

INVITATION FOR BIDS

P20148
(revised 09/28/2020)

SVBX - BART FOLLOW-ON CISCO SYSTEMS SPARES



Procurement, Contracts and Materials Management Department
3331 North First Street, Building B
San Jose, CA 95134-1906
www.vta.org

| | |
|-----------------------------|---|
| Buyer | Elena Lazo |
| <u>Key IFB Dates</u> | |
| Date Issued | SEPTEMBER 23, 2020 |
| Pre-Bid Conference | OCTOBER 1, 2020, 10:00 AM P.T. |
| Submit Questions | OCTOBER 5, 2020 by 5:00 PM P.T. |
| Submit Bids: | OCTOBER 22, 2020 by 2:00 PM P.T. |

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*Procurement, Contracts and Materials Management Department
3331 North First Street. Building "B"
San Jose, CA 95134-1906*

**INVITATION FOR BIDS
P20148**

SVBX - BART FOLLOW-ON CISCO SYSTEMS SPARES

Invitation for Bid. Request for quotation. Request for proposal.

INSTRUCTIONS:

The enclosed Santa Clara Valley Transportation Authority (herein referred to as "VTA") "conditions" form an integral part of each bid ("Bid") submitted. Prices must be F.O.B destination, freight prepaid and allowed, unloaded to the dock unless otherwise specified.

| BUYER | DATE ISSUED | CLOSING TIME/DATE | BID NUMBER |
|---|--|--------------------------|-------------------|
| Elena Lazo | SEPT. 23, 2020 | OCTOBER 22, 2020 | P20148 |
| Phone (408) 321-5574 FAX (408) 955-9729 e-mail: elena.lazo@vta.org | <ul style="list-style-type: none"> • Pre-Bid Conference: October 1, 2020 at 10:00 AM P.T. • Last Day to ask Questions: October 5, 2020; by 5:00 PM P.T. • Bids will be received until 2:00 PM P.T. on the above closing date. | | |

- CONTRACT TITLE:** SVBX - BART FOLLOW-ON CISCO SYSTEMS SPARES
- PRE-BID CONFERENCE:** A Pre-Bid conference is scheduled for OCTOBER 1, 2020 at 10:00 AM P.T. at the following address:

**Santa Clara Valley Transportation Authority
3331 North First St., Building B
San Jose, California 95134-1906**

Attendance at the Pre-Bid Conference is not mandatory but is strongly encouraged. Attendance may be in person or via teleconference. Email the buyer ("Buyer") listed above to register as a teleconference attendee. Teleconference registration deadline is **September 29, 2020 by 5:00 PM P.T.**

3. **BID OPENING TIME & LOCATION:** Each bidder (“Bidder”) must submit its sealed Bid through **email to: eSubmission@vta.org or mail your Sealed Bid to:** Santa Clara Valley Transportation Authority, Attn: Elena Lazo – Buyer, Procurement, Contracts and Materials Management Department at 3331 North First Street, Building B, San Jose, CA 95134. To drop off the Sealed Bid, please drop off your Sealed Bid at VTA, 3331 North First Street, Building B Front Lobby, Attention: Elena Lazo – Purchasing. There is a Bid/Proposal Drop Box and there is a sign for instruction placed next to this drop box. There is a provided sticker and time stamp machine. **You must place the stamped sticker on your Sealed Bid envelop before placing it in the drop box.** Sealed Bid must be received at VTA no later than 2:00 PM P.T. on OCTOBER 22, 2020 at 2:00 PM P.T. and at that time, publicly opened and read. No Bid will be received or accepted after 2:00 PM P.T. on OCTOBER 22, 2020.

The Bid opening broadcast will also be available online. Email the Buyer on or before 2:00 PM P.T. on OCTOBER 20, 2020 for receiving an email invitation to join the online Bid opening.”

4. **BID DOCUMENTS:** The following, in addition to this Invitation for Bid, constitute the Bid documents (“Bid Documents”) in order of precedence, and are the instructions and conditions to this Bid: **Check the appropriate boxes**

- Solicitation Amendments, if any
- Invitation for Bid
- Technical Specifications and/or Scope of Work
- Contractor Acknowledgement of Addenda (Bid Form 1-A)
- Schedule of Prices and Estimated Quantities (Bid Form 1-B)
- Listing of DBE Contractor or subcontractors (Bid Form 2-A)
- Supplemental Contractor and subcontractor Information (Bid Form 2-B)
- Instructions to Bidders
- Special Conditions
- VTA Standard Terms and Conditions
- Federal Requirements
- Federal Requirement Certificates
- Exhibit M-5 – Insurance Requirements
- Exhibit O – Bidder’s Questionnaire

Exhibit I – “No Bid” Response Form

5. BIDDER QUALIFICATIONS AND ELIGIBILITY FOR AWARD:

- A. Bidder must be an appointed, authorized reseller of Cisco Systems, Inc. (“Cisco”), who has the right and license to sell and distribute the goods and/or services set forth in the Scope of Work. Bidder must source the Cisco goods and/or services called for hereunder only through authorized Cisco distribution partners.
 - B. Each Bidder must complete, and submit with the Bid, the Contractor’s Questionnaire contained in these documents. If the Bidder is a joint venture, each joint venturer must prepare and submit a separate form. Failure to complete and return the Bidder’s Questionnaire may be grounds for rejection of the Bid.
 - C. When federal, state, or local law or ordinance requires a special license or permit, a Bidder must be properly licensed prior to submitting a Bid and furnish evidence of such with the Bid.
 - D. In order for a Bidder to be eligible to be awarded the Contract, the Bid must be responsive to the solicitation and VTA must be able to determine that the Bidder is responsible to perform the Contract satisfactorily.
 - E. Bids deviating or taking exception to the solicitation requirements may not be considered.
 - F. Bidder must have the equipment, organization, facilities, and financial capability to ensure delivery of the goods and/or performance of the services required by this solicitation.
- 6. TERM OF CONTRACT:** The term of the contract (“Contract”) awarded to the successful Bidder (herein also referred to as the “Contractor”) will be from the Effective Date of the Contract until the earlier of delivery of all of the Deliverables or two years after the Effective Date, unless earlier terminated as further set forth herein.
- 7. CONTRACT TYPE:** VTA anticipates the award of a firm, fixed-price Contract as a result of this solicitation.
- 8. OBLIGATION:** This Invitation for Bids does not obligate VTA to award a Contract or to pay costs incurred in the preparation or submittal of any Bid.
- 9. INSURANCE:** Each prospective Bidder is cautioned to review the Insurance requirements of this solicitation. See Exhibit M-5.
- 10. PRICE:** It is the desire of VTA to enter into a firm fixed price Contract with the successful Bidder who agrees that the prices quoted are firm and fixed for the duration of the Contract. The unit price as bid will apply regardless of the actual quantity purchased.

No additional charges will be allowed unless agreed to in writing by VTA prior to delivery of goods and/or services. Bidder agrees that the prices quoted on the attached Bid Form 1-B are maximum for the period of the proposed Contract, and in the event of a price decline, the benefit of such lower price will be extended to VTA.

11. PRICE INCREASE: [OMITTED]

12. FREIGHT TERMS: All materials must be FOB Destination, prepaid and allowed, at no additional cost to VTA unless specified otherwise in the Scope of Work, attached hereto. Destination is defined for purposes of this Contract as the VTA Yard locations as specified under Delivery or on the individual purchase orders associated with this Contract. Any exception to this policy may deem the Bid non-responsive.

13. INVOICE BILLING/PAYMENT TERMS: Invoices must be prepared per descriptions and pricing in this Bid.

Note: Invoices for goods or services not specifically covered in this Bid will not be approved for payment.

14. SPECIFICATIONS: See Scope of Work.

15. QUANTITIES: See Scope of Work, and the Exhibit 2- Bid Form 1-B, Contractor Price Sheet.

16. BIDS: All Bids must be received in sealed envelopes with the Bidder’s company name, Bid number, closing date and time noted on the outside of the envelope if send via mail or the sealed Bid can be emailed to: **eSubmission@vta.org**. Seal Bid can also be dropped off at VTA, Building B. There is a provided sticker, time stamp machine, and instruction. You must place the stamped sticker on your Sealed Bid envelop before placing it in the drop box.

17. TERMINATION: Please refer to the Federal Requirements section of these Bid Documents for termination conditions.

18. AWARD CRITERIA: Contracts will be awarded to the lowest responsive and responsible Bidder found to have the fitness, quality, and capacity to satisfactorily deliver the goods and services as detailed in the Bid Documents. Any potential Contract award will be subject to a VTA technical and business evaluation of the Bidder prior to any Contract award. VTA reserves the right to reject any and all Bids or to waive any informalities or technicalities in any Bid in the best interest of VTA. Single conforming Bids are subject to price or cost analysis by VTA. Bids will be valid for review and award up to ninety (90) days after Bid Opening.

The specific basis of award is the Total Bid designated on Bid Form 1-B Schedule of Prices sheet that is a part of these Bid Documents.

19. SOLICITATION SUBMITTALS: Each Bid submittal must include the following forms which are included in this IFB:

BID FORM 1-A: BIDDER ACKNOWLEDGEMENT OF ADDENDA.....21
 BID FORM 1-B: CONTRACTOR PRICE SHEET.....See Attachment 1
 BIDDER SIGNATURE PAGE.....32
 BID FORM 2-A, LISTING OF DBE CONTRACTOR OR SUBCONTRACTORS.....25
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AND SUBCONTRACTOR INFORMATION

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EXHIBIT A-1, BUY AMERICA CERTIFICATION.....51

EXHIBIT A-2, CERTIFICATION OF RESTRICTIONS ON LOBBYING.....53

EXHIBIT A-3, COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES
REPRESENTATION.....54

EXHIBIT O – BIDDER’S QUESTIONNAIRE.....55

EXHIBIT I – NO BID RESPONSE FORM.....59

20. BRAND NAME OR EQUAL: [OMITTED]

21. DELIVERY ADDRESS: Below is the delivery address for the deliverable items for this project:

Santa Clara Valley Transportation Authority
 River Oaks
 3331 North First Street
 San Jose, CA 95134
 Receiving Hours: 8:00 AM-4:00 PM

22. DISADVANTAGED BUSINESS ENTERPRISE POLICY:

- A. POLICY:** It is VTA policy to ensure that, as set out in VTA's Policy on Utilization of Disadvantaged Business Enterprises (DBEs) such businesses have an equitable opportunity to participate in the performance of Contracts and subcontracts.
- B. DBE GOAL:** VTA has not established a specific Disadvantaged Business Enterprise (DBE) goal for this project. However, the Bidder agrees to cooperate with VTA in meeting VTA’s overall goal of thirteen percent (13%) annual utilization of Disadvantaged Business Enterprises. In this regard Contractor will use its best efforts to ensure that DBEs must have an equitable opportunity to compete for subcontract work under this Contract.

23. WEBSITE REGISTRATION:

Bidders must register on VTA’s website as a condition of bidding to ensure receiving notification of any potential addenda or other pertinent information, as well as notification of closing and award even if this was a manually processed IFB. Go to <http://www.vta.org>, select “Doing Business with VTA” and then select “Get Registered”. The system will take you to the registration page where you will enter all your registration information. In the “NAICS Email Subscription Settings” check the box “New Solicitation and Updates, Including Plan Holder Updates”. Then check all the NAICS code boxes for the categories of business that represent your company.

