **C. Traveler information (customer-facing)** | 1. Customer experience that brings travel planning and ticketing/purchasing into a seamless process in mobile app(s)
 | Required |
| 1. Custom branding for an ART mobile app
 | Strongly Desired |
| 1. Transit trip planner
 | Required |
| 1. Multimodal trip planner that shows transit, demand-responsive transit (“microtransit” and taxi/TNC/ridehail), and airport transportation, and which combines options to provide optimal trips.
 | Desired |
| 1. Ability to integrate transportation services with standard and common data formats
 | Required |
| 1. Ability to show real-time transportation information, including for fixed-route public transportation, using GTFS-realtime and/or the Syncromatics real-time API
 | Required |
| 1. Ability to show marketing messages and announcements from Anaheim Resort Transportation
 | Required |
| 1. Ability to show service advisories targeted at particular routes, stops, and trips, providing using a GTFS-realtime feed
 | Required |
| **D. Traveler information (agency-facing / administrative)** | 1. Secure data logging to see where customers use the app, which trips they plan and for what times, and what mode and travel path they ultimately choose
 | Required |

* 1. **Content Management System**

To manage all application contents, separate user friendly content management system should be provided with following general features:

1. Admin user to be able to create, publish/unpublished and delete all the content
2. Admin user should have User Management
3. Admin user should have Vaccine Management
4. Admin user should have Push Notification Management
5. Admin user should have Reminder Management
6. Admin user should have Growth Chart Management
7. Admin user should be able to sort data, search data
8. CMS should be protected using the HTTPS for secure access to application
	1. **Reports**

The selected firm will provide regular App Analytics, reports, vital statistics and analysis. Audit Log Screen will be provided to admin user to check the activities performed by all users. The data will be available only in read-only mode. Admin User will be able to see the list of login/logout information for the user through Authentication report screen. Admin User will be able to see the list of notifications sent to the devices through notification screens. Data will be only in read only mode. Google and iPhone provides the required details on their console along with app publishing. Google Analytics will be used to provide the required information on the Google Analytics Console.

If proposer has the ability, optional metrics are:

1. Top locations of users on the app
2. Age of users on the app
3. Gender of users on the app
4. Time of day users are on the app
5. App load time- how long does the app take to load
6. How many users share/send our app (via the Stores) with others
	1. **Hosting**

Proposal shall include the specifications on how the application will be hosted. Selected firm will update whenever necessary and will maintain totally, any hosting system provided by the firm, ensuring uptime of 99.6%

* 1. **Support**

Selected agency should provide support 24\*7, as well as application customization and upgrade

* 1. **Training**

For the effective uses of the supplied software/application licenses & their functionalities, the selected vendor must compulsorily provide classroom training for selected ATN Employees.

1. Following training needs are to be provided by Vendor as part of the scope:
2. Content Management Training
3. Deployment & Hosting Training
4. Application Submission Training
5. Support Handover
	1. **Brand Guidelines**

Application(s) design must conform to ATN branding guidelines. ATN will provide brand guidelines to developer.

* 1. **Deliverables**

The following deliverables assume a notice to proceed/work order to the successful Proposer will be issued by December 1, 2017. These deliverables are to be met in order for this project to be considered complete:

1. Selected agency is expected to deliver the web version mobile application within 90 days of receiving the work order.
2. Selected firm is expected to deliver the mobile application on application store (Google Play, Apple and windows) within 120 days of receiving the work order.
3. Selected firm has to share the Design and Deployment Documents and obtain ATN sign-off.
4. The selected firm will be responsible for developing, hosting and maintaining the application for three years beyond ATN’s acceptance of the project.
5. Technical documentation of design and development stages of mobile application, database, complete source code of mobile application, training to users etc. shall also be provided to ATN upon launch and project acceptance.

**END OF SECTION**

# SECTION 04: EVALUATION AND SELECTION

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## PROPOSAL REQUIREMENTS AND ORGANIZATION

Proposer shall review and base their proposal on the Scope of Work (Section 03) and in accordance with the terms and conditions of the RFP. Strict conformance to the specified proposal format and completeness of required content is essential. Lack of any listed item may disqualify the proposal. The proposal should give clear and concise information in sufficient detail and in the order presented below to allow an evaluation based on the requirements. All requirements are considered necessary for evaluation. The expectation is that those proposals in the competitive range and considered for contract award will exceed the minimum requirements.

All responses and attachments shall be sequentially numbered to correspond to the applicable question or requirement.

## EVALUATION FACTORS:

The proposal evaluation factors are listed in their relevant order of importance:

1. **Technical Approach** – Documentation Development: Demonstrates a depth of understanding of the project, as outlined in RFP and SOW; approach, methodology and technology demonstrates reflects the ability to provide the work requested, a responsive plan and schedule; and is responsive to the functional and technical requirements and needs of the agency and service area.
2. **Personnel and Qualifications (Knowledge, Experience, Qualifications):** Professional qualifications and experience of key project personnel, as demonstrated by key personnel resumes; relevant experience of the project Team in developing and implementing comparable projects; proposed Team/personnel's experience appropriate for technical and management requirements of the Project; staff with knowledge of applications connecting travel choices with payment options; and time commitment of key personnel and Team members.
3. **Experience and Qualifications of the Firm/Team Approach:** Specialized experience or knowledge of firm in developing & implementing comparable projects; demonstrated competence of the firm, including sub-contractor(s) to perform SOW requirements; knowledge of SOW applications in applications connecting travel choices with payment options; evidence of satisfaction of current clients with firm's experience and work demonstration; and integrity and reputation of project Team.
4. **Cost and Revenue Proposal:** The costs meet the RFP and SOW required elements; overall cost for system providing all desired and any optional elements (as provided in proposer’s response); cost effective application development, ongoing operating & maintenance costs and the amount of an ATN financial contribution to the project by task (if requested from proposer); estimation of revenue generation and how revenue will be shared between proposer and ATN (profit sharing); this evaluation factor is based on the reasonableness of total costs based on anticipated requirements, the amount of the ATN financial contribution requested, the estimated profit sharing between proposer and ATN, as well as the adequacy of data in support of figures quoted and basis on which prices/revenue are quoted.

## SUBMITTAL INSTRUCTIONS AND REQUIREMENTS:

**Consultant shall submit one (1) proposal for the Development of a Customer Application as follows:**

Proposers shall review and base their proposal on the Scope of work located in RFP **Section 03**, all terms and conditions of the RFP, and evaluation criteria. Strict conformance to the specified proposal format and completeness of required content are essential. Lack of any listed item may disqualify a proposal, at ATN’s discretion.

Electronic submittals shall be submitted to **artinfo@atnetwork.org** as outlined below, with each tab representing a separate document plus an additional document for the price proposal.

Hard copy proposals shall be submitted in a package marked with the Company Name, and RFP title. One (1) copy shall contain all original signatures and be marked “Original”. Proposer shall also submit one (1) digital (thumb drive) and five (5) hard copies of their proposal marked “Copy”.

