



**SUBURBAN MOBILITY AUTHORITY for REGIONAL TRANSPORTATION**

**REQUEST FOR PROPOSALS  
Enterprise Resource Planning (ERP) System Upgrade  
Consultant  
Control No. 26-4364**

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**RFP Control Number: 26-4364  
RFP Due Date: 3:00 PM Eastern Time  
Friday, February 13, 2026**

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VENDOR NAME: \_\_\_\_\_

REPRESENTATIVE NAME: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP: \_\_\_\_\_

PHONE: \_\_\_\_\_ EMAIL: \_\_\_\_\_

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## **1.00 INTRODUCTION AND STATEMENT OF WORK**

### **1.01 Introduction and SMART Contact Information**

This Request for Proposals (RFP) is being solicited by the Suburban Mobility Authority for Regional Transportation (SMART), a public transportation authority in southeast Michigan that serves more than 10 million passengers annually.

This project is utilizing Federal funds. A necessary part of the required documentation would be compliance with all the mandated Federal Clauses and Certifications. Please return all required Federal Clauses and Certifications with quotation to SMART for compliance determination before an award can be made.

Request For Proposals (RFP) Title:	Enterprise Resource Planning (ERP) System Upgrade Consultant
RFP Control Number:	26-4364
Date Advertised:	Wednesday, January 14, 2026
Date Issued:	Wednesday, January 14, 2026
Due Date:	Friday, February 13, 2026
Time:	3:00 PM Eastern Time
Location:	See Section 2.05: Instructions for Electronic Submission
Senior Purchasing Agent:	Erika Blocker
E-mail Address:	<a href="mailto:eblocker@smartbus.org">eblocker@smartbus.org</a>
Telephone Number:	313-223-2141
Manager of Contracts and Procurement:	Caleb Barrett
Project Manager:	Ryan Byrne

### **1.02 Term of the Contract**

SMART is interested in awarding a contract whose term shall continue until completion of the required services. Any options or extensions shall be exercised solely at SMART's discretion.

### **1.03 Scope of Work/Technical Specifications and Objective**

#### **Introduction**

SMART is seeking an experienced Enterprise Resource Planning Consultant (ERP Consultant) to assist with all aspects of implementing a new enterprise and financial planning system. The ERP Consultant will provide support throughout the project, offering a wide range of professional, technical, consultative, managerial, and other essential services required for the successful integration of a new ERP solution. Key responsibilities will include conducting a thorough assessment of current business processes and systems, devising a detailed action plan to address identified needs, preparing the scope of work for a Request for Proposal for a financial system solution, participating in the evaluation of proposal submissions, and providing guidance and support during the implementation phase of the new system.

The current SMART financial and accounting software, which has been in operation for many years, no longer meets the Authority's evolving needs and lacks the technological advances and integration necessary for a robust financial system and effective data analysis. The overall objective of this project is to streamline processes, eliminate redundant or manual tasks and processes, enhance operational efficiency, strengthen internal control, and improve accessibility of information for users. Furthermore, the comprehensive needs assessment will specifically concentrate on the financial accounting and budgeting processes at SMART but require seamless integration with various operational software systems.

## **Current Systems**

SMART is currently utilizing Microsoft Dynamics GP as its accounting system. The following modules are in use with the GP environment:

- General Ledger
- Accounts Payable
- Financial Reporting (Report Designer, Report Viewer)

SMART has not currently implemented the following system modules, but are a necessary component of the new system:

- Accounts Receivable/Billing – Fare, Millage, State Operating, Fed Grant, State Grant
- Grant Development and Tracking
- Fixed Assets
- Budgeting – Capital and Operating
- Purchasing

SMART is utilizing the following operational systems, which will need to interface with the new financial software:

- Inventory and Asset Management – Trapeze EAM and Transit Asset Planning Module of EAM – This system will need to interface with the new financial system, to ensure inventory and assets match between systems and eliminate extra work reconciling the two systems
- Payroll – ADP Workforce Now – This system will need to interface with the new financial system to automatically post payroll into the accounting system
- Human Resource Information System -ADP Workforce Now – This system will need to interface with the new ERP system regarding staff levels and benefits information.
- Dispatch – Trapeze OPS – This system tracks the underlying drivers' hours and miles, and will need to integrate with the Dashboarding module
- Point of Sale System – SMART ticket and pass sales system

SMART is utilizing the following operational systems, which will need to be replaced by the new financial software:

- Procurement – Ariett – This is the procurement workflow tracking system. It ultimately creates POs in the financial system. This system is significantly aged and no longer supported. Replacement will need to be scoped into the Financial System Upgrade.
- Grant Development – This is the process SMART uses to plan for grant capital needs.
- Document Management System – DocuWare – This is the current system SMART uses to electronically store most financial documents

Other important operational systems

- Bus Operations – Clever Device – on board bus system that tracks passengers, miles, and other bus operation data.
- Scheduling – Trapeze FX – this system estimates budget hours and miles used by Finance
- Legal – Accident claims tracking – currently manual process

## **Scope of Service**

The objectives of this consulting contract are:

- Comprehensive needs assessment
  - Departments
    - Finance Department
      - Payroll
      - Governmental Accounting
      - Treasury
      - AP/AR
    - Maintenance
      - Parts Inventory
      - Rolling Stock (Vehicles)
      - Warranty
    - Procurement
      - General Purchase
      - Parts Purchase
    - Bus Operations
    - Grant Programs
    - Information Technology
    - Human Resources
    - Planning
  - Assistance in preparing an RFP covering all required needs
  - Ongoing Cost Estimation
  - Assistance in evaluation of responding vendors and vendor selection
  - Contract negotiation assistance
  - Implementation oversight
  - Advisory Services

The needs assessment shall include any necessary technical infrastructure to support the software system. For this, technical infrastructure includes hardware, system software, databases, network components, and operating systems required to support the ERP software application.

The needs assessment shall also include, but is not limited to:

- General Accounting (General Ledger, Accounts Payable, Accounts Receivable, Payroll)
- Budget Development and Tracking – Operating and Capital
- Procurement – development and tracking
- Grant Development and Tracking
- Cash Management
- Inventory and Fixed Asset Tracking
- Warranty tracking and recovery
- Dashboard analytics and reporting (operation and financial)
- National Transit Database Reporting
- Human Resources Information System

## **Comprehensive Needs Assessment**

The Consultant shall meet with SMART staff to gain an understanding of all pertinent business processes. The Consultant shall conduct on-site interviews with staff from pertinent departments to review, evaluate and document existing business practices, information requirement, unmet needs, possible interfaces, and other systems that relate to various ERP System processes.

The Consultant shall provide a comprehensive project schedule of interviews and working sessions that will be coordinated with SMART's staff. The consultant shall provide meeting notes in a mutually agreed format for each session.

The Consultant shall evaluate and document the effectiveness of existing software solutions, integrations, and identify the requirements necessary to meet the current and future business needs of SMART regarding accurate and complete financial information, proper internal control, and effective workflow processes. The Consultant shall evaluate existing department specific data needs that may be incorporated into the ERP software solution. Additionally, the Consultant shall evaluate the ability of current systems to effectively integrate into the new financial system solution and identify other relevant systems or resources that may be necessary to replace the current financial software.

The Consultant shall provide a Comprehensive Needs Assessment document, by functional area, including an "as-is" and "to-be" assessment, with the following:

- Key Requirements
- Process flows and narrative of systems involved in the financial software
- Necessary data fields report to manage workflow
- Documentation of issues and proposed resolutions
- Opportunities for process improvements
- Future functional requirements
- Necessary interfaces
- Information security needs

## **Request For Proposal Document(s)**

The Consultant shall prepare, with the assistance of SMART Procurement Staff, a comprehensive RFP(s) and identify potential contractors to solicit for the purchase, installation, implementation and training of the new financial system solution. The Consultant shall assist SMART staff during the proposal evaluation process.

The Scope of Work for the RFP shall include the following:

- Project Overview – outlining the overall vision of the project
- Application Requirements
- Technical Requirements
- Implementation Methodology
- Project Administration
- Testing
- Conversion
- Interface Implementation
- Roles and Responsibilities
- Milestone Payment Schedule
- Training

## **Vendor Evaluation**

The Consultant shall provide technical support and guidance to SMART's staff during the vendor evaluation process of proposals, including but not limited to:

- Assessment of the staffing and skill set of the vendor
- Assessment of critical functionality of the proposed solution
- Review of references submitted

## **Contract Negotiation**

The Consultant shall assist SMART staff to successfully negotiate a contract with the selected software vendor, and any additional contract necessary with existing vendors, as follows:

- Ensure any best and final offer submitted by the contractor fully aligns with the requirements of the Scope of Work in the RFP
- Complete Cost Proposal including details regarding estimated number of hours and cost by task and/or stage of the project.
- Ensure contract documents depict clear delineation of roles and responsibilities for the contractor and the agency based on SMART's requirements.