Once you are confirmed as a registered vendor, click the “View Solicitations” link on the page. This will take you to the “Procurements” page where you will select this solicitation. Once you are on the page for this solicitation, you will need to register and log in to download the solicitation documents. You do this by entering in your email address and password in the boxes indicated. You will finalize your registration by downloading all the solicitation documents. This will register you as a plan holder for this solicitation.

It is vital to register as a plan holder, because if any addenda or notifications are posted for this solicitation, you will get an email directing you to go to the site for viewing and possible download.

Note: To review Bids after award of Contract, contact the Buyer listed in the Instructions section.

24. EXERCISE OPTIONS: [OMITTED].”

INSTRUCTIONS TO BIDDERS
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1. EXAMINATION OF DOCUMENTS:

- A.** A complete set of Bid Documents must be used in preparing a Bid; VTA assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of documents.
- B.** Each Bidder should carefully examine these Bid Documents and take such other steps as may be reasonably necessary to ascertain the Contract performance requirements. Failure to do so will not relieve Bidders from responsibility for estimating properly the difficulty or cost of successfully performing the Contract. Extra compensation will not be allowed for conditions that are determinable by examining these documents.

- 2. INTERPRETATION:** Should any discrepancies or omissions be found in the Bid specifications, or doubt as to their meaning, the Bidder must notify the Buyer in writing at once. The Buyer will send written instruction or addenda to all Bidders. Receipt of addenda by the Bidder must be acknowledged in the space provided on Bid Form 1-A. VTA will not be held responsible for oral interpretations. Questions must be received at least ten (10) days before date set to receive Bids. All addenda issued will be incorporated into the Contract. VTA will assume no responsibility for any understanding or representations concerning conditions made by any of its officers, agents, or employees prior to the execution of the Contract, unless included in these documents.

3. BIDDER QUALIFICATIONS AND ELIGIBILITY FOR AWARD:

- A.** Each Bidder must complete, and submit with the Bid, the Bidder's Questionnaire contained in these documents. If the Bidder is a joint venture, each joint venturer must prepare and submit a separate form. Failure to complete and return the Bidder's Questionnaire may be grounds for rejection of the Bid.
 - B.** When federal, state or local law or ordinance requires a special license or permit, a Bidder must be properly licensed prior to submitting a Bid and furnish evidence of such with the Bid.
 - C.** In order for a Bidder to be eligible to be awarded the Contract, the Bid must be responsive to the solicitation and VTA must be able to determine that the Bidder is responsible to perform the Contract satisfactorily.
 - D.** Bids deviating or taking exception to the solicitation requirements will not be considered.
 - E.** Bidder must have the equipment, organization, facilities, and financial capability to perform the services required by this solicitation.
- F. PROTESTS:** The following procedures must be used by Bidders seeking review of the Bid Documents or the Contract process:

- A. **SOLICITATION PHASE:** Prior to the closing date for submittal of Bids, Bidder may submit to VTA protests regarding the procurement process, or alleged improprieties in specifications or alleged restrictive specifications. Any such protests must be filed no later than ten (10) working days prior to the scheduled closing date. If necessary, the closing date of the solicitation may be extended pending a resolution of the protest.
- B. **PRE-AWARD:** Protests dealing with alleged improprieties in the procurement or the procurement process must be filed within five (5) working days of issuance of the Notice of Recommended Award. Protests must contain a statement of the grounds for protests and supporting documentation. Protestor will be notified of VTA's final decision prior to issuance of Award.

Protestors will have an opportunity to appear and be heard before the agency prior to the opening of proposals in the case of protests based on the content of the request for proposals or prior to final award in the case of protests based on other grounds. Proposer's requests and protests must be in writing and be addressed to:

**Santa Clara Valley Transportation Authority
Procurement, Contracts and Materials Management Department
Attention: Chief Procurement Officer
3331 North First Street, Building B
San Jose, California 95134**

The full text of VTA's Policy No. 36 may be obtained at <http://www.vta.org/about-us/doing-business-with-vta-policies>. Failure to comply with the above protest procedures will render a protest untimely and/or inadequate and will result in its rejection.

For federally funded projects, a Bidder may appeal VTA's determination of the protest to the Federal Transit Administration. All appeals submitted to the FTA must be filed and will be handled in accordance with FTA Circular 4220.1F.

5. PREPARATION OF BIDS:

- A. All prices and notations must be printed in ink or typewritten. No erasures are permitted. Errors may be crossed out and corrections printed in ink or typewritten nearby and must be initialed in ink by the person signing the Bid.
- B. Each item should be bid on separately. Prices should be stated in the units specified. Sales tax, if any, should be stated separately.
- C. Delivery date or time of performance is a part of the Bid and must be adhered to.
- D. All Bids must be signed by an authorized representative with the name, title, and firm name clearly printed.

6. SUBMISSION OF BIDS:

- A. Each Bid must be submitted on enclosed VTA forms, in sealed envelope, with company name, Bid number, closing date and time noted on the outside of the envelope.

- B.** Bid modifications or corrections thereof received after the closing time specified will be rejected.
 - C.** Notwithstanding the time for opening Bids established in the Request for Bid, the Bid opening might be postponed solely at VTA's discretion.
- 7. ACCEPTANCE OF BIDS:** Bids are subject to acceptance at any time **within ninety (90) days** after Bid Opening, unless otherwise stipulated in the Bid.
- 8. TIE BIDS:** In the event that two or more low Bids equal in all respects are received by VTA, the Contract will be awarded to the Bidder by the flip of a coin in the presence of witnesses, or the entire Bid may be rejected and re-bid.
- 9. AWARD:**
 - A.** Award of a firm fixed-price Contract, if awarded, will be made to the lowest responsive, and responsible Bidder.
 - B.** The Basis of Award will be the **Total Bid as submitted on Bid Form 1-B.**
 - C.** Unless the Bidder specifies otherwise in the Bid, or the Bid gives notice of an all or none award, VTA may accept any item or group of items of any Bid.
 - D.** VTA reserves the right to reject any or all Bids and to waive informalities and minor irregularities in Bids received.
 - E.** In the event of a discrepancy between the unit price bid and the price extension, the unit price bid will be deemed intended by the Bidder and the extension will be adjusted accordingly. Failure to list a unit price will result in the Bid being rejected as non-responsive.
 - F.** The Bidder whose Bid is accepted will, within the time established in section 7 above, enter into a written Contract with VTA and furnish the required Certificate of Insurance within five (5) working days of Notice of Award.
- 10. TAXES:** Contractor will be responsible for assessing any and all applicable taxes related to the purchase of, or installation of, materials used as part of this Contract. For material used on a VTA project, the Contractor will assess any and all applicable taxes and will, for purposes of determining transaction or use tax liability, use the VTA job site as the place where "engaged in business".
- 11. DBE DOCUMENTATION:** All Bidders are required to submit the following documents to the Buyer at the Bid Opening:
 - A.** Bid Form #2-A.
 - B.** Bid Form #2-B.

12. DISCLOSURE OF BID INFORMATION: After award, all Bids will be open to public inspection. VTA assumes no responsibility for the confidentiality of information offered in a Bid.

13. DESIGNATED POINT OF CONTACT: All communications with VTA regarding this IFB must be in writing (US mail/ email) to the Designated Point of Contact identified below. All emails must indicate in the subject line IFB P20148 for SVBX - BART Follow-on Cisco Systems Spares. No telephone calls will be accepted.

Except as otherwise provided herein, no contact will be entertained by the Procurement, Contracts, and Materials Management staff outside of the formal Q&A period, and/or by anyone other than the Designated Point of Contact regarding this IFB. Any unauthorized contact related to this IFB is not permitted. Any breach of this provision may result in the Bidder's submittal being deemed non-responsive and may be cause for rejection.

VTA Designated Point of Contact:
Elena Lazo, Buyer II
3331 N. First Street, Bldg. B
San Jose, CA 95134-1906
Elena.Lazo@vta.org

STANDARD TERMS AND CONDITIONS
P20148
SVBX - BART FOLLOW-ON CISCO SYSTEMS SPARES

1. **ACCEPTANCE:** VTA will not be bound by the terms and conditions stated in these RFQ Documents until a Contract is appropriately executed between VTA and Contractor or VTA accepts deliveries against the purchase order. These Bid Documents will be deemed incorporated into the Contract, and the Contractor will be bound by the terms and conditions set forth in these Bid Documents, when it executes, and returns said Contract. By entering into the Contract, Contractor will be deemed to have accepted the terms and conditions set forth herein; any additional or different terms proposed by Contractor will not be deemed a part the Contract unless expressly assented to in writing by VTA.

2. **TERMINATION AND SUSPENSION:**
 - A. VTA may, by giving at least ten (10) business days' written notice to Contractor, terminate this Contract, or suspend performance hereunder, in whole or in part at any time for VTA's convenience. Contractor will be compensated in accordance with the terms of this Contract for the Scope of Work satisfactorily performed prior to the effective date and time of termination or suspension. Contractor will have no right to recover lost profits on the balance of the Scope of Work.

 - B. VTA, by written notice given to Contractor, may declare default in Contractor's performance of any term of this Contract, specifying with particularity the basis for such default. Contractor must deliver a response thereto in writing to VTA within two (2) business days of receipt of the notice, setting forth a reasonable proposal to cure the default. If Contractor fails to deliver the foregoing response on time or fails to cure the default within ten (10) business days after receipt of the notice (or within such additional time the Parties may agree upon in writing), VTA may elect to terminate this Contract for cause by serving written notice thereof to Contractor.

 - C. In the event of such termination for cause, VTA will be relieved of any obligation of further payment to Contractor and may complete the remainder of the Scope of Work by itself, or by using an alternative, third party contractor. The additional cost to VTA for completing the Scope of Work will be deducted from any sum due to the Contractor and the balance, if any, must be paid to the Contractor upon demand. The foregoing will be in addition to any other legal or equitable remedies available to VTA.

 - D. If, after termination for failure to fulfill Contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of VTA.

3. **WARRANTY:**
 - A. Contractor expressly warrants that all services covered by this Contract will conform to the specifications or other descriptions upon which this Contract is based and will be fit and sufficient for the purpose intended.