Hard copy proposals shall be submitted in three ring binders. Cost Proposal sheets shall be separately placed into sealed envelopes separate from Proposals and labeled “Confidential”. Each section of the proposal shall be tabbed in accordance with the below numbering system as to aid in expedient location of information and provide for consistent proposal organization:

Tab 1: Cover Letter: Identify the proposal by the RFP title. Provide a summary emphasizing the distinguishing factors that highlight your ability to perform the services described herein.  It should be brief (two (2) pages maximum), and include all contact information inclusive of the name, address, telephone number, title, and signature of the contact person for this procurement.  The signatory shall also be a person with the official authority to bind the company.

Tab 2: Qualifications and Experience: Provide a summary of your company’s background, skills and experience in the subject-matter and overall performance of services associated with the Scope of work. Provide a detailed list of key personnel in the proposed team, their titles and tasks to be assigned relative to the services identified in the Scope of work.

Tab 3: Past Performance (references): Describe specifically your company’s experience in providing services listed in the Scope of work similar in scope, magnitude, and complexity**.** This should include references from past and current projects (including with ATN, if applicable). This should also include relevant past performance from the proposed team, including proposed Prime and its Sub-consultants.

Tab 4: Technical Approach: Provide a narrative illustrating the approach to providing the deliverables for each task, which shall include but is not limited to: quality assurance methods, proposed schedule/time lines with milestones, roles and responsibilities, capabilities and capacities, and administrative approach.

Tab 5: Cost and Revenue Proposal. Complete Attachment B of the RFP as provided and include any other pertinent cost information. Place in separate sealed package and mark as “Confidential”. Clearly identify which tasks are proposed to be reimbursed by ATN (if any).

## PROPOSAL EVALUATION METHOD AND SCORING:

ATN willconsider the Source Selection Committee (ATN) proposal scoring, risk factors assigned and final proposal costs in a subjective decision making tradeoff process using good business judgment to choose the proposal that represents the Overall Best Value to ATN.

Each of the RFP evaluation factors will be rated by the ATN using the following adjectives and numerical values as defined:

1. Excellent: Fully complies with the RFP requirements with the most desirable strengths and/or betterments, contains no errors, risks, weaknesses, or omissions. Exceeds in all aspects of the requirements; high probability of success, no significant weaknesses. (Numerical Value: 8-10)
2. Good: Compliant with RFP requirements with no errors, or risks, or weaknesses, or omissions. Substantial response; meets all aspects of the requirements and in some cases exceeds; high probability of success; no significant weaknesses. (Numerical Value: 5-7)
3. Adequate: Minimally compliant with the RFP requirements has errors, or risks, or weaknesses, or omissions, and is doubtful they be corrected and made acceptable. Generally meets minimum or critical requirements; slight probability of success; weaknesses most likely cannot be readily corrected. (Numerical Value: 2-4)
4. Poor: Non-compliant with the RFP requirements, has errors, risks, weaknesses, or omissions and will be impractical or inefficient to correct and make acceptable; requires major revision. Lacking essential information; does not meet minimal requirements; significant weaknesses, and near zero probability of success. (Numerical Value: 0-1)

## EVALUATION PROCESS

Proposals will be evaluated based upon the information provided in response to the RFP. A ATN will be established of individuals with experience and expertise deemed relevant in order to evaluate the proposal. The ATN may include representatives from ATN, both voting and non-voting members (Technical Advisors), representatives from other agencies, and the general public.

ATN reserves the right to request clarification and/or request additional information from the Proposer if necessary. Such clarifications and/or additional information shall be submitted by the Proposer as an Addendum to their proposal upon request of the Contracting Officer. However, since no additional input may be requested, Proposer is advised to submit complete information in their proposal. Steps 4-6 are at the sole discretion of ATN, Proposer is advised to submit their proposal without the expectation of ATN to exercise any of the options.

**STEP 1: RESPONSIVENESS AND RESPONSIBILITY REVIEW**

The Contracting Officer shall perform an evaluation of all proposals in order to determine if a Proposer meets the requirements of the RFP and to ensure that unacceptable exceptions or conditions are not proposed. This is a “Pass/Fail” determination. ATN reserves the right to waive any minor irregularities or to seek additional clarifications from Proposers. Only proposals receiving a “Pass” determination will be evaluated further.

**STEP 2: EVALUATION OF TECHNICAL PROPOSAL**

The Technical Proposal shall be evaluated and scored based on findings of strengths and weaknesses of how responsive each technical proposal is to the stated “Evaluation Criteria”.

After evaluations, ATN’s staff may request additional detailed elements of the proposals or clarifications. This process does not constitute negotiations. Negotiations may be conducted at the discretion of ATN. ATN reserves the right to award a contract without discussions or negotiations.

**STEP 3: EVALUATION OF COST PROPOSAL**

The overall project costs, reasonableness of those costs, as well as the proposed cost to ATN (if any) will be considered in evaluation. Should proposers not require an ATN contribution, the total project cost and reasonableness will still be considered as an evaluation factor by ATN, although cost may be of lesser importance as an evaluation factor, it will not be ignored. The degree of importance will increase with the degree of quality of proposals with respect to the other “Evaluation Factors”.

Once Steps 1-3 are completed the ATN will determine the competitive range using the non-exclusive list of criteria contained in the “Evaluation Factors”. Only proposals within the competitive range will continue in the evaluation process.

**STEP 4: ORAL PRESENTATIONS OR INTERVIEW/S (IF REQUESTED BY ATN)**

The ATN may authorize the use of oral presentations and/or interviews as a method of presenting the Proposers proposal or obtaining additional information. If applied, the ATN will invite competitive Proposers to make a presentation to, or participate in interviews with ATN. Interviews are scheduled for Thursday October 19, 2017, between the hours of 9:00 a.m. ad 5:00 p.m. at ATN’s offices in Anaheim. The purpose of such presentations or interviews would be to allow the Proposer to present their proposed solutions to ATN and for the ATN to obtain additional information; the key points in the presentations and interviews will be evaluated by the ATN.

**STEP 5: NEGOTIATIONS**

The ATN may, at its sole discretion, enter into negotiations with any Proposer found to be in the competitive range. Negotiations may include, but not be limited to: scope of work, contract schedule, contract terms and conditions, technical specifications, and price. ATN has sole and final authority to terminate negotiations and exercise other options available to procure such services.

**STEP 6: BEST AND FINAL OFFER (IF REQUESTED BY ATN)**

The ATN may also ask for a Best and Final Offer (BAFO) at any time prior to its final determination and rescore as necessary, always using the “Evaluation Factors”, the “Proposal Evaluation Method and Scoring” and the “Proposal Risk Assessment” described herein.

**STEP 7: FINAL DETERMINATION**

It is the task of the ATN to independently score each proposal and then collectively determine which proposal is the “Best Value” to ATN based upon the evaluation method scoring, risk factors assigned and final proposal costs. The Proposer, or Proposers if applicable, deemed to be the “Best Value” using the “*subjective decision making tradeoff process”* of evaluation will be the Proposer, or Proposers, recommended to the Board of Directors for award.

