



PH: 209.723.3153
FAX: 209.723.0322
www.mcagov.org
369 W. 18th Street
Merced, CA 95340

Release Date: January 14, 2020
Project No. RFP20200114MCAG

Request for Proposals for Merced County Westside Commuter Bus Study

Notice is hereby given that proposals will be received at the Merced County Association of Governments (MCAG) for performing all work necessary in accordance with the Requirements specified herein. Please carefully read and follow the instructions provided. Proposers are responsible for making certain their proposal is complete and is received by MCAG on or before the closing deadline.

Proposals shall be mailed or delivered to:

Merced County Association of Governments
Attn: Alicia Ochoa-Jones, Purchasing and Contracts Manager
369 West 18th Street
Merced, CA 95340

Proposals shall be clearly marked as follows: *Merced County Westside Commuter Bus Study – Submission Deadline February 21, 2020, 12:00 p.m.*

Proposals received after the closing deadline will be rejected

The Merced County Association of Governments Purchasing Policy and all of its provisions are incorporated by this reference.

MCAG is not liable for any costs incurred by Proposers in responding to this Request for Proposals (RFP). Proposers are to clearly identify any information that is confidential and/or proprietary and submit a redacted copy of their proposal with the confidential and/or proprietary information. MCAG is not responsible or liable for the disclosure of any information that is not clearly labeled as confidential and/or proprietary.

In compliance with Title 49 CFR Part 26, Disadvantaged Business Enterprise's (DBE) are encouraged to submit proposals and will be afforded full opportunity to submit and participate in this solicitation. Note that the resulting contract from this solicitation has no specific DBE goal or requirement, therefore prospective proposers will not be required to submit good faith efforts.

Please direct inquiries to Alicia Ochoa-Jones, Purchasing and Contracts Manager via email at alicia.ochoa-jones@mcagov.org.

TABLE OF CONTENTS

Cover Page	1
Table of Contents	2
Proposer’s Submittal Checklist	3
Definitions	4
Section I - General Information	5
Section II – Requirements – Scope of Work	8
Section III – Submittals	10
Section IV– Basis of Award, Evaluation, Selection Process, and Protests	13
Certification	17
Nondebarment Certification	18
Lobbying Certification	20
Disadvantaged Business Enterprise Program Bidders List Form	21
Reference List	23
Sample Agreement	24

PROPOSER'S SUBMITTAL CHECKLIST

This checklist is provided to assist Proposers with submitting a complete Proposal. Proposers are to submit Proposal as noted below and are to include this checklist with Proposal.

1. _____ Cover Letter
2. _____ Proposer's Submittal Checklist
3. _____ Table of Contents
4. _____ Tab One – Certification, Nondebarment Certification, Lobbying Certification, DBE Program Bidders List Form, and References List
5. _____ Tab Two – Organization, Capability, and Experience
6. _____ Tab Three – Response to Requirements
7. _____ Tab Four – Project Costs

Non-submittal of any requested item may be considered non-responsive.

DEFINITIONS

Agreement – The Agreement constitutes the entire contract between MCAG and the selected Proposer. Term may be used interchangeably with Contract.

Authorized Representative – Person who has the legal MCAG to enter into and sign contracts on behalf of the organization.

Closing Deadline – The last day and time the proposal must be received in the office at 369 West 18th Street, Merced, California 95340. Term may be used interchangeably with Submission Deadline.

Contract – The Contract constitutes the entire agreement between MCAG and the selected Proposer. Term may be used interchangeably with Agreement.

Consultant – The Proposer awarded the Contract derived from this RFP. Term may be used interchangeably with Contractor or Vendor.

Evaluation Committee – A committee established to review and evaluate proposals to determine the Contract award. The committee may include representatives of MCAG and its member jurisdictions.

MCAG – Merced County Association of Governments, a Joint Powers MCAG, established under California Government Code Section 6500 et seq.

Proposer/Respondent – A person, partnership, firm, or corporation submitting a proposal with the intention of obtaining an MCAG contract.

Subcontractor/Subconsultant(s) – Any person, entity or organization, to which Contractor/Consultant or MCAG has delegated any of its obligations hereunder.

SECTION I – GENERAL INFORMATION

1.1 PURPOSE

MCAG is requesting proposals from qualified firms to provide professional services to complete a feasibility study for the provision of long distance express/commuter bus service between western Merced County and the greater San Francisco Bay Area, especially the South Bay area including San Jose and other cities. The selected firm will complete the study in consultation with MCAG and the cities of Los Banos, Dos Palos, Gustine, and the County of Merced. MCAG intends to use the results of this RFP to award one (1) contract to the Proposer as evaluated per Section IV of this RFP.

1.2 AGENCY INFORMATION

Formed through a Joint Powers Agreement signed by member jurisdictions in 1967, MCAG serves as the Metropolitan Planning Organization, Regional Transportation Planning Agency and Local Transportation Authority for Merced County. MCAG is comprised of seven-member agencies including six cities (Atwater, Dos Palos, Gustine, Livingston, Los Banos and Merced) and the County of Merced. The MCAG Governing Board includes a supervisor from each of the five county districts and an elected official from each of the cities. In addition to transportation planning, MCAG also administers the Transit Joint Powers Authority for Merced County, Merced County Regional Waste Management Authority, and Yosemite Area Regional Transportation System. MCAG is also responsible for the administration of Measure V. For more information, visit MCAG's website at <http://www.mcagov.org/>.