- B.** Contractor agrees to re-perform any services not conforming to the foregoing warranty promptly, without expense to VTA, when notified of such nonconformity by VTA. In the event of failure by Contractor to correct defects in or re-perform non-conforming services promptly, VTA, after reasonable notice to Contractor, may make such corrections or re-perform such services and charge Contractor for the cost incurred by VTA thereby.
- C.** VTA may, at its option, require Contractor to grant full refund or credit to VTA, in lieu of re-performance, with respect to any item VTA is entitled to reject hereunder. VTA will have the right to cancel this order or any partial order if service conforming to specifications will not be ready at the time and in the quantities herein set forth. The foregoing will be in addition to any legal remedies available to VTA.
- 4. FORCE MAJEURE:** An event of force majeure refers to an event beyond the control and without the fault or negligence of the Party affected that prevents a Party from complying with any of its obligations under this Contract, including but not limited to:
- Acts of God (such as, but not limited to earthquakes, flood, fire or other physical natural disaster)
 - War, hostilities (whether declared or not), invasion, acts of terrorism, civil war, rebellion, revolution, requisition
 - Contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- A.** Neither Party is responsible for any failure to perform its obligations under this Contract if it is prevented or delayed in performing its obligations by an event of force majeure.
- B.** Where there is an event of force majeure, the Party prevented from or delayed in performing its obligations under this Contract (“Affected Party”) must immediately notify the other Party giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing that Party from, or delaying that Party in, performing its obligations under the Contract, and the Affected Party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its performance of the Contract and must use reasonable efforts to fulfill its obligations under the Contract.
- C.** Upon completion of the event of force majeure, the Affected Party must, as soon as reasonably practicable, re-commence the performance of its obligations under this Contract.
- 5. CHANGES:** VTA will have the right at any time prior to the delivery date of the services or goods to make changes in drawings, designs, specifications, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for performance, or otherwise affect any other provision of this Contract, a mutually agreed upon adjustment will be made and this Contract will be modified in writing accordingly. Any claim by Contractor for adjustment under this clause will be deemed waived unless made in writing within ten (10) working days after receipt by Contractor of notice of such change. Price increases or extensions of time for delivery will not be binding on VTA unless evidenced by a written change order executed by an authorized agent of VTA.
- 6. VTA’s PROPERTY:** The Contractor agrees that any documentation and equipment or material, including drawings, patterns, and specifications, supplied or paid for by VTA will be and remain

VTA's properties and will be held by the Contractor for VTA unless directed otherwise by VTA. The Contractor will account for such items and keep them in good/working condition and fully covered by insurance at all times without expense to VTA.

7. **ASSIGNMENTS AND SUBCONTRACTING:** This Contract and any payments to be made hereunder may not be assigned, subcontracted or transferred without the prior written approval of VTA.
8. **WAIVER:** VTA's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or VTA's waiver of any breach hereunder will not thereafter waive any other terms, conditions, rights or privileges.
9. **BANKRUPTCY/INSOLVENCY:** In the event of any proceeding by or against Contractor in bankruptcy, reorganization or insolvency or any assignment for the benefit of creditors or of a receiver, VTA will have the right, upon written notice to Contractor and without liability, to cancel this Contract with respect to any portion thereof not complete.
10. **ADDITIONAL DOCUMENTS:** All specifications and documents expressly referred to in this Contract are incorporated herein by reference. If such reference is to a portion of such specifications or documents, then only the portions referenced will be incorporated herein.
11. **COMPLIANCE WITH LAWS:** Contractor warrants that all services performed have been performed in compliance with, and Contractor agrees to be bound by, all applicable federal, state and local laws, orders, rules and regulations.
12. **THIRD PARTIES NOT TO BENEFIT:** This Contract is binding upon and will inure to the benefit of the parties hereto and their successors and permitted assigns, but will not inure to the benefit of any third party or other person.
13. **AUDIT AND RECORDS:**
 - A. Contractor must maintain, in accordance with generally accepted accounting principles and practices, complete books, accounts, records and data with respect to actual time devoted and costs incurred for services under this Contract. Such documentation must be supported by properly executed payrolls, invoices, Contracts and vouchers evidencing in detail the nature and propriety of any charges and sufficient to allow a proper audit of the services. All checks, payrolls, invoices, Contracts and other accounting documents pertaining in whole or in part to the services must be clearly identified and readily accessible.
 - B. For the duration of the Contract, and for a period of three (3) years thereafter, VTA, its representatives and the state auditor will have the right to examine and audit during Contractor normal business hours these books, accounts, records, data and other relevant information to the extent required to verify the costs incurred hereunder where such costs are the basis for billings under this Contract.

14. **PROHIBITED INTERESTS:**

- A. **SOLICITATION:** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or

secure this Contract and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely Contractor, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the Contract. For breach or violation of this warranty, VTA will have the right to rescind this Contract without liability.

B. INTEREST OF PUBLIC OFFICIALS: No Board Member, officer or employee of the VTA during his or her tenure or for two (2) years thereafter will have any interest, direct or indirect, in this Contract or the proceeds thereof.

C. INTEREST OF CONTRACTOR: The Contractor covenants that neither it nor its officers, directors or agents, presently has any interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The Contractor further covenants that in the performance of this Contract no person having any such interest will knowingly be employed.

15. NONDISCRIMINATION: During performance of this Contract, Contractor its employees and sub-Bidders must not unlawfully discriminate, harass or allow harassment against any person because of race, religious creed, color, sex, gender, gender identity, gender expression, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), genetic information, marital status, age (over 40), sexual orientation or military and veteran status, and the denial of family care leave. Contractor must ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment.

16. CONFIDENTIALITY AND PUBLICITY: Without the written consent of VTA, Contractor must not disclose to third parties other than its employees or authorized sub-Bidders or disclose or use for any purpose other than performance of the services any information provided to Contractor by VTA in connection with performance of this Contract, or any information developed or obtained by Contractor in the performance of this Contract, unless: (1) the information is known to Contractor prior to obtaining same from VTA or performing services under this Contract; (2) the information is, at the time of disclosure by Contractor, then in the public domain; or (3) the information is obtained by or from a third party who did not receive it, directly or indirectly, from VTA and who has no obligation of confidentiality with respect thereto.

17. SEVERABILITY: If any of the provisions or portions or applications thereof of this Contract are held to be unenforceable or invalid by any court of competent jurisdiction, VTA and Contractor will negotiate in good faith to create an equitable adjustment in the provisions of the Contract with a view toward effecting the purpose of this Contract, and the validity and enforceability of the remaining provisions or portions or applications thereof will not be affected thereby.

18. NOTICES: Notices provided for under this Contract will be provided in writing and addressed to VTA's authorized representative.

19. INDEPENDENT CONTRACTOR: Contractor is an independent Contractor and not the agent or employee of VTA in performing its services under this Contract.

- 20. ENTIRE CONTRACT:** This Contract constitutes the entire contract between VTA and Contractor relating to the subject matter hereof and supersedes any previous contracts or understandings, oral or written.
- 21. AMENDMENT:** Except as expressly provided herein, the provisions of this Contract cannot be altered, modified, or amended except through the execution of a written amendment executed by VTA and Contractor.
- 22. DAYS:** For purposes of this Contract, all references herein to “day” will mean calendar day, unless specified otherwise. All references to “calendar day” will mean any day, including Saturday, Sunday and all legal holidays. All references to “working day” will mean any business day, excluding Saturdays, Sundays, and legal holidays.
- 23. GOVERNING LAW:** The laws of the State of California will govern these terms and conditions, as well as any claim that might arise between Contractor and VTA, without regard to conflict of law provisions.
- 24. FORUM SELECTION:** Contractor will resolve any claim, cause of action or dispute (collectively “claim”) that Contractor has with VTA arising out of or related to this Contract in a state or federal court located in Santa Clara County, California. Contractor agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.

25. INDEMNIFICATION AND DEFENSE OF CLAIMS:

A. INDEMNITY AND DEFENSE OF CLAIMS:

1. General Indemnification and Defense of Claims:

- i. Contractor must indemnify and hold harmless VTA, any public agencies within whose jurisdiction, on whose behalf, or on whose property the Contract is being performed, any party VTA is contractually obligated to identify in this Contract as an indemnitee, and each of their respective Board of Directors, Board of Supervisors, Councils, individual board members, officers, agents, employees, and consultants (each an “Indemnitee”; collectively, the “Indemnitees”) from and against any claims, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, or fees and costs (including reasonable attorneys’ and experts’ fees and costs) (each, a “Claim” and collectively, the “Claims”) arising out of, pertaining to, caused by, or in any way relating to the performance of this Contract, including compliance or non-compliance with the terms of this Contract, by Contractor and/or its agents, employees, suppliers, or subcontractors, whether such Claims are based upon a contract, personal injury, death, property damage, or any other legal or equitable theory whatsoever.
- ii. Contractor must, at its own expense, and upon written request by VTA or any individual Indemnitee, immediately defend any suit, action, proceeding, dispute, or demand brought against any Indemnitee founded upon, alleging, or implicating any Claims covered by Contractor’s indemnity obligation set forth above in subparagraph (i) immediately above and regardless of whether Contractor and/or any of its agents, employees, suppliers, or subcontractors, was, in fact, liable. In the event a court of competent jurisdiction

determines that any suit, action, claim, or demand brought against any Indemnitee was caused by the sole or active negligence or willful misconduct by VTA or its agents, servants, or independent contractors who are acting on behalf of VTA, VTA will promptly reimburse Contractor for costs of defending the Indemnitees in such action incurred by Contractor, but only in proportion to the sole or active negligence or willful misconduct of VTA or its agents, servants, or independent contractors who are acting on behalf of VTA.

2. Infringement Indemnification and Defense of Claims:

- i. Contractor must indemnify and hold harmless the Indemnitees from and against any and all Claims which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to any actual or alleged infringement of any intellectual property rights (including but not limited to patents, copyrights, trade secrets, service marks, and trademarks) by the goods and/or services provided by Contractor hereunder (referred to as “Goods” and “Services” for purposes of this Infringement Indemnification and Defense of Claims provision), or use of any of the aforementioned.
- ii. Contractor must, at its own expense, and upon written request by VTA or any individual Indemnitee, immediately defend any suit, action, proceeding, dispute, or demand brought against any Indemnitee founded upon, alleging, or implicating any claims, liabilities, losses, injuries, damages, expenses, fines, penalties, or fees and costs covered by Contractor’s indemnity obligation set forth in subparagraph (i) immediately above and regardless of whether Contractor and/or any of its agents, employees, or subcontractors did, in fact, infringe any intellectual property rights.
- iii. If any part of the Goods and/or Services is, or in Contractor’s reasonable judgment is likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party intellectual property right, Contractor must, at its expense and option, do one of the following: (a) procure for VTA the necessary right to continue using the Goods and/or Services; (b) replace or modify the infringing portion of the Goods and/or Services with a functionally equivalent item or portion thereof, or (c) if none of the foregoing are commercially reasonable, Contractor may terminate this Contract upon written notice to VTA, take back any infringing portion of the Goods, and refund to VTA a pro-rated amount of any fees paid for the infringing portion of the Goods and/or Services. The remedies set forth in this subparagraph (iii) are in addition to, and not in lieu of, all other remedies that may be available to VTA, including the indemnification rights under this Indemnity and Defense of Claims provision.
- iv. Contractor will have no liability or obligation hereunder with respect to any Claim to the extent the Claim is based upon (a) modifications, alterations, combinations, or enhancements by VTA of the Goods and/or Services that is not authorized by Contractor or (b) VTA’s continuation of allegedly infringing activity after being notified thereof.
- v. **Infringement Indemnification Procedures:** Contractor’s obligations under the Infringement Indemnification and Defense of Claims section are expressly conditioned on the following: VTA will (a) promptly notify Contractor in writing of any such Claim of which VTA has actual knowledge (provided that failure to do so will only release Contractor from the foregoing indemnification and defense obligations to the extent that

such failure led to material prejudice), (b) in writing, grant Contractor sole control of the defense of any such Claim and of all negotiations for its settlement or compromise (provided that no such settlement or compromise may impose any liability or other obligations on VTA), and (c) reasonably cooperate with Contractor to facilitate the settlement or defense of the Claim. Notwithstanding the foregoing, VTA may participate, at VTA's own expense, in the defense of such Claim.