**END OF SECTION**

# SECTION 05: INSURANCE REQUIREMENTS

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, his agents, representatives, employees, or sub-consultants. Commercial general liability, workers’ compensation, employer’s liability, and automobile liability coverage are required for all Agreements.

**POLICY LIMITS REQUIRED**

☐ **Commercial General Liability**

Coverage for Commercial General Liability insurance shall be at least as broad as the following:

Insurance Services Office Commercial General Liability coverage covering Commercial General Liability on an “occurrence” basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury. Per occurrence and aggregate limits are addressed below.

☐ **Automobile Liability**

At all times during the performance of the work under the Agreement, the Consultant shall maintain auto liability insurance, in a form and with insurance companies acceptable to ATN and in an amount indicated herein

☐ **Workers’ Compensation and Employer’s Liability**

At all times during the performance of the work under a future Agreement and acceptance by ATN, the Consultant shall maintain workers' compensation in compliance with applicable Federal and State of California requirements, with statutory limits. The Consultant hereby grants to ATN a waiver of any right to subrogation which any insurer of said consultant may require against ATN by virtue of the payment of any loss under such insurance. The Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not ATN has received a waiver of subrogation endorsement from the insurer. If insurance is maintained, the workers' compensation and employers’ liability program may utilize either deductibles or provide coverage excess of a self-insured retention, reasonably satisfactory to ATN.

The following insurance limits are required for the Agreement:

|  |  |
| --- | --- |
| TYPE | AMOUNT |
| Commercial General Liability | $2 million per occurrence limit/$5 million aggregate |
| Automobile Liability | No less than $5 million each accident |
| Workers’ Compensation & Employer’s Liability | $1 million per accident |

**A. EVIDENCE REQUIRED**

Prior to execution of the Agreement, the Consultant shall furnish to ATN, original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by ATN before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the consultant’s obligation to provide them. ATN reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional primary insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

**B. POLICY PROVISIONS REQUIRED**

All policies shall provide that the coverage shall not be canceled, except with notice to ATN.

For any claims related to this Agreement, the Consultant’s insurance coverage shall be primary insurances as respects to ATN, its officers, officials, employees, and volunteers.

**C. QUALIFYING INSURERS**

All policies required shall be issued by acceptable insurance companies, as determined by ATN, which satisfy all of the following minimum requirements:

1. Insurance carriers shall be authorized to transact business in California and/or maintain an agent for process within the state.
2. Such insurance carrier shall have not less than an “A-” policyholder's rating and a financial rating of not less than “Class VII” according to the latest A.M Best Key Rating Guide.

**D. ADDITIONAL INSURANCE PROVISIONS**

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Consultant and any approval of said insurance by ATN, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to an Agreement, including but not limited to the provisions concerning indemnification.
2. The Commercial General Liability and auto liability policies shall include an endorsement that names ATN, the Board and each member of the Board, its officers, employees, agents and ATN designated volunteers as additional insureds with respect to liability arising out of operations performed by the consultant.
3. If at any time during the life of the Agreement the Consultant fails to maintain in full force any insurance required by the agreement documents, ATN may terminate the agreement.
4. The Consultant shall include all sub-consultants as insureds under its policies or shall furnish separate certificates and endorsements for each sub-consultant. All coverages for sub-consultants shall be subject to all of the requirements stated herein.
5. Certificate(s) of insurance must be mailed to the ATN staff member specified in the solicitation document, and the solicitation number must be referenced on the certificate(s).

In the event the Consultant is self-insured for workers’ compensation coverage, it shall furnish Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Office of Self Insurance Plans, Sacramento, California.

**END OF SECTION**

# SECTION 06: GENERAL CONDITIONS

1.
2.

## AGREEMENT DOCUMENTS

All rights and obligations of ATN and the Consultant are fully set forth and described in the Agreement documents. All parts of the Agreement Document are intended to be fully correlated so that any work called for in one part and not mentioned in another, and vice versa, is to be executed the same as if mentioned in all said documents. The individual documents comprising the Agreement Documents are complementary, and indicate the prosecution and completion of the work. Anything mentioned in the Specifications and not shown on the Agreement Documents, shall be of like effect as if shown or mentioned in both. The intent of the Agreement Documents is to include all items necessary for the proper execution and completion of the work.

## RELATIONSHIP OF PARTIES

Nothing contained herein shall be construed as creating the relationship of employer and employee between ATN and Consultant or their agents and employees. The Consultant shall perform its services as an independent consultant and in accordance with its own methods, the Contract Document, applicable laws and regulations. The Consultant shall have exclusive and complete control over its employees and sub-consultant.

## INDEMNIFICATION

Indemnity. Consultant shall, to the fullest extent permitted by law, hold harmless, protect, defend and indemnify ATN and its Board of Directors and each member of the Board, officers, agents and employees, representatives and their successors and assigns (“ATN” and/or “ Indemnified Parties”), from and against any and all losses, liabilities, claims, suits, damages, expenses and costs including reasonable attorney's fees and costs, and expert costs and investigation expenses arising out of or attributable, in whole or in part, by to the performance or failure to perform by Consultant, its employees, representatives, sub-consultants, or agents regardless of whether or not such claim, loss or liability is caused, in part by a party indemnified hereunder.

General Indemnity Provisions. This indemnity is in addition to any other rights or remedies which ATN may have under the law or this Agreement. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, ATN may, at its sole discretion, reserve, retain or apply any monies due to Consultant under this Agreement for the purpose of resolving such claims; provided however, that ATN may release such funds if Consultant provides ATN with reasonable assurances of protection of ATN's interest. ATN shall, in its sole discretion determine whether such assurances are reasonable.

Consultant agrees that its duty to defend the Indemnified Parties arises upon an allegation of liability based upon the performance of services under this Agreement by Consultant, its officers, agents, representatives, employees, sub-consultants, or anyone for whom Consultant is liable and that an adjudication of Consultant’s liability is not a condition precedent to Consultant’s duty to defend. Consultant shall defend, at Successful Proposer’s own cost, expense and risk, with counsel of ATN's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the Indemnified Parties. To the extent of its liability, Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the Indemnified Parties, in any such suit, action or other legal proceeding. Consultant shall reimburse the Indemnified Parties for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

Consultant agrees to indemnify and defend ATN in the event ATN withholds production of records which Consultant has marked "Confidential” “Trade Secret” “Proprietary”, or similar designations, that are responsive to a Public Records Act request pursuant to California Government Code section 6250, et seq. or a Freedom of Information Act request. Consultant shall defend, indemnify and hold ATN, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with Prevailing Wage Laws, if applicable.

## GOVERNING LAW

The law of California shall govern the resolution of any issue arising in connection with the Agreement Document, including but not limited to, all questions concerning the validity of the Agreement Document; the authorities of the parties to enter herein; and modifications or amendment thereto; and the rights and obligations of the parties hereunder. Consultant warrants that in the performance of this agreement it shall comply with all applicable Federal, State and local laws and ordinances and all lawful orders, rules, and regulations thereunder.

Consultant agrees that the venue for any legal proceeding relating to or concerning this agreement is Orange County, California.

