


**PAGE ONE**  
**(Return Page One with Your Offer)**

	<p><b>PEE DEE REGIONAL TRANSPORTATION AUTHORITY (PDRTA)</b></p> <p><b>Request for Proposal Advertisement# 56163</b></p>	<p><b>Solicitation Number:</b> RFP032025-2  <b>Date Issued:</b> 3/14/2025  <b>Procurement Manager:</b> Rachel McMillian  <b>Phone:</b> (843)-519-0885  <b>E-Mail Address:</b> procurement@pdrta.org</p>
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**SUBMIT OFFER BY (Opening Date/Time): 05/08/2025 2:00 p.m.** (See "Deadline for Submission of Offer" provision)

**QUESTIONS ROUND 1 MUST BE RECEIVED BY: 04/04/2025 2:00 p.m.** (See "Questions from Offerors" provision)

**QUESTIONS ROUND 2 MUST BE RECEIVED BY: 04/16/2025 2:00 p.m.** (See "Questions from Offerors" provision)

**NUMBER OF COPIES TO BE SUBMITTED: 4**

*Offers can be emailed to [procurement@pdrta.org](mailto:procurement@pdrta.org) before the 05/08/2025 2:00 pm deadline.*

*Offers may still submit in a sealed package, Solicitation number and Opening Date must appear on package exterior.*

**SUBMIT YOUR SEALED OFFER TO: Pee Dee Regional Transportation Authority (PDRTA), ATTN: RACHEL MCMILLIAN  
313 S. Stadium Road Florence, SC 29506**

<p><b>CONFERENCE TYPE:</b> Pre-Bid Meeting- Optional  <b>DATE &amp; TIME:</b> 28 March 2025 @ 10:00am</p> <p>(As appropriate, see "Conferences - Pre-Bid Meeting" provisions)</p>	<p><b>LOCATION:</b> SEE SECTION IIB "Conferences - Pre-Bid Meeting" provisions FOR SITE SCHEDULES:</p>
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<b>AWARD &amp; AMENDMENTS</b>	<p>Award will be posted on or before 06/02/2025. The award, this solicitation, any amendments, and any related notices will be posted at the following web address:  <a href="https://pdrta.org/business/procurement">https://pdrta.org/business/procurement</a></p>
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**You must submit a signed copy of this form with Your Offer. By submitting a bid or proposal, you agree to be bound by the terms and conditions of the Solicitation. You certify that this bid is made without prior understanding, agreement, connection with any corporation, firm, or person submitting a bid for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. You agree to hold Your Offer open for a minimum of ninety (90) calendar days after the Opening Date.** (See "Signing Your Offer" and "Electronic Signature" provisions.)

<p><b>NAME OF OFFEROR</b></p> <p>(full legal name of business submitting the offer)</p>	<p>Any award issued will be issued too, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.</p>	
<p><b>AUTHORIZED SIGNATURE</b></p> <p>(Person must be authorized to submit a binding offer to contract on behalf of Offeror.)</p>	<p><b>TAXPAYER IDENTIFICATION NO.</b></p> <p>(See "Taxpayer Identification Number" provision)</p>	
<p><b>TITLE</b></p> <p>(business title of person signing above)</p>	<p><b>STATE VENDOR NO.</b></p> <p>(Register to Obtain S.C. Vendor No. at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a>)</p>	
<p><b>PRINTED NAME</b></p> <p>(printed name of person signing above)</p>	<p><b>DATE SIGNED</b></p>	<p><b>STATE OF INCORPORATION</b></p> <p>(If you are a corporation, identify the state of incorporation.)</p>

<p><b>OFFEROR'S TYPE OF ENTITY: (Check one)</b></p> <p> <input type="checkbox"/> Sole Proprietorship              <input type="checkbox"/> Partnership              <input type="checkbox"/> Other _____  <input type="checkbox"/> Corporate entity (not tax-exempt)              <input type="checkbox"/> Corporation (tax-exempt)              <input type="checkbox"/> Government entity (federal, state, or local)       </p>	<p>(See "Signing Your Offer" provision.)</p>
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**PAGE TWO**  
(Return Page Two with Your Offer)

<b>HOME OFFICE ADDRESS</b> (Address for offeror's home office / principal place of business)	<b>NOTICE ADDRESS</b> (Address to which all procurement and contract-related notices should be sent.) (See "Notice" clause)
	<hr/> Area Code - Number - Extension                      Facsimile
	<hr/> E-mail Address

<b>PAYMENT ADDRESS</b> (Address to which payments will be sent.) (See "Payment" clause)	<b>ORDER ADDRESS</b> (Address to which purchase orders will be sent) (See "Purchase Orders and "Contract Documents" clauses)
<input type="checkbox"/> Payment Address same as Home Office Address <input type="checkbox"/> Payment Address same as Notice Address (check only one)	<input type="checkbox"/> Order Address same as Home Office Address <input type="checkbox"/> Order Address same as Notice Address (check only one)

**ACKNOWLEDGMENT OF AMENDMENTS**  
Offerors acknowledge receipt of amendments by indicating amendment number and its date of issue. (See "Amendments to Solicitation" Provision)

Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date

<b>DISCOUNT FOR PROMPT PAYMENT</b> (See "Discount for Prompt Payment" clause)	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	____ Calendar Days (%)
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**END OF PAGE TWO**

## **I. SCOPE OF SOLICITATION**

### **ACQUIRE SERVICES**

**The purpose of this solicitation is to acquire services complying with the enclosed description and/or specifications for Auditing Services at Pee Dee Regional Transportation Authority (PDRTA).**

**Successful Bidders shall have a minimum of (3) year's commercial experience working on a contract or project of this size or larger.**

### **MAXIMUM CONTRACT PERIOD - ESTIMATED**

**Start date: 07/01/2025 - End date: 06/30/2026. Dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award. See clause entitled "Term of Contract - Effective Date/Initial Contract Period". This contract is for an initial term of one (1) year with the possibility of four (4) additional, one (1) year renewals not to exceed five (5) years.**

### **DISADVANTAGED BUSINESS ENTERPRISES (DBE):**

Disadvantaged Business Enterprises are encouraged to submit proposals for this procurement and vendors/manufacturers are encouraged to procure goods and services from disadvantaged business enterprises. All participation of DBE's should be described in detail in bidder's proposals. If the prime vendor or any subcontractors are DBE's that are certified by the South Carolina Department of Transportation, documentation of such a certification must be included in the bid at the time of submission.

## II. INSTRUCTIONS TO OFFERERS

### A. GENERAL INSTRUCTIONS

1. DEFINITIONS, CAPITALIZATION, AND HEADINGS CLAUSE HEADINGS USED IN THIS SOLICITATION ARE FOR CONVENIENCE ONLY AND SHALL NOT BE USED TO CONSTRUE MEANING OR INTENT. EVEN IF NOT CAPITALIZED, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION, UNLESS EXPRESSLY PROVIDED OTHERWISE.
2. AMENDMENT means a document issued to supplement the original solicitation document.
3. BOARD means the South Carolina Budget & Control Board or its successor in interest.
4. BUSINESS means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.
5. BUYER means the Procurement Manager.
6. CHANGE ORDER means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.
7. CONTRACT See clause entitled Contract Documents & Order of Precedence.
8. CONTRACT MODIFICATION means a written order signed by the procurement manager, directing the contractor to make changes which the clause of the contract titled "Changes," if included herein, authorizes the Procurement Manager to order without the consent of the contractor.
9. CONTRACTOR means the Offeror receiving an award because of this solicitation.
10. COVER PAGE means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the Cover Page.
11. OFFER means the bid or proposal submitted in response this solicitation. The terms Bid and Proposal are used interchangeably with the term Offer.
12. OFFEROR means the single legal entity submitting the offer. The term Bidder is used interchangeably with the term Offeror. See bidding provisions entitled Signing Your Offer and Bid/Proposal as Offer to Contract.
13. ORDERING ENTITY Using Governmental Unit that has submitted a Purchase Order.
14. PDRTA Pee Dee Regional Transportation Authority
15. PROCUREMENT MANAGER means the person, or his successor, identified as such on either the Cover Page, an amendment, or an award notice.
16. YOU and YOUR means Offeror.
17. SOLICITATION means this document, including all its parts, attachments, and any Amendments.
18. SUBCONTRACTOR means any person you contract with to perform or provide any part of the work.

19. US or WE mean the using governmental unit.

20. USING GOVERNMENTAL UNIT means the unit(s) of government identified as such on the Cover Page. If the Cover Page identifies the Using Governmental Unit as "Statewide Term Contract," the phrase "Using Governmental Unit" means any South Carolina Public Procurement Unit [11-35-4610(5)] that has submitted a Purchase Order to you pursuant to the contract resulting from this solicitation. Reference the clauses titled "Purchase Orders" and "Statewide Term Contract."

21. WORK means all labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

## **B. AUTHORIZED AGENT**

1. All authority regarding this procurement is vested solely with the responsible Procurement Manager. Unless specifically delegated in writing, the Procurement Manager is the only government official authorized to bind the government regarding this procurement or the resulting contract.

## **C. AMENDMENTS TO SOLICITATION**

1. The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged. Amendments found on the following PDRTA website: <https://pdrta.org/business/procurement>.

## **D. AWARD NOTIFICATION**

1. Notice regarding any award, cancellation of award, or extension of award will be posted at the location and on the date specified on PAGE ONE or, if applicable, any notice of extension of award. Should the contract resulting from this Solicitation have a total or potential value of one hundred thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until seven business days after such notice is given.

## **E. QUOTATION/BID/PROPOSAL AS OFFER TO CONTRACT**

1. By submitting Your Bid or Proposal, you are offering to enter a contract with the Using Governmental Unit(s). Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer may be submitted by only one legal entity; "joint bids" are not allowed.

## **F. BID ACCEPTANCE PERIOD**

1. In order to withdraw Your Offer after the minimum period specified on PAGE ONE, you must notify the Procurement Manager in writing.

## **G. BID IN ENGLISH**

1. Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation.