- 3. Survival:** This Indemnity and Defense of Claims provision will survive the expiration or termination of this Contract and remain in full force and effect.

SPECIAL CONDITIONS
P20148
SVBX - BART FOLLOW-ON CISCO SYSTEMS SPARES

1. **COMPENSATION:** As full consideration for the satisfactory performance of the Contract by the Contractor, VTA will pay to the Contractor amounts designated in Bid Form 1-B – Schedule of Prices and Estimated Quantities.
2. **QUANTITY:** Contractor agrees Bid price(s) apply to any quantity purchased under this Contract and such prices are guaranteed for the term of the Contract unless otherwise agreed by both parties in writing.
3. **TAXES:** Sales tax (when applicable) must be included in the bid as a separate line item.
4. **INVOICING AND PAYMENTS:**
 - A. The Contractor must submit its invoice for payment to the address listed below for the services provided, which have been accepted by VTA.

VTA ACCOUNTS PAYABLE
3331 NORTH FIRST STREET, BUILDING B
SAN JOSE, CA 95134-1906

or
VTAAccountsPayable@VTA.org

- B. Payments will be made to the Contractor within thirty (30) days following receipt of a properly prepared invoice.
 - C. Payment will be considered to have been made on the date VTA mails a check therefor or pays Contractor via direct deposit..
 - D. Discounts offered by Contractor for early payment will be taken by VTA if payment is made within the discount period specified.
 - E. VTA will not be responsible for late payment charges unless they are an express part of this Contract.
 - F. Upon completion of this Contract, the final payment will be made on determination by VTA that all requirements hereunder have been completed, and such determination will not be unreasonably delayed.
5. **LIQUIDATED DAMAGES:** [OMITTED]

**SCOPE OF WORK
P20148
SVBX- BART FOLLOW-ON CISCO SYSTEMS SPARES**

A. INTRODUCTION AND OVERVIEW: The Contractor must be an authorized reseller of Cisco Systems, Inc. (“Cisco”), to furnish various Cisco Systems components requested by BART as spare parts for the SVBX, BART Follow-on Cisco Spare Parts project identified below (Section B. List of Deliverables) to VTA.

B. LIST OF DELIVERABLES:

Contractor will provide VTA with the deliverables set forth below.

| Item | Description | Manufacturer's Name | Part # | Order Quantity |
|-------------|----------------------------|----------------------------|-------------------|-----------------------|
| 183 | Multimode SFP | Cisco | ONS-SE-G2F-SX | 4 |
| 184 | Singlemode SFP | Cisco | ONS-SE-G2F-LX | 4 |
| 185 | BartNet/Sec/UNI DWDM Trunk | Cisco | ONS-XC-10G-EP58.1 | 2 |
| 186 | BartNet/Sec/UNI DWDM Trunk | Cisco | ONS-XC-10G-EP58.9 | 2 |
| 187 | BartNet/Sec/UNI DWDM Trunk | Cisco | ONS-XC-10G-EP59.7 | 2 |
| 188 | Power Supply | Cisco | 15454-M6-AC2 | 4 |
| 189 | Mesh patch panel | Cisco | 15454-PP-4-SMR= | 2 |
| 202 | INDUSTRIAL ETHERNET SWITCH | Cisco | IE-3010-16S-8PC | 5 |
| 223A | Switch | Cisco | C9400-LC-48P | 1 |
| 223B | Switch | Cisco | C9400-SUP-1 | 1 |
| 223C | Switch | | C9400-LC-48S | 1 |
| 249 | Ethernet Switch | Cisco | IE-3400-8P2S-E | 2 |
| 250 | Ethernet Switch | Cisco | IEM-3400-8S= | 2 |
| 251 | Ethernet Switch | Cisco | IEM-3400-8P= | 2 |

C. TIME FOR DELIVERY:

Contractor will expedite the delivery of the ordered goods or services as soon as possible upon VTA’s issuance of a purchase order hereunder.

**BID FORM 1-A: BIDDER ACKNOWLEDGEMENT OF ADDENDA
P20148
SVBX - BART FOLLOW-ON CISCO SYSTEMS SPARES**

In compliance with your **Invitation for Bid** for this project, the undersigned Bidder, being thoroughly familiar with the terms and conditions of the Bid Documents, hereby bids and agrees fully to perform the work within the time stated and in strict accordance with the Bid Documents.

Note: It is the Bidder's responsibility to obtain all addenda to this solicitation.

The Bidder hereby acknowledges receipt of the following Addenda to the Bid Documents:

| | | | | | | | |
|--------------------|-------------|--|--|--------------------|-------------|--|--|
| Addendum No. _____ | Dated _____ | | | Addendum No. _____ | Dated _____ | | |
| Addendum No. _____ | Dated _____ | | | Addendum No. _____ | Dated _____ | | |
| Addendum No. _____ | Dated _____ | | | Addendum No. _____ | Dated _____ | | |
| Addendum No. _____ | Dated _____ | | | Addendum No. _____ | Dated _____ | | |

CONTINUED 

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY AND REQUIREMENTS
P20148
SVBX - BART FOLLOW-ON CISCO SYSTEMS SPARES**

1. **POLICY:** It is the policy of the Santa Clara Valley Transportation Authority to ensure that Disadvantaged Business Enterprises (“DBEs”) as defined in federal regulations at 49 CFR Part 26 have the opportunity to participate in the performance of Contracts and subcontracts financed with federal funds.
 - A. VTA’s Office of Business Diversity Program encourages Contractors to call (408) 321-5962 for assistance in identifying eligible DBE firms. Listings of eligible firms are also available on the internet at the following:
http://www.dot.ca.gov/hq/bep/find_certified.htm.
2. **GOAL:** There is no specific goal established for this Contract. However, Contractor is encouraged to make every effort to meet VTA’s overall agency-wide DBE goal of thirteen percent (13%) where possible.
3. **COUNTING TOWARD THE DBE GOAL:** DBEs may perform as contractors, subcontractors (1st tier), or subcontractor to subcontractors (2nd tier). Only the value of the materials actually supplied by the DBE, including materials and supplies, will be counted toward the DBE goal.
 - A. Credit for a DBE vendor of materials or supplies is limited to sixty percent (60%) of the amount to be paid to the vendor for the materials or supplies unless the vendor manufactures or substantially alters the goods. Credit for DBE brokers is limited to only the fees and commissions portion of the amount paid. All other firms receive on hundred percent (100%) credit, less work subcontracted by the DBE to non-DBE firms, toward the DBE goal.
4. **AWARD OF THE CONTRACT:** VTA will award this Contract to the lowest responsible and responsive Bidder as required by federal and California laws.
5. **SUBMITTALS:** All Bidders must submit the following:
 - A. Bid Form #2-A: Listing of DBE Contractor, subcontractor(s) or supplier(s) Bidder intends to use and count toward VTA’s overall agency DBE goal, with a complete description of services or supplies to be provided by each, work which the DBE further subcontracts to non-DBE firms, and the dollar value of each such subcontracting or supplies transaction.
 - B. Bid Form #2-B: Supplemental Contractor and subcontractor Information.
6. **NONDISCRIMINATION:** The Contractor must make VTA’s Contracting requirements known to subcontractors, vendors and suppliers who are certified or accepted as certifiable as DBE, as well as to non-DBE businesses, and must provide a practical opportunity for all firms to participate in the Contract.

- 7. SUBSTITUTION OF DBE SUBCONTRACTOR WITH NON-DBE SUBCONTRACTOR:** A DBE subcontractor or supplier must not be replaced without the prior written consent of VTA. Contractor must make good faith efforts to find another DBE subcontractor or supplier to substitute for the original DBE. The efforts employed by the Contractor must be those that one could reasonably expect a Contractor to take if the Contractor were actively and aggressively trying to engage a certified DBE firm to substitute for an DBE firm that has to be replaced and must include the following:
- A.** Contractor must immediately notify VTA in writing of its intent to replace a DBE firm, and of the reasons therefore, prior to any solicitation or advertisement for replacement firms. A copy of the notice must be provided to the VTA Office of Business Diversity Program (OBDP).
 - B.** VTA will provide written notice to the DBE firm of Contractor's request for substitution and of the reasons therefor and they will be requested to provide any written objections within five (5) working days.
 - C.** Contractor must utilize the following sources for identifying certified DBE firms for solicitation:
 - (1) California DBE Uniform Certification Program (UCP) database.
 - (2) California Department of General Services Small Business database.
 - (3) VTA DBE database.
 - D.** Contractor must provide written notice to at least five (5) firms in each work or material/supply category to be substituted. If Contractor provides written notice to fewer than five (5) firms, Contractor must explain to OBDP in writing why the number of firms solicited was sufficient. Written notice must be sent first to firms located in the County of Santa Clara and its contiguous counties ("local firms") and then, where appropriate, to out-of-area DBE firms.
 - E.** Contractor must contact the DBE firms solicited to determine with certainty whether the firms are interested in bidding on the project. This follow-up must be documented with telephone logs, fax logs or other written documentation and submitted to OBDP.
 - F.** Contractor must provide OBDP with the following information:
 - (1) A list and copies of all DBE and non-DBE responses to the solicitation, including all Bids received.
 - (2) If a Bid is rejected by Contractor, the reasons for the rejection.
 - (3) If Contractor rejected a DBE firm as unqualified, a description of the qualification assessment conducted by Contractor and the factors considered.

- G. A Contractor who fails to use good faith efforts to replace a DBE firm with another DBE firm may be subject to the imposition of a penalty of up to fifteen percent (15%) of the value of the work of the subcontractor or supplier replaced.
8. **MONTHLY DBE UTILIZATION REPORT:** Contractors are required to submit a monthly DBE Utilization Report electronically to the DBE Administrator, VTA Office of Business Diversity Program. These monthly reports must be submitted electronically, and the Contractor will document the dollar value of payments to DBE firms, and the percentage of the Contract completed. VTA will monitor the Contract for compliance with DBE requirements.
- A. This system is web-based, accessible from any computer via the internet at <https://vta.sdbde.com>. Each Contractor and subcontractor will receive an email providing them with log on identification, and a temporary password and instructions on how to use the system. Classroom training will also be provided. Other assistance will be provided upon request.
 - B. Contractor will include this requirement in all of its subcontracts and purchase orders when required to provide or verify DBE utilization documentation.
 - C. If the DBE Utilization Reports indicate potential problems, the Contractor must meet with the appropriate VTA representative(s) to address any deficiencies and discuss appropriate corrective actions.
 - D. Prior to final payment, Contractor will be required to submit a final DBE Utilization Report. In addition to payments to the DBEs, the final report must include payments to and other information about all other businesses including non-DBE subcontractors, suppliers of materials, trucking firms, consultants, and others.
 - E. Failure by Contractor to submit required reports as described above may be considered grounds for a determination by VTA of nonresponsibility in consideration of Contractor's eligibility to bid on or be awarded future work.
9. **PROMPT PAYMENT:** The Contractor must adhere to all federal and California prompt payment laws and regulations. If Contractor does not adhere to prompt payment requirements, penalties may apply.
10. **ENFORCEMENT ACTIONS:** VTA will bring to the attention of U.S DOT any false, fraudulent, or dishonest conduct in connection with its DBE Program so that U.S. DOT can take the steps (i.e., referral to the Department of Justice for criminal prosecution, referral to the U.S. DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Remedies rules) provided in 49 CFR 26.107. VTA will consider similar action under its own legal authority, including responsibility determinations in any future Contracts.

