

**Berkeley Charleston Dorchester Council of Governments (BCDCOG)
Regional Freight Plan**

Request for Proposals

1/14/2019

I. INTRODUCTION TO AGENCY'S OBJECTIVE

The Berkeley Charleston Dorchester Council of Governments (BCDCOG) is an association of local governments that assists in planning for common needs of the three counties and municipalities therein for sound regional development. Charged with providing a multimodal transportation system that promotes the safe and efficient movement of people and goods, and supports the economic vitality of the region, the BCDCOG is working to better integrate freight into the transportation planning process.

As such, the BCDCOG is seeking qualified firms to lead the development of a Regional Freight Plan for the Berkeley-Charleston-Dorchester (BCD) region. The proposed Regional Freight Plan will complement the *South Carolina Statewide Freight Plan (Amended, 2017)*¹; with freight planning efforts focused specifically on the BCD region and providing an in depth look at the area's freight conditions, trends, challenges and opportunities.

The Plan will serve to:

- i. Collect system freight data, across modes, that support an on-going regional freight planning function;
- ii. Create a framework of analysis for freight performance measures and the identification of freight-specific issues on the transportation network that would inform a set of strategic recommendations;
- iii. Develop a plan that helps guide the prioritization and implementation of future investments, policies and strategies in the short-, mid-, and long-term that would improve the safety, mobility and reliability of the freight transportation system and support the economic development goals of the region.

II. PROJECT BACKGROUND AND LOCATION

The study area for the Regional Freight Plan includes the three counties of Berkeley, Charleston and Dorchester (Appendix – Map 1: Study Area). The BCD region is experiencing significant growth with new industry and residents relocating to the area daily. With a population of roughly 761,150² as of 2016, the tri-county region has seen an approximate 45 new residents move to the area each day. According to U.S. Census data, for the period 2012-2016, the Charleston MSA population was growing at approximately 3-times the national average³. This growth, however, has come with challenges as road capacities reach its limit and growing congestion negatively impacts the movement of people and goods in the region. Growing congestion, if not

¹ South Carolina Statewide Freight Plan, SCDOT 2014 (Amended, 2017)

² U.S. Census Bureau, 2016 American Community Survey 1-Year Estimates

³ Charleston Regional Development Alliance – Population and Demographics, 2017

effectively addressed, can contribute to quality of life issues which may result in the loss of existing and potential residents or businesses, thus hurting the economic health of the area.

The region's economy benefits from a diverse economic base with industries ranging from hospitality and information technology to aeronautical and automotive manufacturing. Both multi-national corporations and fast-growing startup companies are taking advantage of the globally competitive business environment of the region. In FY 2015-2016, announced corporate expansions and relocations to the area averaged \$3.9 billion⁴ in economic impact.

The BCD region serves as a key trade gateway linking the state and U.S. southeast markets to the world. Freight is an important component of the area's transportation system and major driving force for the Charleston economy. The region has direct access to two major interstates (I-26 and I-95), various U.S. highways (US 17, US 52, US 78), an International Airport, the Port of Charleston, which was named as the most productive and fastest growing port in North America⁵, two major Class I railways, intermodal facilities, and a diverse and growing mix of logistic companies and warehouse/distribution centers throughout the area. The presence of companies such as Boeing and Volvo has also supported a strong and growing manufacturing base.

Moreover, there are a number of major freight related projects, at various stages of planning and development, occurring in the area that would impact the demands placed on the freight transportation system. The South Carolina Ports Authority (SCPA), the State, and other partners have committed approximately \$2.4 billion in port-related infrastructure that will improve the operations and movement of goods at the port and throughout the State. Infrastructure investments include the construction of inland port facilities, existing port terminal improvements, and new terminal and intermodal facility construction⁶.