1.3 PROJECT DURATION

The contract term is anticipated to commence April/May 2020 and the completed work product is to be provided by June 30, 2021, or sooner, and is contingent upon available funding and successful performance. The contract may be extended by MCAG for up to an additional 12 months, in increments as agreed upon, and shall be based on available funding and successful performance. The contract will be a fixed price contract for the full term including extension options.

1.4 SCHEDULED ACTIVITIES

To the extent achievable, the following schedule shall be used for the procurement process. MCAG reserves the right to modify the dates below as necessary.

a. RFP Distributed	January 14, 2020
b. Questions/Clarifications due by	January 29, 2020, 12:00 p.m.
c. Addendum(s) and Responses posted by	February 5, 2020
d. Deadline to Submit Proposal	February 21, 2020, 12:00 p.m.
e. Evaluations	Week of February 24, 2020
f. Interviews (Selection)	March 4, 2020
g. Notice of Intent to Negotiate	Week of March 9, 2020
h. Notice of Intent to Award	Week of March 23, 2020
i. Governing Board Approval	April 16, 2020
j. Notice of Award	Week of April 20, 2020
k. Contract Execution/Notice to Proceed	April/May 2020

1.5 QUESTIONS, CLARIFICATIONS AND/OR REVISIONS

Proposers are expected to raise any questions, noted errors, discrepancies, ambiguities, exceptions, additions or deficiencies they have concerning this RFP via email to alicia.choa-jones@mcagov.org no later than 12:00 p.m., January 29, 2020.

If the Proposer fails to notify MCAG of any condition stated above that reasonably should have been known to the Proposer, and if a contract is awarded to that Proposer, the Proposer shall not be entitled to additional compensation or time by reason of the error or its correction.

Revisions to this RFP will be made only by official addendum issued by MCAG. Addenda will be posted by February 5, 2020. Proposers are responsible for checking the website for addenda prior to submitting their proposal. Failure to acknowledge addenda may disqualify a Proposal. As such, Proposers are advised to review the website prior to the close of this RFP at <http://www.mcagov.org/bids.aspx>. Proposers are encouraged to sign up for "Notify Me" on the website to receive emails, or a text, when items are posted relevant to RFP's.

1.6 WITHDRAWAL OF PROPOSALS

Proposals shall be irrevocable unless withdrawn prior to the closing deadline. Proposers may withdraw a Proposal, in writing, at any time up to the closing deadline. A written withdrawal notice must be received by MCAG at 369 W. 18th Street, Merced, California, 95340. The notice must be signed by an authorized representative. If a previously submitted Proposal is withdrawn before the closing deadline, the Proposer may submit another proposal at any time up to the closing deadline.

1.7 PROTEST PROCEDURES

Notice of intent to protest must be made in writing and conform to the requirements of MCAG Protest Procedures, included herein on pages 14-16.

1.8 FALSE OR MISLEADING STATEMENTS

Proposals which contain false or misleading statements, or which provide references which do not support an attribute or condition claimed by the Proposer, shall be rejected.

1.9 RIGHT TO REJECT OR ACCEPT PROPOSALS AND RIGHT TO CANCEL

MCAG reserves the right to reject any or all Proposals or any part thereof, to waive any informalities or minor irregularities in the Proposals, and to make an award on the basis of suitability, quality of service to be provided, and ability to perform the Requirements. MCAG also reserves the right to cancel this RFP in part or in its entirety.

1.10 DISPUTE RESOLUTION, ATTORNEY FEES, JURISDICTION, AND VENUE

In any action, suit, or proceeding arising out of or in any way connected with the performance of the Agreement contemplated herein, the prevailing party shall be entitled to recover reasonable attorney's fees and costs. Notwithstanding any other provision of the Agreement contemplated herein, any disputes

concerning any question of fact or law relating to the Agreement contemplated herein, or any litigation or arbitration arising out of the Agreement contemplated herein, shall be interpreted pursuant to California law, subject to the jurisdiction of the Superior Court of California, and venued in the County of Merced. CONSULTANT expressly waives federal jurisdiction.

SECTION II – REQUIREMENTS – SCOPE OF WORK

2.1 GENERAL

MCAG is seeking proposals from qualified consultants to prepare and provide a feasibility study for the provision of long distance express/commuter bus service between western Merced County and the greater San Francisco Bay Area, especially the South Bay area including San Jose and other cities. It is expected the study will focus on the higher population areas in western Merced County, including the cities of Los Banos, Dos Palos, and Gustine, and the unincorporated community of Santa Nella. The final product will present various route and schedule scenarios, fare structure(s), and a cost-benefit analysis for potential services.

The goal of the study is to assess the feasibility of long-distance commuter/express bus service between western Merced County and the greater San Francisco Bay Area.

The selected CONSULTANT will provide all work products in hard copy and digital format, including all maps, charts, figures, graphs and applicable studies.

2.2 TASKS

- Stakeholder Involvement
- Data Collection and Market Analysis
- Community Outreach and Surveying:
- Evaluate and compare alternatives.
- Analysis and Final Report

2.3 STAKEHOLDER COORDINATION

The CONSULTANT will convene stakeholder committees, and presentations made to local jurisdictions across the county. The timing of the meetings will be decided throughout plan development.