**LISTING OF DBE CONTRACTOR OR SUBCONTRACTORS
P20148
SVBX - BART FOLLOW-ON CISCO SYSTEMS SPARES**

Issued SEPTEMBER 23, 2020

BID FORM #2-A

| | |
|------------------------------|---|
| Firm: _____ | Street Address: _____ |
| City, State: _____ | Zip Code: _____ |
| Phone: _____ | Fax/E-mail: _____ |
| Age of Firm: _____ | Disadvantaged Business Enterprise: Yes _____ No _____ |
| Name and Title: _____ | Signature: _____ Date: _____ |

Contract dollar value must exclude work performed by non-DBEs except materials or equipment purchased and used in this Contract.

CREDIT FOR DBE VENDOR of materials or supplies is limited to sixty percent (60%) of its expenditures for materials and supplies required under this Contract and obtained from a DBE regular dealer. Credit for DBE manufacturers is given at one hundred percent (100%) toward the goal only where the DBE vendor manufactures or substantially alters the material prior to resale.

CREDIT FOR DBE BROKERS (Distributor or Representative) is limited to the fees and commissions of the amount paid. All other firms receive one hundred percent (100%) credit, less work subcontracted by the DBE to non-DBE firms, towards the DBE goal.

CREDIT FOR DBE TRUCKING FIRMS is limited to amount performed by the DBE's own trucks and drivers and by certified DBE trucking subhauleders. A DBE trucking firm must itself own and operate at least one fully licensed, insured and operational truck used on the Contract. *A DBE must be certified or accepted as Certified by VTA.* Refer to 49 CFR Part 26.

**LISTING OF DBE CONTRACTOR OR SUBCONTRACTORS
P20148
SVBX - BART FOLLOW-ON CISCO SYSTEMS SPARES
Issued SEPTEMBER 23, 2020**

BID FORM #2-A

| Name & Address of Certified DBE | Certification Number | Agency Certifying | Age Of Firm | M* W** | Description of Work | Bid Item | Dollar Value of Contract |
|---------------------------------|----------------------|-------------------|-------------|-----------|---------------------|----------|--------------------------|
| | | | | | | | \$ |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

DBE GOALS ARE DETERMINED ON BASE CONTRACT AMOUNT.....TOTAL \$ _____

| | |
|-----------------------|----------|
| Base Contract Amount: | \$ _____ |
| DBE Contract Amount: | \$ _____ |

Goal Achieved _____ % **DBE Goal** _____ %

DBE Amounts and Base Amounts Must Exclude Alternate Bids

*Minority Type: **A** = Asian, **SA**= Subcontinent Asian, **B** = Black, **H** = Hispanic, **NA** = Native American, **O** = Other, ** Woman

$\frac{\text{DBE Contract Amount}}{\text{Base Contract Amount}} \times 100 =$ _____ % _____ %

IMPORTANT! THIS FORM MUST BE SUBMITTED WITH THE BID

**SUPPLEMENTAL CONTRACTOR AND SUBCONTRACTOR INFORMATION
P20148
SVBX - BART FOLLOW-ON CISCO SYSTEMS SPARES**

Issued SEPTEMBER 23, 2020

BID FORM #2-B

This form shall be copied by the Bidder and distributed to all sub- Bidders. The completed forms are to be submitted with the Bid.

Date: _____

Contract Name and Number: _____

Firm Name: _____

Firm Address: _____

Phone Number: _____

Fax Number: _____

Age of Firm: _____

| | | | | | | |
|-----------------------------------|--------------|---------------|-----------|-----------|-----------|-------------|
| (Check one) | | | | | | |
| Annual Gross Receipts | | | | | | |
| Indicate bracket of income | Below \$500K | \$500K - \$1M | \$1M-\$4M | \$4M-\$6M | \$6-\$13M | Above \$13M |

| | | | |
|-------------------|------------------------------|------------------------------|--------------------------------------|
| Check One: | DBE <input type="checkbox"/> | SBE <input type="checkbox"/> | Non-SBE/DBE <input type="checkbox"/> |
|-------------------|------------------------------|------------------------------|--------------------------------------|

Ethnicity*: _____ Gender: _____ Work/Trade Category: _____

A = Asian, SA = Subcontinent Asian, B = Black, C = Caucasian, H = Hispanic, NA = Native American, O = Other

Completed by Company _____
Email Address: _____

Valley Transportation Authority
Office of Business Diversity Program
3331 North First Street, Bldg. B San Jose, CA 95134-1906
If you require additional forms or information, call (408) 321-5719

EXHIBIT M-5 - INSURANCE REQUIREMENTS
for
SVBX - BART FOLLOW-ON CISCO SYSTEMS SPARES
CONTRACT P20148

INSURANCE

Without limiting Contractor's indemnification and defense of claims obligations to VTA, Contractor must procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the work hereunder by Contractor, its agents, representatives, or employees, or subcontractors. The cost of such insurance must be included in the Contract price. Contractor must furnish complete copies of all insurance policies within three (3) business days of any such request by VTA.

A. Liability and Workers' Compensation Insurance

1. Minimum Scope of Coverage

Coverage must be at least as broad as:

- a. General Liability coverage: Insurance Services Office "occurrence" form CG 0001. Products/Completed Operations coverage must be continuously maintained for two (2) years following acceptance of the goods. General liability insurance written on a "claims made" basis is not acceptable.
- b. Professional Liability: including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake, or omission in the performance of Contractor's services under this Contract. This coverage must be continuously maintained for a minimum of two (2) years following completion of this Contract. This coverage may be written on a "claims made" basis, if so, please see special provisions in Section B.

2. Minimum Limits of Insurance

Contractor must maintain limits no less than:

- a. General Liability (including umbrella/excess liability): \$1,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If general liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
- a. Professional Liability: \$1,000,000 each occurrence/aggregate minimum limit per claim

B. Claims Made Provisions (not applicable to General Liability or Auto Liability)

Claims-made coverage is never acceptable for general liability or auto liability. Claims-made may be considered for professional, environmental/pollution, or cyber liability. If coverage is written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must comply with the following:

1. The policy must be in effect as of the date of this Contract and the retroactive date must be no later than the date of this Contract.
2. If any policy is not renewed or the retroactive date of such policy is to be changed, Contractor must obtain or cause to be obtained the broadest extended reporting period coverage available in the commercial insurance market. This extended reporting provision must cover at least two (2) years.
3. No prior acts exclusion may be added to the policy during the contract period.
4. The policy must allow for reporting of circumstances or incidents that might give rise to future claims.

C. Self-Insured Retention

The certificate of insurance must disclose the actual amount of any deductible or self-insured retention, or lack thereof, for all coverages required herein. Any self-insured retention or deductible in excess of \$50,000 (\$100,000 if Contractor is a publicly-traded company) must be declared to and approved by VTA. If Contractor is a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention or deductible in excess of \$50,000, Contractor must provide a current financial report including balance sheets and income statements for the past three years, so that VTA can assess Contractor's ability to pay claims falling within the self-insured retention or deductible. Upon review of the financial report, if deemed necessary by VTA in its sole discretion, VTA may elect one of the following options: to accept the existing self-insured retention or deductible; require the insurer to reduce or eliminate the self-insured retention or deductible as respects VTA, its directors, officers, officials, employees and volunteers; or to require Contractor to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Applicable costs resulting therefrom will be borne solely by Contractor. Contractor may request execution of a nondisclosure agreement prior to submission of financial reports.

A. Other Provisions

The policies must contain, or must be endorsed to contain, the following provisions:

1. General Liability

- a. VTA, its directors, officers, officials, employees, and volunteers must be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor, including VTA's general supervision of Contractor; products and completed operations of Contractor and its subcontractors; premises owned, occupied, or used by Contractor; or automobiles owned, leased, hired, or borrowed by Contractor. The coverage must contain no

special limitations on the scope of protection afforded to VTA, its directors, officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.

- b. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its directors, officers, officials, employees, or volunteers.
- b. Contractor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- c. The General Liability General Aggregate limit must apply per project, not per policy.

2. All Coverages

- a. The Contractor must agree to waive all rights of subrogation against VTA, its directors, officers, officials, employees, and volunteers for losses arising from work performed by Contractor and its subcontractors for VTA.
- b. Contractor's insurance coverage must be primary insurance as respects VTA, its directors, officers, officials, employees, and volunteers. Self-insurance or insurance that may be maintained by VTA, its directors, officers, officials, employees, or volunteers may apply only as excess to Contractor's insurance. Contractor's insurance must not seek contribution from VTA's insurance program.

3. Other Insurance Provisions

- a. The Certificate must disclose the actual amount of the deductible or self-insured retention.
- b. If any coverage forms or endorsements required by this Contract are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Contract, VTA reserves the rights to require Contractor to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

B. Acceptability of Insurers

Insurance and bonds must be placed with insurers with an A.M. Best's rating of no less than A VII (financial strength rating of no less than A and financial size category of no less than VII), unless specific prior written approval has been granted by VTA.

C. Certificates of Insurance

Contractor must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy are to be signed by an authorized representative of that insurer. The certificates must be issued on a standard ACORD Form. Contractor must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to Insurance.certificates@vta.org. All endorsements must be attached to the ACORD certificate in a single PDF document.

The certificates must (1) identify the insurers, the types of insurance, the insurance limits, the deductibles, and the policy term, (2) include copies of all the actual policy endorsements required above, and (3) in the "Certificate Holder" box include:

Santa Clara Valley Transportation Authority ("VTA")
3331 North First Street
San Jose, CA 95134-1906

In the Description of Operations/Locations/Vehicles/Special Items Box, the VTA Contract number must appear, the list of policies scheduled as underlying on the Umbrella/Excess policy must be listed, Certificate Holder must be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Contract documents.

It is a condition precedent to award of this Contract that all insurance certificates and endorsements be received and approved by VTA before Contract execution. No work may be performed until insurance is in full compliance. VTA reserves the rights to require complete, certified copies of all required insurance policies, at any time.

D. Maintenance of Insurance

If Contractor receives notice that any of the insurance policies required by this Exhibit may be cancelled or coverage reduced for any reason whatsoever, Contractor must immediately provide written notice to VTA that such insurance policy required by this Exhibit is canceled or coverage is reduced.

Ed. Rev. 10-1-19

BIDDER SIGNATURE PAGE
P20148
SVBX - BART FOLLOW-ON CISCO SYSTEMS SPARES

BY SIGNING, THE BIDDER CERTIFIES THAT HE/SHE HAS READ AND UNDERSTANDS THE BID DOCUMENTS AND THAT HE/SHE OFFERS AND AGREES TO FURNISH THE GOODS AND/OR SERVICES SPECIFIED UNDER THE INSTRUCTIONS AND CONDITIONS STATED THEREIN.