## FEDERAL REQUIREMENTS

Inasmuch as the services herein described are to be purchased with Federal assistance authorized by the Department of Transportation and Federal Transit Administration (FTA) laws and regulations codified at 49 USC §§ 5301 et seq.; or Title 23, United States Code (Highways); or the Transportation Equity Act for the 21st Century, Pub. L. 105-178, June 9, 1998, 23 USC § 101 note, as amended by the TEA-21 Restoration Act, Pub. L., 105-206, July 22, 1998, 23 USC § 101 note, (TEA-21), Moving Ahead for Progress in the 21st Century Act (MAP 21), Pub. L. 112-141, July 6, 2012, and other further amendments thereto, Fixing America’s Surface Transportation (FAST) Act, Public Law No: 114-94 , as may be amended, or other Federal enabling laws administered by FTA and guidance thereto, including without limitation FTA Circular 4220.1F and amendments thereto, the Consultant will be required to comply with all terms and conditions prescribed for third party contracts in a grant contract between the United States Department of Transportation and ATN and to flow all applicable federal provisions down to Sub-consultants at every tier. Federal provisions applicable to this Agreement and third party contracting in general are provided in Section 07 of RFP.

Specific guidelines shall be those prescribed by "Federal Transit Administration Master Agreement" (Form FTA-MA), "Uniform Requirements for Grants and Cooperative Agreements with State and Local Governments” (49 C.F.R., Part 18), "Third Party Contracting Guidance" (FTA Circular 4220.1 F), and "Grants and Cooperative Agreements with State and Local Governments” (OMB Circular A-1 02).

## INTEREST OF MEMBERS OF CONGRESS

In accordance with 18 U.S.C. 431, no member of, or delegates to, the Congress of the United States shall be admitted to a share or part of this RFP, any resulting agreements, or to any benefit arising therefrom.

## INTEREST OF MEMBERS OF PUBLIC AGENCY

No member, officer, or employee of ATN or of a local public body during their tenure or one (1) year thereafter shall have any interest, direct or indirect, in this agreement or the proceeds thereof.

To the Consultants knowledge, no Board member, officer or employee of ATN has any interest, whether contractual, non-contractual, and financial or otherwise in this transaction, if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other party.

## FRAUD

The Consultant certifies and affirms through execution of the False Claims Certificate, contained in this solicitation, the truthfulness and accuracy of any statement it has made, it makes, it may make or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false or fictitious, or fraudulent claim, statement, or submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.

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

The Consultant agrees to include the above two (2) clauses in each sub-consultant agreement financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the sub-consultant who will be subject to the provisions.

The Consultant acknowledges that ATN has the right to revoke acceptance if it was deceived into an acceptance by fraud. Fraud involves an intentional deceit or falsehood. Acceptance due to fraud may be revoked even if the defect was patent.

## CONTINUING THE WORK DURING DISPUTES

The Consultant shall continue the services and adhere to the progress schedule during all disputes or disagreements with ATN over any work listed in the Scope of work, price, or time dispute. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the Consultant and ATN may otherwise agree in writing.

## SUSPENSION FOR CAUSE OR CONVENIENCE

ATN may, without cause, order the Consultant in writing to suspend, or interrupt performance of the Work in whole or in part for such period of time as ATN may determine. An adjustment may be made for an increase in the cost of performance of the Agreement including profit on the increased cost of performance, if any, caused by any such suspension or interruption. An equitable adjustment may be made of the price or prices specified in the Agreement relating to the portion of the Work not suspended or interrupted by the notice of suspension or interruption. No adjustment shall be made to the extent:

1. That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Consultant is responsible; or
2. An equitable adjustment is made or denied under another provision of this Agreement.

## EFFECT OF SUSPENSION, OR INTERRUPTION FOR CAUSE OR CONVENIENCE

Any suspension or interruption for cause or convenience shall be effected by delivery to the Consultant of a written notice of suspension or interruption specifying the extent to which performance of Work under the Contract is suspended or interrupted and the date upon which such suspension or interruption becomes effective. After receipt of the notice of suspension or interruption and except as otherwise directed by ATN, the Consultant shall:

1. Stop Work under the Agreement on the date and to the extent specified in the notice of suspension or interruption;
2. Place no further orders or subcontracts for materials, services or facilities except as necessary to complete the portion of the Work under the Agreement which is not suspended or interrupted;
3. Place no further equipment at the Project except as necessary to complete the portion of the Work under the Agreement which is not suspended or interrupted;
4. Terminate all orders or subcontracts to the extent they relate to the performance of Work suspended or interrupted by the notice of suspension or interruption;
5. Assign to ATN in the manner, at the times, and to the extent directed ATN, all the right, title and interest of the Consultant under the orders and subcontracts so suspended or interrupted. ATN shall have the right, in its discretion, to settle or pay any or all claims arising out of the suspension or interruption of such orders and subcontracts;
6. Settle all outstanding liabilities and all claims arising out of such suspension or interruption of orders and subcontracts, with the approval or ratification of the Board to the extent the Board may so require. The Board’s approval or ratification shall be final for all purposes of this clause;
7. Transfer title to ATN, and deliver in the manner, at the times, and to the extent, if directed by ATN, the fabricated or unfabricated parts, work in process, completed Work, supplies and other materials produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of suspension, or, and the completed or partially completed plans, drawings, information and other property which, if the Agreement had been completed, would have been required to be furnished to ATN;
8. Use its best efforts to sell, in the manner, at the times, and to the extent, and at the price or prices that ATN direct or authorized, any property of the types previously referred to herein, but the Consultant shall not be required to extend credit to any purchaser and may acquire any such property under the conditions prescribed and at a price or prices approved by ATN. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by ATN to the Consultant under this Agreement or shall otherwise be credited to the price or cost of the Work covered by this Agreement or paid in such other manner as ATN may direct;
9. Complete performance of such part of the Work as shall not have been suspended or interrupted by the notice of suspension or interruption;
10. Take such action as may be necessary, or as ATN may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the Consultant and in which ATN has or may acquire an interest;
11. The Consultant shall maintain the Work site and provide such ingress and egress for local resident or tenants or the public as may be necessary during the period of suspended work or until the Agreement has been declared terminated; and
12. Maintain all required insurance as if the Agreement had been satisfactorily performed and accepted by ATN.

After receipt of the notice of suspension, or interruption, the Consultant shall submit to ATN a certified suspension or interruption claim. Such claim shall be submitted promptly but in no event later than ninety (90) days from the effective date of the notice of suspension or interruption. If the Consultant fails to submit a suspension or interruption claim at any time after such ninety (90) day period, ATN may determine, on the basis of information available to it, the amount, if any, due to the Consultant. ATN shall then pay to the Consultant the amount so determined.

After receipt of a certified claim, ATN and the Consultant may agree upon the whole or any part of the amount or amounts to be paid to the Consultant because of the total or partial suspension or interruption of the Contract. The amount may include a reasonable allowance for profit on Work performed. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Work not suspended, or interrupted and any claims ATN may have against the Consultant. Nothing in this section, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Consultant pursuant to this paragraph.