## **Implementation Assistance**

The Consultant will assist in the overall implementation of the ERP upgrade. The Consultant is responsible for developing and maintaining the Project Schedule for major tasks and deliverables. Consultant shall run periodic progress meetings, which include project status summary. The summary should document task status, decisions made, and action items to be addressed by the project team and SMART. SMART staff maintain overall responsibility for the system implementation.

## **Additional Advisory Services**

SMART may request the ERP Consultant to provide services in addition to the above tasks. These tasks may become necessary during this Contract or after the new ERP system has been implemented. Any such extra or optional tasks will be treated as a change order and subject to negotiation.

Proposers for the ERP Consultant are free to propose, as an additional and optional Task, any other efforts that they believe may be beneficial to the ERP Project execution that have not been specifically requested or identified above.

## **2.00 SOLICITATION PROCEDURES**

### **2.01 Solicitation Schedule**

Pre-Proposal Conference (if applicable) (Section 2.02):	10:00 AM, Eastern Time, Friday, January 23, 2026
Requests for Clarification, Communications and Equal Performance Deadline (Section 2.03):	3:00 PM, Eastern Time, Tuesday, January 27, 2026
Proposal Due Date and Time (Section 1.01):	3:00 PM, Eastern Time, Friday, February 13, 2026

### **2.02 Pre-Proposal Conference**

A Pre-Proposal Conference (including a site visit if applicable) will be held on the above date and time via Zoom. See details in section 3.00. The project will be discussed at the meeting; however, no statements should be viewed as modifications to the RFP unless issued as addenda. Attendance is encouraged but it is not mandatory.

A Pre-Proposal Conference will not be held.

### **2.03 Offeror Communications**

During the solicitation process, all forms of contact and correspondence in regard to any aspect of this solicitation shall only be with the Purchasing Agent identified in Section 1.01. Further, this Offer must be made based upon independent price determination, and Offeror shall not have communications with others for the purpose of restricting competition. Any alleged breach of this Section may, at SMART's sole discretion, result in the rejection of the breaching Offeror's proposal and reporting of such conduct to any applicable governing authorities.

At any time before the Requests for Clarification, Communications and Equal Performance Deadline (See Section 2.01), the Offeror may request clarification, interpretation, or further explanation of any portion of this RFP. All such requests should be done on Request for Clarification form(s), as provided in Section 3.04. Offerors may also request approval of an item that deviates from the specifications stated in the Scope of Work.

Whenever brand, manufacturer, or product names are used, they are included for the purpose of establishing a description of the item. This inclusion is not advocating or prescribing the use of a particular brand, item, or product. Whenever such names appear, requests for approved equal substitutions will be considered. Offeror's request(s) for approved equals shall include all aspects of product which would document the products salient features.

All such Requests and SMART's responses will be issued as addenda and made available to all prospective bidders. Approval, denial, and any other response to requests are in the sole discretion of SMART.

### **2.04 Addenda to the RFP**

SMART reserves the right to amend the RFP at any time prior to the Proposal Due Date. Any such amendments will be issued as addenda to the RFP and will become part of the RFP. Addenda will be posted exclusively on the MITN website, [www.mitn.info](http://www.mitn.info). All Offerors shall acknowledge the receipt of all addenda in their proposal. Failure to do so may result in the rejection of an Offeror's proposal, at SMART's sole discretion.

## **2.05 Proposal Content Requirements and Proposal Submission**

Offerors must precisely follow all of the instructions of the RFP. All proposals must include the entire RFP document, as the combination of the RFP and the Offeror's response form the Contract. Failure to conform to all content and packaging requirements may result, at SMART's sole discretion, in rejection of an Offeror's proposal. Proposals shall be submitted in two separately sealed packages, marked "TECHNICAL PROPOSAL" and "PRICING PROPOSAL". **Electronic submission only. Emailed attachments shall contain RFP of all pages and required documents. The company financials shall be sent as separate email.** The required contents of each attachment are described below sent in one email.

### TECHNICAL PROPOSAL

The Technical Proposal must include all information necessary for SMART to evaluate both the Offeror and the Offeror's proposal. It must include the entire RFP document and all issues of responsibility and responsiveness, as set out in Section 2.08, "Qualification Requirements", and Section 2.09, "Evaluation Criteria". Additionally, all required (non-pricing) forms, and any Deviation forms related to the Technical Proposal, shall be included and properly completed.

### PRICING PROPOSAL

The Pricing Proposal shall include all information necessary for SMART to evaluate the Offeror's proposed pricing, including any necessary supporting data. All required (pricing-related) forms including forms 3.01, 3.02 and 3.03, and any Deviations related to the Pricing Proposal, shall be included and properly completed.

### **INSTRUCTIONS FOR ELECTRONIC SUBMISSION:**

All proposals in response to this solicitation issued by Suburban Mobility Authority for Regional Transportation (SMART), must be submitted electronically via Bidnet Direct (MITN) at [www.bidnetdirect.com](http://www.bidnetdirect.com) or by email at [bids@smartbus.org](mailto:bids@smartbus.org) by , 3:00 PM, ET. Physical submissions will **not be accepted**.

Vendors must be registered with Bidnet Direct to view, download, and submit bids/proposals/quotes should they choose to use Bidnet Direct for their submission. Registration is available at no cost at the following link: [www.bidnetdirect.com](http://www.bidnetdirect.com).

If a vendor uses Bidnet Direct, it is the sole responsibility of each vendor to ensure that its electronic bid submission is completed and successfully uploaded to Bidnet Direct prior to the submission deadline indicated in the solicitation. Late submissions will **not be accepted**.

By submitting a proposal through Bidnet Direct, the vendor agrees to all terms and conditions of the solicitation and the electronic submission process.

For technical support with the Bidnet platform, vendors may contact Bidnet Direct at [support@bidnet.com](mailto:support@bidnet.com) or call 800.835.4603.

**SMART will also accept email submissions. See below for email submission instructions:**

1. Email to: [bids@smartbus.org](mailto:bids@smartbus.org)

2. Subject Line: SMART RFP No. 26-4364 Response – COMPANY NAME
3. Please number all pages of your document.
4. If your submission requires more than one email, please include behind your company name "Email 1 of 2" or "Email 2 of 2," whatever applies.
5. Please note, all requirements and due date requirements will remain in place. Your electronic submission must arrive in the [bids@smartbus.org](mailto:bids@smartbus.org) email by 3:00 PM ET, should you choose to email your submission.

If any issues should arise when submitting your bid, contact the purchasing agent via email at [eblocker@smartbus.org](mailto:eblocker@smartbus.org) at least 2 hours prior to the cut off time. If you do not receive receipt acknowledgement of your submission, please contact the purchase agent.

## **2.06 Modification or Withdrawal of Proposals**

A modification of a proposal already received will be accepted by SMART only if the modification is received prior to the proposal Due Date, is requested by SMART, or is made in response to a request for revised proposals. All modifications shall be made in writing and executed and submitted in the same form and manner as the original proposals.

An offeror may withdraw a proposal prior to the proposal Due Date by submitting to SMART a written request for withdrawal executed by the offeror's authorized representative. The withdrawal of a proposal does not prejudice the right of an offeror to submit another proposal within the time set for receipt of proposals.

## **2.07 Proposal Evaluation, Negotiation, and Selection**

Proposals will be evaluated, negotiated, and selected using the criterion and processes explained herein. In addition to disqualifying proposers and/or proposals based upon this process, SMART may, in its sole discretion, reject any or all proposals or Offerors for any reason. Additionally, offerors hereby on notice that the lowest dollar cost bidder may not always be awarded a contract. Any and all Deviations, Clarifications, reservations, and additional or contradictory terms included in a bid may result in its rejection, at SMART's sole discretion. SMART also reserves the right to waive any defects or irregularities in any proposal, or to request that an Offeror provide any missing information and make corrections.

## **2.08 Qualification Requirements**

Bids are first evaluated as a threshold requirement to conduct business with SMART, to determine the responsibility of Offerors. **If it is found that an offeror does not meet these requirements, that offeror is deemed non-responsible and their Bid will be excluded from consideration for Bid award.** This determination is made in the sole discretion of SMART. Responsibility requirements are as follows:

- A. Sufficient financial strength and resources and capability to finance the work to be performed and complete the contract in a satisfactory manner as measured by one of the following:
  1. Offeror's financial statements prepared in accordance with United States Generally Accepted Accounting Principles (GAAP) and audited or reviewed by an independent certified public accountant authorized to practice in the jurisdiction of either SMART or the

## SOLICITATION PROCEDURES

offeror. If offeror does not have audited or reviewed financial statements, offeror may provide complete copies of the prior two year's signed federal tax returns.