In addition to these committees, a project progress call will be held between MCAG project management and CONSULTANT approximately monthly. An agenda shall be prepared by the CONSULTANT with input from MCAG for all progress meetings.

2.4 DATA COLLECTION, RESEARCH, MARKET ANALYSIS, AND SURVEY

The CONSULTANT will review and evaluate the existing system with respect to all routes, stops, and connections, together with loading and unloading procedures and any other activity assumed to impact the efficiency of the proposed service. Review of previously identified documentation shall be conducted to understand the current and anticipated transit needs and concerns being communicated to MCAG.

CONSULTANT shall propose a preferred method of survey which will facilitate an effective review of service demand. The needs and concerns of current riders as well as those not using the system must be well understood. Survey questions may be developed in consultation with MCAG utilizing research and survey information including the collection and resolution of demographic and socioeconomic data for Merced County, which is expected to include yet not necessarily be limited to:

- Census Data
- Department of Finance information and statistics
- Local jurisdiction planning department and general plan information
- Transit data
- Major employers, colleges, and local high schools will also be investigated to identify shifts/bell times, commuter residence locations, and transit needs.

2.5 PUBLIC OUTREACH

CONSULTANT will develop a strategy which effectively surveys existing commuters as well as potential users of an express or commuter bus. The CONSULTANT will recommend the most effective approach in surveying. This effort may include development of appropriately placed flyers and, newspaper advertisements as well as Public Service Announcements. It may also include the use of email distribution lists in combination with attached and on-line surveys all coordinated with groups and agencies including City and County government and Chambers of Commerce.

2.6 ANALYSIS AND REPORT

Following the review of the existing system, all survey work, public meetings (if proposed), and discussions with partner agencies, the CONSULTANT shall prepare "Service Alternatives" for review and discussion with MCAG staff and draft presentation to the MCAG Governing Board. It is expected that the alternatives be presented each with a quantifiable anticipated measure of improvement using the previously stated goals and criteria. In general, MCAG wants to know:

- Is the proposed service financially viable?
- What routing will generate the greatest ridership for the proposed service?
- What time schedules will be most appropriate for the proposed service?
- How many assets will be required to provide the proposed service? At what cost?

The presentation of each alternative shall include a route plan, schedules, estimates of ridership, and estimated costs. Additional alternatives may reflect measurable percentage annual service hour increases. Any mapping prepared will be compatible with ArcGIS software platform.

End Product: A fully developed proposed long range inter-city commuter service route, including; route alternatives, timetables, and fare structure, based upon public demand and a detailed cost-benefit analysis.

2.7 BUDGET

The budget for the Merced County Westside Commuter Bus Study project is estimated not to exceed \$125,000. MCAG encourages all Proposes to make their best effort to stay under \$100,000. If Proposer deems \$100,000 is not possible, MCAG is still interested in receiving your proposal and MCAG reserves the right to adjust the estimated budget.

SECTION III – SUBMITTALS

3.1 GENERAL INSTRUCTIONS

This section describes the required Proposal format and content. The Proposal must contain the requested information organized by the prescribed sections. Each Proposer shall submit a complete Proposal, providing all information requested with a complete description of the project plan. Failure to follow the prescribed format may result in rejection of the Proposal.

A Proposal may be rejected if it is conditional or incomplete, or if it contains any alteration of form or other irregularities of any kind. A Proposal may be rejected if any such defect or irregularity constitutes a material deviation from the submittal requirements. Proposals submitted under improperly marked covers may be rejected. If discrepancies are found within the Proposal, the Proposal may be rejected.

Proposals must be typed with a minimum font size 11 and submitted on standard 8 ½” by 11” paper. Each page must be clearly and consecutively numbered. All Proposals must be submitted in the name of the legal entity or authorized agency.

3.2 SUBMITTAL PACKAGE

Proposers must submit in a sealed package four (4) paper copies, and one (1) electronic copy on CD, DVD or flash drive in PDF format, of all materials required for acceptance of their Proposal by the Proposal deadline - 12:00 p.m., February 21, 2020 to:

Merced County Association of Governments
Attn: Alicia Ochoa-Jones, Purchasing and Contracts Manager
369 West 18th Street
Merced, CA 95340

All Proposals must be signed by an authorized representative and received by MCAG by the closing deadline. Late Proposals will be rejected. Receipt of the Proposal by the U.S. mail system does not constitute receipt of the Proposal by MCAG. MCAG will not accept facsimile or email submitted Proposals. All Proposals must be packaged, sealed, and show the following information on the outside of the package:

1. Proposer's Name and Address
2. Merced County Westside Commuter Bus Study – Submission Deadline 12:00 p.m., February 21, 2020.

3.3 COVER LETTER

A one (1) page cover letter shall be submitted and include the Proposer's contact information and specify the authorized representative. The person authorized by the firm to negotiate a contract with MCAG shall sign the cover letter. The cover letter shall include the name, phone number, fax number and e-mail address of a contact person for the Consultant selection process. Proposers shall include a statement certifying MCAG's insurance requirements will be met as noted in Section Five of the Sample Agreement; RFP page 25.