The Port of Charleston currently operates at four locations, spanning three municipalities along the Cooper River, and generates freight movements to and from these locations that are primarily supported by truck and rail. The Port has recorded strong growth over the years and the committed investments will support future trade demands and maintain the economic competitiveness of the trade gateway. The South Carolina Port Authority (SCPA) is currently working to deepen the harbor channel of the Port of Charleston from 45 feet to 52 feet to accommodate the growing number of large and new Post-Panamax vessels that call on the Port. When completed, the harbor deepening will make the Charleston harbor the deepest on the U.S. East Coast. Other infrastructure projects underway include the construction of the Hugh Leatherman Terminal (HLT) - a new 286-acre container terminal that is anticipated to boost port capacity by roughly 50% when fully built out; and the Port Access Road is also under construction which will connect the HLT container terminal directly to I-26. Palmetto Railways intends to development a new intermodal transfer facility adjacent to the HLT facility which allows for near-dock rail service, and would include new rail and road alignments and improvements to existing roadways.

⁴ Charleston Regional Development Alliance – Local Data: Location and Expansion Log, 2017

⁵ Charleston Regional Development Alliance – Logistics, 2017

⁶ South Carolina Ports Authority (SCPA) – Capital Plan

III. PROJECT DESCRIPTION

The selected CONSULTANT will be tasked with developing a Plan that will provide an in depth evaluation of the area's freight conditions, trends, challenges, and opportunities, and guide freight investment in the region. This process undertaken in the development of the Plan should also serve to build stakeholder engagement and foster relationships with the freight community, both public and private.

IV. REQUEST FOR PROPOSAL

BCDCOG, in coordination and cooperation with the counties and local municipalities, is hereby issuing this Request for Proposals (RFP) to firms that have the capability and interest in undertaking and performing a **Regional Freight Plan** for the Berkeley-Charleston-Dorchester (BCD) region. Each firm is officially a CONSULTANT. Each CONSULTANT must submit a package containing an original and four (4) copies of its proposal to BCDCOG no later than 3:00 p.m. on February 11, 2019 to:

Jason McGarry, Contracts/Procurement Administrator
BCD Council of Governments
1362 McMillan Avenue, Suite 100
North Charleston, SC 29405

Proposals may be submitted in person, by messenger, or by regular mail. All proposals will be logged in and date and time stamped. Any proposal package that is received after the date and time specified will be logged in and date and time stamped as "late" and returned unopened to the CONSULTANT.

Proposals must not be more than the equivalent of 20 single-sided 8 ½ by 11-inch pages in length (not counting the front and back covers of the proposal, cover letter of interest, section dividers that contain no information or SF 330 forms). The font size should be no smaller than 12 pt. Proposals shall include the following information:

1. A work plan describing the CONSULTANT's proposed approach and methodology to the project.
2. A suggested project schedule that includes tasks, milestones, technical memorandums, and final deliverables, to indicate how the CONSULTANT proposes to meet the targeted timeline for this project.
3. Name(s) of the prime and sub-CONSULTANTS that will comprise the team, identifying the Executive Officer of each company. Consortia, joint ventures or team proposals, although encouraged, must acknowledge that contractual responsibility will rest solely with one Contractor or legal entity which shall not be a subsidiary or affiliate with limited resources.
4. Identity of the proposed Project Manager for the team who will be the sole point of contact to BCDCOG for day to day operations.

5. List of the key personnel who will participate in performing the scope of work. Provide a resume for each listed team member, including sub-CONSULTANT key personnel who will be completing a portion of the scope of work.
6. An organizational chart depicting the relationships between the team members and agencies and responsibilities of each.
7. List of three (3) relevant projects performed within the past 5 years indicative of past performances and abilities of the proposed team, including a key client contact person for each project with current daytime phone number.
8. Standard Federal Form 330 for the prime CONSULTANT and all sub-CONSULTANTS.
9. Signature of an authorized officer of the prime CONSULTANT firm.

V. KEY PROJECT ELEMENTS or STUDY DETAILS

The CONSULTANT shall prepare a Regional Freight Plan for the BCDCOG. Work to be performed by the CONSULTANT on the Plan consists of the furnishing of all labor, equipment, materials, expertise, tools, supplies, bonds, insurance, licenses and permits, and performing all tasks necessary to accomplish work items concerning the design and development of the Regional Freight Plan unless specifically excluded as agreed upon by contract. The proposal should address how the CONSULTANT will develop a Plan that includes, but is not limited to these core areas:

1. **Stakeholder/Public Engagement** – In developing the Regional Freight Plan the CONSULTANT will identify and engage with major stakeholders of the freight community, from both the public and private sectors, and the general public. Stakeholder input should help inform the planning process especially when identifying freight deficiencies and opportunities. Responders to this RFP should address how and when they plan to involve various stakeholders within the proposed work plan. The CONSULTANT will also utilize and engage with the BCDCOG/MPO Freight Advisory Committee for guidance and input into the process. A major product of this plan will be identifying and building relationships with the freight community, especially within the private sector, and keeping these stakeholders engaged in the freight planning process moving forward. Innovative and effective engagement approaches are encouraged.
2. **Facilities and Commodity Flow Profiles** – Assessment to include:
 - i. Identify and inventory the region's freight facilities for all modes (highway, rail, intermodal, air and water), intermodal nodes, major freight generators, freight dependent land uses, and freight support services (truck stop facilities, etc.).
 - ii. Examine existing freight/goods movements, patterns, mode share, volumes, major commodity flows, origins and destinations, etc.
 - iii. Examine future year freight/goods movements, patterns, mode share, volumes, major commodity flows, origins and destinations, etc. Analysis should include any assumptions used in determining future year forecasts of freight/goods movement in the region.
3. **Performance Measures** – The CONSULTANT will develop a targeted, quantitative set of regional freight performance measures in accordance with federal guidance from MAP-

21/FAST Act and State requirements. Additional measures, beyond those mandated, may be proposed and should complement the South Carolina Statewide Freight Plan and Statewide Rail Plan recommended measures.

4. **Network Assessment** – Conduct a data-driven network evaluation, with focus on freight roadway and rail networks. Tasks may include:
 - i. Develop a regional freight network and subsystem of freight significant corridors (highways and rail). Using planning data and stakeholder input, define a regional freight system that includes the national and state freight corridors as well as propose local freight corridors or connectors, both urban and rural, that link major freight-related land uses or freight generators to critical freight corridors in the region. Consideration will be given to truck restricted facilities and preferred truck routing networks.
 - ii. Use the measures identified in prior task to analyze the local freight network and identify issues or shortcomings in the network that would impact the safe and efficient movement of freight. The CONSULTANT will utilize any guidance in conducting network analyses such as the Truck Freight Bottleneck Reporting Guidebook, FHWA 2018, as well as stakeholder/public feedback.
 - iii. The CONSULTANT will define the regional quantitative data collection process used in the analysis and address how BCDCOG and partner agencies can continue to gather or maintain these datasets to regularly monitor the performance of the network.

5. **Land Use/Facility/Infrastructure Assessment** – Conduct an assessment of current and planned future freight-related land uses in the region, including facilities and infrastructure. Tasks may include:
 - i. Identify and inventory the existing freight-related land uses in the region, as well as current freight land use policies and regulations.
 - ii. Identify and inventory proposed future freight-related land uses in the area.
 - iii. Identify and inventory freight facilities and infrastructure that serve these uses to include, but not limited to, intermodal and service facilities such as truck parking facilities and capacities.
 - iv. Conduct a gap analysis, utilizing planning data collected and stakeholder/public input, to determine any areas and facilities within the region that are critical to ensure efficient freight flows and mobility in the future. This analysis should identify any conflicts in land uses or possible impacts to surrounding land use (especially EJ populations) and recommend appropriate mitigation strategies.
 - v. Examine opportunities for increased coordination between land use and transportation planning to promote increased regional economic competitiveness.

6. **Best Practices** – The CONSULTANT will identify through a peer review of other regional freight mobility plan “best practices” models, best practices in the areas of modal technology trends and applications utilized by the private sector to improve freight mobility and increase efficiencies, land use, regulatory and planning practices in an effort to attract private industry, improve commodity flow and provide regional economic benefits. In accordance with federal guidance, applicable industry technological improvements in the area of Intelligent Transportation Systems (ITS), safety and security, as well as opportunities for public/private partnerships and initiatives within the BCD region should be included.

- 7. Recommendations** – The CONSULTANT will utilize the data collected, analyses conducted, and major findings generated during the plan development, to recommend a prioritized list of freight infrastructure improvements, process and policy needs and strategies that would improve the multimodal freight transportation system in the region. Recommendations should be identified as short-, mid-, and long-range and should be prioritized based on the projects that have the greatest impact to freight safety and mobility and supports regional economic development. Recommendations should also include future planning activities or studies. Recommendations should complement State freight planning efforts, and also inform other regional and local planning efforts including the long-range transportation plan, and MPO TIP processes.