2. Ability to secure required bond(s), if required under the bonding requirements described herein.

3. Willingness of any parent company to provide the required financial guaranty evidenced by a letter of commitment signed by an officer of the parent company having the authority to execute the parent company guaranty as evidenced by a Corporate Resolution of the Parent Company. Such letter of commitment must be accompanied by the parent company's financial statements prepared in accordance with United States Generally Accepted Accounting Principles (GAAP) and audited or reviewed by an independent certified public accountant.

It should be noted that this information is requested for internal evaluation purposes only, and like any other information which forms part of a proposer's submission, it will be held in strict confidence. However, once a proposer is selected, some or all the information submitted may be subject to the Freedom of Information Act, unless it qualifies as an exemption. If you would like anything kept confidential, please mark the materials as such. Those materials will be returned to any proposers not selected. The materials of the selected vendor must be kept on file with SMART as part of the contract, however, in the event of a FOIA request, SMART will promptly notify the vendor and allow it the opportunity to seek judicial relief.

B. Evidence that the human and physical resources of the Offeror are sufficient to perform the Contract as specified and assure delivery of all equipment and/ or services within the time specified in the Contract. Examples of ways to demonstrate this are as follows:

1. Evidence of sufficient personnel staffing levels with sufficient skills, training, expertise, to complete the Contract as required and satisfy any circumstances that may arise during the Contract;
2. Evidence of sufficient equipment to complete the Contract as required and satisfy any circumstances that may arise during the Contract.

C. Evidence of satisfactory performance and integrity on past and current contracts.  
Examples of ways to demonstrate this are as follows:

1. References from past and current clients;
2. Awards and accolades based upon similar past and current projects;
3. Prior contractual successes with SMART.

D. Compliance with all Equal Employment Opportunity laws and regulations. This may only be evidenced by proper completion of Form 3.07, "EEO / Affirmative Action Compliance".

E. Federal Disadvantaged Business Enterprise requirements. This may only be evidenced by proper completion of Form 3.12, "Disadvantaged Business Enterprises".

## **2.09 Evaluation Criteria**

If a proposal has been determined to meet all Qualification Requirements and is not otherwise rejected, it is then evaluated based upon pricing and Evaluation Criteria for determining the competitive range or selection of a proposal for potential award.

Any and all Deviations, Clarifications, reservations, and additional or contradictory terms included in a proposal that did not result in rejection will be evaluated in this Section according to what evaluation criteria they affect.

Evaluation Criteria	Max Points
<b>1. Experience working with ERP software solutions.</b>	<b>40</b>
<b>2. Approach and understanding of the scope of work</b>	<b>30</b>
<b>3. References</b>	<b>10</b>
<b>4. Price</b>	<b>20</b>

## **2.10 Determination of the Competitive Range**

If proposal evaluation as explained in Section 2.08 and Section 2.09 does not provide sufficient information for SMART to select a proposal for potential award, SMART may, at its sole discretion, establish a competitive range of proposals for further discussion with SMART.

### Proposals Not Within the Competitive Range

Proposals that have been determined to be outside of the competitive range, and unable to be made within the competitive range at SMART's discretion, will be excluded from further evaluation and will not be considered for award.

### Proposals within the Competitive Range

The Offerors who are found by SMART to be within the competitive range, or whose proposals may be made to be within the competitive range (at SMART's discretion), will be notified in writing. SMART will then undertake to further evaluate the remaining Offerors through interviews, requests for clarifications, site visits, or any other analysis determined by SMART to be probative of the Offeror's ability to perform the Contract.

Any and all Deviations, Clarifications, reservations, and additional or contradictory terms included in a proposal may be negotiated at this time. Failure to come to a resolution acceptable to SMART may result in the rejection of that proposal from further consideration, at SMART's sole discretion.

No information, financial or otherwise, will be provided to any Offeror about any of the proposals from other Offerors within the competitive range during this process, and Offerors will not be told of their rankings in relation to other Offerors.

## **2.11 Best and Final Offers (BAFO)**

After further evaluation of the competitive range has been completed, each Offeror in the competitive range may be afforded, at SMART's sole discretion, the opportunity to amend its proposal and make its BAFO. SMART may also use the BAFO process, in the issuance of a Request for Revised Proposals, to clarify, modify, delete, or add work or terms to any portion of the RFP.

Any modifications to the initial proposal made by an Offeror shall be clearly identified in its BAFO. SMART will make appropriate adjustments to the initial evaluation scores for any criteria which have been affected by modified or supplemental information supplied in the BAFO.

## **2.12 Notice of Intent to Award, and Contract Award**

Once SMART has determined the Offeror to which it intends to award the Contract, a Notice of Intent to Award letter will be sent to that Offeror requesting all Required Submissions, which are listed in Article 5.00. Failure to submit satisfactory documents within ten (10) business days may result, at SMART's sole discretion, in the contract being awarded to an alternative offeror. These documents must be accepted prior to initiation of work under the Contract. The Notice of Intent to Award does not bind SMART and is not acceptance of the Offer.

The acceptance of an Offer for award, if made, shall be evidenced only by a fully executed Offer and Award Form, Form 3.03, delivered in person, by mail, or electronically to the Offeror whose Offer is accepted. No other act by SMART shall evidence acceptance of an Offer. Such notice shall obligate said Offeror to commence performance under the Contract.

## **2.13 Protests**

Interested parties that believe they have been aggrieved by solicitation, or the award of any resulting contract may file a written notice of protest with the General Manager of SMART. This must be via certified mail, with a copy served upon SMART's General Counsel in the same manner. The General Manager or their designee shall review and determine the merits of any such protest. The General Manager may, at their sole discretion, schedule a hearing on the protest and/or receive evidence or legal argument from any interested party, but shall not be bound by the rules of evidence nor formal procedure. The General Manager shall issue their conclusion to the protesting party in writing via certified mail and shall also advise the SMART Board of Directors.

An "interested party" is a party that is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the third-party contract at issue. A subcontractor is not an interested party.

Protests addressing the adequacy of the solicitation process, and all solicitation documents, must be received by the General Manager no later than five (5) business days before the Proposal Due Date (See Section 1.01). Notice of protest of the award of a solicitation must be received by the General Manager no more than five (5) business days after the SMART Board of Directors has authorized the General Manager to award a contract(s) for that solicitation. Failure to adhere to these time limitations will result in the protested issue(s) being waived by all parties. All determinations made by the General Manager are final.

## **2.14 Effect of Termination or Suspension of Contractor on Other Contractor and Bidders**

In the event the primary vendor is suspended or terminated, SMART reserves the right in its sole discretion to make the secondary vendor the primary vendor or to contract with a different

## SOLICITATION PROCEDURES

contractor that either previously bid in response to this solicitation or through other contracting procedures consistent with SMART's contracting policy to be the primary vendor. SMART has the sole discretion to follow these same procurement procedures if the secondary vendor is terminated or suspended and SMART chooses to replace the secondary vendor.

## **3.00 REQUIRED FORMS AND SUBMISSIONS**

Forms 3.01-3.14 must be completed and included in the Offeror's Response to the Proposal, even though some may not seem to apply to this solicitation. Failure to complete any of these forms may result, at SMART's sole discretion, in the rejection of that proposal. Forms 3.01, 3.02, and 3.03 shall be submitted with the Price Proposal. The remaining forms shall be submitted with the Technical Proposal.

Article 5.00, *Required Submissions for Selected Vendor after Notice of Intent to Award*, details all submissions the successful Offeror must produce before being awarded the Contract. When SMART has chosen an Offeror to which it intends to award the Contract, a Notice of Intent to Award letter, see Section 2.12, will be sent to the recommended vendor and will require all submissions prior to the award of the Contract.

### **Please see details below for Pre-Bid Conference**

Join Zoom Meeting

<https://smartbus.zoom.us/j/84808687975?pwd=JZ6XblyAUsNF1SgWZLc8K8ph04O24x.1>

Meeting ID: 848 0868 7975

Passcode: 007092

One tap mobile

+19292056099,,84808687975#,,,\*007092# US (New York)

+13017158592,,84808687975#,,,\*007092# US (Washington DC)

Join instructions

<https://smartbus.zoom.us/meetings/84808687975/invitations?signature=VXzT7AIFMfHa jC1NkdkYmTggmYoy2EF...>

### **3.01 Pricing Schedule**

The Offeror hereby offers to furnish to SMART all goods and/or services at the prices as proposed below, pursuant to all requirements, terms, and conditions as stated in the RFP and response.

Rates provided must be inclusive of all costs and fees, including but not limited to those fees imposed by Federal, State, and local governments. No additional fees will be accepted.

Alternative pricing schemes may be proposed provided that they are in addition to a base proposal and shall be included with the Pricing Proposal.

Pricing shall be valid for 160 days after due date. Pricing shall be firm fixed for the entire contract.