3.4 TABLE OF CONTENTS

Using the Submittal Checklist provided on page 3, the Proposer shall provide a Table of Contents listing proposal contents by page number.

3.5 CERTIFICATIONS AND REFERENCES (TAB ONE)

- 1) Certification (noting any addenda – if applicable);
- 2) Nondebarment Certification and Other Responsibility Matters;
- 3) Lobbying Certification;
- 4) Disadvantaged Business Enterprise Bidders List Form, and
- 5) Reference List

RFP Certifications must be signed by the person in the Proposer's organization who is responsible for the decision as to the prices being offered or by a person who has been authorized in writing to act as agent for the person responsible for the decision on prices and services. Failure to provide this form/information with a submittal may disqualify the Proposal.

ALL Proposers *must* complete a Disadvantaged Business Enterprise (DBE) Bidders List form regardless of DBE status.

Proposer must supply three references to which similar services have been provided. If contacted, all references must verify that a high level of satisfaction was provided.

3.6 ORGANIZATION, CAPABILITY, AND EXPERIENCE (TAB TWO)

Provide a concise statement covering the history of your organization under current and any prior names (include number of years in business under each name), your major projects or activities both in general and similar to the subject of the proposal, and why your agency is best suited to fulfill the Requirements in Section II of this RFP. The section should clearly state the unique qualifications which the Proposer believes it possesses to meet the goals and objectives of the Requirements in Section II. This section should contain the following information:

1. Present organizational structure and current operations including number of years in business;
2. Experience providing similar service that demonstrates your agency's capability in providing the services described in your proposal; and
3. Experience and qualifications of the proposed key staff members assigned to this project.

3.7 RESPONSE TO REQUIREMENTS (TAB THREE)

Proposers are to describe how the Requirements in Section II will be met. This shall include, at a minimum, the following:

1. Proposers shall describe their response in sufficient detail to enable evaluators in knowing what is anticipated at every stage and to make a judgment as to the probable success of the proposed effort.

2. Proposers shall provide a description detailing the proposed project schedule. Proposers shall provide, in a timeline format, a clear and concise description of the work to be provided and activities to be undertaken as a means of reaching the objectives stated in Requirements in Section II.

3.8 PROJECT COSTS (TAB FOUR)

Proposers shall provide a project cost summary based on the proposed labor, materials, tasks, activities, deliverables, and any other project related costs including travel. Total costs shall be itemized and submitted in a manner deemed most appropriate by Proposer and shall include but are not limited to billing rates for each proposed staff member, task budget with breakdown/itemization, and direct costs.

As noted on page 9 of the RFP, Proposers shall provide a budget not to exceed \$125,000. MCAG encourages all Proposes to make their best effort to stay under a proposed cost of \$100,000. If Proposer deems \$100,000 is not possible, MCAG is still interested in receiving your proposal and MCAG reserves the right to adjust the estimated budget.

Note that if additional time is needed to complete the project, additional costs will not be added to the resulting Agreement.

SECTION IV – BASIS OF AWARD, EVALUATION, SELECTION PROCESS, AND PROTESTS

4.1 BASIS OF AWARD

MCAG intends to make one (1) award to the Proposer whose proposal is most advantageous to MCAG. Accordingly, MCAG may not necessarily make an award to the Proposer with the highest technical ranking nor award to the Proposer with the lowest price proposal if doing so would not be in the overall best interest of MCAG.

4.2 RIGHT TO REJECT PROPOSALS

MCAG reserves the right to reject any or all Proposals or any part thereof.

4.3 WAIVER OF IRREGULARITIES

MCAG reserves the right to waive any informalities or minor irregularities in the Proposals and to make an award on the basis of suitability, quality of services to be provided, and ability to perform the Requirements.

4.4 EVALUATION

Proposals will be evaluated by a selection committee based on the evaluation criteria outlined in Section 4.5.

4.5 EVALUATION CRITERIA

Proposals will undergo an initial administrative review prior to evaluation. Any Proposal which fails to meet the submission requirements may be considered non-responsive and may be rejected.

Proposals will be evaluated on a maximum point scale of 100 as follows:

Proposal Evaluation Criteria	Possible Points
Comprehensiveness of Approach	40
Qualifications & Experience in Providing Similar Services	40
Cost Efficiency	10
Organization & Presentation	10
Total	100

4.6 INTERVIEW PRESENTATION

Top scoring Proposer(s) may be asked to participate in an interview. The Proposer's original response cannot be changed in any aspect at the interview presentation. Proposer(s) will be advised as to the time and place for such presentations and they should be prepared to discuss all aspects of their proposal.

4.7 NEGOTIATIONS

MCAG reserves the right to negotiate the terms of the contract, including the award amount, with the selected Proposer prior to entering into a contract. However, certain contract terms, including, but not limited to, Insurance, Indemnification, Termination for Convenience, and Liquidated Damages, are non-negotiable. If contract negotiations cannot be concluded successfully with the highest-ranking Proposer, the agency may choose to negotiate a contract with the next highest-ranking Proposer, etc.

4.8 NOTICES - INTENT TO NEGOTIATE, INTENT TO AWARD, AND AWARD

A Notice of Intent to Negotiate with the highest ranked proposer will be issued and sent via email to all participating proposers upon the evaluation committee's recommendation to initiate Agreement negotiations.