**H. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.**

1. By submitting an offer, the offeror certifies that-
  - (a) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to-  
Those prices.  
The intention to submit an offer; or  
The methods or factors used to calculate the prices offered.
  - (b) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
  - (c) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.
  - (d) Each signature on the offer is a certification by the signatory that the signatory-
    - (i) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (1)(a) through 1(d) of this certification; or
    - (ii) Has been authorized, in writing, to act as agent for the offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (1)(a) through 1(d) of this certifications as used in this subdivision, the term "principals" means the person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal;
    - (iii) As an authorized agent, does certify that the principals referenced in subdivision (1)(d)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (1)(a) through 1(d) of this certification; and
    - (iv) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (1)(a) through 1(d) of this certification.
    - (v) If the offeror deletes or modifies paragraph (1)(b) of this certification, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

**I. CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS**

1. By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-
  - (a) Offeror and/or any of its Principals-
    - (i) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;
    - (ii) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
    - (iii) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(ii) of this provision.

(b) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.

(c) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

2. Offeror shall provide immediate written notice to the Procurement Manager if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

3. If Offeror is unable to certify the representations stated in paragraphs (I)(1)(a), Offer must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Manager may render the Offeror no responsible.

4. 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 paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

5. The certification in paragraph (I)(1)(a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the County, the Procurement Manager may terminate the contract resulting from this solicitation for default.

#### **J. CIVIL RIGHTS PROVISIONS**

1. The contractor providing services under this Invitation to Bid must comply with the provisions of the Civil Rights Act of 1964, as amended. The contractor must comply with applicable federal, state, and local laws and regulations pertaining to wages, hours, and conditions of employment. In connection with contractor's performance of work under this contract, contractor agrees not to discriminate against any employee(s) or applicant(s) for employment because of race, color, national origin, sex, age, or disability. In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating based on race, color, national origin, sex, age or disability. To file a complaint, write USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free at (866) 632-9992. Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at 800-877-8339; of 800-845-6136 (Spanish). USDA is an equal opportunity provider and employer.

#### **K. CODE OF LAWS AVAILABLE**

1. The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at:  
<http://www.scstatehouse.gov/code/statmast.php>

2. The South Carolina Regulations are available at:  
<http://www.scstatehouse.gov/coderegs/statmast.php>

3. Federal Acquisition Regulation at:  
<https://www.acquisition.gov/browse/index/far>

4. Pee Dee Regional Transportation Authority Regulation is available upon request.

## **L. CONTRACT VIOLATION**

1. During the term of the contract, contractors who violate any contract will be considered in breach and subject to cancellation for cause. Contractors may be suspended or debarred from doing business with the district. Examples of vendor violations include but are not limited to: (1) Adding items to the contract without approval. (2) Increasing contract price without approval. (3) Misrepresentation of the contract to any District entity.

## **M. COMPLETION OF FORMS/CORRECTION OF ERRORS**

1. All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule). (Applicable only to offers submitted on paper.)

## **N. DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE**

1. You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgment, and
2. Preventing an unfair competitive advantage. If you have an unfair competitive advantage or a conflict of interest, the state may withhold award. Before withholding award on these grounds, an offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. Without limiting the foregoing, you represent that your offer identifies any services that relate to either this solicitation or the work and that has already been performed by you, a proposed subcontractor, or an affiliated business of either.

## **O. DEADLINE FOR SUBMISSION OF OFFER**

1. Any offer received after the Procurement Manager of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental bodies mail room which services that purchasing office prior to the bid opening.

## **P. DRUG FREE WORKPLACE CERTIFICATION**

1. By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

## **Q. DUTY TO INQUIRE**

1. Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require the better quality or greater quantity of work and/or materials, unless otherwise directed by amendment. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention. See clause entitled "Questions from Offerors."

## **R. ETHICS CERTIFICATE**



1. By submitting an offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed.

#### **S. IRAN SANCTIONS ACT (FAR 25.703-2)**

1. The Iran Sanctions Act is a list published by the U.S. Department of the Treasury that identifies persons engaged in investment activities in Iran. This list is located on the U.S. Department of the Treasury website at: <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>. By signing your offer, you certify that, as of the date you sign, you are not on the Iran Divestment Act list.

#### **T. OMIT TAXES FROM PRICE**

1. Do not include any sales or use taxes in your price that the PDRTA may be required to pay.

#### **U. PROHIBITED COMMUNICATIONS AND DONATIONS**

1. Violation of these restrictions may result in disqualification of your offer, suspension, or debarment, and may constitute a violation of law.
2. During the period between publication of the solicitation and final award, you must not communicate, directly or indirectly, with the Using Governmental Unit or its employees, agents or officials regarding any aspect of this procurement activity, unless otherwise approved in writing by the Procurement Manager. All communications must be solely with the Procurement Manager.
3. You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek a contract. *You represent that your offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the Using Governmental Unit during the period beginning eighteen months prior to the Opening Date.*

#### **V. PROTESTS**

1. For purchases less than \$100,000, any actual or prospective bidder, proposer or contractor who is aggrieved in connection with the solicitation or award of a contract may submit a written protest to the Procurement Manager within ten (10) business days of the purchase being awarded. Within 15 business days of the receipt of such written protest, the Procurement Manager shall hold a hearing on the protest and make a render a decision on the protest. The Procurement Manager's decision shall be final.
2. For purchases greater than \$100,000, any actual or prospective bidder, proposer or contractor who is aggrieved in connection with the solicitation or award of a contract may submit a written protest to the Executive Director within ten (10) business days of the purchase being awarded. Respecting protests for purchases in excess of \$100,000, the date of the award shall be considered the date of any preliminary award, hereof if a preliminary award is actually made in advance of formal approval by the Authority; in the absence of a preliminary award, the formal award date by the Authority shall be controlling. The protest, setting forth the grievance and the grounds thereof, shall be submitted in writing within ten (10) business days after such aggrieved person knows or should have known of the facts giving rise thereto, but in no circumstance after 15 business days notification of the award of the contract.
3. Any protest must be addressed to the Executive Director, Pee Dee Regional Transportation Authority (PDRTA), and submitted in writing
  - (a) By email to: [procurement@pdrta.org](mailto:procurement@pdrta.org)

(b) By post or delivery to:  
Pee Dee Regional Transportation Authority  
Attn: Rachel McMillian  
313 S. Stadium Rd  
Florence, SC 29506

#### **W. PUBLIC OPENING**

1. No Public Opening as this is a Request for Proposal.

#### **X. QUESTIONS FROM OFFERORS**

1. Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions regarding the original solicitation or any amendment must be received by the Procurement Manager no later than ten (10) days prior to opening unless an earlier date is stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. See clause entitled "Duty to Inquire." We will not identify you in our answer to your question.

*Email is the preferred method for submitting questions with "Questions: Solicitation # as the subject of the email. Questions must be submitted in an easily copied format such as Word.*

*Email: [procurement@pdrta.org](mailto:procurement@pdrta.org)*

#### **Y. REJECTION/CANCELLATION**

1. PDRTA may cancel this solicitation in whole or in part. PDRTA may reject any or all proposals in whole or in part.

#### **Z. RESPONSIVENESS/IMPROPER OFFERS**

1. Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.
2. Multiple Offers. Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, if you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.
3. Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Manager.
4. Price Reasonableness: Any offer may be rejected if the Procurement Manager determines in writing that it is unreasonable as to price.
5. Unbalanced Bidding. PDRTA may reject an Offer as nonresponsive if the prices bid is materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to PDRTA even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

#### **AA. RESTRICTIONS APPLICABLE TO OFFERORS**

1. Violation of these restrictions may result in disqualification of your offer, suspension, or debarment, and may constitute a violation of the state Ethics Act. (a) After issuance of the solicitation, you *agree not to discuss this procurement activity in any way with the Using Governmental Unit or its employees, agents, or officials*. All communications must be solely with the Procurement Manager. This restriction may be lifted by express written permission from the Procurement Manager. This restriction expires once a contract has been formed. (b) Unless otherwise approved in writing by the Procurement Manager, you *agree not to give anything to any Using Governmental Unit or its employees, agents, or officials prior to award*.

## **BB. SIGNING YOUR OFFER**

1. Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venture involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal.

## **CC. PEE DEE REGIONAL TRANSPORTATION AUTHORITY OFFICE CLOSINGS**

1. If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first workday on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at:

<https://pdrta.org/business/procurement>

## **DD. SUBMITTING CONFIDENTIAL INFORMATION**

1. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret, or (b) privileged and confidential, as that phrase is used. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret of the Trade Secrets Act. For every document Offeror submits in response to or about this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from withholding information by the State of South Carolina or any of its agencies, that Offeror marked as "confidential" or "trade secret" or "PROTECTED".

## **EE. SUBMITTING YOUR OFFER OR MODIFICATION**

1. Offers and offer modifications shall be submitted in sealed envelopes or packages - (1) Addressed to the office specified in the Solicitation; and (2) Showing the time and date specified for opening, the solicitation number, and the name and address of the bidder. (b) If you are responding to more than one solicitation, each offer must be submitted in a different envelope or package. (c) Each Offeror must submit the number of copies indicated on the Cover Page. (d) Offerors using commercial carrier services shall ensure that the Offer is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs (a)(1) and (2) of this provision when delivered to the office specified in the Solicitation. (e) e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. (f) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation. (f) offers must provide an overall pricing on PAGE TWO and submit a detailed proposal with bid sheet.

## **FF. TAXPAYER IDENTIFICATION NUMBER**

1. If Offeror is owned or controlled by a common parent as defined in paragraph (b) of this provision, Offeror shall submit with its Offer the name and TIN of common parent.
2. Definitions: "Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its federal income tax returns on a consolidated basis, and of which the offeror is a member. "Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

2. If Offeror does not have a TIN, Offeror shall indicate if either a TIN has been applied for or a TIN is not required. If a TIN is not required, indicate whether (i) Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States; (ii) Offeror is an agency or instrumentality of a state or local government; (iii) Offeror is an agency or instrumentality of a foreign government; or (iv) Offeror is an agency or instrumentality of the Federal Government.