After receipt of a certified claim, if the Consultant and ATN fail to agree on the amounts to be paid to the Consultant, ATN shall determine, on the basis of the information available to it the amount, if any, due to the Successful Proposer by reason of the suspension or interruption and shall pay the Consultant the amount which shall be determined as follows:

For all work specified in the Agreement which is performed before the effective date of the notice of suspension or interruption, the total of:

1. The reasonable cost to the Consultant, without profit, for all Agreement Work performed prior to the notice of suspension or interruption, including the Work done to secure the project for termination. In determining the reasonable cost, ATN may utilize the schedule of values, Agreement unit prices, Agreement lump sum, the percentage of Work completed and any other method available to it. For purposes of determining reasonable costs, deductions will be made for the cost of materials to be retained by the Consultant, amounts realized by the sale of materials, and for other appropriate credits against the cost of the Work. When in the opinion of ATN the cost of an item of Work is unreasonably high, the reasonable cost to be allowed will be the estimated reasonable cost of performing such Work in compliance with the requirements of the plans and specifications and excessive actual cost shall be disallowed.
2. Reasonable cost will include a reasonable allowance for project overhead and general administrative overhead not to exceed a total of ten percent (10%) of direct costs of such Work.
3. A reasonable allowance for profit on the cost of the Work performed as determined under Subsection (a), of this section, provided the Consultant established to the satisfaction of ATN that it would have made a profit had the Contract been completed and provided further, that the profit allowed shall in no event exceed five percent (5%) of the cost of the Work completed.
4. The reasonable cost to the Consultant of handling material returned to the vendor, delivered to ATN or otherwise disposed of as directed by ATN.

In no event shall ATN be liable for costs incurred by the Consultant or any of its sub-consultants after receipt of a notice of suspension, interruption or termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement post-suspension, post-interruption or post-termination, employee salaries, administrative expenses, overhead or unabsorbed overhead, the costs of preparing and submitting the proposal, attorneys’ fees or other costs relating to the prosecution of a claim or lawsuit, pre-judgment interest, or any other expense which is not reasonable or authorized as referenced above.

## TERMINATION

1. Termination for Convenience: ATN may terminate the Agreement, in whole or in part, at any time by written notice to the Consultant. The Consultant shall only be paid its justifiable costs, including Agreement closeout costs and profit on work performed up to the time of termination but not for anticipatory profits. If the Consultant has any property in its possession belonging to ATN, the Consultant will account for the same and dispose of it in the manner ATN directs. In the event the Consultant believes they have a legitimate claim for termination costs, the Consultant is to submit a termination claim within ten (10) working days from the receipt of ATN’s “Intent to Terminate” letter. Upon the completion of negotiations for any claimed costs, ATN will issue a Termination for Convenience letter specifying the exact date that performance under the Agreement is to cease.
2. Termination for Default: If the Consultant fails to perform in any manner its obligations under the Agreement or fails to comply in any other manner with the provisions of the Agreement, ATN may terminate the Agreement for default. Termination will be effective upon notification of the Consultant by ATN pursuant to the Agreement. Said notice shall set forth the manner in which the Consultant is in default. On termination for default the Consultant will only be paid the Agreement price for supplies and/or materials delivered and accepted and for work completed in accordance with the Agreement.
3. If it is later determined by ATN or any other decision maker including a court of competent jurisdiction and arbitrator, that the Consultant had an excusable reason for not performing, such as a strike, fire, or flood or events which are not a default; ATN, after setting up a new delivery or performance schedule, may allow the Consultant to continue work, or treat the termination as a termination for convenience, at ATN’s sole option.
4. Rights of ATN in the Event of Termination for Default: In the case of a termination of the Agreement for default by the Consultant, the Consultant agrees that ATN may procure the materials and services to complete the project from other sources at the sole discretion of ATN and may be deducted from the unpaid balance due the Consultant, or, if applicable, may collect against the Consultant bond of surety, or may invoice the Consultant for all costs so paid. The prices paid by ATN to complete the project shall be considered the prevailing market price at the time such purchase is made or such Agreement is entered into.
5. Separate Agreement negotiations may be entered into, at the sole discretion of ATN, after the Agreement termination concerning the disposition and materials, supplies and equipment acquired by the Consultant for the requirements of the agreement.
6. Remedies and Rights of Consultant: The Consultant shall not be relieved of any responsibility under the Agreement for work accepted by ATN before the termination of the agreement. Furthermore, the termination of the Agreement shall in no way relieve the Consultant from any of its covenants, undertakings, duties and obligations under this Agreement nor limit the rights and remedies of the Board hereunder in any manner whatsoever.
7. Opportunity to Cure: In the case of a termination for breach or default, ATN will allow the Consultant ten (10) days in which to cure the defect, except that if the nature of the cure requires more than ten (10) days to complete, then the cure period shall be extended sufficiently to allow completion of the cure if being diligently pursued by the Consultant. If the Consultant fails to remedy to ATN’s satisfaction the breach or default of any of the terms, covenants, or conditions of the Agreement within ten (10) days or other cure period after receipt by Consultant or written notice from ATN setting forth the nature of said breach or default, ATN shall have the right to terminate the Consultant without any further obligation to the Consultant. Any such termination for default shall not in any way operate to preclude ATN from also pursuing all available remedies against the Consultant and its sureties for said breach or default.

## BUSINESS ETHICS EXPECTATIONS

During the performance of work under a future agreement, the Consultant agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the dealings with ATN.

## CONSULTANT ASSOCIATED WITH THE PROJECT

The Consultant listed below have been associated with the development and/or the preparation of this RFP and are provided for informational purposes only. This list is not intended to be relied on for purposes of compliance with any conflict of interest rules or applicable laws or regulations affecting this RFP. Consultants are solely responsible for due diligence in identifying and avoiding all potential conflicts of interest related to contracting for, and performing the services as required by this RFP and resulting Agreement.

1. Michelle Kirkhoff Consulting, LLC
2. SDE Consulting
3. Trillium Solutions, Inc.

## SOCIAL MEDIA

Proposers or the Consultant is prohibited from using any social media to reference any ongoing proposal or solicitation process without ATN’s express written permission. Please see the terms of the Agreement as provided in the contract documents for any additional requirements or obligations

## PUBLIC RECORDS ACT/CONFIDENTIALITY OF PROPOSALS

Access to government record is governed by the laws of the State of California under the California Public Records Act (Gov. Code 6250, et seq.) [Act]. Proposal price forms submitted to ATN in response to this RFP are public records and may, therefore, be disclosed in accordance with the California Public Records Act. Any such proprietary information, trade secrets or confidential commercial and financial information which a Proposer believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not ensure confidentiality.

The Proposer shall submit proprietary information, trade secrets or confidential commercial and financial information, which a Proposer believes should be exempted from disclosure, in a separate volume specifically identified and marked as “Confidential”, or “Trade Secret”, or “Proprietary”, or a similar designation.

## APPLICABLE LAWS AND REGULATION

All items prepared by the Successful Proposer shall conform to all laws, statutes and ordinance, zoning requirements, applicable rules and regulations and the methods and procedures of all local, State and Federal; governmental boards, bureaus, or agencies having jurisdiction over the Contract Document.