MCAG will issue a Notice of Intent to Award upon conclusion of negotiations and, where appropriate, place an item on the MCAG Governing Board agenda for approval. The Notice of Intent to Award will be sent via email to all participating proposers. Proposals shall remain confidential and shall not be made available in response to a Public Records Act Request until after the issuance of the Notice of Intent to Award.

Once the MCAG Governing Board has approved award of the Agreement, MCAG will issue a Notice of Award.

4.9 DEBRIEFING

A debriefing may be requested by unsuccessful Proposers after the Notice of Intent to Award has been issued and before the Notice of Award. Requestor shall submit questions via email to the Purchasing and Contracts Manager, or her designee, within three (3) business days of issuance of the Notice of Intent to Award. The purpose of the debriefing shall be to receive information concerning the evaluation of the unsuccessful Proposer. Information regarding other agencies/proposers will not be covered. Debriefings shall be held via telephone conference. The time allotted for the debriefing shall be a maximum of one (1) hour.

4.10 MCAG PROTEST PROCEDURES

All protests shall reference the name of the project or procurement in question and the contract, bid or proposal reference number. Failure to comply with the time requirements specified below shall constitute grounds for MCAG to deny the protest without further consideration. MCAG has no obligation to delay or otherwise postpone an award of a contract based on a protest. Bids or Proposals shall remain confidential until after the Notice of Intent to Award is issued.

Pre-Award Protest Procedures

Any bidder or proposer who has submitted a bid or proposal to MCAG may file a protest of MCAG's intent to award a contract provided that:

1. The bid or proposal protest is in writing;
2. The bid or proposal protest is signed by the protestor or an individual legally entitled to act on his or her behalf;

3. The bid or proposal protest is received by MCAG's Finance Director or Deputy Executive Director not more than five (5) business days following the date of issuance of MCAG's Intent to Award the Contract; and
4. The bid or proposal protest sets forth, in detail, a statement of the reason(s) for the protest, all facts and documentation supporting the protest, and legal authorities and argument in support of the grounds for the protest. Any grounds for protest not identified in the pre-award protest are waived.

Protests of MCAG's Intent to Award must be personally delivered or sent by U.S. mail, postage prepaid, to Stacie Guzman, Executive Director, Merced County Association of Governments, 369 W. 18th Street, Merced, CA 95340 with a copy to: General Counsel, Haden Law Office, 2241 N Street, Merced, CA 95340.

Any protest not conforming with the foregoing shall be rejected by MCAG as invalid. Provided that the protest is filed in strict conformity with the foregoing, MCAG's Finance Director or Deputy Executive Director shall review and evaluate the basis for the bid or proposal protest. The Finance Director or Deputy Executive Director shall provide the protestor with a written statement concurring with or denying the protest. The written decision will then be provided to the protestor.

Use of the above procedures shall be a condition precedent to use of the post-award protest procedures detailed below and/or the institution of any legal or equitable proceedings relative to the bid or proposal. In the event that any such legal or equitable proceedings are instituted and MCAG is named as a party thereto, the prevailing party(ies) shall be entitled to recover all attorney's fees and costs incurred in connection with the proceeding.

Post-Award Protest Procedures

Within five (5) business days of the contract being awarded, a bidder or proposer who has complied with the pre-award protest procedures detailed above may file a post-award protest. The post-award protest must:

1. Be in writing;
2. Be signed and dated by the bidder/proposer or someone legally entitled to act on his or her behalf; and
3. Include a detailed statement of the reason for the post-award protest and all facts and documentation supporting the bidder or proposer's position, including any legal authorities or argument.

Post-award protests must be personally delivered or sent by U.S. mail, postage prepaid, to Stacie Guzman, Executive Director, Merced County Association of Governments, 369 W. 18th Street, Merced, CA 95340 with a copy to: General Counsel, Haden Law Office, 2241 N Street, Merced, CA 95340.

Failure to file a request for a pre-award protest shall constitute grounds for MCAG to deny the protest without further consideration of the grounds stated therein. Any grounds for protest that could have been, but were not, identified in the pre-award protest are deemed waived and will not be considered.

Provided that the protest is filed in strict conformity with the foregoing, MCAG's Executive Director or his or her designee shall review and evaluate the basis for the bid or proposal protest, together with the written statement issued by MCAG's Finance Director or Deputy Executive Director. MCAG's Executive

Director or his or her designee shall issue a written statement concurring with or denying the protest. The decision of MCAG's Executive Director shall be final and not subject to appeal or reconsideration.

Use of the above procedures shall be a condition precedent to the institution of any legal or equitable proceedings relative to the bid or proposal. In the event that any such legal or equitable proceedings are instituted and MCAG is named as a party thereto, the prevailing party(ies) shall be entitled to recover all attorney's fees and costs incurred in connection with the proceeding.

CERTIFICATION

To: Merced County Association of Governments
Attn: Matt Fell, Deputy Director - Planning
369 West 18th Street
Merced, CA 95340

Re: Merced County Westside Commuter Bus Study – Project No. RFP20200114MCAG

In compliance with submittal requirements of which this Certification is a part, the undersigned proposes to furnish all services as indicated in the enclosed submittal package for the following amount:

Total Proposed Cost \$ _____ by June 30, 2021

Term options will not result in additional costs.

