

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
**REQUEST FOR PROPOSALS FOR ON-CALL HUMAN RESOURCES CONSULTING**  
**SOLICITATION INSTRUCTIONS**

**Project Description:** The Santa Barbara Metropolitan Transit District (MTD), a California special district public transit operator, desires to engage with Human Resource experts to support the hiring and onboarding of senior-level management positions, employee benefits, regulatory compliance, and other critical HR functions on an on-call, as-needed basis. Experience providing recruitment services to public transit systems is highly desired.

**Project Location:** MTD is located in downtown Santa Barbara at 550 Olive Street, Santa Barbara, CA 93101

**Submittal:** **Proposals will be accepted by MTD via email until Thursday, July 18, 2024 at 11:00 AM** (local time). The offer must be in .PDF format and emailed to [purchasing@sbmtd.gov](mailto:purchasing@sbmtd.gov) with the subject line, "On-Call HR Consulting." A complete proposal shall be composed of the following items:

- Letter of Transmittal**—Please limit to one page. Letter shall be signed by an officer authorized to bind the firm contractually and shall address its interest and willingness to carry out the project as described in the attached *Scope of Services*; and its ability and willingness to obtain insurance meeting the requirements as detailed in the attached.
- Proposal**— Please limit to three pages. Proposal shall include a description of the proposing firm and the range of HR services offered; identification of key personnel's experience and expertise; a narrative on the method, strategy or work plan that MTD should expect to achieve its HR objectives; and any additional information appropriate for providing a general overall picture of the firm and its value proposition.
- Fee Schedule**—Provide Fee Schedule indicating hours and rates by task which shall be used as the basis for a not-to-exceed agreement Include an explanation of the pricing proposal including billing practices and payment terms that would apply.
- Bidder Information**—Submittal shall include the fully completed *Bidder Information* form.
- References & Certifications**—Submittal shall include the fully completed forms, attached. Please be certain to list contact information that is accurate and current. References from public agencies and transit operators of similar size and scope of MTD should be provided whenever possible. A firm's past performance is an important part of MTD's evaluation.

**Contract Award:** The goal is to announce the contract award decision by August 1, 2024. MTD will issue a not-to-exceed agreement to the firm that offers MTD the best value based on its proposal, references, and bid price. Such contract will reference these *Solicitation Instructions*, the *Scope of Services*, submitted proposal, and insurance terms. The contracted firm must provide certificates of insurance meeting the requirements prior to beginning project services.

**Solicitation Contact:** All communications concerning this solicitation and the project shall be directed to Valerie White, purchasing agent, 805.963.3364 x224, [purchasing@sbmtd.gov](mailto:purchasing@sbmtd.gov)

**End of Solicitation Instructions (see attachment)**



**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
**REFERENCES**

Business Name of Bidder: \_\_\_\_\_

---

***Work References***

Include three recent clients for which you provided **similar services** to the project work.

Client Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_

Contact Phone: \_\_\_\_\_ Contact E-Mail: \_\_\_\_\_

Description of Work: \_\_\_\_\_

---

-----  
Client Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_

Contact Phone: \_\_\_\_\_ Contact E-Mail: \_\_\_\_\_

Description of Work: \_\_\_\_\_

---

-----  
Client Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_

Contact Phone: \_\_\_\_\_ Contact E-Mail: \_\_\_\_\_

Description of Work: \_\_\_\_\_

---

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
**NONCOLLUSION DECLARATION**

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_,  
(title) (business name of bidder)

the party making the included bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.  
(date) (city) (state)

\_\_\_\_\_  
Authorized Official Signature

\_\_\_\_\_  
Authorized Official Name (printed)

**COMPENSATION CERTIFICATION**

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

\_\_\_\_\_  
Authorized Official Signature

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Authorized Official Name

\_\_\_\_\_  
Authorized Official Title

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
**LOBBYING CERTIFICATION**

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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 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.