VI. CONSULTANT SELECTION PROCESS

All proposals received shall be evaluated by a CONSULTANT Selection Committee, assisted by other technical personnel as deemed appropriate for the purpose of selecting the CONSULTANT with whom a contract will be executed. The BCDCOG reserves the right to reject any and all proposals in whole or in part if in the judgment of the CONSULTANT Selection Committee, the best interest of all parties will be served.

The CONSULTANT proposal will be evaluated using a two-step selection process. The first step will involve evaluation of the CONSULTANT's technical proposal by the CONSULTANT Selection Committee using the selection criteria below. The second (optional) step may involve oral interviews of/presentations by the CONSULTANTS submitting the highest scoring technical proposals. The selection of the CONSULTANT will be determined by the highest total score.

The criteria and weight of consideration in making the selection are:

STEP ONE: Proposal Submission

Understanding the Purpose: 15 Points

Demonstrated understanding of the project purpose and goals as presented in the RFP by the CONSULTANT. Evaluation will be based on information presented in the CONSULTANT's proposal, and the approach and allocation of time on specific tasks. CONSULTANTS should feel free to suggest other requirements and problems that may have been overlooked.

Method of approach: 30 Points

The technical soundness of the CONSULTANT's stated approach to the project, the comprehensiveness of the proposed approach, and the methodology/techniques to be used. Proposals should outline the type of deliverables anticipated over the course of the project.

Capability and qualifications: 15 Points

The qualifications, experience and technical expertise of team members to be assigned to the project as specified in the proposal including Sub-CONSULTANTS, and with particular reference to experience and technical quality on similar projects. The CONSULTANT's professional and project staff that work on the project must be the same staff that is identified in the proposal.

Stakeholder/Public Engagement: 10 Points

The CONSULTANT's proposed approach and experience with planning and facilitating stakeholder/public meetings and other innovative ways to engage the members of the freight community, especially within the private sector, as well as the general public. Proposals should outline an approach to stakeholder/public involvement for this particular project that will build relationships with local freight stakeholders.

Cooperative work experience: 10 Points

The CONSULTANT's/CONSULTANT TEAM's experience working as a cooperative team with other CONSULTANTS and public agencies. Qualifications of professionals assigned will be measured by experience on past projects within a cooperative team environment. The CONSULTANT will provide specific examples of cooperative work experiences with contact references for the selection committee.

Originality or innovativeness: 10 Points

The degree to which an innovative approach to the project is proposed beyond the suggested elements, either in data gathering and analysis, public participation, etc. that will be accomplished within the time limits.

Schedule: 5 Points

The CONSULTANT's suggested project schedule and demonstrated ability to follow a schedule that will successfully complete the project within the required time frame.

Disadvantaged Business Enterprise (DBE) designation or subcontractor participation: 5 Points

The extent to which the prospective CONSULTANT/Consulting Team includes participation of a DBE. See agency policy on following page.

STEP TWO: Oral Presentations (BCDCOG reserves the right not to include this activity)

CONSULTANTS with the highest scoring technical proposals may be requested to make an oral presentation of their proposal. This presentation, if held, will provide an opportunity for the CONSULTANT to clarify their proposal.

QUESTIONS AND CLARIFICATIONS:

CONSULTANTS may ask questions to clarify the contents of this RFP and expectations of the BCDCOG related to this project. All questions or request for clarifications shall be submitted by fax or email or in writing no later than February 1, 2019. All questions submitted and their answers will be promptly placed on the BCDCOG website at www.bcdco.com after the deadline for questions. No telephone inquiries shall be accepted.

If, in the judgment of the BCDCOG, changes in the content of the RFP are required, an addendum will be issued by the BCDCOG. Any addendum that may be issued will be transmitted by fax and e-mail to a list of firms maintained by the BCDCOG and in the South Carolina Business Opportunities (SCBO).

Due to potential conflict of interest, no CONSULTANT or person representing a CONSULTANT may arrange or meet with individual members of the BCDCOG or the review committee to discuss

any items or matters related to this RFP during the period of time between the date of the release of this RFP and the date the BCDCOG makes the decision selecting the successful CONSULTANT.