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

1. It is the policy of the Agency and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.
2. The contractor or subcontractor 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 C.F.R. part 26 in the award and administration of DOT-assisted contracts. 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 the Agency deems appropriate, which may include, but is not limited to:
  - (a) Withholding monthly progress payments;
  - (b) Assessing sanctions;
  - (c) Liquidated damages; and/or
  - (d) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).
3. Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).
4. Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency’s written consent; and that, unless the Agency’s consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

## **HH. WITHDRAWAL OR CORRECTION OF OFFER**

1. Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

## **II. SPECIAL INSTRUCTIONS**

### **1. CONFERENCE - PRE-BID MEETING - OPTIONAL**

- (a) Pre-Bid Meeting Date: March 28, 2025

Location/Time of Pre-Bid Meeting: Virtual via Zoom at 10:00am

<HTTPS://US06WEB.ZOOM.US/J/82890688210?PWD=9RRNLTJMZUGO2TLZKNSJRGQBFZ2DOM.1>

- (b) Due to the importance of all offerors having a clear understanding of the specifications and requirements of this solicitation, a conference of potential offerors will be held on the date specified on the cover page. Bring a copy of the solicitation with you. Any changes resulting from this conference will be noted in a written amendment to the solicitation. Your failure to attend will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to PDRTA. PDRTA assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available at the conference. Nor does PDRTA assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding, or representation is expressly stated in this contract.

(c) This solicitation includes an Optional Pre-Bid Meeting. The purpose of the Pre-bid is to validate market research plus identify items that are in error, unclear, or unduly restrictive.

(d) All meeting attendees should read the solicitation and develop their questions in preparation for the meeting. The pace of the meeting will NOT afford individuals enough time to complete an initial review of the document during the meeting.

### III. BID SUBMITTAL

**A. By Mail or Hand Delivered:** All bidding documents must be submitted in a sealed envelope. Do not include more than one bid per envelope. The face of the envelope shall contain the bid title, the bid number, and the date and time of bid opening. Bids not submitted on the bid form will be subject to rejection. PDRTA assumes no responsibility for unmarked or improperly marked envelopes. PDRTA must receive mailed bids before the submitted deadline on PAGE ONE. Number of copies (4). Submit your sealed offer to:

PEE DEE REGIONAL TRANSPORTATION AUTHORITY  
ATTN: RACHEL MCMILLIAN  
313 S. STADIUM RD  
FLORENCE, SC 29506

**B. By Email:** Offers can be emailed to [procurement@pdrta.org](mailto:procurement@pdrta.org) before the deadline stated on PAGE ONE “Submit Offers By”. If emailed, only one copy is necessary. Email subject line should be: RFP032025-2

**C. RFP Offerors are expected to examine the specifications, and all instructions.** Failure to do so will be at the offeror's risk. Each offeror shall furnish the information required by the solicitation. The proposal must be signed by an officer of the company, who is legally authorized to enter a contractual relationship in the name of the offeror.

**D. All RFP(s) received will become a part of the official contract file and may be subject to disclosure.** All RFPs should include the information outlined below and in the following order:

- i. **Proposal Coverage:** Cover the scope of work and general objectives to which the proposal is addressed.
- ii. **Tasks and Method:** Describe the principal tasks or sub-tasks undertaken. Describe and discuss the method of management control to be applied to the services to ensure timely deliverables, professionalism, and quality performance. The content should generally follow the outline of work tasks, though alternative approaches may be suggested to accomplish the same ends. The proposals submitted must clearly identify:
  - a. A work plan indicating that the proposer understands the nature, scope, and scale of the work to be done,
  - b. Activities to be undertaken under each work task,
  - c. Time to be devoted to each task,
  - d. Provide current reference information for three former or current clients,
  - e. Provide a company profile, length of time in business and core competencies,
  - f. Briefly describe your firm’s project management process,
  - g. Please explain your service level agreement (SLA) structure.
- iii. **Organization and Manpower:** Include the name of the project manager and/or the name(s) of key personnel in organizational chart format. Include a brief resume for each person shown on the Organization Chart, including special qualifications applicable to the performance of this project. Describe the specific effort to be contributed to the project by each person, if applicable. If subcontractors are to be used, describe the arrangements and include resumes of key personnel. Prior approval shall be required for all subcontractor(s) used, Statement of Incorporation, partnership or proprietorship of proposer, including the names and titles of all officers, partners or principals of the proposer.
- iv. The individual to be assigned overall responsibility for the project shall be identified. In addition to be the person named above, it is also required to name the individual who would be assigned the responsibility for the specific identified task within the organization.
- v. Definition of the activities to be undertaken, how they will be carried out, and the approach and plan to achieve project activities including definitive description of the tasks to be carried out.
- vi. Prior and current experience. Include a list of projects currently in progress or completed within the last two years which are relevant to the type of project effort proposed. Include the names, address, and telephone numbers of contact points with those clients. The PDRTA reserves the right to request information from any

source so named. **Provide a minimum of three (3) references that demonstrate your experience. A contact person with telephone number and email address for each reference should be included.**

- vii. Signature. The proposal shall be signed by an official authorized to bind the offeror and shall contain a statement to the effect that the proposal is a firm offer for a ninety (90) day period. The proposal shall also provide the name, title, address, and telephone number of the individual(s) with authority to negotiate, and contractually bind the company, and also the identity of the person who shall be contacted during the period of proposal evaluation and negotiation.
- viii. Provide any pertinent information needed to describe your services, including a statement-relating rate per hour for other than auditing services.

**E. Clarification**

- (i) The Procurement Manager may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation.
- (ii.) Unit prices are required to be shown for each item.

**F. Information for Offerors to Submit**

- (i) Offeror shall submit a signed PAGE ONE and PAGE TWO. Offeror should submit all other information and documents requested in this part and in parts (II)(FF); II. Special Instructions; IV. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section XI. Attachments to Solicitations

**IF YOU QUALIFY YOUR OFFER WITH A STATEMENT SUCH AS, “THIS IS NOT AN OFFER”, THE OFFER WILL BE DEEMED “NON-RESPONSIVE” AND REMOVED FROM FURTHER CONSIDERATION.**

**G. PROPOSED SCHEDULE FOR PROCUREMENT**

<b>14 MARCH 2025</b>	<b>ADVERTISEMENT IN SOUTH CAROLINA BUSINESS OPPORTUNITY (SCBO)</b>
<b>28 MARCH 2025 AT 10:00 AM</b>	<b>PRE-BID MEETING – OPTIONAL</b> <a href="https://us06web.zoom.us/j/82890688210?pwd=9RRNLTJMZUGQ2TLZKNSJRGQBFZ2DQM.1">HTTPS://US06WEB.ZOOM.US/J/82890688210?PWD=9RRNLTJMZUGQ2TLZKNSJRGQBFZ2DQM.1</a>
<b>4 APRIL 2025 BY 2:00 PM</b>	<b>ROUND 1 QUESTIONS SUBMITTED BY ELECTRONIC MAIL TO</b> <a href="mailto:PROCUREMENT@PDRTA.ORG">PROCUREMENT@PDRTA.ORG</a>
<b>11 APRIL 2025</b>	<b>RESPONSE TO ROUND 1 QUESTIONS ANSWERED BY PDRTA</b>
<b>16 APRIL 2025 BY 2:00 PM</b>	<b>ROUND 2 QUESTIONS SUBMITTED BY ELECTRONIC MAIL TO</b> <a href="mailto:PROCUREMENT@PDRTA.ORG">PROCUREMENT@PDRTA.ORG</a>
<b>18 APRIL 2025</b>	<b>RESPONSE TO ROUND 2 QUESTIONS ANSWERED BY PDRTA</b>
<b>8 MAY 2025 BY 2:00 PM</b>	<b>PROPOSAL DUE</b>
<b>9 MAY 2025 AT 3:00 PM</b>	<b>BID OPENING AND DISBURSEMENT OF ELECTION COMMITTEE MEMBERS LOCATED IN BOARD ROOM AT 313 S. STADIUM RD., FLORENCE, SC 29506</b>
<b>16 MAY 2025</b>	<b>INTENT OF AWARD TO BE POSTED ON WINDOW IN LOBBY OF PDRTA’S ADMINISTRATIVE OFFICE AT 313 S. STADIUM RD., FLORENCE, SC 29506 AND ON THE FOLLOWING WEBSITE: <a href="https://pdrta.org/business/procurement">HTTPS://PDRTA.ORG/BUSINESS/PROCUREMENT</a></b>
<b>2 JUNE 2025</b>	<b>STATEMENT OF AWARD TO BE POSTED ON WINDOW IN LOBBY OF PDRTA’S ADMINISTRATIVE OFFICE AT 313 S. STADIUM RD., FLORENCE, SC 29506 AND ON THE FOLLOWING WEBSITE: <a href="https://pdrta.org/business/procurement">HTTPS://PDRTA.ORG/BUSINESS/PROCUREMENT</a></b>



## **H. DEADLINE ENFORCED**

Proposals received after the time and date set for receipt of proposals WILL NOT be accepted. It is the respondent's responsibility to ensure timely delivery of their proposal.

## **IV. SCOPE OF WORK/SPECIFICATIONS**

### **A. INTRODUCTION AND PURPOSE:**

Pee Dee Regional Transportation Authority, located in Florence, South Carolina, is requesting proposals from professional Certified Public Accounting firms for the required auditing of the PDRTA's records in accordance with State and Federal Requirements. PDRTA is located at 313 S. Stadium Rd, Florence, SC 29506.

### **B. GENERAL REQUIREMENTS:**

The work specified in this section will comply and adhere to all requirements of the U.S. Department of Transportation (DOT), Federal Transit Administration (FTA), and the Office of the Inspector General. The audit work will be required to reflect, at a minimum, the most current version of each of the following:

- a. Generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants (AICPA);
- b. Federal Audit Requirement outlined in Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards (Uniform Guidance);
- c. The Provisions of the Single Audit Act as amended; and
- d. All other applicable requirements as they relate to the use of federal funds and the state of South Carolina direct and contract funds.