SIGNATURE:

PRINT NAME:

FIRM:

ADDRESS:

TELEPHONE:

EMAIL

DATE:

EXHIBIT A - REQUIRED FTA CLAUSES
IFB P20148
SVBX - BART FOLLOW-ON CISCO SYSTEMS SPARES

PART 1

In its performance under the Contract, Contractor will comply with all of the Federal Transit Administration (“FTA”) clauses which are identified below as applicable (if the box next to the clause is checked, the clause is applicable). The substance of these applicable requirements is set forth on the following pages of this Exhibit (Revised 09/2020).

- A. ACCESS TO RECORDS AND REPORTS
- B. BONDING REQUIREMENTS
- C. BUS TESTING
- D. BUY AMERICA REQUIREMENTS [Must include certificate]
- E. CARGO PREFERENCE REQUIREMENTS
- F. CHARTER SERVICE
- G. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT
- H. CIVIL RIGHTS LAWS AND REGULATIONS
- I. DISADVANTAGED BUSINESS ENTERPRISE (DBE)
- J. EMPLOYEE PROTECTIONS
- K. ENERGY CONSERVATION
- L. FLY AMERICA
- M. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION
- N. LOBBYING RESTRICTIONS [Must include certificate]
- O. NO GOVERNMENT OBLIGATION TO THIRD PARTIES
- P. PATENT RIGHTS AND RIGHTS IN DATA
- Q. PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES
- R. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS
- S. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS
- T. RECYCLED PRODUCTS
- U. SAFE OPERATION OF MOTOR VEHICLES
- V. SCHOOL BUS OPERATIONS
- W. SEISMIC SAFETY
- X. SUBSTANCE ABUSE
- Y. TERMINATION
- Z. VIOLATION AND BREACH OF CONTRACT
- AA. SPECIAL DOL EEO CLAUSE FOR CONSTRUCTION PROJECTS
- BB. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE
- CC. ADA ACCESS

- DD. CHANGES
- EE. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE SERVICES OR EQUIPMENT
- FF. INCORPORATION OF FTA TERMS

EXHIBIT A - REQUIRED FTA CLAUSES PART 2

These FTA terms and conditions (“FTA Clauses”) are required by the FTA pursuant to the Master Agreement between FTA and VTA, Section 16 (a copy of which may be viewed at <https://www.transit.dot.gov/>) and apply to all third party contracts awarded by VTA that are funded in whole or in part with FTA assistance. Unless specifically defined herein, the capitalized terms used in these FTA Clauses have the meanings as defined in the solicitation and/or Contract, as applicable. Contractor is responsible for its subcontractors’ compliance, as applicable, with these FTA Clauses (Revised 09/2020).

In the event that any of these FTA Clauses conflict with other terms of the Contract, these FTA Clauses will prevail.

A. ACCESS TO RECORDS AND REPORTS: In addition to any other audit and record retention requirements set forth in the Contract, Contractor will comply with the following:

- a. **FLOW DOWN:** The requirements of this Section A apply to Contractor and its Contract subcontractors at every tier. Contractor will ensure compliance with this Section A by all of its subcontractors of every tier.
- b. **RECORD RETENTION:** Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- c. **RETENTION PERIOD:** Contractor will comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of the Contract, except in the event of litigation or settlement of claims arising from the performance of the Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- d. **ACCESS TO RECORDS:** Contractor will provide sufficient access to the FTA and its contractors to inspect and audit records and information related to performance of the Contract as reasonably may be required.
- e. **ACCESS TO THE SITE OF PERFORMANCE:** Contractor will permit FTA and its contractors access to the sites of performance under the Contract as reasonably may be required.

B. BONDING REQUIREMENTS: Contractor will comply with the bonding requirements set forth elsewhere in the Contract.

C. BUS TESTING: Contractor will comply with all bus testing requirements set forth elsewhere in the Contract.

D. BUY AMERICA REQUIREMENTS: If the Contract is for the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock, Contractor will comply with the following:

- a. **FLOW DOWN:** The requirements of this Section D apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section D.
- b. **COMPLIANCE WITH FEDERAL LAW:** Contractor will comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.
- c. **CERTIFICATIONS:** Contractor must submit to VTA the appropriate Buy America certification attached to the solicitation or otherwise provided by VTA with its (i) Bid (in the case of a sealed bidding procurement) or (ii) final offer or final revised Proposal (in the case of a negotiated procurement). Bids or Proposals (as applicable) that are not accompanied by a completed Buy America certification will be rejected as nonresponsive and cannot be considered by VTA.

E. CARGO PREFERENCE REQUIREMENTS: If the Contract involves equipment, materials, or commodities that may be transported by ocean vessels, Contractor will comply with the following:

- a. **FLOW DOWN:** The requirements of this Section E apply to Contractor and its Contract subcontractors at every tier involved with the transport of equipment, material, or commodities by ocean vessel. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section E.
- b. **UNITED STATES-FLAG COMMERCIAL VESSELS:** Contractor will use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.
- c. **BILL-OF-LADING:** Contractor will furnish within 20 business days following the date of loading for shipments originating within the United States or within 30 business days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to VTA (through Contractor in the case of a subcontractor's bill-of-lading).

F. CHARTER SERVICE: If the Contract is for the operation of transportation service, Contractor will comply with the following:

- a. **FLOW DOWN:** The requirements of this Section F apply to Contractor as the first tier service contractor. The provisions of this Section F do not flow down to subcontractors.
- b. **COMPLIANCE WITH FEDERAL LAW:** Contractor will comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

- i. Federal transit laws, specifically 49 U.S.C. § 5323(d);
 - ii. FTA regulations, “Charter Service,” 49 C.F.R. Part 604;
 - iii. Any other federal Charter Service regulations; or
 - iv. Federal guidance, except as FTA determines otherwise in writing.
- c. **VIOLATIONS:** If Contractor engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures or impose remedies on Contractor. These corrective measures and remedies may include:
- i. Barring Contractor or any subcontractor operating public transportation under its award that has provided prohibited charter service from receiving federal assistance from FTA;
 - ii. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA’s Charter Service regulations; or
 - iii. Any other appropriate remedy that may apply.

G. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT: If the Contract has a total value of more than \$150,000, Contractor will comply with the following:

- a. **FLOW DOWN:** The requirements of this Section G apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section G.
- b. Contractor will:
 - i. Not use any violating facilities;
 - ii. Report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
 - iii. Report violations of use of prohibited facilities to FTA; and
 - iv. Comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

H. CIVIL RIGHTS LAWS AND REGULATIONS: Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:

- a. **FLOW DOWN:** The requirements of this Section H apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section H.

- b. **NONDISCRIMINATION:** In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, U.S. Department of Transportation (“DOT”) regulations at 49 C.F.R. Part 21, and federal transit law at 49 U.S.C. § 5332, Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.
- c. **RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX:** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and federal transit laws at 49 U.S.C. §5332, Contractor will comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (“U.S. DOL”) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action will include, but not be limited to, the following: employment, promotion, 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, Contractor will comply with any implementing requirements FTA may issue.
- d. **AGE:** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (“U.S. EEOC”) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. Part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. Part 90, and federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
- e. **DISABILITIES:** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §4151 *et seq.*, and federal transit law at 49 U.S.C. § 5332, Contractor will not discriminate against individuals on the basis of disability. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

I. DISADVANTAGED BUSINESS ENTERPRISE (“DBE”): Contractor will comply with the DBE requirements set forth elsewhere in the Contract.

J. EMPLOYEE PROTECTIONS:

- a. **FLOW DOWN:** The requirements of this Section J apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section J.
- b. If the Contract is for construction, alteration, or repair in excess of \$2,000, Contractor will comply with the following:

- i. Prevailing Wage:** Contractor will comply with the prevailing wage requirements set forth in the Contract.
 - ii. Anti-Kickback:** Contractor shall comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by U.S. DOL regulations at 29 C.F.R. Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
- c.** If the Contract (i) has a total value of more than \$100,000 and (ii) involves the employment of mechanics or laborers, Contractor will comply with the following:
- i. Contract Work Hours and Safety Standards:** Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the U.S. DOL regulations at 29 C.F.R. Part 5. Under 40 U.S.C. § 3702 of the Contract Work Hours and Safety Standards Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

 - 1. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply if the Contract is for (i) the purchase of supplies or materials or articles ordinarily available on the open market or (ii) transportation or transmission of intelligence.
 - 2. In the event of any violation of this section, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and any such subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by this section.
 - 3. The FTA shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor (i) under the Contract, (ii) under any other federal government contract with the same prime Contractor, or (iii) any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act and held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.
 - 4. Contractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring all subcontractors to include these clauses in any lower tier subcontracts.

- ii. **Contract Work Hours and Safety Standards for Awards Not Involving Construction:** Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.
 - 1. Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Such records maintained under this paragraph shall be made available by Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Contractor will permit such representatives to interview employees during working hours on the job.
 - 2. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

K. ENERGY CONSERVATION: Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:

- a. **FLOW DOWN:** The requirements of this Section K apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section K.
- b. **MANDATORY STANDARDS AND POLICIES:** Contractor will 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.

L. FLY AMERICA: If performance of the Contract involves 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., Contractor will comply with the following:

- a. **FLOW DOWN:** The requirements of this Section L apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section L.
- b. **DEFINITIONS:**
 - i. **“International air transportation”** means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
 - ii. **“United States”** or **“U.S.”** means the 50 States, the District of Columbia, and outlying areas.

- iii. **“U.S.-flag air carrier”** means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- c. **USE OF U.S.-FLAG AIR CARRIERS:** Pursuant to Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act), Contractor and all of its subcontractors at every tier must use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. Contractor understands that the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, will disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- d. **STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS:** In the event that Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403.

[State reasons]: _____

- e. **SUBCONTRACTS:** Contractor shall include the substance of this clause, including this paragraph (5), in each subcontract or purchase under the Contract that may involve international air transportation.
 - f. **CODE SHARE AGREEMENT:** Contractor is permitted to use transportation on a foreign air carrier 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.
 - g. **AIR TRANSPORTATION AGREEMENT:** Contractor is permitted to use transportation by a foreign air carrier 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 U.S. DOT has determined meets the requirements of the Fly America Act.
- M. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION:** If the Contract has a total value of \$25,000 or more, Contractor will comply with the following:
- a. **FLOW DOWN:** If Contractor and/or any of its subcontractors enter into covered transactions with a participant at the next lower level, Contractor and/or its subcontractor, as applicable, must require that participant to: (a) comply with subpart C of 2 C.F.R. Part 180, as supplemented by 2 C.F.R. Part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. Part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.
 - b. **COMPLIANCE WITH FEDERAL LAW:** Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180. These provisions apply to the Contract and to (i) any subcontract at any tier of \$25,000 or more, and (ii)

each contract at any tier for a federally required audit (irrespective of the contract amount), and (iii) each contract at any tier that must be approved by an FTA official irrespective of the contract amount.

- c. CERTIFICATION:** By executing this Contract, Contractor hereby certifies that its principals, affiliates, and subcontractors are eligible to participate in the federally funded Contract and are not presently declared by any federal department or agency to be:
- i.** Debarred from participation in any federally assisted award;
 - ii.** Suspended from participation in any federally assisted award;
 - iii.** Proposed for debarment from participation in any federally assisted award;
 - iv.** Declared ineligible to participate in any federally assisted award;
 - v.** Voluntarily excluded from participation in any federally assisted award; or
 - vi.** Disqualified from participation in any federally assisted award.