.....
The undersigned acknowledges receipt of the following addenda to the RFP:

Addendum No. _____, dated _____
Addendum No. _____, dated _____
Addendum No. _____, dated _____

.....
I am the authorized representative with authority to sign this certification and agree that:

1. The Response has been arrived at by the Proposer independently and has been submitted without collusion, and without any agreement, understanding, or planned common course of action, with any other party which would obstruct fair and open competition;
2. The Proposer is legally entitled to enter into contract with MCAG and is not in violation of any prohibited conflict of interest, including those prohibited by the provisions of state and federal law;
3. The Proposer is fully informed regarding the accuracy of the above statements.

NOTICE: Any agreement or collusion among Proposers or prospective Proposers which restrain, tend to restrain, or are reasonably calculated to restrain competition by agreement to respond, or to refrain from responding, or otherwise, is prohibited.

Name of Individual, Partnership, or Corporation

Address

Authorized Person (Print or Type)

Authorized Signature

Title of Authorized Person

Date

Email Address of Authorized Person

Phone Number

NONDEBARMENT CERTIFICATION

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

Instructions for Certification

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
4. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
5. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(CONTINUED ON NEXT PAGE)

NONDEBARMENT CERTIFICATION (CONTINUED)

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature of Authorized Representative: _____ Date: _____

Name/Title: _____

Name of Organization/Business: _____

LOBBYING CERTIFICATION

This form is to be submitted with an offer exceeding \$100,000.

The Proposer or Bidder certifies, to the best of its 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 a federal department or agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a member of the U.S. 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 thereof.
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 instruction, as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). *
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, USC § 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 PROPOSER OR BIDDER, _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE PROPOSER OR BIDDER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 USC §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

Name of the Proposer's or Bidder's authorized official: _____

Title: _____

Signature: _____ Date: _____

* **NOTE:** Per paragraph 2 of the included form Lobbying Certification, add Standard Form-LLL, "Disclosure Form to Report Lobbying," ***if applicable.***



DBE PROGRAM BIDDERS LIST FORM

The Merced County Association of Governments (MCAG) as a *designated recipient* of Department of Transportation (DOT) federal financial assistance funding is required to: 1) Create and maintain a comprehensive DBE bidders List {49 CFR Part 26.11(c)}; and 2) Monitor *subrecipient* DBE compliance. The Bidders List Form will be used to determine the relative availability of Disadvantaged Business Enterprise (DBE) and non-DBEs, and will assist with establishing the agency’s triennial DBE goal. Each Bidders List is a compilation of data on bidders, proposers, quoters, subcontractors, manufacturers, and suppliers of materials and services who have submitted bids during the advertising period of a specific acquisition.

Certified DBE’s must be verifiable and currently listed on the following website to be considered a certified DBE:

http://www.dot.ca.gov/hq/bep/find_certified.htm

Providing the following information is mandatory regardless of DBE status:

PART A: BUSINESS DATA

1. Business Name: _____

2. Business Address: _____
Street City State Zip

3. County Business is located in: _____

4. Name of Contact Person: _____

5. Phone: () _____ 6. Fax: () _____

7. Email address: _____

8. Is this business a certified Disadvantaged Business Enterprise (DBE)? a. Yes * b. No

***If “yes”, MCAG will verify via the following website:** http://www.dot.ca.gov/hq/bep/find_certified.htm

9. Business Annual Gross Receipts:

- a. Less than \$500,000
- b. \$500,000 to \$1,000,000
- c. \$1,000,000 to \$2,000,000
- d. \$2,000,000 to \$5,000,000
- e. Over \$5,000,000

10. Age of Business: _____ Years _____ Months

(continued on next page)

DBE PROGRAM BIDDERS LIST FORM (CONTINUED)

PART B: PROJECT AND WORK DESCRIPTION

11. RFQ, RFP, OR IFB#: _____

12. Project Name: _____

13. Provide a brief description of scope of work, services, and/or materials to be performed/furnished: _____

14. Will you subcontract any of your work? a. Yes * b. No

*** If "yes", subcontractor(s) also required to complete the mandatory Bidders List Form, regardless of DBE status**

PART C: SIGNATURE

The undersigned declares that the information set forth on this page is current, complete, and accurate.

Authorized Signature: _____ Date: _____

Printed Name: _____ Title : _____

REFERENCE LIST

Complete and return with the submittal package. Three references required.

REFERENCE NO. 1 - AGENCY NAME: _____

ADDRESS: _____

CONTACT PERSON: _____ TITLE: _____

E-MAIL: _____ TELEPHONE NUMBER: _____

SERVICE DESCRIPTION: _____

CONTRACT DATE & AMOUNT: _____

REFERENCE NO. 2 - AGENCY NAME: _____

ADDRESS: _____

CONTACT PERSON: _____ TITLE: _____

E-MAIL: _____ TELEPHONE NUMBER: _____

SERVICE DESCRIPTION: _____

CONTRACT DATE & AMOUNT: _____

REFERENCE NO. 3 - AGENCY NAME: _____

ADDRESS: _____

CONTACT PERSON: _____ TITLE: _____

E-MAIL: _____ TELEPHONE NUMBER: _____

SERVICE DESCRIPTION: _____

CONTRACT DATE & AMOUNT: _____

SAMPLE AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of ____ 2020 by and between the Merced County Association of Governments, a California joint powers authority within the meaning of Government Code § 6500 et seq (hereinafter referred to as "MCAG"), and *To Be Determined*, (hereinafter referred to as "CONSULTANT").