## ASSIGNMENT AND SUBCONTRACTING

The Successful Proposer shall not assign, sublet, or transfer the Contract Document or any rights under or interest in the Contract Document without the written consent of ATN, which may be withheld for any reason.

Nothing shall prevent the Successful Proposer from employing independent associates and sub-consultants as the Successful Proposer may deem appropriate to assist in the performance of the Agreement Document.

Certain work may be purchased or contracted from an outside source under a subcontract, and the Successful Proposer shall assume full responsibility for all work and materials. ATN reserves the right to approve the use of any sub-consultant and the Successful Proposer must make a request in writing to use a sub-consultant not named in the proposal and Agreement.

## CONTINGENT FEES AND GRATUITIES

The Successful Proposer warrants and covenants as follows:

1. That no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach of violation of this warranty ATN shall have the right to annul the contract without liability or in its discretion to deduct from the total price or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
2. That no gratuities, in the form of entertainment, gifts or otherwise, have been or will be offered or given by the Proposer or any of its agents, employees or representatives to any official ATN employee or member of the Board in an attempt to secure a contract or favorable treatment in awarding, amending or making any determination related to the performance of this work.

## COMMENCEMENT OF CONTRACT SERVICES:

1. Following the execution by both parties of Contract Document and receipt of required insurance certificates, the Successful Proposer shall receive a Fully Executed Contract (FEC) authorizing the commencement of work in accordance with the Period of Performance as stated in the contract. Commencement of work by Successful Proposer before receipt of the FEC is at the sole risk and expense of the Successful Proposer who shall be fully liable for any damage or injury sustained by ATN or third parties resulting therefrom.
2. The Successful Proposer shall begin work immediately upon receipt of the FEC and shall complete all of the work as required.

## ADDING PERSONNEL TO THE CONTRACT

The Successful Proposer shall identify key personal assigned to the Contract such key personal shall not be replaced or removed from the Project without approval by ATN. Key personal shall be identified for not only the Successful Proposer but also all sub-consultants.

## PAYMENTS

The Successful Proposer shall be paid based on services rendered, such payment shall be full compensation for services and work performed. Advance payments are prohibited.

## PROMPT PAYMENT (49 CFR 26.29)

Not later than ten (10) days after receipt of each progress payment from ATN, the Successful Proposer shall pay to any sub-consultant performing any Work, the respective amounts allowed to the Successful Proposer for work performed by the sub-consultant, to the extent of each sub-consultant’s interest therein, unless otherwise agreed to in writing.  For projects that issue progress payment invoices, upon incremental acceptance of any portion of the work by ATN, the Successful Proposer shall pay each of its sub-consultants from whom retention has been withheld, each sub-consultants share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. This clause applies to both DBE and non-DBE sub-consultants.

## METHOD OF COMPENSATION

The method of payment is to be a consultant firm fixed price contract and reimbursed based on the percentage of work completed during the invoice period. The fee shall include total compensation for all direct and indirect costs, overhead, fringe benefits and fee (profit) as detailed in **Exhibit B.**

**END OF SECTION**

# SECTION 07: SPECIAL CONDITIONS

**FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES**

It is the responsibility of the Proposer to ensure that all clauses applicable to the Work of the Agreement resultant from this RFP are adhered to by the Consultant and its Sub-consultants when applicable.

|  |  |  |
| --- | --- | --- |
| **Sec.** | **Contract Clause** | **Applicability to Type of Contract** |
| 1. | Fly America Requirements | When Transportation Paid By FTA Funds |
| 2. | Energy Conservation Requirements | All |
| 3. | Clean Water Requirements | Value > 100K |
| 4. | Lobbying | All |
| 5. | Access to Records and Reports | All |
| 6. | Federal Changes | All |
| 7. | Clean Air | Value > 100K |
| 8. | Recycled Products | Value > 10K In Fiscal Year |
| 9. | No Government Obligation to Third Parties | All |
| 10. | Program Fraud and False or Fraudulent Statements and Related Acts | All |
| 11. | Termination | Value > 10K |
| 12. | Government-Wide Debarment and Suspension (Non-procurement) | Value > 25K |
| 13. | Privacy Act | All |
| 14. | Civil Rights Requirements | All |
| 15. | ADA Access Requirements | All |
| 16. | Breaches and Dispute Resolution | Value > 100K |
| 17. | Patent and Rights in Data | Research Projects Only |
| 18. | Disadvantaged Business Enterprise (DBE) | All |
| 19. | Incorporation of FTA Terms | All |
| 20. | Conformance with National ITS Architecture | Contracts and Solicitations for ITS projects only |

1. **FLY AMERICA REQUIREMENTS**

**49 U.S.C. §40118
41 CFR Part 301-10.131 - 301-10.143**

**Applicability to Contracts**: The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

**Flow down Requirements**: The Fly America requirements flow down from ATN to first tier consultants, who are responsible for ensuring that lower tier consultants and sub-consultants are in compliance.

**Fly America** - The Consultant agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10.131 - 301-10.143, which provide that recipients and sub-recipients of Federal funds and their consultants are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Consultant agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

1. **ENERGY CONSERVATION REQUIREMENTS**

**42 U.S.C. 6321 et seq.
49 CFR Part 622**

**Applicability to Contracts**:The Energy Conservation requirements are applicable to all contracts.

**Flow down Requirements**:The Energy Conservation requirements extend to all third party consultants and their contracts at every tier and, sub-recipients and their sub-agreements at every tier.

**Energy Conservation** - The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act. The consultant agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, “Requirements for Energy Assessments,” 49 CFR part 622, subpart C.

1. **CLEAN WATER REQUIREMENTS**

**33 U.S.C. 1251 - 1377**

**Applicability to Contracts**: The Clean Water requirements apply to each contract and subcontract which exceeds $100,000.

**Flow down Requirements**:The Clean Water Act requirements flow down to ATN third party consultants and their contracts at every tier, and sub-recipients and their sub-agreements at every tier.

**Clean Water** - (a) The consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. 1251 – 1377 et seq.

(b) The consultant agrees to report each violation to ATN and understands and agrees that ATN will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office in compliance with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368

(c) The consultant agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f – 300j-6.

(d) The consultant also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

1. **LOBBYING**

**31 U.S.C. 1352**

**49 CFR Part 19**

**49 CFR Part 20**

**Applicability to Contracts**:The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

**Flow Down Requirements** The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]** - Consultants who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above 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 a Federal 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. Each tier certifies to the tier above that it will not and has not taken any action involving the Project or the Underlying Agreement for the Project, including any award, extension, or modification. Each tier 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 are forwarded from tier to tier up to ATN.

1. **ACCESS TO RECORDS AND REPORTS**

**49 U.S.C. 5325**

**18 CFR 18.36(i)**

**49 CFR 633.17**

**Applicability to Contracts**:Reference Chart "Requirements for Access to Records and Reports by Type of Contracts", Item 6 of this Section.