PROPOSED TIMEFRAME FOR SELECTION PROCESS

The proposed timeframe for this selection process is as follows:

Request for Proposals Due:	February 11, 2019
Interviews (if held):	TBD
Award of Contract:	TBD
Completion of Contract:	TBD

NOTICE OF AWARD

Selection of the successful CONSULTANT will be made solely by the BCDCOG. The CONSULTANT Selection/Steering Committee shall rank each proposal against the stated criteria. BCDCOG reserves the right to contact a firm to obtain written clarification of information submitted and to contact references to obtain information regarding performance reliability and integrity.

Based on evaluations of the submitted proposals, the BCDCOG will select the top ranked firm and negotiations will begin immediately to finalize the scope of work, personnel, hours, hourly rates, use of sub-CONSULTANTS, and other direct costs that will be required to complete the agreement between BCDCOG and the selected firm. If an agreement cannot be reached with the top ranked firm, BCDCOG will identify the next most responsive and qualified firm and the negotiation phase will be repeated. This process will be continued until an agreement is reached with a qualified firm that can provide the required services. BCDCOG reserves the right to reject any and all proposals received, and in all cases BCDCOG will be the sole judge as to whether a CONSULTANT's proposal has or has not satisfactorily met the requirements of this RFP.

Notice of "Intent to Award Contract" will be posted on the BCDCOG website. In addition, a notice will be mailed to CONSULTANTS, informing them of the success, or lack thereof, of their proposal to receive an award.

VII. ADDITIONAL INFORMATION

FUNDING

Funding for this project will be provided through Federal and State transportation funding sources. Costs incurred prior to notice-to-proceed will be the responsibility of the CONSULTANT and will not be reimbursed. All travel expenses prior to notice to proceed shall be at the CONSULTANT's expense. This project will be negotiated as a lump sum contract.

DISADVANTAGED BUSINESS ENTERPRISE

It is the policy of the BCDCOG to ensure nondiscrimination in the award and administration of federally assisted contracts and to use Disadvantaged Business Enterprises (DBEs) in all types of contracting and procurement activities according to State and Federal laws. To that end, the BCDCOG has established a DBE program in accordance with regulations of the United States Department of Transportation found in 49 CFR Part 26. Each CONSULTANT is encouraged to use certified DBEs to meet the tasks and milestones of this request. A list of certified DBEs can be found at: <https://www.scdot.org/business/bus-development-dbe-sbe-cert.aspx>

To ensure compliance with the BCDCOG DBE policies, BCDCOG's goal is to achieve a minimum participation of 10% by South Carolina Unified Certification Program (UCP) certified DBEs for this project. The following statement should be included in the proposal to denote the level of proposed DBE participation.

"We the (CONSULTANT) ensure to the fullest extent possible that at least _____% of all procurement, including sub CONSULTANTS, made with funds provided under this project/plan/request will be made from organizations owned and controlled by socially and economically disadvantaged individuals, women, and historically black colleges and universities."

PROPRIETARY/CONFIDENTIAL INFORMATION

Trade secrets or proprietary information submitted by a CONSULTANT in connection with a procurement transaction shall not be subject to public disclosure under the Freedom of Information Act; however, the CONSULTANT must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state reasons why protection is necessary. Disposition of such material after award is made should be requested by the CONSULTANT. No information, materials or other documents relating to this procurement will be presented or made otherwise available to any other person, agency, or organization until after award.

All CONSULTANTS must visibly mark as "Confidential" each part of their proposal that they consider to contain proprietary information. All unmarked pages will be subject to release in accordance with the guidelines set forth under Chapter 4 of Title 30 (The Freedom of Information Act) South Carolina Code of Laws and Section 11-35-410 of the South Carolina Consolidated Procurement Code. Privileged and confidential information is defined as "information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the part supplying the information." The examples of such information provided in the statute includes: customer lists, design recommendations and identification of prospective problem areas under an RFP, design concepts to include methods and procedures, and biographical data on key employees of the CONSULTANT.