<b>Deliverables</b>	<b>Estimated Hours</b>	<b>Hourly Price</b>
<b>Project Initiation &amp; Planning:</b> Kickoff meeting, project plan, schedule, and coordination		
<b>Comprehensive Needs Assessment:</b> Department interviews, systems review, integrations review, and comprehensive needs assessment report		
<b>ERP RFP Development:</b> Preparation of ERP system RFP(s) and procurement support		
<b>Vendor Evaluation Support:</b> Proposal evaluation assistance, cost and functionality review		
<b>Contract Negotiation Assistance:</b> Support during negotiations and BAFO review		
<b>Implementation Oversight:</b> Project oversight, meetings, status reporting, and implementation support		

NAME OF OFFEROR: \_\_\_\_\_

## CONTRACTUAL PROVISIONS

### **3.02 Acknowledgement of Addenda**

Addenda are published on the Michigan Intergovernmental Trade Network website, [www.mitn.info](http://www.mitn.info). Failure to acknowledge all addenda may result in rejection of any such proposal, at SMART's sole discretion.

The Offeror acknowledges receipt of the following addenda. **If the RFP No. 26-4364 did not have any addenda, please submit this form filled out as "NOT APPLICABLE".**

Addendum Number \_\_\_\_\_, Dated \_\_\_\_\_

Name of Offeror: \_\_\_\_\_

Signature Of  
Authorized Signer: \_\_\_\_\_

Name And Title of Offeror's Authorized Official: \_\_\_\_\_

### **3.03 Offer and Award**

By executing below, the Offeror hereby offers to furnish equipment and services as proposed, pursuant to all requirements, terms, and conditions as stated in the RFP and response, and incorporated in SMART's Request for Proposal No. 26-4364. Offeror stipulates that all terms of the Contract are negotiated, and that the consideration for this Contract is real and not merely a recital. This Contract is valid and enforceable with electronic, facsimile, and mechanically reproduced signatures, and if separately countersigned. This Offer shall remain open and valid until the award of this Contract, or until the withdrawal of this solicitation, whichever is greater.

<b>Offer:</b>	Company Name: _____
	Street Address: _____
	City, State, Zip: _____
Legal Entity (Check One):	<input type="checkbox"/> Individual / Sole Proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust / Estate <input type="checkbox"/> Limited Liability Company
State of Incorporation: _____	
Tax ID Number: _____	
Name of Authorized Official: _____	
Signature of Offeror's Authorized Official: _____	
Name and Title of Offeror's Authorized Official: _____	
Date: _____	

By executing below, SMART accepts the Offer as indicated above.

### **Award:**

\_\_\_\_\_  
Name and Title of SMART Official

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

### **3.04 Request for Clarification, Communications and Equal Performance**

This form must be used to request clarifications, changes, substitutions, explanations, or approval of items equal to items with specified brand names. This form must be submitted by the Requests for Clarification, Communications and Equal Performance Deadline, noted in Section 2.01. Each request must be submitted on a separate form. Multiple questions on the same form will not be answered. Attach additional pages if necessary. **If Offeror has no Requests for Clarification, Communications or Equal Performance, please submit this form filled out as "NOT APPLICABLE".**

RFP Control Number: 26-4364

Request Number: \_\_\_\_\_

Request Regarding RFP Section: \_\_\_\_\_

#### **Clarification, Communications or Equal Performance Request:**

#### **Reason/Rationale for Request:**

**NAME OF OFFEROR:** \_\_\_\_\_

#### **SMART Response:**

## CONTRACTUAL PROVISIONS

### **3.05 Proposal Deviation**

This form must be completed for each condition, exception, reservation, understanding, additional or contradictory terms, etc. (i.e. deviation) in Offeror's proposal. Any and all deviations and rationale must be explicitly stated so that they may be properly evaluated. Deviations which SMART finds ambiguous, unfavorable, or unacceptable may result in lowered proposal evaluation scoring, or may result in the rejection of the proposal, at SMART's sole discretion. Copies of this form must be submitted for each deviation. Attach additional pages if necessary. **If Offeror has no Proposal Deviations, please submit this form filled out as "NOT APPLICABLE".**

RFP Control Number: 26-4364

Deviation Number: \_\_\_\_\_

Deviation Regarding RFP Section: \_\_\_\_\_

**Deviation:**

**Reason for deviation:**

**NAME OF OFFEROR:** \_\_\_\_\_

### **3.06 Compliance with Laws and Regulations**

By signing below, Offeror certifies compliance with all applicable Federal, state, county, and local laws, regulations, ordinances, and codes in the performance of the Contract.

Additionally, Offeror certifies compliance with all FTA terms, including but not limited to FTA Circular 4220.1G as amended, which are hereby incorporated as applicable and consistent with current laws and regulations. Offeror is responsible for the procurement of all required permits and licenses. Offeror further certifies compliance with all changes to the aforementioned laws, regulations, ordinances, codes, policies, etc., throughout the term of the Contract. Offeror additionally certifies that it is not an Iran-linked business as set forth in the Iran Economic Sanctions Act, M.C.L. 129.311 et seq.

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

Finally, Offeror shall determine whether any or all of the aforementioned requirements apply to any or all subcontractors and certifies compliance by any affected subcontractors.

Offeror hereby certifies compliance with all laws and regulations in the performance of this Contract.

Name of Offeror: \_\_\_\_\_

Signature of Offeror's Authorized Official: \_\_\_\_\_

Name and Title of Offeror's Authorized Official: \_\_\_\_\_

Date: \_\_\_\_\_

**NAME OF OFFEROR:** \_\_\_\_\_

### **3.07 EEO / Affirmative Action Compliance**

SMART only conducts business with Offerors who are Equal Opportunity Employers. Offerors must complete this form regarding compliance. Offerors must comply with SMART's nondiscrimination requirements as set forth in Section 4.06, "Nondiscrimination" and Section 6.05 "Civil Rights Requirements".

Additionally, certain contractors that are awardees of federally funded contracts are required to file affirmative action plans with government agencies as set forth in 41 C.F.R. Chapter 60 for purposes of compliance with the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. Please note that while Offeror may receive funds from, and provide transit-related employees to, other FTA direct and sub-recipients, this should not be considered when answering the questions below. To assist SMART in determining whether Offeror is required to have such a plan on file, please answer the following questions:

1. Does Offeror employ over fifty (50) transit-related employees<sup>1</sup> at SMART? \_\_\_\_\_ Yes \_\_\_\_\_ No
2. Has Offeror completed in excess of \$1,000,000 in contracts with SMART in the past year? \_\_\_\_\_ Yes \_\_\_\_\_ No

If Offeror answered "Yes" to both questions, please provide SMART with a copy of your Affirmative Action Plan and state below which government agency currently has Offeror's Affirmative Action Plan on file:

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Offeror hereby affirms compliance with all Equal Employment and applicable Affirmative Action requirements as required by law and as set forth herein.

Name of Offeror: \_\_\_\_\_

Signature of Offeror's Authorized Official: \_\_\_\_\_

Name and Title of Offeror's Authorized Official: \_\_\_\_\_

Date: \_\_\_\_\_

Should you have any questions or concerns regarding the completion of this form, or compliance provisions set forth herein, please contact:

Candice Fowler, Civil Rights and External Drug and Alcohol Compliance Manager  
SMART  
Buhl Building, Suite 600  
535 Griswold  
Detroit, MI 48226  
Phone: (313) 223-2167  
[cfowler@smartbus.org](mailto:cfowler@smartbus.org)

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<sup>1</sup> Transit-related employee refers to an employee of an FTA applicant, recipient, subrecipient, or contractor who is involved in any aspect of an agency's public transit operation funded by FTA. 49 C.F.R. 4704.1a Sections 1.4 and 1.6.

### **3.08 Debarment and Suspension Certification**

#### **Certification of Primary Participation Regarding Debarment, Suspension and Other Responsibility Matters**

Offeror certifies, to the best of its knowledge and belief, that it and each of its principals:

1. Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any Federal department or agency;
2. Has not, within the preceding three years, been convicted of or had a civil judgment rendered against him, her for or it commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
3. Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any offense described in paragraph 2 of this certification;
4. Has not, within the preceding three years, had one or more public transactions (Federal, State, or local) terminated for cause or default.

The certification in this clause is a material representation of fact relied upon by SMART. If it is later determined that the bidder or proposer provided an erroneous certification, in addition to remedies available to SMART to terminate or suspend the contract arising from this solicitation, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 48 C.F.R. Part 9 and 2 C.F.R. Part 180 and any other disclosures required in this Section while this offer is valid and throughout the period of any contract that may arise from this offer, and has the affirmative obligation to notify SMART in writing to the contracting officer and the SMART General Manager by Certified Mail, of any events or circumstances that come into existence that would necessitate a change in, or a withdraw of, the certifications set forth in this section. The bidder or proposer further agrees to include a provision requiring such compliance in its lower-tier-covered transactions.