**Typical Duties:** shall include, but are not limited to, the following:

- a. Comparative Balance Sheets
- b. Comparative Statements of Revenues, Expenses, and Changes in Retained Earnings
- c. Comparative Statements of Changes in Equity
- d. Comparative Statements of Cash Flow
- e. Notes to the Financial Statements for both Fiscal Years to include:
  - a. The Description and Definition of the Authority
  - b. Summary of Significant Accounting Policies
  - c. Property and Depreciation
  - d. Operating Subsidies
  - e. Inventory, Statement of Cash Flows
  - f. Contributed Capital
  - g. Compensation for Future Absences
  - h. Accounts Receivable and Revenue Recognition
  - i. Contingencies
  - j. Employee Retirement
  - k. Indirect Cost Allocation
  - l. Revolving Fund Statement
  - m. Cash Balances
  - n. Risk Management
  - o. Operation Grant Funds Available
  - p. Capital Lease
  - q. any other pertinent information.
- f. Independent Auditor's Report on Compliance and Internal Control over Financial Reporting.
- g. Independent Auditor's Report on Compliance with Requirements Applicable to Each Major Program and Internal Control over Compliance for each Major Program.
- h. Independent Auditor's Report of Expenditures of Federal Awards, State Grant Activity, and Selected Grant Activity.
- i. Schedule of Expenditures of Federal Awards.
- j. Schedule of Findings and Questioned Cost.
- k. Management Letter

**Applicable Completion and Presentation Dates:**



- a. The auditor shall conduct one (1) final audit for each Fiscal Year for the duration of the contract. The C.P.A. shall present the audit to the PDRTA Audit Committee for review and approval within five (5) business days before the Board of Directors meeting on the third Thursday of October. The auditor will provide PDRTA with twenty (20) copies of the audit report. The auditor will appear at the Board of Directors Meeting, if requested by the PDRTA Audit Committee or the Executive Director, following presentation to the Audit Committee.
- b. An example of applicable dates for the 20-21 Fiscal year is as follows:

	<u>AUDIT COMMITTEE</u>	<u>BOARD OF DIRECTORS</u>
Final (1 year) Audit:	Oct. 13-16, 2025	Oct. 16, 2025

**Other Duties:** shall include, but are not limited to, the following:

- a. Be available to PDRTA Administrative Staff for occasional guidance on accounting procedures, policies, inventory and general ledger entries and adjustments.
- b. Be available during an audit from one of the outside agencies, such as the Federal Transit Authority or the South Carolina Department of Transportation. Audits are subject to review by the governmental agencies that we report to, so audit working papers shall be made available upon request.
- c. Retain all working papers and reports, at the auditor's expense, for a minimum of seven (7) years after the last year of the contract, unless the auditor is notified in writing by PDRTA of the need to extend the retention period.
- d. Respond to reasonable inquiries of the successor auditor and allow the successor auditor to review working papers relating to matters of continuing accounting significance.

**Desired Qualifications:**

- a. Have adequate financial resources for performance, or have the ability to obtain such resources as required during performance;
- b. Have the necessary experience, organization, technical qualifications, skill and facilities, or have the ability to obtain them;
- c. Be able to comply with required suspense dates;
- d. Have satisfactory record of performance;
- e. Be able to comply with the requirements of the Disadvantaged Business Enterprise and Equal Employment Opportunity statement attached; and
- f. Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

## V. QUALIFICATIONS

### A. QUALIFICATION OF OFFEROR

1. To be eligible for award of a contract, a prospective contractor must be responsible. In evaluating an Offeror's responsibility, the State Standards of Responsibility and information from any other source may be considered. An Offeror must, upon request of the State, furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award.

### B. QUALIFICATIONS - MANDATORY MINIMUM

1. In order to be qualified to receive award, you must meet the following mandatory minimum qualifications:
  - a. Have adequate financial resources for performance, or have the ability to obtain such resources as required during performance;
  - b. Have the necessary experience, organization, technical qualifications, skill and facilities, or have the ability to obtain them;
  - c. Be able to comply with required suspense dates;
  - d. Have satisfactory record of performance;
  - e. Be able to comply with the requirements of the Disadvantaged Business Enterprise and Equal Employment Opportunity statement attached; and
  - f. Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

2. The Procurement Manager may, in his discretion, consider (1) the experience of a predecessor firm or of a firm's key personnel which was obtained prior to the date offeror was established, and/or any subcontractor proposed by offeror.
3. Provide a detailed, narrative statement providing adequate information to establish that you meet all the requirements stated in subparagraph (a) above. Include all appropriate documentation.
4. As an attachment to the bid, Offerors shall also furnish the following items, which shall be used to determine responsibility:
  - (a) Summary or overview of manpower intended for use in the performance of this contract
  - (b) List of references to include contact information (name, telephone, and e-mail address) for a minimum of three (3) organizations with projects of similar size and scope.

## **VI. AWARD CRITERIA**

### **A. AWARD CRITERIA -- BIDS**

Award will be made by a grading panel.

### **B. CALCULATING BID**

See Section VIII. Selection Process and Evaluation Criteria within this document.

## **VII. SELECTION PROCESS AND EVALUATION CRITERIA**

PDRTA intends to evaluate all submitted proposals in accordance with the criteria identified below.

### **EVALUATION CRITERIA**

Evaluation criteria to be used in determining the selected firm in order of importance are:

Proposal evaluation criteria will be grouped into percentage factors as follows:

#### **A. Qualifications and Experience of the Firm – Maximum 25 Points**

Demonstrated knowledge of state laws relating to municipal corporations and public transportation benefit areas, experience in working with agencies of a similar size as PDRTA, knowledge of federal laws and grant regulations of FTA and SCDOT, and other types of services offered by the firm, and response time to requests for assistance.

#### **B. Qualifications and Experience of members of the Firm assigned to work with PDRTA Board and Staff – Maximum 20 Points**

Demonstrated knowledge of state laws relating to municipal corporations and public transportation benefit areas, experience in working with agencies of a similar size as PDRTA, knowledge of federal laws and grant regulations of FTA and SCDOT, and other types of services offered by the firm, and response time to requests for assistance (for the Firms Employee(s) working with PDRTA).

#### **C. Audit Methodology – Maximum 20 Points**

Work plan and activities (see Part III (D)(ii.))

#### **D. Cost Proposal – Maximum 10 Points**

#### **E. References – Maximum 25 Points**

Including applicable past work and financial performance.

## **VIII. TERMS AND CONDITIONS - GENERAL**

### **A. ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE**

(i) Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the responsible procurement manager. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g., bankruptcy; corporate reorganizations and consolidations, but not including partial asset sales). Notwithstanding the foregoing, contractor may assign monies receivable under the contract provided that the state shall have no obligation to make payment to an assignee until thirty days after contractor (not the assignee) has provided the responsible procurement officer with (i) proof of the assignment, (ii) the identity (by contract number) of the

specific state contract to which the assignment applies, and (iii) the name of the assignee and the exact address or account information to which assigned payments should be made.

(ii) If contractor amends, modifies, or otherwise changes its name, its identity (including its trade name), or its corporate, partnership or other structure, or its FEIN, contractor shall provide the procurement officer prompt written notice of such change.

(iii) Any name change, transfer, assignment, or novation is subject to the conditions and approval, which does not restrict transfers by operation of law.

#### B. BANKRUPTCY – GENERAL

(i) Notice. In the event the Contractor enters proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within two (2) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

(ii) Termination. This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy.

#### C. CHOICE-OF-LAW

(i) The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced, and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.

#### D. CONTRACT DOCUMENTS & ORDER OF PRECEDENCE

(i) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Manager, (2) the solicitation, as amended, (3) documentation of clarifications or discussions of an offer, if applicable, (4) your offer, (5) any statement reflecting the final acceptance (a/k/a "award"), and (6) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above.

(ii) The terms and conditions of documents (1) through (5) above shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation, (1) a purchase order or other instrument submitted by PDRTA Safety Manager, (2) any invoice or other document submitted by Contractor, or (3) any privacy policy, terms of use, or end user agreement. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect.

(iii) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Manager shall be void and of no effect.

#### E. DISCOUNT FOR PROMPT PAYMENT

(i) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(ii) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the state annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount rate falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

## F. DISPUTES

(i) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Purchasing Manager, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Florence County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United States' Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

## G. EQUAL OPPORTUNITY

(i) Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference.

## H. FALSE CLAIM

(i) According to the S.C. Code of Laws Section 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.

## I. FIXED PRICING REQUIRED

(i) Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit contractor from offering lower pricing after award.

## J. NO INDEMNITY OR DEFENSE

(i) Any term or condition is void to the extent it requires PDRTA to indemnify, defend, or pay attorney's fees to anyone for any reason.

## K. NOTICE

(i) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified as the Notice Address on Page Two. Notice to the state shall be to the Procurement Manager's address on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph.

## L. PAYMENT & INTEREST

(i) The PDRTA shall pay the Contractor within 30 days after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless otherwise provided herein, including the purchase order, payment will be made by check mailed to the payment address on "Page Two." Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is

applicable. Except as set forth in this paragraph, PDRTA shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason.

#### M. PUBLICITY

(i) Contractor shall not publish any comments or quotes by County employees or include the County in either news releases or a published list of customers, without the prior written approval of the Purchasing Manager.

#### N. PURCHASE ORDERS

(i) Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The using governmental unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order.

#### O. SETOFF

(i) PDRTA shall have all its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, PDRTA option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the county with regard to this contract, any other contract with any state department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the state for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

#### P. SURVIVAL OF OBLIGATIONS

(i) The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit.

#### Q. TAXES

(i) Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the PDRTA, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely PDRTA's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by PDRTA to contractor, contractor shall be liable to PDRTA for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor.

#### R. TERMINATION

(i) Subject to the conditions below, PDRTA, providing a (30) thirty-day advance written notice is given to the vendor, may terminate the contract for any reason. **NON-APPROPRIATIONS:** Any contract entered by PDRTA resulting from this bid invitation shall be subject to cancellation without damages or further obligation when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period or appropriated year. **FOR CONVENIENCE:** If this contract is terminated or canceled upon request and for the convenience of PDRTA without the required thirty (30) days advance written notice, then PDRTA may negotiate reasonable termination costs, if applicable. **FOR CAUSE:** Termination by PDRTA for cause, default or negligence on the part of the vendor shall be excluded from the foregoing conditions; termination costs, if any, shall not apply. The thirty (30) days advance notice requirement is waived and the default clause in this bid shall apply. **DEFAULT:** In case of default by the vendor, PDRTA reserves the right to purchase any or all items in default in the open market, charging the vendor with any additional costs. The defaulting vendor shall

not be considered a responsible bidder until the assessed charge has been satisfied.