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

\_\_\_\_\_  
Authorized Official Signature

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Authorized Official Name

\_\_\_\_\_  
Authorized Official Title

\_\_\_\_\_  
Business Name of Vendor

(Signer must match authorized official shown on Bidder Information form)

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
**REQUEST FOR PROPOSALS FOR ON-CALL HUMAN RESOURCES CONSULTING**  
**SCOPE OF SERVICES**

**1. BACKGROUND**

Santa Barbara Metropolitan Transit District (MTD) is an incorporated transit district under Sections 95000, et seq. of the California Public Utilities Code. MTD's mission is to enhance the mobility of South Coast residents, commuters, and visitors by offering safe, appealing, equitable, environmentally responsible, and fiscally sound transit service. MTD's service area is 52 square miles and includes the cities of Santa Barbara, Goleta, and Carpinteria; and the unincorporated portions of the County of Santa Barbara between such cities including the areas of Montecito and Summerland.

MTD operates with approximately 195 employees. Bus operators, Operations Supervisors, mechanics, and utility/service workers are represented by the International Brotherhood of Teamsters Local 186. All non-represented employees are classified as "Staff" which includes administrative employees and management and, other than the General Manager, are At-Will employees. Fiscal year 2023 expenses included \$14,101,217, in total wages and \$4,558,176 in retirement and health benefits for both represented and non-represented employees.

**2. OBJECTIVES**

MTD is requesting proposals from interested, qualified, and experienced consultants to support the MTD Human Resources Department on an as-needed, project-by-project basis (on-call). Projects may occur concurrently. For each project, the Consultant shall be expected to conduct key stakeholder meetings to understand MTD needs: obtain information regarding expectations, challenges, responsibilities, and requirements. The price, the schedules, and the deliverables shall be established via a Task Order. The types of projects that may generate a Task Order from MTD include, but are not limited to:

HR Policies / Handbook

- Complete Standard Operating Procedures (SOP) Manual
- Update Compensation Analysis

Recruitment

- Job description updates and standardization
- Candidate selection criteria
- Interview question bank development

The On-Call Human Resources Consulting contract shall be awarded with a fee schedule fixed for a term of two years. The fee schedule shall be fixed price and incorporated into the *On-Call Human Resources Consulting Master Agreement*. Overall, there will be a not-to-exceed of \$200,000.

As services are required, MTD will issue a Task Order. In response, the Consultant shall provide MTD a quote for the Task Order using the fixed prices included in the *On-Call Human Resources Consulting Master Agreement*. Quotes shall account for and itemize all services, materials, and supplies necessary to complete each ordered project properly.

All deliverables shall become the property of MTD and a matter of public record, which may be reproduced, distributed, published, or electronically posted without restrictions.

**End of Scope of Services**

## INSURANCE REQUIREMENTS

### Insurance.

- a. Contractor's Insurance Representations to MTD.
  - i. It is expressly understood and agreed that the insurance coverages required herein:
    - A. represent MTD's minimum requirements and are not to be construed to void or limit Contractor's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages Contractor should or should not maintain for its own protection; and
    - B. are being, or have been, obtained by Contractor in support of Contractor's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy, or failure of any insurance company carrying insurance of Contractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate, or waive any of the provisions of this Agreement.
  - ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under this Contract. If Contractor shall fail to remedy such breach within five (5) business days after written notice by MTD, Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to MTD from such breach, unless a written waiver of the specific insurance requirement(s) is provided to Contractor by MTD. In the event of any failure to Contractor to comply with the provisions of this portion of the Agreement, MTD may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to Contractor, purchase such insurance, at Contractor's expense, provided that MTD shall have no obligation to do so and if MTD shall do so, Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.
- b. Conditions Affecting All Insurance Required Herein.
  - i. Cost of Insurance. All insurance coverage shall be provided at Contractor's sole expense.
  - ii. Maintenance of Insurance. All insurance coverage shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement.
  - iii. Status and Rating of Insurance Company. All insurance coverage shall be written through insurance companies admitted to do business in California and with a Best's Financial Strength Rating of A- or better, as shown in the on-line version of Best's Rating & Criteria Center.
  - iv. Restrictive, Limiting, or Exclusionary Endorsements. All insurance coverage shall be provided to Contractor Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage in any manner without the prior express written approval of MTD.
  - v. Limits of Liability. The limits of liability may be provided by a single policy of insurance or by a combination of primary and umbrella policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.
  - vi. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage. In the event of cancellation, nonrenewal, or material reduction in coverage affecting the certificate holder, thirty (30) days prior written notice shall be given to the certificate holder by certified mail, return receipt requested, except in the event of cancellation for nonpayment, in which event fifteen (15) days prior written notice shall be given. If insurer will not include in its coverage such written notifications, it shall be incumbent upon Contractor to comply with such written notification requirements.
  - vii. Additional Insured Status. **Additional insured status shall be provided in favor of MTD and its officers, employees and agents, including consultants,** on all liability insurance required herein except workers' compensation/employer's liability and the certificate of insurance shall reflect same. Such

additional insured coverage shall be primary to and shall seek no contribution from all insurance available to MTD, with MTD's insurance being excess, secondary, and noncontributing.