Signature of Offeror's Authorized Official: \_\_\_\_\_

Name and Title of Offeror's Authorized Official: \_\_\_\_\_

Date: \_\_\_\_\_

**3.09 RESERVED**

**This space has been intentionally left blank.**

### **3.10 Lobbying Certification**

#### **Certification Regarding Lobbying**

The undersigned 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, 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 shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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. 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.

Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Contractor understands and agrees that the provisions of 31 U.S.C. 3801 et seq., apply to this certification and disclosure, if any.

Name of Offeror: \_\_\_\_\_

Signature of Offeror's Authorized Official: \_\_\_\_\_

Name and Title of Offeror's Authorized Official: \_\_\_\_\_

Date: \_\_\_\_\_

### **3.11 Conflict of Interest Certification**

#### **Conflict of Interest Certification**

No employee, officer or member of the Board of Directors of SMART shall solicit or be a party, directly or indirectly, to any contract between him/herself and any firm of which he/she is a partner, member or employee. Kinship shall extend to all parents, children, grandparents, grandchildren, uncles, aunts, first cousins, nephews or nieces whether related by marriage or blood.

Contractor shall indicate below the names and kinship between the officers and/or principal beneficiaries of the firm bidding on this solicitation and any SMART employee, officer or board member who may exercise any discretion over the letting, evaluating, awarding or administering of this solicitation and resulting contract:

PLEASE INDICATE ANY RELATIONSHIPS BELOW. **IF NONE EXIST, please submit this form filled out as "NONE EXIST".**

Name _____	Kinship _____
_____	_____
_____	_____
_____	_____
_____	_____

Name of Offeror: \_\_\_\_\_

Signature of Offeror's Authorized Official: \_\_\_\_\_

Name and Title of Offeror's Authorized Official: \_\_\_\_\_

Date: \_\_\_\_\_

### **3.12 Offeror and Subcontractor Certifications**

#### **Program Overview**

In accordance with 49 C.F.R. Part 26, and as further set forth in Contract Section 6.27, "Disadvantaged Business Enterprise", as the recipient of federal funds, SMART sets an overall goal annually for DBE participation in contracts financed with federal funds. For professional services, construction, and non-construction contracts awarded during the federal government fiscal year 2019, SMART has proposed an overall DBE goal of 6.8%.

For federally funded contracts, SMART intends to meet the overall DBE goal by setting specific DBE goals on a contract-by-contract basis. Contract goals will be based upon the actual required types of work and the availability of DBEs to perform the required types of work. Specific contract goals will be set so that they will cumulatively result in meeting the portion of SMART's overall goal that it projects it will not be able to meet through race-neutral means. Therefore, a DBE goal for a particular contract may be more or less than the annual overall DBE goal.

For additional information and to locate certified DBE vendors, please see the Michigan Uniform Certification Program (MUCP): <https://www.michigan.gov/mdot/business/contractors/dbe>.

#### **DBE Goal for This Contract**

The Suburban Mobility Authority for Regional Transportation (SMART) has set a goal of **zero (0)** percent for participation of Disadvantaged Business Enterprises (DBEs) in this contract.

#### **Application of DBE Goal to Contract Value**

The DBE contract goal is applicable to the full contract value, including any contract change orders or amendments. A DBE goal is also applicable during the entire term of the contract, including any extension periods.

#### **Requirements to Meet DBE Goal**

A firm meets a DBE goal by having actual DBE participation equaling or exceeding the percentage of the contract amount specified in the goal established for the solicitation, or by providing backup documentation that good faith efforts have been made to meet the established goal for this contract.

If a proposal is submitted with DBE participation at a **lower percentage** than the goal set for the contract, then the proposal must include sufficient written documentation of the "good faith efforts" the proposer made to meet the goal. 49 C.F.R. 26.53(c) provides that SMART cannot commit to contracting with a business that has **not** provided "complete and accurate and [adequate documentation] of the proposer's good faith efforts" to meet a DBE goal. **"Good faith efforts" must be made before the Proposal Deadline.**

#### **Definitions of DBEs and SBEs**

Disadvantaged Business Enterprises (DBE) and Small Business Enterprises (SBE) are two different types of certifications. A company that qualifies may choose to become certified as both or choose to be certified as just one type of company. Not all SBEs qualify to be a DBE, but all DBEs would qualify as an SBE if they were to seek that certification. Due to DBE certification including the criteria that a socially and economically disadvantaged individual own at least 51% interest and also control management and daily business operations; many small businesses do not qualify for DBE certification.

Offerors can only count work completed by DBE certified firms towards any DBE participation goals set on a SMART contract. Work completed by SBEs cannot be counted towards any contracts with a DBE participation goal. The Prompt Payment clause in this contract applies to both DBE and SBE subcontracted firms. An offeror is required to pay both DBE and SBE subcontractors no later than thirty (30) days from receipt of each payment the prime contractor receives from SMART.

## CONTRACTUAL PROVISIONS

**Disadvantaged Business Enterprises (DBE):** Are for-profit small businesses where socially and economically disadvantaged individuals own at least a 51% interest and also control management and daily business operations. For a business to become certified as a DBE, a small business must be owned and controlled by a socially and economically disadvantaged individual(s). In addition, it must receive DBE certification from one of the certifying agencies who are a member of the Michigan Uniform Certification Program (MUCP). Only companies certified as a DBE by an agency within the State of Michigan can be counted towards a SMART contract's DBE participation percentage goal.

**Small Business Enterprises (SBE):** Are businesses that have been certified by a local and/or state government entity that have met the Small Business Administration's (SBA) thresholds for being a small business. A business qualification is determined by the company's average gross receipts or by the number of employees.

**Note: To count towards the stated DBE goal, a firm must be certified as a DBE in the Michigan Unified Certification Program (MUCP). Firms certified as only a Small Business Enterprise (SBE) cannot be counted towards DBE participation.**

### **Certified Small Business Enterprise (SBE) Certification**

Indicate if your company or any of the subcontractor(s) that will be working on this contract are a certified Small Business Enterprise (SBE).

- 1) Are any of the companies you are subcontracting with a certified Small Business Enterprise? \_\_\_ Yes \_\_\_ No
- 2) If you answered "No" to question one (1), please proceed to the following page. If you answered "Yes" to question one (1), please attach a copy of the SBE certification of your company or that of the subcontracting firm(s).

Describe the responsibilities of each SBE participant. (Attach additional sheets, if necessary). Firms which have applied for certification, but have not yet completed the certification process, will not be considered after the bid is due.

**Name of Offeror/Vendor:** \_\_\_\_\_

**SBE Vendor #1:** \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ Phone #: \_\_\_\_\_

Summary of Participation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SBE Vendor #2:** \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ Phone #: \_\_\_\_\_

Summary of Participation:

**SBE Vendor #3:** \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ Phone #: \_\_\_\_\_

Summary of Participation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## CONTRACTUAL PROVISIONS

### **Payment**

As set forth in Contract Sections 6.27 "Disadvantaged Business Enterprise" and 4.08 "Payment and Retainage", Contractor must ensure prompt payment for work completed by Disadvantaged Business Enterprises.

The prime contractor shall pay each DBE/SBE subcontractor under this contract for satisfactory performance of the subcontractor's portion of the contract no later than thirty (30) days from receipt of each payment the prime contractor receives from SMART. The prime contractor shall return any retainage withheld to ensure satisfactory completion of the work to each subcontractor within thirty (30) days after the DBE/SBE subcontractor achieves the specified work as verified by SMART's Project Manager. Any disputes that arise regarding the satisfactory completion of work by a DBE/SBE subcontractor shall be brought to the attention of SMART's Project Manager, who will determine if the work is satisfactory.

Any delay of payment from the above referenced time frame may occur only for good cause following written approval from SMART's Project Manager. The failure by the prime contractor to carry out the requirements of this section, without just cause, is a material breach of this contract, which may result in SMART withholding payment from the prime contractor until all delinquent payments have been made to the DBE/SBE subcontractor.