It is agreed between the parties that:

Section One – Scope of Work

CONSULTANT agrees to perform all work necessary to complete, in a manner satisfactory to MCAG, those items described in Exhibit A – Scope of Work and incorporated herein by this reference as if set forth in full.

Section Two – Notice to Proceed

MCAG shall serve an email notice to proceed upon full execution of this Agreement. Upon receipt of such notice, CONSULTANT shall diligently proceed with the work authorized and complete it within the agreed time period.

Section Three – Term

CONSULTANT shall commence work immediately following execution of this Agreement. CONSULTANT shall complete the performance of its obligations under this Agreement by June 30, 2021, or sooner. All work is contingent upon available funding and successful performance. MCAG, at its sole discretion, may extend the term for 12 additional months. All work is contingent upon agreed upon services, available funding and successful performance. The contract will be a fixed price contract for the full term including extension option.

Section Four – Compensation and Invoicing

For services performed pursuant to this Agreement, MCAG agrees to pay and CONSULTANT agrees to accept as payment in full, the amounts as identified on the cost summary provided in Exhibit B – Cost Summary. CONSULTANT shall be reimbursed no later than thirty (30) days following submission of a written, acceptable billing to MCAG. Written billing must include details of tasks and/or work completed relevant to the billing payment request.

In each invoice, CONSULTANT shall include current invoice dollar amount, budget dollar amount based on the contract, previously billed dollar amount, and the remaining amount in the budget.

In the event MCAG disputes all or any part of a bill submitted by CONSULTANT pursuant to this Agreement, MCAG shall pay the undisputed portion of the invoice when due and shall notify CONSULTANT of the disputed amount in writing at least ten (10) days prior to the due date of the disputed invoice. The Parties shall use best efforts to resolve the dispute amicably and promptly. Upon determination of the correct billing amount, MCAG shall pay such amount within ten (10) days of such determination.

Section Five – Insurance

CONSULTANT shall, for the duration of this Agreement, purchase and maintain insurance to protect against loss resulting from the performance of its duties under this Agreement. Said insurance coverage shall comply with the following minimum requirements:

- A. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or any other policy with a general aggregate limit is used, either the aggregate limit shall be endorsed to apply separately to this project, or the aggregate limit shall be twice the above occurrence limit.
- B. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- C. Professional Liability or Errors and Omissions Insurance: \$1,000,000.

Original certificates of such insurance shall be filed with MCAG. Said certificates shall evidence coverage through the term of this Agreement, reference the agreement number, and shall name MCAG as an additional insured, with the exception of Professional Liability or Worker's Compensation. Modifications to insurance requirements must be approved by MCAG in writing. CONSULTANT is responsible for providing MCAG updated insurance documents annually.

CONSULTANT shall maintain worker's compensation coverage sufficient to comply with statutory requirements and limits as required by the California Labor Code, including Employers' Liability limits of \$1,000,000 per accident.

All policies shall be endorsed to waive the insurer's subrogation rights against MCAG.

Section Six – Changes to Scope

MCAG may at any time, and upon a minimum of ten (10) days written notice, modify the scope of basic services to be provided under this Agreement. CONSULTANT shall, upon receipt of said notice, determine the impact on both time and compensation of such change in scope and notify MCAG in writing. Upon agreement between MCAG and CONSULTANT as to the extent of said impacts on time and compensation, an amendment to this Agreement shall be prepared describing such changes. Execution of the amendment by MCAG and CONSULTANT shall constitute the CONSULTANT's notice to proceed with the changed scope.

Section Seven – Compliance with Laws, Rules, and Regulations

All services performed by CONSULTANT pursuant to this Agreement shall be undertaken with usual and customary professional care to be performed in accordance and full compliance with all applicable federal, state or city statutes, and any rules or regulations promulgated thereunder.

Section Eight – Responsibility of CONSULTANT

By executing this Agreement, CONSULTANT warrants to MCAG that it possesses, or will arrange to secure from others, all of the necessary professional services, resources and facilities to provide MCAG with the services contemplated under this Agreement. CONSULTANT further warrants that it will follow the best current, generally accepted practice of the profession to make findings, render opinions, prepare factual

presentations, and provide professional advice and recommendations regarding the project for which services are rendered under this agreement.

Section Nine – Responsibility of MCAG

To the extent appropriate to the Project contemplated by this Agreement, MCAG shall:

- A. Assist CONSULTANT by placing at its disposal all available information pertinent to the project.
- B. Examine all studies, reports, proposals and other documents presented by CONSULTANT, and render verbally or in writing, as may be appropriate, decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT.
- C. The Deputy Director - Planning, or designee, will act as MCAG's representative with respect to all work to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define MCAG's policies and decisions with respect to materials, equipment, elements, and systems pertinent to CONSULTANT's services.

Section 10 – Termination for Convenience of MCAG

MCAG may terminate this Agreement, with or without cause, at any time by giving CONSULTANT ten (10) days written notice of such termination. If this Agreement is terminated by MCAG as provided herein, CONSULTANT shall be paid a total amount that is the ratio of completed tasks to total services as determined by MCAG, less payments already made under this Agreement. This proration shall be extended to cover any fixed fee charged for a fully completed product. Upon termination, CONSULTANT will give MCAG all of its work product.