Evaluative documents pre-decisional in nature such as inter or intra-agency memoranda containing technical evaluations and recommendations are exempted so long as the contract award does not expressly adopt or incorporate the inter- or intra-agency memoranda reflecting the pre-decisional deliberations.

Marking the entire proposal confidential/proprietary is not in conformance with the South Carolina Freedom of Information Act.

VIII. PROJECT SCHEDULE

The CONSULTANT must agree to begin work upon issuance of a notice to proceed by BCDCOG and to complete this work within *9 months* of the date of such notice. The work shall be guided by a detailed flow diagram, prepared by the CONSULTANT and furnished to the BCDCOG within one week of receipt of notice to proceed, and approved by BCDCOG. The project shall be considered complete only after action has been taken by the BCDCOG Board of Directors. Periodic payments for the work shall be made in accordance with a schedule proposed by the CONSULTANT and approved by BCDCOG.

IX. MEETINGS

Stakeholder/Public meetings shall be conducted by the CONSULTANT in coordination with BCDCOG staff during the course of this project. The CONSULTANT shall be responsible for the logistics of these meetings and consistency with the CHATS Public Participation Plan. The number of meetings to be held shall be negotiated between the CONSULTANT and BCDCOG/MPO project manager as part of the scope of work.

X. BRIEFINGS AND PRESENTATIONS

Regularly scheduled briefings shall be held by the CONSULTANT for the BCDCOG/MPO. These briefings shall be held at least once every month at an agreed upon location during the course of the project. The purpose of the briefings will be to appraise the BCDCOG/MPO project manager of the activities of the CONSULTANT, to schedule future activities and to ensure that the PROJECT is on schedule. Minutes for these meetings shall be the responsibility of the CONSULTANT. Technical project presentations shall be made to the BCDCOG/MPO as requested by the BCDCOG/MPO's project manager and/or Executive Director until adoption, and possibly following the completion, of the plan.

XI. COMPUTING REQUIREMENTS

The BCDCOG will not be responsible for providing any proprietary software packages to the CONSULTANT. Should the CONSULTANT desire to use any BCDCOG programs, permission must be received in accordance with this agreement. Computations or graphics based on computer programs other than the BCDCOG's, must conform to all BCDCOG format requirements.