viii. **Waiver of Subrogation.** All insurance coverage carried by Contractor required herein shall provide a waiver of subrogation in favor of MTD for all loss covered by such insurance, and Contractor waives all rights of action against MTD for such loss.

ix. **Primary Liability.** All insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to MTD, with MTD's insurance being excess, secondary, and noncontributing. Where necessary, coverage shall be endorsed to provide such primary liability, and the certificate of insurance shall reflect same.

x. **Deductible/Retention.** All insurance required for this project shall have a maximum deductible or self-insured retention of \$10,000 per policy.

xi. **Claims Against Aggregate.** MTD must be notified in writing by Contractor at MTD's address set forth herein immediately upon knowledge of possible claims against Contractor that might cause a reduction below seventy-five (75%) of any aggregate limit of any primary policy.

c. **Commercial General Liability Insurance.**

i. **Coverage.** Such insurance shall cover liability arising out of all locations and operations of Contractor, including but not limited to liability assumed under this Agreement (including the tort liability of another assumed in a business contract). Defense shall be provided as an additional benefit and not included within the limit of liability.

ii. **Form.** Commercial General Liability Occurrence form, at least as broad as an unmodified ISO CG 00 01 10 93 or its equivalent.

iii. **Amount of Insurance.** Coverage shall be provided with limits of not less than:

A. Each Occurrence Limit	\$1,000,000
B. General Aggregate Limit	\$2,000,000
C. Product-Completed Operations Aggregate Limit	\$2,000,000
D. Personal and Advertising Injury Limits	\$1,000,000
E. Fire Damage (any one fire)	\$50,000
F. Medical Expense (any one person)	\$5,000

iv. **Required Endorsements.**

A. Additional Insured status as required in 18(b)(vii), above.

B. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage, as required in 18(b)(vi), above.

C. Personal Injury Liability: The personal injury contractual liability exclusion shall be deleted.

D. Primary Liability, as required in 18(b)(ix), above.

E. Waiver of Subrogation, as required in 18(b)(viii), above.

F. Continuing Commercial General Liability Insurance: Contractor shall maintain such insurance in identical coverage, form, and amount, including required endorsements, for at least three (3) years following the date of acceptance by MTD of the last bus built pursuant to this Agreement.

d. **Auto Liability Insurance.**

i. **Coverage.** Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned).

ii. **Form.** Business Auto Form (at least as broad as an unmodified ISO CA 0001 or its equivalent).

iii. **Amount of Insurance.** Coverage shall be provided with a limit of not less than \$1,000,000, combined single limit.

iv. **Required Endorsements.**

A. Additional Insured status as required in 18(b)(vii), above.



B. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage, as required in 18(b)(vi), above.

C. Waiver of Subrogation, as required in 18(b)(viii), above.

**e. Workers' Compensation/Employer's Liability Insurance.**

i. Coverage. Such insurance shall cover liability arising out of Contractor's employment of workers and anyone for whom Contractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted.

ii. Amount of Insurance. Coverage shall be provided with a limit of not less than:

A. Workers' Compensation:            Statutory limits

B. Employer's Liability:            \$1,000,000 each accident and disease.

iii. Required Endorsements.

A. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage, as required in 18(b)(vi), above.

B. Waiver of Subrogation, as required in 18(b)(viii), above.

**f. Professional Errors & Omissions Liability Insurance.**

i. Coverage. Such insurance shall cover claims alleged to arise out of the negligent performance of Contractor's professional services.

ii. Amount of Insurance. Coverage shall be provided with a limit of not less than \$1,000,000 annual aggregate.

g. Other Insurance. MTD shall have the right, exercisable in its sole judgment at any time by giving prior written notice thereof to Contractor, to require Contractor to increase the limit and coverage amount of any insurance Contractor is required to maintain pursuant to this Agreement to an amount that MTD may, in its sole judgment, deem reasonably sufficient; and purchase other insurance and/or endorsement in such amounts or types as MTD may reasonably require from time to time.

# SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

## MTD PURCHASE ORDER TERMS AND CONDITIONS

1. Qualifications. Contractor or Contractor's representative (hereinafter, collectively, "Contractor") certifies that Contractor (1) is qualified to do business and is in good standing in the State of California, (2) has never been restricted or debarred from federal contracting, and (3) has authority to enter into and perform its obligations under this Purchase Order, which constitutes a valid and binding obligation of Contractor.
2. Prohibited Interest. The parties hereto covenant and agree that no Board member, officer, or employee of MTD, during his/her tenure as such and for one year thereafter, has any interest, whether contractual, financial or otherwise, in this Purchase Order transaction, or in the business of a contracting party other than MTD. If any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other party, even if such interest would not be considered a conflict of interest under Article 4, Chapter 1, Divisions 4 and 4.5, Title I of the Government Code of the State of California.
3. Compliance with Laws and Regulations. Contractor warrants that in the performance of work and/or services under this Purchase Order it will comply with all applicable federal, state and local laws and ordinances, and all lawful orders, rules, and regulations thereunder.
4. Delivery & Freight. Any item provided under this purchase order shall be delivered FOB Santa Barbara to 550 Olive Street, Santa Barbara, CA 93101. All freight and delivery charges shall already have been included in the Contractor's purchase order price and shall not be paid otherwise by MTD.
5. Title & Risk of Loss. The Contractor shall have title to and bear the risk of any loss of or damage to any item provided hereunder until it is safely delivered and/or installed or otherwise set up for usage by MTD. Upon such safe delivery and applicable installation/setup, title shall pass from the Contractor to MTD, and the Contractor's responsibility for loss or damage shall cease, except for loss or damage resulting from the Contractor's negligence. Such passing of title shall not, however, constitute acceptance of any item by MTD. The Contractor shall further warrant that the title to any item provided hereunder is free from all claims, encumbrances and liens.
6. Acceptance. All items, devices, services, work or systems to be furnished by the Contractor pursuant to this purchase order shall be subject to acceptance by MTD. MTD shall inspect such deliverables no later than fourteen (14) calendar days after said deliverables have been received, and, if applicable installed or otherwise set up for usage by MTD. Acceptance shall occur when it is determined by MTD that all items, devices, services, work or systems provided pursuant to this purchase order are in full compliance with this purchase order and any other applicable contract documents. Upon acceptance, formal notification thereof shall be made by MTD via notice to the Contractor.
7. Damage or Loss. All losses or damage arising from circumstances, either natural or artificial, foreseeable or unforeseeable, which may be encountered by the Contractor during performance under this Purchase Order, shall be borne solely by the Contractor. This provision shall also apply to losses or damage resulting from any act or omission on the part of the Contractor or any agent or person employed by or working for or with the Contractor.
8. Infringement of Patents. The Contractor agrees that it will, at its own expense, defend all suits and proceedings instituted against MTD and pay any award of damages assessed against MTD in such suits or proceedings, insofar as the same are based upon any claim that Contractor's items, devices, services, work, systems, or any part thereof, or any tool or process used in or for performance of this purchase order, constitutes an infringement of any legal United States copyright or patent. MTD agrees that it will give the Contractor prompt notice in writing of the institution of any such suit or proceeding and will permit the Contractor through any counsel reasonably agreed to by MTD to defend the same and will give Contractor information, reasonable assistance and authority necessary for the Contractor to do so. Contractor may settle any such litigation at its sole cost. If anything provided to MTD under this purchase order is held to constitute infringement and use of same is enjoined, the Contractor shall, at its own expense and at its option, either procure for MTD the right to continue using the infringing item, or replace same with a non-infringing similar item, or modify the item so it becomes non-infringing.