Section 11 – Interest of Officials and CONSULTANT

- A. No member of or delegate to the Congress of the United States of America nor any Resident Commissioner shall be admitted to any share or part hereof or to any benefits to arise herefrom.
- B. CONSULTANT hereby covenants that it has, at the time of the execution of this Agreement, no interest, and that it shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. CONSULTANT further covenants that in the performance of this work, no person having any such interest shall be employed.

Section 12 – Subcontracting

- A. CONSULTANT shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without the prior written approval of MCAG.
- B. All subcontracts shall be subject to the provisions contained in this Agreement between MCAG and CONSULTANT.
- C. If the subcontractor is a Disadvantaged Business Enterprise, prompt payment and return of retainage requirements apply, as referenced in 49 CFR 26.29. CONSULTANT will provide payment records upon MCAG's request.
- D. CONSULTANT cannot terminate a subcontractor, including a DBE subcontractor, for convenience if CONSULTANT listed the subcontractor in response to the RFP, and then perform the work of the

terminated subcontract with its own forces or those of an affiliate, without MCAG's prior written consent.

Section 13 – Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of any successors or assigns.

Section 14 – Independent Contractor

MCAG and CONSULTANT agree that CONSULTANT is an independent contractor and that no employer-employee relationship exists between MCAG and CONSULTANT or any of its subcontractors. CONSULTANT shall be solely responsible for the conduct and control of the work performed under this Agreement. CONSULTANT shall be free to render services to others during the term of this Agreement so long as such activities do not interfere with or diminish CONSULTANT's ability to fulfill the obligations established herein to MCAG.

Section 15 – Dispute Resolution, Attorney Fees, Jurisdiction, and Venue

In any action, suit or proceeding arising out of or in any way connected with the performance of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs. Notwithstanding any other provision of this Agreement, any disputes concerning any question of fact or law relating to this Agreement or any litigation or arbitration arising out of this Agreement shall be interpreted pursuant to California law, subject to the jurisdiction of the Superior Court of California, and venued in the County of Merced. CONSULTANT expressly waives federal jurisdiction.

Section 16 – Publication

No reports relating to this work shall be published by CONSULTANT without written permission of MCAG.

Section 17 – Indemnification

CONSULTANT shall indemnify and defend MCAG and hold it harmless from and against any and all claims, demands, or liability arising out of or in any way connected with the performance of this Agreement. Indemnity shall apply to any acts, omissions, willful misconduct, or negligent conduct, whether active or passive, unless liability is caused solely by the negligent or willful misconduct of MCAG. CONSULTANT will, on request and at its own expense, defend any action, suit, or proceeding arising hereunder and shall reimburse and pay MCAG for any loss, cost, damage, or expense, including attorney's fees suffered by it hereunder.

Section 18 – Ownership of Documents

All documents, methodological explanations, computer programs, drawings, designs and reports generated as a result of work on this Agreement shall be the property of MCAG.

Section 19 – Documentation/Access to Records

CONSULTANT shall document the results of the work with each billing, to the satisfaction of MCAG. Such

documentation shall include a progress summary, listing attainment of Agreement objectives. CONSULTANT shall work with MCAG to ensure that all paperwork requirements are met.

CONSULTANT shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred, and make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment to CONSULTANT. Such materials shall be available for inspection by authorized representatives of MCAG, or the copies thereof shall be furnished if requested. The FTA, FHWA, Comptroller General of the United States, or any authorized representative, shall have access to any books, documents, papers and records of the CONSULTANT, which are directly pertinent to that specific Agreement, for the purpose of making audit, examination, excerpt and transcriptions.

Section 20 – Waiver

No waiver by either party of any default, breach, or condition precedent shall be valid unless made in writing and signed by the parties hereto. No oral waiver of any default, breach, or condition precedent shall be binding on any of the parties hereto. Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent, or any other right hereunder.

In no event shall the making, by MCAG, of any payment to CONSULTANT constitute, or be construed as, a waiver by MCAG of any breach of covenant, or any default which may then exist, on the part of CONSULTANT. The making of any such payment by MCAG while any such breach or default shall exist, shall not be construed as acceptance of substandard or careless work or as relieving CONSULTANT from its full obligations under this Agreement.

Section 21 – Notices

Any notices required to be given pursuant to this Agreement shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service, addressed to the parties as follows:

- A. To MCAG: Matt Fell, Deputy Director - Planning
Merced County Association of Governments
369 W. 18th Street
Merced, CA 95340

- B. To CONSULTANT: Contact Name, Title
Company Name
Street Address
City, State, Zip Code

Nothing hereinabove shall prevent either MCAG or CONSULTANT from personally delivering any such notices to the other.

Section 22 – Integration

This Agreement, and Exhibits A and B represent the entire understanding of MCAG and CONSULTANT as

to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by MCAG and CONSULTANT.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the day and year first above written.

Merced County Association of Governments:

CONSULTANT:

By _____
Stacie Guzman, Executive Director

By _____
Contact Name, Title

APPROVED AS TO FORM:

By _____
General Counsel, Haden Law Office

SAMPLE