**It is the responsibility of the Prime Contractor to provide SMART's DBE Compliance Coordinator with copies of invoices received from offeror's DBE/SBE subcontractor(s), along with proof of payment.**  
**Please forward all information to:**

**SMART**

Attn: DBE Compliance Coordinator  
Candice Fowler  
535 Griswold Street, Suite 600  
Detroit, MI 48226  
Email: cfowler@smartbus.org  
Phone no. 313-223-2167

### **Prompt Payment Certification**

**By signing below, the Offeror acknowledges and agrees to provide the Authority's DBE Compliance Coordinator with invoices received by the DBE/SBE subcontractor upon receipt and without delay. The Offeror must additionally provide proof of payment to the DBE Compliance Coordinator no later than thirty (30) days after the prime contractor's receipt of payment from SMART. Failure to promptly pay any DBE/SBE subcontractor(s) may affect SMART's future payments to Offeror and may affect the Offeror's ability to obtain contracts with SMART in the future.**

Name of Offeror: \_\_\_\_\_

Signature of Offeror's  
Authorized Official: \_\_\_\_\_

Name and Title of Offeror's  
Authorized Official: \_\_\_\_\_

Date: \_\_\_\_\_

## CONTRACTUAL PROVISIONS

### **Disadvantaged Business Enterprises (DBE) Certification**

Indicate your proposed percentage level of DBE subcontracting participation for this contract: \_\_\_\_\_ %

Describe the responsibilities of each DBE participant. (Attach additional sheets, if necessary). To be counted towards the DBE goal, a firm must be certified by the date of the bid is due. Firms which have applied for certification, but have not yet completed the certification process, will not be considered after the bid is due. **Note: To count towards the stated goal, a firm must be certified as a DBE in the Michigan Unified Certification Program (MUCP).**

**RFP CONTROL NUMBER/ TITLE:** \_\_\_\_\_

**Name of Offeror/Vendor:** \_\_\_\_\_

**Proposed DBE Vendor #1:** \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

Phone #: \_\_\_\_\_ Age of DBE Vendor #1: \_\_\_\_\_

Race and Gender information for Firm's majority owner:

Annual gross receipts of firm:

Less than \$1 million

\$1-\$3 million

\$3-\$6 million

\$6 - \$10 million

Summary of Participation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NAICS Code for scope of work of participation:

Proposed % of subcontracting participation and/or proposed contract amount: \_\_\_\_\_

**Proposed DBE Vendor #2:** \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

Phone #: \_\_\_\_\_ Age of DBE Vendor #1: \_\_\_\_\_

Race and Gender information for Firm's majority owner:

Annual gross receipts of firm:

## CONTRACTUAL PROVISIONS

Less than \$1 million

\$1-\$3 million

\$3-\$6 million

\$6 - \$10 million

Summary of Participation: \_\_\_\_\_  
\_\_\_\_\_

NAICS Code for scope of work of participation:

Proposed % of subcontracting participation and/or proposed contract amount: \_\_\_\_\_

**Offeror hereby certifies compliance with the goals and requirements of the Disadvantaged Business Enterprise section:**

Name of Offeror: \_\_\_\_\_

Signature of Offeror's Authorized Official: \_\_\_\_\_

Name and Title of Offeror's Authorized Official: \_\_\_\_\_

Date: \_\_\_\_\_

**3.13 RESERVED**

**This space has been intentionally left blank.**

**3.14 RESERVED**

**This space has been intentionally left blank.**

## **4.00 GENERAL CONTRACTUAL PROVISIONS**

This Article contains terms and conditions of the Contract.

### **4.01 Contract, Contract Documents, and Conflicts**

The documents (including portions of the RFP), and materials incorporated therein, listed below constitute the complete contract (referred to throughout the solicitation as the "Contract") between SMART and the Offeror. This Contract contains the entire agreement of the parties, and supersedes all prior negotiations, agreements, conversations, communications, and any other understandings with respect hereto.

The Contract consists of:

1. Amendments, if applicable
2. Best and Final Offer, if applicable
3. Addenda, if applicable
4. Introduction and Statement of Work (Article 1.0)
5. General Contractual Provisions (Article 4.0)
6. Additional Contractual Provisions (Article 6.0)
7. All other Articles and Sections of the RFP, as issued
8. Offeror Proposal

All requirements and duties of the Contract issued by SMART are independent and shall augment any other similar requirements and duties stated herein. If any direct conflict among the requirements and duties of the Contract arises, the order of precedence shall be as listed above.

Contractor shall not cause SMART to breach the Master Agreement for Public Transit Contracts between the Michigan Department of Transportation and SMART ("MDOT Master Agreement"). For any Contract utilizing funds from the Michigan Department of Transportation, the terms and conditions of the MDOT Master Agreement shall be incorporated by reference.

### **4.02 Amendments**

Amendments to this Contract are valid only if in writing and signed by the SMART Procurement Manager and an authorized representative of Contractor. Notwithstanding, no amendments to this Contract are valid that are in violation of applicable laws, regulations, or SMART Board Policy.

### **4.03 Change Orders**

SMART reserves the right to require alterations in, additions to and deductions from the work initially contemplated in the formation of the Contract without rendering void the Contract. All work shall be described in a written Change Order signed by the SMART Procurement Manager. Contractor shall submit a detailed technical proposal for the amended requirements within 30 days if necessary, as determined by SMART. If Contractor determines that any pricing changes will result from the Change Order, it shall be treated as a request for an amended pricing schedule and Contractor shall not proceed with the modified work until authorized by SMART. Amended pricing information shall be submitted with all backup documentation within 30 days. The proposed technical proposal and, if applicable, pricing schedule, shall be accepted or modified by negotiation. Disagreements arising under this Section that cannot be resolved by negotiation may result, at SMART's sole discretion, in a Termination for Default (See Section 4.13) of the Contract. SMART may alternatively elect, at its sole discretion, to revert to the original requirements of the Contract.

#### **4.04 RFP and Proposal Omissions**

Contractor shall have the responsibility of supplying all parts and services required to make the product complete and ready for service, even though such details may not be specifically set forth in the RFP or Proposal. If Offeror is uncertain about responsibility to supply parts or services due to perceived ambiguity within the RFP, it is the sole responsibility of the Offeror to submit Form 3.04, "Request for Clarification", or Form 3.05, "Proposal Deviation", as appropriate.

#### **4.05 Governing Law and Parties; Venue and Disputes**

This Contract and all related disputes shall be interpreted in accordance with the laws of the State of Michigan, except those which would direct the application of the laws of another jurisdiction. All disputes arising under this Contract shall be decided by arbitration if the parties mutually agree, or in a court in the State of Michigan of competent jurisdiction.

#### **4.06 Nondiscrimination**

In accordance with the Title VI of the Civil Rights Act of 1964, Section 303 of the Age Discrimination Act of 1975, section 202 of the Americans with Disabilities Act of 1990, 49 U.S.C. 5332, the Michigan Elliot-Larsen Civil Rights Act, M.C.L. 37.2101 et seq., and SMART policy, the Offeror agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, disability, height, weight, familial status, marital status, or sexual orientation. In addition, the Offeror agrees to comply with applicable Federal regulations as further set forth in Section 6.05.

#### **4.07 Price Adjustment for Regulatory Changes**

If price adjustment is required for changes that are mandatory as a result of legislation or regulations that are promulgated and become effective after the Due Date of the Contract, the adjustment shall be negotiated between SMART and Contractor. Failure to successfully negotiate any adjustment may result, at SMART's sole discretion, in Termination for Default, Section 4.13, of the Contract.

#### **4.08 Payment and Retainage**

Subject to the terms of the Contract, SMART shall pay and Contractor shall accept the amounts set forth in the price schedule as full compensation for all costs and expenses of completing the Work in accordance with the Contract, including but not limited to all labor and material required, overhead, expenses, storage and shipping, risks and obligations, taxes (as applicable), fees and profit, and any unforeseen costs.

Invoices must be submitted electronically to AccountsPayable@smartbus.org for payment.

Contractor shall pay all subcontractors performing work under this Contract within **thirty (30)** days of receipt of a proper invoice for work performed satisfactorily. Contractor shall not withhold payment due to subcontractors that is being held by SMART as retainage.

**Payment Retainage – Not Applicable** For all progress payment contracts, Contractor shall be paid ninety (90) percent of the amount earned under the Contract and pursuant to the provisions set forth herein. SMART shall retain ten (10) percent to ensure faithful performance of the Contract, which shall be due as part of SMART's final payment under the Contract. All such invoices shall clearly set forth (a) the invoice amount, (b) the amount retained for that invoice, (c) the total amount billed toward the Contract, and (d) the total amount retained by SMART against the Contract.

#### **4.09 Cancellation of Procurement**

SMART reserves the right to cancel this solicitation at any time before the Contract is fully executed, for any reason, and shall thereby incur no liability to any offeror or prospective offeror.

#### **4.10 Indemnification**

Contractor shall, to the extent permitted by law protect, indemnify and hold SMART, its Board of Directors, officers, employees and agents, and consultants, harmless from any and all liabilities, damages, claims, demands, liens, encumbrances, judgments, awards, losses, costs, expenses, and suits, actions or proceedings, including expenses, costs, and attorney's fees, in the defense, settlement or satisfaction thereof for any injury, death, loss or damage to persons or property of any kind whatsoever arising out of or resulting from the alleged or actual negligent acts, errors, or omissions of Contractor, including its officers, employees, servants, agents, subcontractors and suppliers. At SMART's sole discretion, Contractor shall undertake at its own expense the defense of any such suit, action, or proceeding. Contractor shall promptly notify SMART of the notice or assertion of any such suit, action, or proceeding. SMART will endeavor to furnish all reasonable assistance necessary for defending any such suit, action, or proceeding, and shall be repaid all reasonable costs incurred in doing so. SMART maintains the right to select and pay for its own counsel.