This certification is a material representation of fact relied upon by VTA. If it is later determined by VTA that Contractor knowingly rendered an erroneous certification, in addition to remedies available to VTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

N. LOBBYING RESTRICTIONS: If the Contract has a total value of \$100,000 or more, Contractor will comply with the following:

- a. FLOW DOWN:** The requirements of this Section N apply to Contractor and its Contract subcontractors at every tier if such subcontract has a total value of \$100,000 or more. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section N.
- b. CERTIFICATION:** Contractor must submit to VTA the appropriate Restrictions on Lobbying certification attached to the solicitation or otherwise provided by VTA with its (i) Bid or Proposal, or (ii) prior to the execution of the Contract, whichever occurs earlier.

O. NO GOVERNMENT OBLIGATION TO THIRD PARTIES: Contractor will at all times comply with the following requirements:

- a. FLOW DOWN:** The requirements of this Section O apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section O.
- b. NO OBLIGATION:** Contractor acknowledges 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 the Contract and shall not be subject to any obligations or liabilities of VTA, Contractor or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the underlying Contract.

P. PATENT RIGHTS AND RIGHTS IN DATA: If the Contract is for the performance of experimental, developmental, or research work, Contractor will comply with the following:

- a. **FLOW DOWN:** The requirements of this Section P apply to Contractor and its Contract subcontractors at every tier if the relevant subcontract meets the definition of a research-type project under 37 U.S.C. § 401.2. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section P.
- b. **INTELLECTUAL PROPERTY RIGHTS:** Certain Patent Rights and Data Rights apply to all subject data first produced in the performance of the Contract. Contractor grants VTA intellectual property access and licenses deemed necessary for the work performed under the Contract and in accordance with the requirements of 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of the Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of the Contract, the term “subject data” means recorded information, whether or not copyrighted, that is delivered or specified to be delivered by the Contract.
- c. The federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described as follows:
 - i. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - ii. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- d. “Federal Government Purposes,” means use only for the direct purposes of the federal government. The federal government may not extend its federal license to any other party without the copyright owner’s consent.
- e. Unless FTA determines otherwise, Contractor will permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the federal government may direct.
- f. Unless prohibited by state law, upon request by the federal government, Contractor will indemnify, save, and hold harmless the federal government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights,

or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor will indemnify the federal government for any such liability arising out of the wrongful act of any employee, official, or agents of the federal government.

- g.** Nothing contained in this clause on rights in data shall imply a license to the federal government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the federal government under any patent.
- h.** Data developed by Contractor and financed entirely without using federal assistance provided by the federal government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work.
- i.** Contractor will include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.

Q. PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES: If the Contract is for the purchase of revenue service rolling stock, Contractor will comply with the following:

- a. FLOW DOWN:** The requirements of this Section Q apply to Contractor as the first tier service contractor. The provisions of this Section Q do not flow down to subcontractors.
- b.** Contractor will comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. Part 663. Contractor shall comply with the Buy America certification(s) submitted with its Bid/Proposal. Contractor will participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. Part 663 and related FTA guidance.
- c.** For more information about pre-award and post-delivery audit requirements, please go to FTA's Buy America page on its website.

R. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS: Contractor will at all times comply with the following requirements:

- a. FLOW DOWN:** The requirements of this Section R apply to Contractor and its Contract subcontractors at every tier if the relevant subcontract involves the making, presenting, or submitting of covered claims and statements. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section R.
- b.** Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to the Contract. Upon execution of the Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or the FTA assisted project for which the Contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the federal government deems appropriate.

- c. Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Contractor, to the extent the federal government deems appropriate.
- d. Contractor will include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. Contractor will not modify the clauses, except to identify the subcontractor who will be subject to the provisions.

S. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS: If (i) Contractor is recognized by FTA to be a transit operator and (ii) the Contract is for transit operations, Contractor will comply with the following:

- a. **FLOW DOWN:** The requirements of this Section S apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section S.
- b. Contractor will comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):
 - i. **U.S. DOL Certification:** Contractor will complete a certification issued by U.S. DOL as a condition of the Contract.
 - ii. **Special Warranty:** U.S. DOL will provide a Special Warranty for the award associated with the Contract. The U.S. DOL Special Warranty is a condition of the Contract.
 - iii. **Special Arrangements:** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractor in its provision of public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated into the Contract as required.

T. RECYCLED PRODUCTS: If (i) the Contract is for the purchase of items designated in guidelines of the U.S. Environmental Protection Agency (“EPA”) at 40 C.F.R. Part 247 and (ii) the purchase price of the relevant item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000, Contractor will comply with the following:

- a. **FLOW DOWN:** The requirements of this Section T apply to Contractor and its Contract subcontractors at every tier if the subcontract involves the purchase of EPA-selected items valued at \$10,000 or more. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section T.
- b. Contractor will provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6962, and EPA, “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. Part 247.

U. SAFE OPERATION OF MOTOR VEHICLES: Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:

- a. FLOW DOWN:** The requirements of this Section U apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section U.
- b. SEAT BELT USE:** Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by Contractor or VTA.
- c. DISTRACTED DRIVING:** Contractor will adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns, leases, or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under the Contract.

V. SCHOOL BUS OPERATIONS: If the Contract is for the operation of public transportation service, Contractor will comply with the following:

- a. FLOW DOWN:** The requirements of this Section V apply to Contractor as the first tier service contractor.
- b.** Contractor will comply with 49 U.S.C. 5323(f) and 49 C.F.R. Part 604 and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:
 - i.** Federal transit laws, specifically 49 U.S.C. § 5323(f);
 - ii.** FTA regulations, “School Bus Operations,” 49 C.F.R. Part 605;
 - iii.** Any other federal school bus regulations; or
 - iv.** Federal guidance, except as FTA determines otherwise in writing.
- c.** If Contractor violates this Section V, FTA may:
 - i.** Bar Contractor from receiving federal assistance for public transportation; or
 - ii.** Require Contractor to take such remedial measures as FTA considers appropriate.
- d.** When operating exclusive school bus service under an allowable exemption, Contractor may not use federally funded equipment, vehicles, or facilities.
- e.** Contractor should include the substance of this clause in each subcontract under the Contract that may operate public transportation services.

W. SEISMIC SAFETY: If the Contract is for the construction of new buildings or additions to existing buildings, Contractor will comply with the following:

- a. **FLOW DOWN:** The requirements of this Section W apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section W.
- b. Contractor will design and construct any new building or additions to existing buildings in accordance with the standards for Seismic Safety required in DOT Seismic Safety Regulations at 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. Contractor will ensure that all work performed under the Contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued under the Contract.

X. SUBSTANCE ABUSE REQUIREMENTS: If the Contract requires Contractor or any of its subcontractors to perform safety-sensitive functions (as defined in 49 C.F.R. § 655.4), Contractor must comply with the following:

- a. **FLOW DOWN:** The requirements of this Section X, along with VTA's Drug and Alcohol Policy, apply to Contractor and its Contract subcontractors at every tier that require the performance of a safety-sensitive function. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section X.
- b. Contractor will establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Part 655; produce any documentation necessary to establish its compliance with 49 C.F.R. Part 655; and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California or VTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Part 655 and review the testing process.
- c. **CERTIFICATION:** Contractor will certify annually its compliance with 49 C.F.R. Part 655 before December 15 and to submit the Management Information System (MIS) reports before March 10 to:

Linda Durham
Sr. Human Resources Analyst
3331 North First Street-Building B1, San Jose, CA 95134

To certify compliance, Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Y. TERMINATION: Contractor will comply with the termination provisions set forth elsewhere in the Contract. The requirements of this Section Y apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section Y.

Z. VIOLATION AND BREACH OF CONTRACT: If the Contract has a total value exceeding the simplified acquisition threshold as defined by 48 C.F.R. 2.101(b) ("Simplified Acquisition Threshold"), Contractor will comply with the following:

- a. **FLOW DOWN:** The requirements of this Section Z apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section Z.
- b. **DISPUTES:** VTA and Contractor intend to resolve all disputes under the Contract to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the VTA's and Contractor's organization. In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with VTA's direction or decisions made thereof.
- c. **PERFORMANCE DURING DISPUTE:** Unless otherwise directed by VTA, Contractor shall continue performance under the Contract while matters in dispute are being resolved.
- d. **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 VTA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

AA. SPECIAL U.S. DOL EEO CLAUSE FOR CONSTRUCTION PROJECTS: If the Contract has a total value of \$10,000 or more and is for construction, Contractor will comply with the following:

- a. **FLOW DOWN:** The requirements of this Section AA apply to Contractor and its Contract subcontractors performing construction work at every tier. Contractor is responsible for ensuring that all applicable lower tier contractors and subcontractors are in compliance with this Section AA.
- b. Contractor will comply with (i) U.S. DOL regulations set forth in 41 C.F.R. Part 60-4, (ii) Executive Order 11246 "Equal Employment Opportunity," as amended (including by Executive Order 11375), and (iii) 42 U.S.C. § 2000 (e) note.
- c. Contractor will comply with the equal opportunity clause set forth in 41 C.F.R. § 60-1.4(b), which is incorporated herein by reference pursuant to 41 C.F.R. § 60-1.4(d).
- d. Contractor will comply with the "Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)" set forth in 41 C.F.R. § 60-4.3, which specifications are attached hereto (if applicable).

BB. CONFORMANCE WITH I.T.S. NATIONAL ARCHITECTURE: If the Contract is (i) for the implementation of Intelligent Transportation Systems ("ITS") and (ii) funded through the Federal Highway Trust Fund, Contractor will comply with the following:

- a. **FLOW DOWN:** The requirements of this Section BB apply to Contractor and its Contract subcontractors performing ITS project work at every tier. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section BB.
- b. Except as otherwise permitted or determined by FTA in writing, Contractor will conform to the National Intelligent Transportation Systems (“ITS”) Architecture and Standards of 23 U.S.C. § 517(d), as amended by MAP-21.
- c. Contractor will comply with FTA Notice, “Federal Transit Administration National ITS Architecture Policy on Transit Projects,” 66 FR 1455, January 8, 2001.

CC. ADA ACCESS: Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:

- a. **FLOW DOWN:** The requirements of this Section CC apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section CC.
- b. Contractor will operate public transportation services and will keep its facilities used in public transportation services in compliance with: (i) 42 U.S.C. § 12101 et seq.; (ii) DOT regulations, including “Transportation Services for Individuals with Disabilities (ADA)” set forth at 49 C.F.R. Part 37; and (iii) Joint Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, including “Americans with Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles” set forth at 36 C.F.R. Part 1192 and “Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles” set forth at 49 C.F.R. Part 38. If Contractor is a private entity, Contractor must comply with the requirements of 49 C.F.R. Part 37 applicable to public entities.

DD. CHANGES: Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:

- a. **FLOW DOWN:** The requirements of this Section DD apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section DD.
- b. Contractor will 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 VTA and FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor’s failure to comply will constitute a material breach of the Contract.

EE. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

(a) *Definitions.* As used in this clause—

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People’s Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (*e.g.*, connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (*e.g.*, voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits VTA on or after August 13, 2020, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to VTA any

equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) *Reporting requirement.*

(1) In the event Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, Contractor must report the information in paragraph (d)(2) of this clause to VTA. For indefinite delivery contracts, Contractor must report to VTA for the indefinite delivery contracts that have any affected order(s).