9. Warranty. Contractor warrants to MTD that, after MTD's full acceptance of items, services, or work under this Purchase Order, each shall conform with the requirements hereof and be free of defects. The rights of MTD hereunder are in addition to, and not limited by, the Contractor's standard warranties, if any. Acceptance of items, services, or work hereunder by MTD, or payment therefor, shall not relieve the Contractor of its obligations under this Purchase Order or any other warranty, whether express or implied.
10. Breach. In the event of a breach of any of these terms and conditions by Contractor, MTD shall have all remedies provided at law or in equity, which remedies shall be cumulative, and the election of one remedy shall not preclude MTD's pursuit of another. If a Contractor breach is determined by MTD to have been willful, the procurement officer shall be entitled to preclude the Contractor from further contracts with MTD. MTD shall at all times retain the right to terminate the contract upon any breach or failure to perform thereof by the Contractor, if such breach or failure remains uncured for ten (10) days following written notice thereof to the Contractor.
11. FTA funds. If this contract involves Federal Transit Administration ("FTA") funds in excess of Ten Thousand Dollars (\$10,000), the Contractor hereby acknowledges that MTD, the FTA, the U.S. Comptroller General and duly authorized representatives of each shall have access to the Contractor's records directly pertaining to this purchase order. Such records shall be maintained for three (3) years after all pending purchase order and contract matters with MTD have been closed.
12. Indemnification. The Contractor hereby covenants and agrees to defend, indemnify and hold MTD harmless from any and all claims, actions, damages, costs or liabilities, including attorney's fees, expert fees and court costs, arising from the negligence or wrongful act or omission of Contractor. Included, without limitation, in the scope of the foregoing indemnification obligation is Contractor's obligation to maintain full insurance coverage for commercial general liability and worker's compensation, with MTD added as an additional named insured under both policies.
13. No Assignment. This Agreement is not assignable by either party, and any attempt by either party to assign its obligations hereunder shall be void ab initio at the election of the other party, which election may be made by written notice within ten (10) days of the non-assigning party's receipt of actual knowledge of such attempted assignment. Notwithstanding the foregoing, however, with the consent of the non-assigning party, the obligations and burdens of a party under this purchase order shall bind and apply to any permitted successor-in-interest or assignee of the business and/or operations of an assigning party.
14. Dispute Resolution. Any dispute hereunder is subject to alternative dispute resolution ("ADR"). The general manager or procurement officer of the MTD is hereby authorized to settle or resolve any dispute, provided agreement can be obtained from Contractor. Failing such agreement, within a reasonable time after the dispute arises, the parties must first pursue mediation, and *binding* arbitration thereafter consistent with the ADR policy.
15. Termination. Notwithstanding any other provision hereof to the contrary, MTD reserves the right to terminate this contract for any reason, at any time, upon thirty (30) days advance notice to the Contractor. Upon such notice of termination (other than for a breach hereof by Contractor), MTD shall accept all goods and/or services tendered to the date of such notice and shall also pay the Contractor all costs reasonably incurred by the Contractor in the supplying of goods or in the rendering of services prior to the notice of termination.
16. Attorney Fees and Costs. In the event of a controversy (including, but not limited to, mediation or arbitration) between the parties with respect to the interpretation, enforcement or termination of this purchase order, the prevailing party in such controversy shall be entitled to receive, in addition to such other award as the arbitrator may deem appropriate, full reimbursement for its costs and reasonable attorney's fees incurred therein.
17. Master Agreement. Contractor understands and agrees that any Master Agreement between MTD and Contractor related to this transaction will control and supersede these terms and conditions, if any are in conflict with the terms and conditions of an applicable Master Agreement.