#### **4.11 Records**

Contractor shall retain records, including but not limited to, all data, documents, reports, records, and supporting materials relating to the project for whichever of the following events occurs **later**:

1. Six (6) years from the termination of the Contract; 2. The resolution of any litigation or settlement of any claims arising out of this Contract; or 3. The resolution of any exception to costs and expenses taken by SMART, the U.S. Department of Transportation, Comptroller General of the United States, or the State of Michigan.

SMART or its designee may perform audits of Contractor, and, if applicable, all tiers of subcontractors, of financial information related to this Contract. Contractor agrees to make these records, including but not limited to bank statements, general ledger, payroll records, and accounts receivable ledgers, available for review in a timely manner when requested by SMART. SMART also requires annual financial statements including balance sheets, income statements, and statements of cash flow. Contractor additionally agrees to provide the FTA, Comptroller General of the United States, the Secretary of the U.S. Department of Transportation, or any of their designees, access to any books, documents, papers, and records of Contractor which are pertinent to or relate in any way to Contractor's performance of this Contract for the purpose of making audits, excerpts, and transcriptions, or when conducting an audit and/or inspection.

In the event of a sole source Contract, single responsive offer, Contract modification, Change Order, or competitive negotiated procurement, SMART and the U.S. Department of Transportation, or their designees, shall have the right to examine all books, records, documents, and other costs and pricing data related to the Contract price. The rights of examination shall extend to all documents necessary for adequate evaluation of the cost or pricing data.

The requirements of this Section are independent and in addition to those in Section 6.03, "Access to Records and Reports".

#### **4.12 Termination or Suspension for Convenience**

SMART may terminate or suspend, at its sole discretion, this contract, in whole or in part, at any time by notice, in writing and with at least fifteen (15) days' advance notice, to Contractor when it

is in SMART's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of any termination or during such suspension. Contractor shall promptly submit any termination or suspension claim to SMART to be paid to Contractor. If Contractor has any property in its possession belonging to SMART, Contractor will dispose of it in the manner SMART directs.

#### **4.13 Termination or Suspension for Default**

SMART may terminate or suspend, in its sole discretion, this Contract, in whole or in part, by written notice of default if Contractor breaches any term or condition of this Contract, fails to perform the work in any aspect required within the RFP, fails to provide any required submissions or updates to certifications required by this contract, or any of the certifications or representations relied upon by SMART in entering into this contract have changed. This right to terminate or suspend may be exercised if Contractor fails to cure all defaults listed within the notice of default within fifteen (15) days of the notice of default. The notice shall be in writing and signed by the Procurement Manager and is effective on the date it is mailed to Contractor. SMART shall be liable only for those services authorized and rendered, and/or goods received before the effective date of termination, subject to any damage incurred by SMART as a result of the termination. If Contractor has any property in its possession belonging to SMART, Contractor will dispose of it in the manner SMART directs. It shall be within SMART's sole discretion whether to terminate the contract or suspend for a period of time determined by SMART to allow Contractor further opportunity to cure any default.

#### **4.14 SMART's Right to Do Work**

If the Contract is terminated or suspended for default in whole or in part, as set forth in Section 4.13, "Termination or Suspension for Default", due to poor workmanship, deficient work, or incomplete work, SMART may, without prejudice to any other remedy it may have, repair or complete said work, and may deduct the cost thereof from payment then or thereafter due to Contractor.

In such case, the Authority shall issue a Change Order deducting from payment then or thereafter due Contractor the cost of correcting such work, including compensation for labor and/or any contracted services required to make corrections. If payment then or thereafter due to Contractor is not sufficient to cover such amount, Contractor shall pay the difference to the Authority within thirty (30) days of receiving an invoice from SMART.

#### **4.15 Confidentiality of Proposals**

Access to all documents in SMART's possession is governed by the Michigan Freedom of Information Act (FOIA), M.C.L. 15.231 *et seq.* SMART will endeavor to not disclose any information it believes to be exempt under FOIA but does not guarantee any such non-disclosure. No deviations may be requested related to this Section.

#### **4.16 Succession, Assignment, and Subcontracting**

This Contract will be binding on the parties, their successors, and assigns, as well as all of Contractor's subcontractors of every tier. Contractor may not assign or subcontract its rights or obligations under the Contract without prior written permission of SMART. Names and addresses of all approved subcontractors must be provided to SMART and kept current throughout Contract performance.

**4.17 Survivability and Severability**

Contractor's obligations herein shall survive the nominal expiration of Contract obligations, and SMART may obtain any remedy under law, Contractor, or equity to enforce the obligations of Contractor that survive the manufacturing, warranty, final payment, and all other Contract periods. If any provision of this Contract is deemed unenforceable, then the remainder of this Contract shall remain enforceable to the extent permitted by law.

**4.18 Waiver**

The failure by SMART to require performance of any provision shall not affect SMART's right to require performance at any time thereafter, nor shall SMART's waiver of any breach or default of this Contract constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

**4.19 Incorporation of RFP Document**

Offeror's proposal shall include all terms, conditions, explanations, work, etc. in this RFP document. If the Offeror fails to return portions of the solicitation with their proposal, those portions are incorporated by reference. Offeror may only deviate from the solicitation using a properly completed Deviation Form, (See Form 3.05). Any contradictory terms, conditions, explanations, work, etc. in the Offeror's proposal not accompanied by a properly completed Deviation Form shall not be incorporated into the Contract, at the sole discretion of SMART.

**4.20 Warranty**

The Offeror warrants and represents to all materials, goods, services, and equipment furnished under the Contract will be new, of good quality, free from defects of material or workmanship, and in conformance with the Contract documents for a period of one (1) year from the date they are furnished and accepted by SMART hereunder. This warranty is in addition to any other warranties provided under the Contract, and any and all warranties and remedies, express or implied, as provided by law or otherwise.

**4.21 Electronic Signature**

The Parties acknowledge and agree that this Contract may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. The Parties agree that the electronic signatures appearing on this Contract are the same as handwritten signatures for the purposes of validity, enforceability and admissibility. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

## **5.00 REQUIRED SUBMISSIONS FOR SELECTED VENDOR(S) AFTER NOTICE OF INTENT TO AWARD**

The following must be submitted by an Offeror within ten (10) business days of receipt of a Notice of Intent to Award as set forth in Section 2.12, "Notice of Intent to Award and Contract Award".

### **A. Insurance**

The selected Offeror shall maintain such insurance as will provide indemnity for claims under the Workers' Compensation act and Employer's Liability; from claims for damages because of bodily injury, including death, to all others and from claims for damages to property - any or all of which may arise out of or result from the Vendor's operations under this contract, or from any subcontractor or anyone directly or indirectly employed by either of them.

Before starting any work for SMART, Contractor must furnish original certificates of insurance stating that it carries insurance in the following types and minimum amounts:

Comprehensive General Liability	
- Each Occurrence BI/PD	\$1,000,000
- Personal and Adv. Injury	\$1,000,000
- General Aggregate	\$2,000,000
Products and Completed Operations	\$2,000,000
Automobile Liability	\$1,000,000 CSL
Employer's Liability	\$500,000
Workers' Compensation	Statutory Limits

Certificates must set forth the amounts of coverage, policy number, and expiration date, and must name SMART as an additional insured, and must provide for thirty (30) days advance written notice of cancellation or reduction in coverage. Coverage must be primary and non-contributory and provide a waiver of subrogation in favor of SMART. If Contractor is self-insured, a certificate from the appropriate State agency must be furnished by such agency to SMART. If during the term of the Contract, the insurance certificate or any required coverage expires or is otherwise modified, Contractor is responsible for providing renewed certificates. The purchase of insurance shall not be a satisfaction of Contractor's indemnification requirements to SMART.

### **B. Other Required Submissions, if applicable**

No others are required.

Other submissions are required as follows: \_\_\_\_\_

## **6.00 ADDITIONAL CONTRACTUAL PROVISIONS**

This Article contains additional terms and conditions of the Contract that are required by the Federal Transit Administration (FTA). No deviations may be made from this Article.

### **6.01 No Government Obligation to Third Parties**

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

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

### **6.02 Program Fraud & False or Fraudulent Statements & Related Acts**

(1) 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 this Project. Upon execution of the underlying 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 underlying contract or the FTA assisted project for which this 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.

(2) 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 the FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5323(l) on Contractor, to the extent the Federal Government deems appropriate.