**Flow down Requirements** FTA does not require the inclusion of these requirements in subcontracts.

**Access to Records -** The following access to records requirements apply to this Contract:

(1) The Consultant agrees to provide ATN, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Consultant access to Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

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

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

(4) The Consultant agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Consultant agrees to maintain same until ATN, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).

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

(6) Requirements for Access to Records and Reports by Types of Contract

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Contract Characteristics** |  | Operational Service Contract | Turnkey | Construction | Architectural Engineering | Acquisition of Rolling Stock | Professional Services |
| Non State Grantees a. Contracts below SAT ($100,000) b. Contracts above $100,000/Capital Projects  |  | Yes1Yes1 | Those imposed on non-state Grantee pass thru to Consultant | YesYes | YesYes | YesYes | YesYes |
|  |  |  |  |  |  |  |  |

Sources of Authority: 1 18 CFR 18.36 (i)

1. **FEDERAL CHANGES**

**49 CFR Part 18**

**Applicability to Contracts**:The Federal Changes requirement applies to all contracts.

**Flow down Requirements**: The Federal Changes requirement flows down appropriately to each applicable changed requirement.

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

1. **BONDING REQUIREMENTS**

This section applies only to construction or facility improvement contracts exceeding $100,000.

1. **CLEAN AIR**

**42 U.S.C. 7401 – 7601(q)**

**40 CFR 15.61**

**49 CFR Part 18**

**Applicability to Contracts**:The Clean Air requirements apply to all contracts exceeding $100,000, including indefinite quantities where the amount is expected to exceed $100,000 in any year.

**Flow down Requirements:** The Clean Air requirements flow down to all subcontracts which exceed $100,000.

**Clean Air** - (1) The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7601(q) et seq. The Consultant agrees to report each violation to ATN and understands and agrees that ATN, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Consultant also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

1. **RECYCLED PRODUCTS**

**42 U.S.C. 6962**

**40 CFR Part 247**

**Executive Order 12873**

**Applicability to Contracts**:The Recycled Products requirements apply to all contracts for items designated by the EPA, when the Consultant procures $10,000 or more of one (1) of these items during the fiscal year, or has procured $10,000 or more of such items in the previous fiscal year, using Federal funds.

**Flow down Requirements**: These requirements flow down to all consultant and sub-consultant tiers.

**Recovered Materials** - The consultant agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The consultant agrees to comply with the U.S. Environmental Protection Agency (US EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR part 247.

1. **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

**Applicability to Contracts**: Applicable to all contracts.

**Flow down Requirements**: This concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

**No Obligation by the Federal Government.**

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

(2) The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the sub-consultant who will be subject to its provisions.

1. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

**31 U.S.C. 3801 et seq.**

**49 CFR Part 31**

**18 U.S.C. 1001**

**49 U.S.C. 5307**

**Applicability to Contracts**: These requirements are applicable to all contracts.

**Flow down Requirements**: These requirements flow down to consultants and sub-consultants who make, present, or submit covered claims and statements.

**Program Fraud and False or Fraudulent Statements or Related Acts**

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

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

(3) The Consultant agrees to include the above two (2) clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the sub-consultant who will be subject to the provisions.

1. **TERMINATION**

**49 CFR Part 18**
**FTA Circular 4220.1F**

**See Section 6.12, “Termination,” of the RFP**

1. **GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)**

**49 CFR 18**

**2 CFR 1200**

**2 CFR 180**

**Executive Orders 12549 and 12689**

**31 U.S.C. 6101**

**Background and Applicability**: In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a consultant, sub-consultant, supplier, Consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered non-procurement transaction and the amount of the contract is expected to equal or exceed $25,000. This extends the coverage of the Department of Transportation non-procurement suspension and debarment requirements to all lower tiers of subcontracts under covered non-procurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180).This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

These provisions apply to all ATN contracts and subcontracts at any level expected to equal or exceed $25,000 as well as any contract or subcontract (at any level) for federally required auditing services. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, consultants, and sub-consultants (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System (EPLS), (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract.

Grantees, consultants, and sub-consultants who enter into covered transactions also must require the entities they contract with to comply 2 CFR 180 and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

**Flow down Requirements**:These requirements flow down to consultants and sub-consultants at all levels.

**Suspension and Debarment**:This contract is a covered transaction for purposes of 49 CFR Part 18. As such, the consultant is required to verify that none of the consultant, its principals, are excluded or disqualified as defined under Executive Orders Nos. 12549 and 12689.

The consultant is required to comply with 2 CFR 1200, and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into.

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

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

1. **PRIVACY ACT**

**5 U.S.C. 552**

**Applicability to Contracts**:When ATN maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

**Flow down Requirements***:* The Federal Privacy Act requirements flow down to each third party consultant and their contracts at every tier.

**Contracts Involving Federal Privacy Act Requirements**: The following requirements apply to the Consultant and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Consultant agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Consultant agrees to obtain the express consent of the Federal Government before the Consultant or its employees operate a system of records on behalf of the Federal Government. The Consultant understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

1. **CIVIL RIGHTS REQUIREMENTS**

**29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.**

**See Section 08, “Civil Rights and Disadvantaged Business Enterprise Requirements,” of this RFP.**

1. **ADA ACCESS REQUIREMENTS**

**49 U.S.C. § 5301, 29 U.S.C. § 794, 42 U.S.C. § 12101**

**Applicability to Contracts**:The Consultant shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Consultant shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

1. **BREACHES AND DISPUTE RESOLUTION**

**49 CFR Part 18
FTA Circular 4220.1F**

**Applicability to Contracts**:All contracts in excess of $100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

**Flow Down Requirements**: The Breaches and Dispute Resolutions requirements flow down to all tiers.

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

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

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

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the ATN and the Consultant arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the ATN is located.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by ATN or Consultant shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

1. **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

**49 CFR Part 26**

**Section 1101(b) of MAP-21 (23 U.S.C. § 101 note)**

**See Section 08, “Civil Rights and Disadvantaged Business Enterprise Requirements,” of this RFP.**

1. **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

**FTA Circular 4220.1F**

**Applicability to Contracts**:The incorporation of FTA terms applies to all contracts and subcontracts at every tier.

**Flow Down Requirements** The incorporation of FTA terms has unlimited flow down.

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the most current FTA Circular 4220, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any ATN requests which would cause ATN to be in violation of the FTA terms and conditions.