**S. TERMINATION DUE TO UNAVAILABILITY OF FUNDS**

(i) Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term.

**T. THIRD PARTY BENEFICIARY**

(i) This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third-party beneficiary or otherwise.

**U. WAIVER**

(i) PDRTA does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to insist upon any term of the Contract strictly or promptly. Only the Procurement Manager has actual authority to waive any of PDRTA rights under this Contract. Any waiver must be in writing.

**V. VALIDITY OF PROPOSALS**

(i) Proposals and subsequent offers shall be valid for a period of 180 days.

**IX. TERMS AND CONDITIONS – SPECIAL**

**A. BANKRUPTCY – GOVERNMENT INFORMATION**

(i) All government information (as defined in the clause herein entitled “Information Security - Definitions”) shall belong exclusively to the State, and Contractor has no legal or equitable interest in, or claim to, such information. Contractor acknowledges and agrees that in the event Contractor enters proceedings relating to bankruptcy, whether voluntary or involuntary, government information in its possession and/or under its control will not be considered property of its bankruptcy estate.

(ii) Contractor agrees to notify the State within forty-eight (48) hours of any determination that it makes to file for bankruptcy protection, and Contractor further agrees to turn over to the State, before such filing, all government information that is in Contractor’s possession in a format that can be readily utilized by the State.

(iii) In order to protect the integrity and availability of government information, Contractor shall take reasonable measures to evaluate and monitor the financial circumstances of any subcontractor that will process, store, transmit or access government information.

**B. CHANGES**

(i) Contract Modification. By a written order, at any time, and without notice to any surety, the Purchasing Manager may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

- (a) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [State] in accordance therewith;
- (b) method of shipment or packing;
- (c) place of delivery;
- (d) description of services to be performed;
- (e) time of performance (i.e., hours of the day, days of the week, etc.); or,
- (f) place of performance of the services. Subparagraphs (a) to (c) apply only if supplies are furnished under this contract.
- (g) Adjustments of Price or Time for Performance. If any such change increases or decreases the

contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the State promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(h) Time Period for Claim. Within 30 days after receipt of a written contract modification under Paragraph (i) of this clause, unless such period is extended by the Purchasing Manager in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the PDRTA is prejudiced by the delay in notification.

(i) Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

C. COMPLIANCE WITH LAWS

(i) During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.

D. CONTRACT DOCUMENTS & ORDER OF PRECEDENCE–SOFTWARE LICENSING–SINGLE AGENCY:

(i) Notwithstanding the clause entitled "Contract Documents & Order of Precedence," but as provided in the clause titled "Software Licensing Agreements–Single Solicitation," any contract awarded pursuant to this solicitation shall not include a software licensing agreement. Further, the document titled *South Carolina Standard Amendment to End User License Agreements for Commercial Off-The-Shelf Software – Single Agency*, which is attached hereto as an exhibit, is offered as information only and does not form part of the contract.

E. CONTRACT LIMITATIONS

(i) No sales may be made pursuant to this contract for any item or service that is not expressly listed. No sales may be made pursuant to this contract after expiration of this contract. Violation of this provision may result in termination of this contract **and may subject contractor to suspension or debarment.**

F. CONTRACTOR’S LIABILITY INSURANCE - GENERAL

(i) Contractor shall provide and maintain during the entire performance period minimum insurance limits for LOW RISK as shown in the Minimum Insurance Limits Guideline. Include a copy of your insurance certificate with your bid.

Minimum Insurance Limits Guidelines

FORM	BASIS	HIGH RISK	MEDIUM RISK	LOW RISK
CGL	Occurrence	\$5 Million	\$2 Million	\$1Million
	Aggregate	\$10 Million	\$5 Million	\$2Million
	Products-Completed			
	Operation Aggregate	\$10 Million	\$5Million	\$2Million
	Personal/Advertising			
	Injury	\$5 Million	\$2 Million	\$1Million
Employees Liability	BI - Occurrence	\$1 Million	\$500,000	\$250,000
	Disease - Occurrence	\$1 Million	\$500,000	\$250,000
	Disease - Aggregate	\$2 Million	\$1 Million	\$500,000
Business Automobile Liability	Occurrence	\$2 Million	\$2 Million	\$1Million

(ii) PDRTA and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

(iii) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects to the County and the officers, officials, employees, and volunteers of any of them. Any insurance or self-insurance maintained by PDRTA or the officers, officials, employees, and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

(iv) Prior to commencement of the work, the Contractor shall furnish the County with original certificates and amendatory endorsements, or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by PDRTA before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. PDRTA reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time.

(v) Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify PDRTA immediately upon receiving any information that any of the coverages required by this section are or will be changed, cancelled, or replaced.

(vi) Contractor hereby grants to PDRTA a waiver of any right to subrogation which any insurer of said Contractor may acquire against PDRTA by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether RCRC has received a waiver of subrogation endorsement from the insurer.

(vii) Any deductibles or self-insured retentions must be declared to and approved by PDRTA. PDRTA may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(viii) PDRTA reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances

(ix) PDRTA reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

(x) Deductibles, Co-Insurance Penalties, & Self-Insured Retention: Contractor shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, or self-insured retention.

#### G. CONTRACTOR PERSONNEL

(i) The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

#### H. CONTRACTOR'S OBLIGATION -- GENERAL

(i) The contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the work. The contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. The contractor will be considered the sole point of contact about all situations, including payment of all charges and the meeting of all other requirements.

#### I. DEFAULT

(i) PDRTA may, subject to paragraphs (iii) and (iv) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

(a) Deliver the supplies or to perform the services within the time specified in this contract or any



- extension;
  - (b) Make progress, to endanger performance of this contract or
  - (c) Perform any of the other material provisions of this contract
- (ii) PDRTA's right to terminate this contract under subdivisions (VII)(B)(18) and (19) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Purchasing Manager) after receipt of the notice from the Procurement Manager specifying the failure.
- (iii) If PDRTA terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Purchasing Manager considers appropriate, supplies or services like those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- (iv) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the State in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- (v) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.
- (vi) If this contract is terminated for default, the State may require the Contractor to transfer title and deliver to PDRTA, as directed by the Purchasing Manager, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Purchasing Manager, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
- (vii) PDRTA shall pay contract price for completed supplies delivered and accepted. The Contractor and Purchasing Manager shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property; if the parties fail to agree, the Purchasing Manager shall set an amount subject to the Contractor's rights under the Disputes clause. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the Procurement Manager determines to be necessary to protect PDRTA against loss because of outstanding liens or claims of former lien holders.
- (viii) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of PDRTA, be the same as if the termination had been issued for the convenience of PDRTA. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of PDRTA, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under the Disputes clause.
- (ix) The rights and remedies of PDRTA in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### J. DEFAULT – SHORT FORM

- (i) PDRTA may terminate this contract, or any part hereof, for cause in the event of any default by the contractor, or if the contractor fails to comply with any material contract terms and conditions, or fails to provide PDRTA, upon request, with adequate assurances of future performance. In the event of termination for cause, the state shall not be liable to the contractor for any amount for supplies or services not accepted, and the contractor shall be liable to PDRTA for any and all rights and remedies provided by law. If it is determined that PDRTA improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

#### K. ESTIMATED QUANTITY -- PURCHASES FROM OTHER SOURCES

- (i) PDRTA may bid separately any unusual requirements or large quantities of supplies covered by this contract.

#### L. ESTIMATED QUANTITY -- UNKNOWN

- (i) The total quantity of purchases of any individual item on the contract is not known. The PDRTA does not guarantee that PDRTA will buy any specified item or total amount. The omission of an estimated purchase

quantity does not indicate a lack of need but rather a lack of historical information.

#### M. ILLEGAL IMMIGRATION

(i) For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after November 6, 1986, to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A). (8 U.S. Code § 1324a - Unlawful employment of aliens)

#### N. INDEMNIFICATION -- THIRD PARTY CLAIMS

(i) Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits act, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, or without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.

## O. INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION

(i) Without limitation, Contractor shall defend and hold harmless Indemnitees from and against any and all suits, claims, investigations, or fines (hereinafter “action”) of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which arise out of or in connection with a disclosure of government information (as defined in the clause titled Information Security - Definitions) caused in whole or in part by any act or omission of contractor, its subcontractors at any tier, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such action is brought by a third party or an Indemnitee, but only if the act or omission constituted a failure to perform some obligation imposed by the contract or the law.

(ii) Indemnitee must notify contractor in writing within a reasonable period after Indemnitee first receives written notice of any action. Indemnitee's failure to provide or delay in providing such notice will relieve contractor of its obligations under this clause only if and to the extent that such delay or failure materially prejudices contractor's ability to defend such action. Indemnitee must reasonably cooperate with contractor's defense of such actions (such cooperation does not require and is without waiver of an Indemnitees attorney/client, work product, or other privilege) and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, allow contractor sole control of the defense, so long as the defense is diligently and capably prosecuted. Indemnitee may participate in contractor's defense of any action at its own expense. Contractor may not, without Indemnitee's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnitee from all liability related to such commenced or threatened action, and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnitee or otherwise adversely affect an Indemnitee. Indemnitee's consent is necessary for any settlement that requires Indemnitee to part with any right or make any payment or subjects Indemnitee to any injunction.

(iii) Notwithstanding any other provision, contractor's obligations pursuant to this clause are without any limitation whatsoever. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of the contract. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, or without regard to any clause regarding insurance.

(iv) "Indemnitee" means PDRTA, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.

## P. LICENSES AND PERMITS

(i) During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

## Q. OFFSHORE CONTRACTING PROHIBITED

(i) No part of the resulting contract from this solicitation may be performed offshore of the United States by persons located offshore of the United State or by means, methods, or communications that, in whole or in part, take place offshore of the United States.