(2) Contractor must report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

FF. INCORPORATION OF FTA TERMS: Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:

- a. FLOW DOWN:** The requirements of this Section FF apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section FF.
- b.** The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth herein. All contractual provisions required by DOT, as set forth

in FTA Circular 4220.1F and the Master Agreement or any revision thereto, are hereby incorporated by reference and made a part of the Contract, except to the extent FTA determines otherwise in writing. Anything to the contrary herein notwithstanding, all FTA-mandated terms are deemed to control in the event of a conflict with other provisions contained in the Contract. Contractor will not perform any act, fail to perform any act, or refuse to comply with any VTA requests which would cause VTA to be in violation of any FTA terms and conditions.

**EXHIBIT A-1 - BUY AMERICA CERTIFICATION
P20148
SVBX - BART FOLLOW-ON CISCO SYSTEMS SPARES**

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The Bidder hereby certifies that it will meet the requirements of 49 U.S.C. Section 5323(j)(1), and the applicable regulations in 49 CFR Part 661.5:

NAME OF COMPANY

SIGNATURE

PRINTED NAME/ TITLE

DATE

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The Bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j) (1) and 49 CFR Part 661.5, but it may qualify for an exception pursuant to 49 U.S.C. Sections 5323(j) (2) (A), 5323(j)(2)(B), or 5323(j)(2)(D), and in 49 C.F.R. 661.7.

NAME OF COMPANY

SIGNATURE

PRINTED NAME/ TITLE

DATE

**EXHIBIT A-2 - CERTIFICATION OF RESTRICTIONS ON LOBBYING
P20148
SVBX - BART FOLLOW-ON CISCO SYSTEMS SPARES**

The undersigned Contractor certifies to the best of his or her knowledge and belief that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contacts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S. C. Section 1352, (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

4. The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C.A. 3081 *et seq.*, apply to this certification and disclosure, if any.

NAME OF COMPANY

SIGNATURE OF CONTRACTOR'S AUTHORIZED OFFICIAL

PRINTED NAME/ TITLE OF CONTRACTOR'S AUTHORIZED OFFICIAL

DATE

**EXHIBIT A-3 COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES
REPRESENTATION
P20148
GIGABIT NETWORK CORE EQUIPMENT REPLACEMENT**

Pursuant to Public Law 115-232, Section 889, Proposer or Bidder or Contractor (referred to as “Offeror” in this document) must make the following representation to VTA:

(a) *Definitions.* As used in this provision, “covered telecommunications equipment or services” means:

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal funds for “covered telecommunications equipment or services”.

(c) *Representation.* The Offeror represents that it **does**, **does not** provide covered telecommunications equipment or services as a part of its offered products or services to VTA in the performance of any contract, subcontract, or other contractual instrument.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

**EXHIBIT O - BIDDER'S QUESTIONNAIRE
P20148
SVBX - BART FOLLOW-ON CISCO SYSTEMS SPARES**

This questionnaire is an integral part of a Bidder's Bid and must be completed. Failure to provide the required information may cause rejection of your Bid. All references and information shall be current and traceable. If the Bidder is a joint venture, each shall prepare a separate form.

NAME OF BIDDER:

PRINCIPAL OFFICE

STREET ADDRESS OR P.O. NUMBER

CITY

STATE

ZIP CODE + 4

TELEPHONE

FAX

E-MAIL ADDRESS

- 1.** Are you an individual _____, a partnership _____, a corporation _____, or a joint venture _____?
(Check appropriate business structure).

If partnership, list names and addresses of partners; if corporation, list names of officers and directors and State of incorporation; if joint venture, list names and addresses of venturers and, if any venture is a corporation, partnership or joint venture, list the same information for each such corporation, partnership and joint venture.

| NAME | ADDRESS |
|------|---------|
| | |
| | |

2. How many years has your organization been in business as a Contractor under your present business name? _____years.
3. How many people are currently employed by your firm? _____ In Santa Clara County? _____
4. Of the people employed, what are the job classifications involved in the services required by this solicitation, and how many people are assigned to each classification?

| JOB CLASSIFICATION | NO. OF EMPLOYEES |
|--------------------|------------------|
| | |
| | |
| | |
| | |

5. What is the location of your facility located in Santa Clara County? What is the square footage of this facility? (If the facility is not in Santa Clara County, indicate the location and square footage of the nearest facility to VTA’s Administrative Offices on First Street, San Jose).

6. What are the types and number of vehicles you will use in the performance of services required by this solicitation?

| TYPE | NUMBER |
|------|--------|
| | |
| | |

7. List the names of companies and public agencies that you have furnished service to within the last twelve months.

NAME AND ADDRESS:

TYPE OF BUSINESS:

CONTACT INFORMATION:

[Redacted]

NAME AND ADDRESS:

TYPE OF BUSINESS:

CONTACT INFORMATION:

[Redacted]

NAME AND ADDRESS:

TYPE OF BUSINESS:

CONTACT INFORMATION:

[Redacted]

8. List the names of companies and public agencies that you have current orders for the same or similar service.

NAME AND ADDRESS:

TYPE OF BUSINESS:

CONTACT INFORMATION:

[Redacted]

NAME AND ADDRESS:

TYPE OF BUSINESS:

CONTACT INFORMATION:

[Redacted]

NAME AND ADDRESS:

TYPE OF BUSINESS:

CONTACT INFORMATION:

[Redacted]

9. Have you or your organization, or any officer or partner thereof, failed to complete a contract? If so, give details:

10. Is any litigation pending against your organization? If so, give details:

11. Are you a certified SBE/DBE? If yes, with which agency do you hold your certification:

The undersigned certifies that (s)he is legally authorized by the Bidder to make the statements and representations contained in this document, and represents and warrants that the foregoing information is true and accurate to the best of his knowledge, and intends that the Santa Clara Valley Transportation Authority, Santa Clara County, California, rely thereon in evaluating the Bidder.

NAME OF COMPANY

SIGNATURE

PRINTED NAME/ TITLE

DATE

**EXHIBIT I - NO BID” RESPONSE FORM
P20148
SVBX - BART FOLLOW-ON CISCO SYSTEMS SPARES**

If no Bid is to be submitted, detach this sheet from the Solicitation, complete the information below, and fax the form to the attention of the Buyer listed on page 1 of this solicitation at the fax number above.

Reason for not submitting a Bid:

- Do not provide this service.
- Unable to obtain required insurance.
- Unable to obtain required bonding.
- Not equipped to handle this project.
- Do not carry this item.
- Not within the scope of our capabilities.
- Insufficient bidding time.
- Unable to identify items.
- Can supply item, however, cannot be competitive.
- Cannot comply with delivery/performance period.
- Project size is too large.
- Project size is too small.
- Not interested in this type of project.

Explain:

Cannot comply with Specification:

Explain:

Other:

Explain:

SIGNATURE

/ / 20

DATE

PRINT NAME

E-MAIL ADDRESS

FIRM

TELEPHONE

FAX

SAMPLE CONTRACT

**CONTRACT P20148
BETWEEN
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
AND
SUPPLIER NAME
FOR
SVBX - BART FOLLOW-ON CISCO SYSTEMS SPARES.**

This contract ("Contract") is made and entered into by and between Santa Clara Valley Transportation Authority ("VTA") and _____ ("Contractor"). This Contract expresses the terms and conditions for the purchase of SVBX- BART FOLLOW-ON CISCO SYSTEMS SPARES.

1. **CONTRACT COMPONENTS:**

The Contract consists of:

- A. Exhibit 1 – Invitation for Bid P20148 dated September 23, 2020 and any addenda thereto (the "IFB")
- B. Exhibit 2 – Bid Form 1-B, Contractor Price Sheet dated September 23, 2020

All parts of the Contract are intended to be complementary and what is set forth in any one document is as binding as if set forth in each document.

In case of any conflict among these documents where the parties' intended resolution is not clear, the order of precedence will be in the order listed above. In the event that any of the language set forth in the Contract is inconsistent or contradictory, then the language that is most favorable to VTA will control.

- 2. **SCOPE OF WORK:** Contractor must furnish and deliver Cisco Smart Net Total Care support services identified in the Scope of Work of the IFB (Exhibit 1).
- 3. **CONTRACT PRICE:** VTA must pay Contractor as set forth in Exhibit 2. The total Contract price must not exceed [\$XXX.XX].
- 4. **TERM OF CONTRACT:** Unless otherwise earlier terminated pursuant to the terms herein, the term of this Contract will be two (2) years from the date of award or until the Contractor completes delivery of the Deliverables.
- 5. **SERVICE OF NOTICE:** Any notice required or permitted to be given under this Contract will be deemed given when personally delivered to recipient thereof or mailed by registered or certified mail, return receipt requested, postage prepaid, to the appropriate recipient thereof, in the case of the Contractor at the business address specified in its Bid and in the case of VTA, at 3331 North First Street, Building B, San Jose, CA 95134-1927, or at any other address which either party may subsequently designate in writing to the other party.
- 6. **ENTIRE AGREEMENT:** This Contract constitutes the complete and entire agreement between VTA and the Contractor and supersedes any prior representations, understandings, communications,

commitments, agreements, or Proposals, oral or written, which are not incorporated as part of the Contract.

7. **GOVERNING LAW:** The laws of the State of California will govern these terms and conditions, as well as any claim that might arise between Contractor and VTA, without regard to conflict of law provisions.
8. **FORUM SELECTION:** Contractor will resolve any claim, cause of action or dispute (collectively "claim") that Contractor has with VTA arising out of or related to this Contract in a state or federal court located in Santa Clara County, California. Contractor agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.
9. **AUTHORIZED REPRESENTATIVES, NOTICES AND POINTS OF CONTACT:** The Authorized Representatives identified below, or assigned designees, have authority to authorize changes to the scope, terms and conditions of this Contract, as set forth herein.

A. AUTHORIZED REPRESENTATIVES:

VTA:

John White
Chief Procurement Officer
3331 N. First Street, Bldg. B
San Jose, CA 95134-1906
John.White@vta.org

CONTRACTOR NAME:

Name/Title
Address
City/State/Zip
Telephone
Email

- B. NOTICES:** Notices must be in writing and addressed to the Authorized Representatives at the address set forth above.

- C. POINTS OF CONTACT:** The Points of Contact listed below are authorized to communicate regarding contract matters, except in the case where correspondence regarding legal notices must be addressed to the Authorized Representatives.

VTA:

Elena Lazo, Buyer II
3331 N. First Street, Bldg. B
San Jose, CA 95134-1906
Elena.Lazo@vta.org

CONTRACTOR NAME

Name/Title
Address
City/State/Zip
Telephone
Email

- D. Written notification to the other party must be provided, in advance, of changes in the name or address of the designated Authorized Representative or Point of Contact stated above.

In witness whereof, VTA and CONTRACTOR have executed this Contract P20148 as of the last date set forth below ("Effective Date").

SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY

CONTRACTOR

John Wesley White Date
Chief Procurement Officer
Procurement, Contracts, & Materials Management

Signature Date

Printed Name

Approved as to Form:

Title

VTA Counsel Date