1. **NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS**

**23 U.S.C. Section 517(d)**

**23 U.S.C. §502**

Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

**END OF SECTION**

# SECTION 08: CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

1. **CIVIL RIGHTS**
	1. The Consultant will be required to comply with these applicable civil rights, nondiscrimination, and equal employment opportunity laws and regulations:
		1. 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 26, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, et seq., 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6101 – 6107, 42 U.S.C. § 12101, et seq., 42 U.S.C § 12132, 49 U.S.C § 5307 (c)(1)(D)(ii), 49 U.S.C § 5332, California Civil Code § 51, California Government Code § 11135
		2. 29 CFR Part 1630, 41 CFR Part 60, 29 U.S.C. § 623, 42 U.S.C. § 2000e, 42 U.S.C. § 12112, California Government Code § 12900 - 12996
		3. 49 U.S.C. § 5325 (k).
		4. Fixing America’s Surface Transportation (FAST) Act, Public Law No: 114-94, as may be amended.
	2. The Civil Rights requirements flow down to all third party sub-consultants and their subcontracts at every tier.
	3. The following requirements apply to a contract awarded as a result of this solicitation:
		1. Nondiscrimination - In accordance with U.S. Department of Transportation (DOT), Federal, and State of California regulations 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, the Rehabilitation Act of 1973, as amended, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6102, 42 U.S.C. § 6101 – 6107, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, 42 U.S.C. § 12132, Federal transit law 49 U.S.C § 5307 (c)(1)(D)(ii), Federal transit law 49 U.S.C. § 5332, FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients.”, DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations, Executive Order No. 13166 and DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (70 FR 74087, Dec. 14, 2005), the Unruh Civil Rights Act, California Civil Code § 51, and California Government Code § 11135, the Consultant agrees that it will comply with the identified Federal and State of California laws and regulations, pertaining to ATN programs and activities, to ensure that no person will be denied the benefits of, or otherwise be subjected to, discrimination (particularly in the level and quality of transportation services and transportation-related benefits) on the bases of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, marital status, genetic information, medical condition, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations, other implementing requirements that DOT or FTA may issue, and any other applicable Federal and State of California statutes and/or regulations that may be signed into law or promulgated.
		2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to a contract awarded as a result of this solicitation:
2. Race, Color, Ancestry, Marital Status, Medical Condition, Genetic Information, Religion, National Origin, Sex, Sexual Orientation, Gender Identity, Gender Expression - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 49 U.S.C. § 5332, FTA Circular 4704.1, “Equal Employment Program Guidelines for Grant Recipients”, and , the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, including "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60, et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), Fair Employment and Housing Act, California Government Code Sections 12900 - 12996 and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect Bidder agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, ancestry, religion, marital status, medical condition, genetic information, national origin, sex, sexual orientation, gender identity, gender expression, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements that DOT or FTA may issue, and any other applicable Federal statutes that may be signed into law or Federal regulations that may be promulgated.
3. Sex – The Consultant agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1975, as amended, 20 U.S.C. § 1681, and 49 CFR part 25. In addition, the Consultant agrees to comply with any implementing requirements that DOT or FTA may issue.
4. Age - The Consultant agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, 45 CFR part 90, the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, and Equal Employment Opportunity Commission (EEOC) implementing regulations 29 CFR part 1625. In addition, the Consultant agrees to comply with any implementing requirements that DOT or FTA may issue.
5. Disabilities - The Consultant agrees to comply with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(d), 36 CFR part 1194, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, 49 CFR parts 27, 37, 38, and 39, and FTA Circular 4710.1, “Americans with Disabilities Act: Guidance”. In addition, the Consultant agrees to comply with any implementing requirements that DOT or FTA may issue.
	1. The Consultant agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.
6. **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**
7. ATN encourages DBE participation in this solicitation. In order to qualify as a DBE, a Consultant, or a Consultant’s sub-consultant, must be certified as a DBE under 49 CFR Part 26. As a recipient of Federal funds, ATN must comply, and insure that it’s Consultant(s) comply with 49 CFR Part 26 and Section 1101(b) of the Fixing America’s Surface Transportation Act (FAST Act).
8. DBE Requirements/DBE Obligation:
	1. The Contract to be awarded may be funded in part by the U.S. Department of Transportation (DOT) FTA. As a condition of financial assistance agreements between ATN and the U.S. DOT, ATN has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
	2. The Contract to be awarded may be funded in part by the U.S. DOT FTA. As a condition of financial assistance agreements between ATN and the U.S. DOT, ATN has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
	3. Pursuant to Race-Neutral DBE policy directive issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in Western States Paving v. Washington State Department of Transportation and the FTA’s Guidance (Docket No. FTA-2006-24063; dated March 23, 2006), ATN will strictly utilize race-neutral measures to meet its overall DBE goals and objectives. Consultants are encouraged to afford small businesses, including DBEs, an equitable opportunity to compete for and perform on a contract resulting from this solicitation.
	4. The Consultant, and any of its sub-consultants, are to ensure that DBE as defined in 49 CFR Part 26 have equal opportunities to participate in the performance of ATN contracts. In this regard, the Consultant shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the equal opportunities to compete for and are awarded contracts. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Each subcontract the Consultant signs with a sub-consultant must include the assurance in this paragraph (see 49 CFR 26.13(b)).
	5. 1101(b) of the FAST Act extends the Federal statutory requirement that FTA make available at least 10 percent (10%) of its funding under that Act for contracts with small business concerns owned and controlled by socially and economically disadvantaged people. ATN and sub-recipients (Consultant and its sub-consultants) of FTA-funding assists FTA in meeting this national goal. To receive FTA assistance, ATN and sub-recipients (Consultant and its sub-consultants) of FTA-funding must comply with applicable requirements of DOT regulations 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”.
9. DBE Financial Institutions
10. The Consultant is to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage sub-consultants to make use of these institutions also.
11. A list of Minority Owned Banks is on the Federal Reserve website at <http://federalreserve.gov/releases/mob/current/default.htm>. The Federal Reserve website is updated periodically.
12. The Consultant is encouraged to use the services offered by banks in the community which are owned and controlled by minorities or women when feasible and beneficial.
13. DBE Reporting and Certification
14. Monthly reporting requires the submittal of a “Monthly Sub-consultant Payment Report”, which is used by ATN to verify payments to DBE and non-DBE sub-consultants. When completing this form, the Consultant must designate DBE sub-consultants by placing an asterisk in front of their name. As Federal law requires that ATN have proof of payment to a DBE sub-consultant, the sub-consultant must initial the form and verify payment received. Failure to submit a properly executed form will result in delayed payment. Failure to submit these reports in a timely manner may result in a penalty of $10 per day, per report.
15. In order for the Consultant to submit a properly executed “Monthly Sub-consultant Payment Report,” the Consultant must verify that Sub-consultants DBE certification is current at time of payment.
16. Certified Consultants can be found at the State of California web site: <http://www.dot.ca.gov/hq/bep/find_certified.htm>
17. DBE Contract Assurance (49 CFR 26.13)
18. ATN does not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. ATN takes all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT assisted contracts. ATN’s DBE Program as required by 49 CFR Part 26 and as approved by U.S. DOT will be is incorporated by reference into the contract resulting from this solicitation.
19. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate, which may include, but is no limited to:
	1. Withholding monthly progress payments;
	2. Assessing sanctions;
	3. Liquidated damages; and/or
	4. Disqualifying the Consultant from future bidding as non-responsible.
20. DBE Prompt Payment (49 CFR 26.29)
21. See Section XXX of the IFB.
22. Failure to comply with these provisions or delay in payment without prior written approval from ATN will constitute noncompliance, which will result in appropriate administrative sanctions, including, but not limited to a penalty of 2% of the amount due per month for every month that payment is not made.

**END OF SECTION**

**ATTACHMENT A: PROJECT STORYBOARD**