## R. PRICE ADJUSTMENTS

(i) Method of Adjustment. Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed):

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in the Contract or subsequently agreed upon;

(c) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed all as specified in the Contract; or subsequently agreed upon;

(d) in such other manner as the parties may mutually agree; or,

(e) in the absence of agreement by the parties, through a unilateral initial written determination by the Purchasing Manager of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed all as computed by the Purchasing Manager in accordance with generally

accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of the S.C. Code of Laws.

(f) Submission of Price or Cost Data. Upon request of the Procurement Officer, the contractor shall provide reasonably available information to substantiate that the price or cost offered for any price adjustments is reasonable, consistent with the provisions of Section 11-35-1830.

#### S. PRICE ADJUSTMENT - LIMITED -- AFTER INITIAL TERM ONLY

(i) Upon approval of the Purchasing Manager, prices may be adjusted for any renewal term. Prices shall not be increased during the initial term. Any request for a price increase must be received by the Purchasing Manager at least ninety (90) days prior to the expiration of the applicable term and must be accompanied by enough documentation to justify the increase. If approved, a price increase becomes effective starting with the term beginning after approval. A price increase must be executed as a change order. Contractor may terminate this contract at the end of the then current term if a price increase request is denied. Notice of termination pursuant to this paragraph must be received by the Purchasing Manager no later than fifteen (15) days after the Purchasing Manager sends contractor notice rejecting the requested price increase.

#### T. PRICE ADJUSTMENTS -- LIMITED BY CPI "OTHER GOODS and SERVICES"

(i) Upon request and adequate justification, the Procurement Officer may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Consumer Price Index (CPI) for all urban consumers (CPI-U), "Other Goods & Services" for services, as determined by the Purchasing Manager. The Bureau of Labor and Statistics publishes this information on the web at [www.bls.gov](http://www.bls.gov).

#### U. PRICING DATA -- AUDIT – INSPECTION

(i) [Clause Included Pursuant to Section 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Purchasing Manager's request, you shall submit cost or pricing data, as defined by 48 C.F.R. Section 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because you furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the Purchasing Manager. The state may audit your records at reasonable times and places. As used in this subparagraph (b), the term "records" means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the state may inspect any part of your place of business which is related to performance of the work. (d) Instructions Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. Section 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR Section 15.406-2(a) (adapted as necessary for the state context). (e) Subcontracts. You shall include the above text of this clause in all your subcontracts. (f) Nothing in this clause limits any other rights of the state. [07-7B185-1]

#### V. RELATIONSHIP OF THE PARTIES

(i) Neither party is an employee, agent, partner, or joint venture of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party.

#### W. RESTRICTIONS ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES

(i) Citizens, as well as public employees (acting in their individual capacity), should not be unnecessarily required to agree to or provide consent to policies or contractual terms in order to access services acquired by the government pursuant to this contract (hereinafter "applicable services") or, in the case of public employees, to perform their job duties; accordingly, in performing the work, contractor shall not require or invite any citizen or public employee to agree to or provide consent to any end user contract, privacy policy, or other terms of use

(hereinafter “terms of use”) not previously approved in writing by the procurement officer. Contractor agrees that any terms of use regarding applicable services are void and of no effect.

(ii) Unless expressly provided in the solicitation, public contracts are not intended to provide contractors an opportunity to market additional products and services; accordingly, in performing the work, contractor shall not – for itself or on behalf of any third party – offer citizens or public employees (other than the purchasing manager) any additional products or services not required by the contract.

(iii) Any reference to contractor in items (a) or (b) also includes any subcontractor at any tier. Contractor is responsible for compliance with these obligations by any person or entity that contractor authorizes to take any action related to the work.

(iv) Any violation of this clause is a material breach of contract. The parties acknowledge the difficulties inherent in determining the damage from any breach of these restrictions. Contractor shall pay the state liquidated damages of \$1,000 for each contact with a citizen or end user that violates this restriction.

#### X. TERM OF CONTRACT -- EFFECTIVE DATE / INITIAL CONTRACT PERIOD

(i) The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is 1 year from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award.

#### Y. TERM OF CONTRACT -- OPTION TO RENEW

(i) At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of one (1) year, not to exceed five (5) unless contractor receives notice that PDRTA elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award.

(ii) Contractor acknowledges that, if the contractor is on the then-current Iran Divestment Act List as of the date of any contract renewal, the renewal will be voided.

#### Z. TERM OF CONTRACT -- TERMINATION BY CONTRACTOR

(i) Contractor may terminate this contract at the end of the initial term, or any renewal term, by providing the Purchasing Manager notice of its election to terminate under this clause at least 160 days prior to the expiration of the then current term.

#### AA. TERMINATION FOR CONVENIENCE -- INDEFINITE DELIVERY / INDEFINITE

(i) The government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government’s best interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

#### BB. QUANTITY CONTRACTS

(i) Unless the termination so provides, a termination for convenience shall not operate to terminate any purchase orders issued prior to the effective date of termination.

## CC. TERMINATION FOR CONVENIENCE

(i) Termination. The Purchasing Manager may terminate this contract in whole or in part, for the convenience of PDRTA. The Purchasing Manager shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

(ii) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Purchasing Manager may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to PDRTA. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(iii) Right to Supplies. The Purchasing Manager may require the contractor to transfer title and deliver to PDRTA in the manner and to the extent directed by the Purchasing Manager: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the Purchasing Manager, protect and preserve property in the possession of the contractor in which PDRTA has an interest. If the Purchasing Manager does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in an accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that PDRTA has breached the contract by exercise of the Termination for Convenience Clause.

(iv) Compensation.

a. The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Purchasing Manager may pay the contractor, if at all, an amount set in accordance with Subparagraph (iii) of this Paragraph.

b. The Purchasing Manager and the contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by PDRTA, the proceeds of any sales of supplies and manufacturing materials under Paragraph (iii) of this clause, and the contract price of the work not terminated;

c. Absent complete agreement under Subparagraph (b) of this Paragraph, the Purchasing Manager shall pay the contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:

a. contract prices for supplies or services accepted under the contract;

b. costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services;

c. reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (ii) of this clause. These costs must not include costs paid in accordance with Subparagraph (b) of this Paragraph;

d. any other reasonable costs that have resulted from the termination. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.

(v) Contractor must demonstrate any costs claimed, agreed to, or established under Subparagraphs (ii) and (iii) of this Paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles.

(vi) Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the state's right to require the termination of a subcontract, or (ii) increase the obligation of the state beyond what it would have been if the subcontract had contained an appropriate clause.

## X. FEDERAL CLAUSES

### A. Buy America Certification

1. This Contract is subject to the "Buy America" requirements of 49 United States Code (USC) §5323(j) and 49 Code of Federal Regulations (CFR) Part 661, as may be amended from time to time, and applicable federal regulations. Prospective Proposers' attention is directed to 49 CFR §661.11, "Rolling Stock Procurements."

Prospective Proposers have the responsibility to comply with the cited and any governing statutes and regulations, including official interpretations. A Proposer shall submit to the Agency the appropriate Buy America certification (located in this document, page 153, CER 8.1), included in this document, with all offers on FTA-funded contracts. Proposals that are not accompanied by a properly completed Buy America certification are subject to the provisions of 49 CFR 661.13 and will be rejected as nonresponsive. The two signature blocks on the Buy America certificate are mutually exclusive. Proposers shall sign only one signature block on the certificate. Signing both signature blocks will make the Proposal nonresponsive. A false certification is a criminal act in violation of 18 USC §1001. Any party may petition the FTA to investigate a successful Proposer's compliance with the Buy America certification. The procedures are set out in 49 CFR Part 661.15. If the FTA determines that the evidence indicates noncompliance, the FTA will require the Agency to initiate an investigation. The successful Proposer has the burden of proof to establish compliance with its certification. If the successful Proposer fails to so demonstrate compliance, then the successful Proposer will be required to substitute sufficient domestic materials without revision of the original Contract terms. Failure to do so will be a breach of the Contract and may lead to the initiation of debarment proceedings under 49 CFR Part 29.

## **B. Access to Records and Reports**

1. Record Retention. The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.
2. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract in accordance with 2 CFR § 200.337.
4. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractor's access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

## **C. American With Disabilities Act (ADA)**

1. The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

## **D. Restrictions on Lobbying**

1. Conditions on use of funds.
  - (i) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence 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 any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - (ii) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.
  - (iii) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.
  - (iv) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence 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 that loan insurance or guarantee.
  - (v) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence 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 that loan insurance or guarantee.
2. Certification and disclosure.
  - (i) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:
    - (a) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or



- (b) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.
- (ii) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:
  - (a) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
  - (b) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000, Updated November 2022 Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.
- (iii) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:
  - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - (b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
  - (c) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (iv) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:
  - (a) A subcontract exceeding \$100,000 at any tier under a Federal contract;
  - (b) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
  - (c) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
  - (d) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement, Shall file a certification, and a disclosure form, if required, to the next tier above.
- (v) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.
- (vi) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.
- (vii) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.
- (viii) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

## **E. Civil Rights Laws and Regulations**

The following Federal Civil Rights laws and regulations apply to all contracts.

1. Federal Equal Employment Opportunity (EEO) Requirements. These include but are not limited to:
  - (i) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
  - (ii) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

2. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

3. Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

4. Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

5. Civil Rights and Equal Opportunity The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

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

(ii) Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(iii) Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, 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. Updated November 2022

(iv) Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(v) Promoting Free Speech and Religious Liberty. The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

**F. No Federal Government Obligations to Third Parties**

Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

1. The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**G. Program Fraud and False or Fraudulent Statements or Related Acts**

1. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.
2. If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.
3. Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.
4. Notice to FTA and U.S. DOT Inspector General of information related to fraud, waste, abuse, or other
5. legal matters (FTA Master Agreement (25), Sec. 39(b)(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient Access to Records and Reports Applicability – As shown below. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

**H. Byrd Anti-Lobby Amendment**

1. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. 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 any lobbying with non-Federal funds that take place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Agency.”

#### **I. Federal Changes**

1. All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. The contractor’s failure to comply shall constitute a material breach of the contract.