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

### **6.03 Access to Records and Reports**

In accordance with 49 U.S.C. 5325(g) and 49 C.F.R. 633.17, Contractor agrees to provide SMART, the FTA Administrator or their authorized representatives, and any person providing project management oversight to any of them, access to Contractor's records (including such records and information the Contractor may regard as confidential or proprietary) and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(3), which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

Contractor shall comply with the record retention requirements of 49 C.F.R. 200.334, and further

agrees to maintain, and require all subcontractors of all tiers to retain, all books, data, records, reports, statistics, sub-agreements, arrangements, accounts and reports, other third-party agreements of any type, and supporting materials pertaining to this Contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until SMART, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

## **6.04 Federal Changes**

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

## **6.05 Civil Rights Requirements**

The following requirements apply to the underlying contract:

(1) Nondiscrimination – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and Federal transit laws at 49 U.S.C. 5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements the FTA may issue.

(2) Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying contract:

(a) 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 agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. In addition, Contractor agrees to comply with any implementing requirements the FTA may issue.

(b) Age – In accordance with the Age Discrimination in Employment Act, 29 U.S.C. 621 et seq. , U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, 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 the FTA may issue.

(c) Disabilities – In accordance with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. 12101 et seq., the Architectural Barriers Act of 1968, 42 U.S.C. 4151 et seq., and Federal transit law at 49 U.S.C. 5332, and 29 C.F.R. Part 1630. Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, Contractor agrees to comply with any implementing requirements the FTA may issue.

(3) Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by the FTA, modified only if necessary to identify the affected parties.

## **6.06 Incorporation of Federal Transit Administration Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1G or its current revision, to the extent it is consistent with the most recent laws and regulations, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (SMART) requests which would cause (SMART) to be in violation of the FTA terms and conditions.

## **6.07 Energy Conservation Requirements**

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6321 *et seq.*

## **6.08 Distracted Driving and Seat Belt Use**

**A.     Seat Belt Use.** Contractor agrees to comply with Executive Order No. 13043, "Increasing Seat Belt Use in the United States, April 16, 1997, 23 U.S.C. 402 note (62 Fed Reg. 19217) by adopting and promoting 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; and (2) including a "seat belt use" provision in each third-party agreement related to this Agreement.

**B.     Distracted Driving, Including Text Messaging While Driving.** Contractor agrees to implement Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and U.S. DOT Special Provision pertaining to Distracted Driving by: (1) adopting and enforcing 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 or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with this Contract or when performing any work for or on behalf of this Contract; (2) conducting workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving. (3) including the preceding "Distracted Driving, Including Text Messaging While Driving" provisions in each third-party agreement related to this Contract.

**6.09 Prohibition on certain Telecommunications and Video Surveillance Services or Equipment.**

Contractor shall comply with the prohibitions against the contracting for, procurement or obtaining of items described in Pub. L. 115-232, 2 C.F.R. 200.216(a)(3). Loan and grant funds may not be expended on covered telecommunications equipment produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

**6.10 Privacy Act**

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

(2) Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by the FTA.

**6.11 Government-Wide Debarment and Suspension**

This Contract is a covered transaction for purposes of 2 C.F.R. Part 200, 180, and 1200. As such, Contractor is required to verify that none of Contractor, its principles, as defined at 2 C.F.R. Part 180, or affiliates, as defined at 2 C.F.R. Part 180, are excluded or disqualified as defined at 2 C.F.R. Part 180.

Contractor is required to comply with 2 C.F.R. Part 180, subpart C and must include the requirement to comply with 2 C.F.R. Part 180, subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, Contractor certifies as follows:

*The certification in this clause is a material representation of fact relied upon by SMART. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to SMART, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C, as supplemented by 2 C.F.R. Part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower-tier-covered transactions.*

**6.12 RESERVED**

**6.13 Notification of Disputes Affecting Federal Government Interests.**

(1) FTA Interest. FTA has a vested interest in the settlement of any violation of federal law, regulation, or disagreement involving this Agreement (and any amendments thereto) including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.

(2) Notification to FTA or DOT Inspector General. If a current or prospective legal matter that may affect the Federal Government emerges, Contractor must promptly notify SMART, as well as either the FTA Chief Counsel or the FTA Region 5 Counsel.

- (a) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation naming of the Federal Government as a party, or a legal disagreement in any forum for any reason.
  - (b) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in this Agreement (and any amendments thereto), or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
  - (c) If Contractor has credible evidence that a principal, official, employee, agent, or third party participant of the Contractor, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. 3729 et seq., or has committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance, the Contractor must promptly notify the U.S. DOT Inspector General, in addition to the FTA Chief Counsel or the FTA Region 5 Counsel.
- (3) Flow Down Provision. Contractor shall include a similar notification requirement in its agreements with third parties and subcontractors and must require each third-party participant in the contract to include an equivalent provision in its subagreements at every tier.
- (4) Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party as a result of the resolution of the dispute, based on the percentage of the federal share of the funding for the underlying agreement.

#### **6.14 Lobbying**

Contractor acknowledges the restrictions of the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, and 2 U.S.C. 1601. Contractor shall, in addition to providing the certification at Section 3.10, require certifications in the form of Section 3.10 from all subcontractors and offerors for bids at any tier, and provide same to SMART.

#### **6.15 Clean Air**

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401. Contractor agrees to report each violation to SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the FTA.

#### **6.16 Clean Water Requirements**

- A. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Contractor agrees to report each violation to SMART and understands and agrees that the

SMART will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

- B. Contractor also agrees to include the requirements of Section 6.07(A) above in each subcontract exceeding \$150,000.

**6.17 RESERVED**

**6.18 Fly America Requirements**

Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

**6.19 RESERVED**

**6.20 RESERVED**

**6.21 RESERVED**

**6.22 RESERVED**

**6.23 RESERVED**

**6.24 RESERVED**

**6.25 RESERVED**

**6.26 Patent and Rights in Data, Inventions, and Copyrights**

**A. Rights in Data** – These following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

## CONTRACTUAL PROVISIONS

(2) The following restrictions apply to all subject data first produced in the performance of the Contract to which this Attachment has been added:

(a) 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 the FTA, until such time as the 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.

(b) In accordance with 2 C.F.R. 200.315, 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 in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes" means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party:

1. Any subject data developed under that contract, whether or not copyright has been obtained; and
2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by the FTA.

(c) When the FTA awards Federal assistance for experimental, developmental, or research work, it is the FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless the FTA determines otherwise, Purchaser and Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit the FTA to make available to the public, either the FTA's license in the copyright to any subject data developed in the course of that 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 the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, Contractor agrees to 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 the Purchaser or 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 shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) 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.

## CONTRACTUAL PROVISIONS

- (f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
- (g) Unless the FTA determines otherwise, Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by the FTA.
- (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and Contractor agree to take the necessary actions to provide, through the FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- (4) Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by the FTA.

**B. Patent Rights** – These following requirements apply to each contract involving experimental, developmental, or research work:

- (1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until the FTA is ultimately notified.
- (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and Contractor agree to take the necessary actions to provide, through the FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- (3) Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by the FTA.

### **6.27 Disadvantaged Business Enterprise (DBE)**

- A. This Contract is subject to the requirements of 49 C.F.R. Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%.

## CONTRACTUAL PROVISIONS

- B. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 and any amendments thereto in the award and administration of this DOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as SMART deems appropriate, including the withholding of monthly progress payments, and/or disqualification of Contractor from future bidding as non-responsible. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph.
- C. Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 C.F.R. 26.53. Award of this Contract is conditioned on submission of the following:
  - 1. The names and addresses of DBE firms that will participate in this Contract;
  - 2. A description of the work each DBE will perform (to count toward a DBE goal, a DBE firm must be certified in an NAICS code applicable to the work performed on the contract);
  - 3. The dollar amount of the participation of each DBE firm participating;
  - 4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
  - 5. Written confirmation from the DBE that it is participating in the Contract as provided in the prime contractor's commitment; and
  - 6. If the contract goal is not met, evidence of good faith efforts to do so, including copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract.

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- D. Contractor is required to pay its subcontractors performing work related to this Contract for satisfactory performance of that work no later than 30 days after Contractor's receipt of payment for that work from SMART. In addition, Contractor may not hold retainage from its subcontractors.
- E. Contractor must promptly notify SMART whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of SMART.

### **6.28 Recycled Products**

Contractor agrees to comply with all requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247, and to include these requirements in all contractor and subcontractor tiers.

**6.29 Preference for United States Materials**

Contractor shall, to the greatest extent practicable, provide a preference for the purchase, acquisition or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement and other manufactured products), as those terms are defined in 2 C.F.R. 200.322. Contractor shall require this provision in all subcontracts.

**6.30 RESERVED**

**6.31 RESERVED**

**6.32 Human Trafficking Statement**

Contractor agrees that it and its employees that participate in the Contract may not engage in severe forms of trafficking in persons during the period of time that the Contract is in effect, may not procure a sex act during the period of time that the Contract is in effect, or use forced labor in the performance of the Contract or Subcontracts thereunder.