# FEDERAL TRANSIT ADMINISTRATION CONTRACT PROVISIONS

## ON-CALL HUMAN RESOURCES CONSULTING

### TABLE OF CONTENTS

1.	Fly America Requirements (Not Applicable to this contract).....	1
2.	Buy America Requirements (Not Applicable to this contract) .....	1
3.	Charter Bus & School Bus Requirements (Not Applicable to this contract) .....	1
4.	Cargo Preference Requirements (Not Applicable to this contract) .....	1
5.	Seismic Safety Requirements (Not Applicable to this contract).....	1
6.	<b>Energy Conservation Requirements</b> .....	<b>1</b>
7.	<b>Clean Water Requirements</b> .....	<b>1</b>
8.	Bus Testing (Not Applicable to this contract) .....	1
9.	Pre-Award & Post-Delivery Audit Requirements (Not Applicable to this contract).....	1
10.	<b>Lobbying</b> .....	<b>1</b>
11.	<b>Access to Records &amp; Reports</b> .....	<b>2</b>
12.	<b>Federal Changes</b> .....	<b>2</b>
13.	Bonding Requirements (Not Applicable to this contract).....	2
14.	<b>Clean Air</b> .....	<b>2</b>
15.	Recycled Products (Not Applicable to this contract) .....	3
16.	Davis-Bacon & Copeland Anti-Kickback Acts (Not Applicable to this contract) .....	3
17.	Contract Work Hours & Safety Standards Act (Not Applicable to this contract) .....	3
18.	Access Requirements (Not Applicable to this contract) .....	3
19.	<b>No Government Obligations to Third Parties</b> .....	<b>3</b>
20.	<b>Program Fraud &amp; False or Fraudulent Statements &amp; Related Acts</b> .....	<b>3</b>
21.	Termination (Not Applicable to this contract) .....	3
22.	<b>Government-Wide Debarment &amp; Suspension</b> .....	<b>4</b>
23.	Privacy Act (Not Applicable to this contract) .....	4
24.	<b>Civil Rights Requirements</b> .....	<b>4</b>
25.	<b>Breaches &amp; Dispute Resolution</b> .....	<b>5</b>
26.	Patent & Rights in Data (Not Applicable to this contract).....	5
27.	Transit Employee Protective Agreements (Not Applicable to this contract).....	5
28.	<b>Disadvantaged Business Enterprise (DBE)</b> .....	<b>5</b>
29.	<b>Notification of Legal Matters to the FTA</b> .....	<b>6</b>
30.	<b>Incorporation of Federal Transit Administration (FTA) Terms</b> .....	<b>6</b>
31.	Drug & Alcohol Testing (Not Applicable to this contract) .....	6
32.	Intelligent Transportation System (ITS) (Not Applicable to this contract).....	6
33.	Build America, Buy America Act (Not Applicable to this contract) .....	6
34.	<b>Telecommunications and Video Surveillance Services or Equipment</b> .....	<b>6</b>
35.	<b>Safe Operation of Motor Vehicles</b> .....	<b>7</b>

1. **FLY AMERICA REQUIREMENTS (NOT APPLICABLE TO THIS CONTRACT)**
2. **BUY AMERICA REQUIREMENTS (NOT APPLICABLE TO THIS CONTRACT)**
3. **CHARTER BUS & SCHOOL BUS REQUIREMENTS (NOT APPLICABLE TO THIS CONTRACT)**
4. **CARGO PREFERENCE REQUIREMENTS (NOT APPLICABLE TO THIS CONTRACT)**
5. **SEISMIC SAFETY REQUIREMENTS (NOT APPLICABLE TO THIS CONTRACT)**
6. **ENERGY CONSERVATION REQUIREMENTS**

The 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. The Contractor agrees to include the requirements of this section in all subcontracts.

#### 7. **CLEAN WATER REQUIREMENTS**

The 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. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000.

#### 8. **BUS TESTING (NOT APPLICABLE TO THIS CONTRACT)**

#### 9. **PRE-AWARD & POST-DELIVERY AUDIT REQUIREMENTS (NOT APPLICABLE TO THIS CONTRACT)**

#### 10. **LOBBYING**

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

(a) 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.

(b) 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, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (b) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

(c) The Contractor shall require that the language of this certification be included in the award documents for all subawards exceeding \$100,000 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. [Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or 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. A 3801, et seq., apply to this certification and disclosure.

[Note: The Contractor shall have previously submitted to MTD a separately signed Lobbying Certification containing the above language for itself and any subcontracts exceeding \$100,000 as a condition of contract award.]

## **11. ACCESS TO RECORDS & REPORTS**

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

(b) If contract is for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to MTD, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

(d) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 MTD, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

## **12. FEDERAL CHANGES**

The 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 MTD and 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.

## **13. BONDING REQUIREMENTS (NOT APPLICABLE TO THIS CONTRACT)**

## **14. CLEAN AIR**

The 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 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

**15. RECYCLED PRODUCTS (NOT APPLICABLE TO THIS CONTRACT)****16. DAVIS-BACON & COPELAND ANTI-KICKBACK ACTS (NOT APPLICABLE TO THIS CONTRACT)****17. CONTRACT WORK HOURS & SAFETY STANDARDS ACT (NOT APPLICABLE TO THIS CONTRACT)****18. ACCESS REQUIREMENTS (NOT APPLICABLE TO THIS CONTRACT)****19. NO GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

(a) MTD 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 MTD, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

**20. PROGRAM FRAUD & FALSE OR FRAUDULENT STATEMENTS & RELATED ACTS**

a) The 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 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the 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, the 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 the Contractor to the extent the Federal Government deems appropriate.