#### **J. Changes to Federal Requirements – Notice to Third Party Participants**

1. Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agree

#### **K. Termination**

Termination Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$100,000.

1. Termination for Convenience (General Provision) 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. Contractor shall promptly submit its termination claim to the recipient. If the contractor is in possession of any of the recipient’s property, the contractor shall account for same, and dispose of it as the recipient directs.
2. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effective by serving a notice of termination to contractor setting forth the manner in which contractor is in default. The contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.
3. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination of default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.
4. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
5. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
6. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to the contractor a notice of termination specifying the nature of default. The contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill

- contract obligations, it is determined that the contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
7. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to the contractor a notice of termination specifying the nature of default. The contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while the contractor has possession of the recipient goods, the contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient 26 or its agent. The contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that the contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
  8. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to the contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work. Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:
    - i. Delay in completing the work arises from unforeseeable causes beyond their control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
    - ii. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience. If termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to the contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient. If, after termination for failure to fulfill contract obligations, it is determined that the contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
  9. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on the contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. The contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to the contractor. If termination is for the recipient's convenience, the contractor shall be paid its contract closeout costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after

serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

**L. Promoting Free Speech and Liberty**

1. The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

**M. Disadvantaged Business Enterprise**

1. The contractor or subcontractor 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 C.F.R. part 26 in the award and administration of DOT assisted contracts. 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 the Agency deems appropriate, which may include, but is not limited to:
  - i. Withholding monthly progress payments;
  - ii. Assessing sanctions;
  - iii. Liquidated damages; and/or
  - iv. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).
2. Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 day from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).
3. Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1). It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT assisted contracts.

**N. Incorporation of Federal Transit Administrations (FTA) Terms**

1. All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, 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 request that would cause the recipient to be in violation of FTA terms and conditions.

## **O. Debarment and Suspension**

1. Applicability: This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least \$25,000
  - i. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
  - ii. C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (3) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency and subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. 29 The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

## **P. Resolution of Disputes, Breaches, or other Litigation Disputes**

1. 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)'s [title of employee]. 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 to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision. Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved. 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 or damage.
2. 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. 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), (Architect) or Contractor shall constitute a waiver of any right or duty afforded by 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.

## **Q. Patent Rights and Rights in Data**

1. Intellectual Property Rights This Project is funded through a Federal award with FTA for experimental, developmental, or Updated November 2022 research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.
2. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
  - i. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
  - ii. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
3. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under Updated November 2022 the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
4. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
5. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
6. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work. 6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance

## **R. Notification of Federal Participation**



1. To the extent required by law, in the announcement of any third-party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third-party contract.
- 2.

**S. Equal Employment Opportunity**

EQUAL EMPLOYMENT OPPORTUNITY During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

8. The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**T. Non-construction Employee Protection (Contract Work Hours and Safety Standards Act)**

Applicability – Contracts over \$250,000

1. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.
3. Withholding for unpaid wages and liquidated damages - the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.
4. Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and 33 also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

**U. Drug and Alcohol Use and Testing (49 CFR part 40.11)**

1. The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or Agency, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 and to submit the Management Information System (MIS) reports to the Agency.

**V. Violation and Breach of Contract**

1. Disputes: Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the agencies authorized representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the agencies authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.
2. Performance during Dispute: 36 Unless otherwise directed by the agency's authorized representative, the contractor shall continue performance under this contract while matters in dispute are being resolved.
3. 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 therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
4. Remedies: Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the agencies authorized representative and 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 Agency is located.
5. Rights and Remedies: 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 Agency or contractor shall constitute a waiver of any right or duty afforded by any of them under the contract, nor shall any such action or failure to act constitute an approval of acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### **W. Prompt Payment**

1. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. The contractor must promptly notify the Agency whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of Updated November 2022 work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent from the Agency.

#### **X. Simplified Acquisition Threshold**

1. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or Updated November 2022 breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America's eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)

#### **Y. Special DOL EEO Clause**

1. The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause: During the performance of this contract, the contractor agrees as follows:
  - i. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
  - ii. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - iii. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
  - iv. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (e) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

- v. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. (g) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. Updated November 2022 The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

**Z. Special Notification for States**

Applies to States --

1. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
  - i. The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
  - ii. The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
  - iii. The amount of federal assistance FTA has provided for a State Program or Project.
2. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

#### **AA. Substance Abuse Requirements**

1. The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or Agency, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 and to submit the Management Information System (MIS) reports to the Agency.

#### **BB. Veterans Hiring Preference**

1. Veterans Employment - Recipients and subrecipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed, or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

#### **CC. Trafficking in Persons**

1. The contractor agrees that it and its employees that participate in the Recipient's Award, may not:
  - i. Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect.
  - ii. Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
  - iii. Use forced labor in the performance of the Recipient's Award or sub agreements thereunder.
  - iv.

#### **DD. Federal Tax Liability and Recent Felony Convictions**

1. The contractor certifies that it: Updated November 2022
  - i. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
  - ii. Was not convicted of felony criminal violation under any Federal law within the preceding 24 months. If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.
2. Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any sub agreement.

#### **EE. Severability**

1. The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

#### **FF. Clean Air Act and Federal Water Pollution Control Act Requirements**

1. The Contractor agrees:
  - i. It will not use any violating facilities;
  - ii. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities";
  - iii. It will report violations of use of prohibited facilities to FTA; and
  - iv. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. 7401-7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).
2. The contractor shall comply with all applicable standards, orders or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1377. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

#### **GG. Energy Conservation Requirements**

1. 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. This requirement extends to all third-party contractors and their contracts at every tier, this clause shall be included in all subcontracts.

#### **HH. Fly America Requirements**

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

#### **II. Safe Operation of Motor Vehicles**

1. **Seat Belt Use** – The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or GTA.
2. **Distracted Driving** – The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

#### **JJ. Buy America Requirements**

1. The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7. The bidder or offeror must submit to the GTA/City the appropriate Buy America certification with all proposals on FTA-funded contracts, except those subject to a general waiver. Proposals that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.
2. Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:
  - i. all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
  - ii. all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
  - iii. all construction materials<sup>44</sup> are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.
3. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project. Waivers: Updated November 2022 When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.
  - i. When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that: 1) applying the domestic content procurement preference would be inconsistent with the public interest; 2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or 3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.
4. A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described at [link to awarding agency web site with information on currently applicable general applicability waivers]. Definitions: “Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives<sup>46</sup>—that is or consists primarily of:
  - i. Non-ferrous metals;
  - ii. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
  - iii. Glass (including option glass);
  - iv. Lumber; or
  - v. Drywall.



5. Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States. “Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy. “Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

**KK. Cargo Preference Requirements**

1. The Contractor agrees (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the GTA/City (through the contractor in the case of a subcontractor’s bill-of lading.); and (c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**LL. Recycled Products**

1. The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR part 247.

**MM. Notification to FTA and U.S. Dot Inspector General**

1. The GTA must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for FTA Region IV, if the GTA has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the GTA and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the GTA. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions. Failure to include this notice may be deemed a material breach of contract.

**NN. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

1. Contractor represents that it is and will be compliant at all times with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (August 13, 2018), and will not provide telecommunications and/or video surveillance services or equipment to the GTA in the performance of any contract, subcontract or other contractual instrument resulting from a solicitation or RFP that have been manufactured by a supplier (including any subsidiary or affiliate of those entities) that is considered prohibited or not approved under this regulation. This statute is not limited to entities that use end-products produced by those companies; and also covers the use of any equipment, system, or services that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

**OO. National Intelligent Transportation Systems (ITS) Architecture and Standards**

1. Contractor represents that it is and will be compliant at all times with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (August 13, 2018), and will not provide telecommunications and/or video surveillance services or equipment to the GTA in the performance of any contract, subcontract or other contractual instrument resulting from a solicitation or RFP that have been manufactured by a supplier (including any subsidiary or affiliate of those entities) that is considered prohibited or not approved under this regulation. This statute is not limited to entities that use end-products produced by those companies; and also covers the use of any equipment, system, or services that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

**PP. Motor Carrier Safety**

1. Contractor agrees that it will comply with the applicable economic and insurance registration requirements of the:
  - i. U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, “Minimum Levels of Financial Responsibility for Motor Carriers,” 49 C.F.R. part 387, if it is engaged in operations requiring compliance with 49 C.F.R. part 387, it is engaged in interstate commerce, and it is not within a defined commercial zone;
  - ii. The provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 C.F.R. part 387, and reduce the amount of insurance the Recipient must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311;
  - iii. The safety requirements of U.S. FMCSA regulations, “Federal Motor Carrier Safety Regulations,” 49 C.F.R. parts 390 – 397, to the extent applicable; and
  - iv. The driver’s license requirements of U.S. FMCSA regulations, “Commercial Driver’s License Standards, Requirements, and Penalties,” 49 C.F.R. part 383, and “State Compliance with Commercial Driver's License,” 49 C.F.R. part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S. FMCSA’s regulations, “Controlled Substances and Alcohol Use and Testing,” 49 C.F.R. part 382, and implementing federal guidance, to the extent applicable.

**QQ. Protection of Sensitive and Personally Identifiable Information**

1. Contractor must implement reasonable measures to safeguard protected personally identifiable information as well as any information that the FTA or pass-through entity designates as sensitive.

**XI. ATTACHMENTS TO SOLICITATION**

**APPENDIX A: BID SHEET AND PRICE/BUSINESS PROPOSAL**

The Agreement shall be in effect for only the decided upon number of days following the receipt of the Notice to Proceed. Having carefully examined the Request for Proposal, attachments and related documents, the undersigned proposes and agrees to provide the specified services to PDRTA, in accordance with the Specifications described in the RFP, during the initial term from the date on the Notice to Proceed and at the prices set forth in the following Bid Schedules.