XII. SPECIFICATIONS FOR DOCUMENTATION

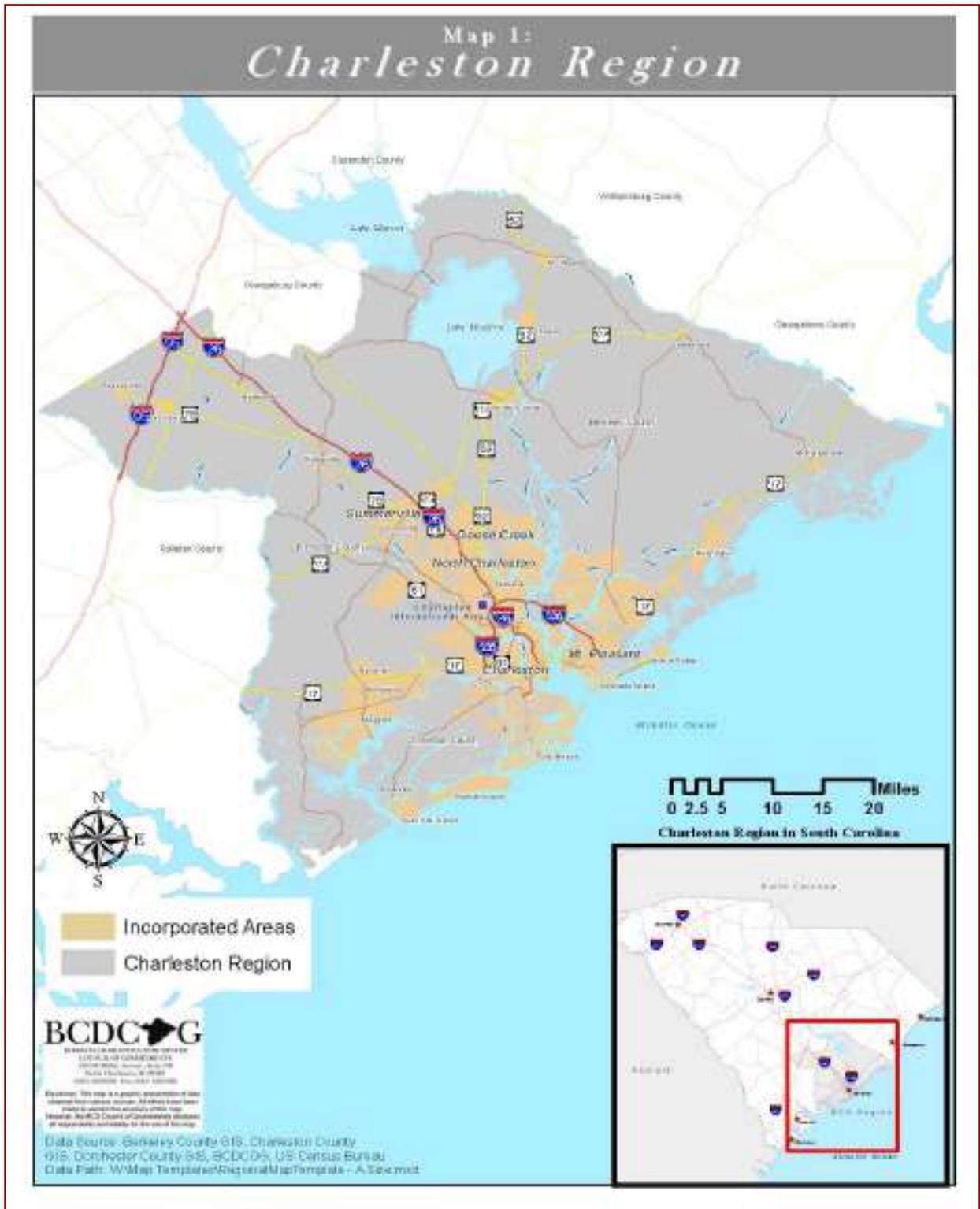
All documentation shall be in Microsoft Word and/or Adobe Portable Document Format (PDF). Any programming source codes, form designs, raw source database (in dBase III format, with field coding definition sheet) and other ancillary files shall be transferred to the MPO in addition to the executable applications at the closure of each task or any moment specified by the MPO project manager.

XI. DELIVERABLES

The CONSULTANT shall provide copies of all Technical Memoranda, Draft Documents, an Executive Summary of the Final Report in Brochure format, and the Final Report in electronic and published formats. The number of paper copies shall be determined between the CONSULTANT and the BCDCOG Project Manager. All work documents shall be presented to BCDCOG upon

completion (Word, PDF, InDesign files, etc.) of the project or established milestone. For presentations to the Committees and Board of the BCDCOG, the CONSULTANT shall prepare a PowerPoint or similar format presentation.

Appendix - Study Area Map



Proposal Submission

All proposals shall be submitted in a sealed envelope. The outside of the package shall be marked "**Request for Proposals: BCD Regional Freight Plan**". Proposals will be received no later than 3:00 p.m. on February 11, 2019. Please mail 1 original, 4 copies, and 1 digital copy to:

Jason McGarry, Procurement/Contracts Administrator
BCD Council of Governments
1362 McMillan Avenue, Suite 100
North Charleston, SC 29405

Please direct questions to: Kathryn Basha, BCDCOG Planning Director, (843)529-0400
kathrynb@bcdco.com

Appendix A – FTA Required Clauses for Third Party Contractors and Sub-Agreements

1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

(a) The Purchaser 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 the contract and shall not be subject to any obligations or liabilities to the Purchaser Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(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.

2. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND 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 C.F.R. 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 the underlying contract or the FTA assisted project for which the 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 extend 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.

3. ACCESS TO RECORDS

(a) The Consultant shall permit the authorized representatives of the Authority, the U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit all data and records of the Consultant relating to his performance under the contract until the expiration of three years after final payment under this contract.

(b) The Consultant further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Authority, the Department of Transportation and Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, paper and records of such subcontractor, involving transactions related to the subcontractor. The term "subcontract" as used in this clause excludes purchase orders not exceeding \$10,000.

(c) The periods of access and examination described above, for records which relate to (1) litigation of the settlement of claims arising out of the performance of this contract, or (2) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of.

4. FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser 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 contract.

5. CIVIL RIGHTS

Nondiscrimination - In accordance with Title VII 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, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Equal Employment Opportunity

1. Race, Color, Creed, National Origin, Sex - 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 C.F.R. Parts 60 ET SEQ. (which implement Executive Order No 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), 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, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of

compensation; and selection for training, including apprenticeship. In addition, the 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 C.F.R. 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 also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6. DISADVANTAGED BUSINESS ENTERPRISES

The Department of Transportation of the United States Government has, as a matter of policy, determined that grantees and their contractors shall endeavor to expend project funds with qualified disadvantaged business enterprises, as subcontractors, located within a reasonable trade area determined in relation to the matter of services or supplies intended to be procured. The Federal Transit Administration (FTA) encourages award of this solicitation, or any portion thereof, to contractors and/or suppliers, who qualify as Disadvantaged Business Enterprises (DBE) as defined by FTA.

- (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.
- (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 Agency 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 prime contractor is required to pay each subcontractor under this contract for satisfactory performance of its contracts no later than thirty (30) days from receipt of each payment received by the Agency. Any delay or postponement of payment between prime and sub-contractors may take place only for good cause, and with prior written approval.

7. TERMINATION

a. Termination for Convenience

The Recipient may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Recipient's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Recipient to be paid the Contractor. If the Contractor has any property in its possession

belonging to the Recipient, the Contractor will account for the same, and dispose of it in the manner the Recipient directs.

b. Termination for Default

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract

8. INCORPORATION OF FTA TERMS

The provisions of this Addendum include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, 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 requests which would cause firm to be in violation of the FTA terms and conditions.

9. SUSPENSION AND DEBARMENT

Suspension and Debarment - This contract is a covered transaction for purposes of 49 CFR Part 29 if it equals or exceeds \$25,000.00. 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 proposal, the proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Recipient. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to Recipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The 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 proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. DISPUTES

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Recipient. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal.

- a. Performance During Dispute - Unless otherwise directed by Recipient, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- b. Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his

employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

- c. Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Recipient and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Recipient is located.
- d. Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Recipient or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

11. LOBBYING

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

12. CLEAN AIR

(1) 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.

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

13. CLEAN WATER

(1) 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.

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

14. ENERGY CONSERVATION

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.

Appendix B – Certifications and Assurances

Disadvantaged Business Enterprise (DBE) Certification

Has your firm been certified by the state of South Carolina as a Disadvantaged Business Enterprise?

_____Yes _____No

If no, has your firm been certified by any other US State, Territory or Protectorate as a Disadvantaged Business Enterprise?

_____Yes _____No

If yes, attach copy of current certification letter.

I hereby certify that the information provided on this form is true and accurate to the best of my knowledge

Firm/Organization: _____

Signature: _____

Name & Title: _____

Date: _____

CERTIFICATION REGARDING LOBBYING

(This Attachment VI - Certification Must Be Completed and Returned with Bid)

The undersigned contractor certifies, to the best of his or her knowledge and belief, that they are in compliance with the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65.

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.

Signature of Contractor's
Authorized Official: _____

Name and Title of Contractor's
Authorized Official: _____ (Type or
Print Name and Title)

Date: _____

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION & OTHER
INELIGIBILITY & VOLUNTARY EXCLUSION**

(This Attachment IV - Certification Must Be Completed and Returned with Bid)

The undersigned, duly authorized representative of _____ hereby certifies or affirms that:

- 1) 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; and
- 2) That the contents of any statements submitted on or with this certification are true and accurate, and understands that the provisions of 31 U.S.C. §§ 3801 et. seq. are applicable thereto.

(Signature)

(Attorney's Signature)

(Typed or Printed Title of
Authorized Official)

(Date)

OR

The undersigned, duly authorized representative of _____ hereby certifies or affirms that:

- 1) It is unable to certify 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, and has attached an explanation of this inability to this certification; and
- 2) That the contents of any statements submitted on or with this certification are true and accurate, and understands that the provisions of 31 U.S.C. §§ 3801 et. seq. are applicable thereto.

(Signature)

(Attorney's Signature)

(Typed or Printed Title of
Authorized Official)

(Date)

Attachment(s) [If required]