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

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

**21. TERMINATION (NOT APPLICABLE TO THIS CONTRACT)**

(a) Termination for Convenience: MTD, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, MTD shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(b) Termination for Default

(1) If the Contractor fails to perform the services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, MTD may terminate this contract for default. MTD shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

(2) If this contract is terminated while the Contractor has possession of MTD goods, the Contractor shall, upon direction of MTD, protect and preserve the goods until surrendered to MTD or its agent. The Contractor and MTD shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

(3) If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of parties shall be the same as if the termination had been issued for the convenience of MTD.

(c) Opportunity to Cure: MTD in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to MTD's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from MTD setting forth the nature of said breach or default, MTD shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude MTD from also pursuing all available remedies against Contractor and its sureties for said breach or default.

(d) Waiver of Remedies for any Breach: In the event that MTD elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by MTD shall not limit MTD's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

## 22. GOVERNMENT-WIDE DEBARMENT & SUSPENSION

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by MTD. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to MTD, 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 49 CFR 29, Subpart C 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.

## 23. PRIVACY ACT (NOT APPLICABLE TO THIS CONTRACT)

## 24. CIVIL RIGHTS REQUIREMENTS

(a) 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 law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

(1) Race, Color, Religion, Sex, Sexual Orientation, Gender Identity, or National Origin: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et

seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), 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. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(2) Age: In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

## **25. BREACHES & DISPUTE RESOLUTION**

See Purchase Order regarding disputes. The Contractor agrees to include the requirements of said Paragraph 30 in all subcontracts.

## **26. PATENT & RIGHTS IN DATA (NOT APPLICABLE TO THIS CONTRACT)**

## **27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS (NOT APPLICABLE TO THIS CONTRACT)**

## **28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

(a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, 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%. MTD's overall goal for DBE participation is posted at <https://sbmtd.gov/about/doing-business/>. A separate contract goal has not been established for this procurement.

(b) The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as MTD deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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

(d) The 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 the Contractor's receipt of payment for that work from the MTD. In addition, the Contractor may not hold retainage from its subcontractors.

(e) Contractor must promptly notify MTD 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. The 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 MTD.

### **29. NOTIFICATION OF LEGAL MATTERS TO THE FTA**

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the FTA Chief Counsel and FTA Region 9 Chief Counsel.

(a) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation 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 the Award funding this Agreement and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(c) The Contractor must promptly notify the U.S. DOT Inspector General in addition to the FTA Region 9 Chief Counsel if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have 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. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor.

(d) The Contractor agrees to include this clause in each subcontract and any lower tier subcontracts financed in whole or in part with Federal assistance provided by the FTA under this Agreement.

### **30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the most recent version of FTA Circular 4220.1, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MTD requests which would cause MTD to be in violation of the FTA terms and conditions. The Contractor agrees to include the requirements of this section in all subcontracts.

### **31. DRUG & ALCOHOL TESTING (NOT APPLICABLE TO THIS CONTRACT)**

### **32. INTELLIGENT TRANSPORTATION SYSTEM (ITS) (NOT APPLICABLE TO THIS CONTRACT)**

### **33. BUILD AMERICA, BUY AMERICA ACT (NOT APPLICABLE TO THIS CONTRACT)**

### **34. TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

The prohibition on certain telecommunications and video surveillance services or equipment applies to all federally funded third-party contracts. MTD is prohibited from using federal funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law

115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

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

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

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

### **35. SAFE OPERATION OF MOTOR VEHICLES**

**Seat Belt Use:** The Contractor agrees to implement 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: (1) 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 Contract.

**Distracted Driving, Including Text Messaging While Driving:** The Contractor agrees to implement (1) 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); (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving:

(i) **Safety.** The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award;

(ii) **Recipient Size.** The Contractor agrees to conduct 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; and

(iii) **Extension of Provision.** The Contractor agrees to include a Distracted Driving, Including Text Messaging While Driving in its third-party agreements, and encourage its third-party participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.