**1. Base Bid:**

To supply all labor and materials and to perform all work shown or specified to complete the project for the sum of:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_) hereby

designated as the Bid. The bidder understands that the PDRTA reserves the right to reject any and all bids and to waive any informalities in the bidding. The Bidder agrees that this Bid shall be good and may not be withdrawn for a period of 90 calendar days after the scheduled closing time for receiving bids. Include completed Appendix A – “The Cost Schedule.” Upon receipt of written notice of the acceptance of this Bid, the Bidder will execute the formal Agreement within 10 days, and deliver Surety Bonds as required by the General Conditions. The bid security attached in the sum of

\_\_\_\_\_ (\$ ) is to become the property of the PDRTA in the event the Agreement and

Bond are not executed within the time above set forth as liquidated damages for the delay and additional expense to the PDRTA caused thereby. The undersigned declares that his firm is (delete those not applicable): A corporation organized and existing under the laws of the State of: \_\_\_\_\_ A partnership consisting of: \_\_\_\_\_

The undersigned declares that the person signing this proposals is fully authorized to sign the proposal on behalf of the firm listed and to fully bind the firm listed to all the conditions and provisions thereof. It is agreed that no person or persons or company other than the firm listed below or as otherwise indicated hereinafter has any interest whatsoever in this proposal or the contract that may be entered into as a result thereof, and that in all respects the proposal is legal and fair, submitted in good faith, without collusion or fraud.

Respectfully Submitted:

\_\_\_\_\_  
Contractor

By: \_\_\_\_\_

\_\_\_\_\_  
(Type/Print Name and Title)

\_\_\_\_\_  
City, State, Zip

S.C. General Contractor’s License No. \_\_\_\_\_

## **APPENDIX B: IMPORTANT TAX NOTICE - NONRESIDENTS ONLY**

Withholding Requirements for Payments to Nonresidents: Section 12-8-550 of the South Carolina Code of Laws requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the nonresident. The withholding requirement does not apply to (1) payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina, (2) nonresidents who are not conducting business in South Carolina, (3) nonresidents for contracts that do not exceed \$10,000 in a calendar year, or (4) payments to a nonresident who (a) registers with either the S.C. Department of Revenue or the S.C. Secretary of State and (b) submits a Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to the person letting the contract.

The withholding requirement applies to every governmental entity that uses a contract ("Using Entity"). Nonresidents should submit a separate copy of the Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to every Using Entity that makes payment to the nonresident pursuant to this solicitation. Once submitted, an affidavit is valid for all contracts between the nonresident and the Using Entity, unless the Using Entity receives notice from the Department of Revenue that the exemption from withholding has been revoked.

Section 12-8-540 requires persons making payment to a nonresident taxpayer of rentals or royalties at a rate of \$1,200.00 or more a year for the use of or for the privilege of using property in South Carolina to withhold 7% of the total of each payment made to a nonresident taxpayer who is not a corporation and 5% if the payment is made to a corporation. Contact the Department of Revenue for any applicable exceptions.

For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at: [www.sctax.org](http://www.sctax.org)

This notice is for informational purposes only. This agency does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-896-1420.

PLEASE SEE THE "NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING" FORM (FORM NUMBER I-312) LOCATED AT: <http://www.sctax.org/forms/withholding/i-312-form>

**APPENDIX C: LOBBY RESTRICTIONS FORM**  
CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, \_\_\_\_\_, hereby certify

(Name and Title of Official)

On behalf of \_\_\_\_\_ that:

(Name of Bidder/Company Name)

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 any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, Disclosure Form to Report Lobbying,” in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of the fact upon which reliance was place when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name \_\_\_\_\_

Type or print name \_\_\_\_\_

Signature of authorized representative \_\_\_\_\_ Date / /

Signature of notary and SEAL \_\_\_\_\_

**APPENDIX D: CERTIFICATION OF COMPLIANCE WITH THE SOUTH CAROLINA ILLEGAL IMMIGRATION REFORM ACT**

I, \_\_\_\_\_, hereby state and declare that I am the \_\_\_\_\_ (name)

\_\_\_\_\_ of \_\_\_\_\_ (title)  
(name of entity)

And hereby certify to the Awarding Agency that, as to any service contract subsequently entered into with the

Awarding Agency, that

\_\_\_\_\_  
(Name of entity)

intends to verify any new employees' status and require any of my subcontractors or sub subcontractors performing services under any contract with the Awarding Agency to verify any new employees' status, per the terms of the South Carolina illegal Immigration Reform Act, and as set out in Title 41, Chapter 8 of the Code of Laws of South Carolina 1976.

\_\_\_\_\_  
(Name of Official)

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

**APPENDIX E: CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**



**Certification Regarding**

**Debarment, Suspension, and Other Responsibility Matters  
Primary Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations are available from local offices of the U.S. Small Business Administration.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

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

Business Name \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_  
Name and Title of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

## **APPENDIX E1: INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. 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 meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).
6. The prospective primary 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 debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. 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 debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the ineligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. 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.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is 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 may terminate this transaction for cause or default.



**APPENDIX F: DBE**

THIS FORM IS TO BE COMPLETED BY ANY PROPOSER WISHING TO BE IDENTIFIED AS A DBE OR BY ANY PROPOSER WISHING TO IDENTIFY DBE PARTICIPATION IN ITS BID.

**SCHEDULE OF DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION**

This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. PDRTA overall goal for DBE participation is 5%. A separate Contract goal of 10% has been established for this Contract.

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 PDRTA deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

Since DBE participation is encouraged, if Bidder submit DBE participants, Proposers are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this Contract is conditioned on submission of the following concurrent with and accompanying an initial Qualifications Statement:

- The names and addresses of DBE Proposers that will participate in this Contract;
- A description of the work each DBE will perform;
- The dollar amount of the participation of each DBE Bidder participating;
- Written documentation of the Bidder’s commitment to use a DBE subcontractor whose participation it submits to meet the Contract goal;
- Written confirmation from the DBE that it is participating in the Contract as provided in the prime Contractor’s commitment; and
- If the Contract goal is not met, evidence of good faith efforts to do so.

Proposers must present the information required above as a matter of responsiveness with initial Qualifications Statement. (see 49 CFR 26.53(3)). The successful Bidder will be required to report its DBE participation obtained through race-neutral means throughout the period of performance. The Contractor is required to pay its subcontractors performing work related to this Contract for satisfactory performance of that work no later than 30 days after the Contractor’s receipt of payment for that work from PDRTA. In addition, the Contractor may not hold retainage from its subcontractors.

The Contractor must promptly notify PDRTA, whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of PDRTA.

If a Bidder is a DBE or if a proposer intends to utilize DBE Proposers in the development, manufacture, or delivery of goods or services or as a joint venture under this proposal, the following schedule must be completed:

The \_\_\_\_\_ will utilize the following:  
(Name of Bidder)

DBE Bidder(s) in the development, manufacture, or delivery of goods or services or as a joint venture under this proposal:

Item # and Description	Name of DBE Bidder	Type of Work or Parts to be Used/Performed	% of Proposal Attributable to DBE
------------------------	--------------------	--	-----------------------------------

- 1.
- 2.
- 3.
- 4.
- 5.

Total % of Proposal Price Attributable to DBE:

\_\_\_\_\_

\_\_\_\_\_  
Signature of Bidder

\_\_\_\_\_  
Date

**APPENDIX G: SUMMARY OF REFERENCES**

Proposers shall furnish three references relating to computer/network maintenance and repair, which enables the contractor to be abreast of current developments in the areas of concern for which they have furnished or are currently furnishing work of a similar nature to the requirements outlined in this solicitation.

**Reference (1)**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ E-mail: \_\_\_\_\_

Contact Person: \_\_\_\_\_

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

Contract Amount: \_\_\_\_\_

+++++

**Reference (2)**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ E-mail: \_\_\_\_\_

Contact Person: \_\_\_\_\_

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

Contract Amount: \_\_\_\_\_

+++++

**Reference (3)**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ E-mail: \_\_\_\_\_

Contact Person: \_\_\_\_\_

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

Contract Amount: \_\_\_\_\_

**APPENDIX H: BUY AMERICA REQUIREMENT**

**Steel, Iron, or Manufactured Products Buy America Certificate**

**IFB/RFP Number:** \_\_\_\_\_ **Procurement Description:** \_\_\_\_\_

**Certificate of Compliance with Buy America Requirements** The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

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

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Company: \_\_\_\_\_

**Certificate of Non-Compliance with Buy America Requirements**

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.

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

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Company: \_\_\_\_\_

**APPENDIX I: CERTIFICATION OF PRIMARY PARTICIPANT REGARDING PROHIBITION OF CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE EQUIPMENT**

The Primary Participant (name of applicant for an FTA grant or cooperative agreement, or potential Contractor for a major third-party contract), \_\_\_\_\_ certifies to the best of its knowledge and belief, that it and its officers, directors, principals, and agents:

1. Pursuant to 48 CFR 52.204-24, the Offeror represents that—

It  WILL,  WILL NOT provide covered telecommunications equipment or services to the GTA in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds “will” in paragraph (d)(1) of this section; and

2. After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It  DOES,  DOES NOT use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds “does” in paragraph (d)(2) of this section.

The Offeror agrees to include these requirements in all subcontracts at all tiers, regardless of value, and to obtain the same certification and disclosure from all subcontractors (at all tiers).

THE PRIMARY PARTICIPANT (APPLICANT FOR AN FTA GRANT OR COOPERATIVE AGREEMENT, OR POTENTIAL CONTRACTOR FOR A MAJOR THIRD-PARTY CONTRACT), \_\_\_\_\_ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 48 CFR 52.204-24 ARE APPLICABLE THERETO.

Executed this day \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_ .

\_\_\_\_\_  
Name of Contractor’s Firm

\_\_\_\_\_  
Signature

**APPENDIX J: ETHICS IN PUBLIC CONTRACTING AFFIDAVIT**

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

\_\_\_\_\_, being first duly sworn, deposes and says that:

1. He/She is \_\_\_\_\_ (title) for/of \_\_\_\_\_ (company/business), the Bidder that has submitted the attached Bid;
2. He/She is legally qualified and capable of signing this affidavit and is authorized to do so by Bidder;
3. He/She is fully informed regarding the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
4. Such Bid is genuine and is made without fraud;
5. Neither the said Bidder, nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest has offered or received any kickbacks or inducements from any offeror, suppliers, manufacturer, or subcontractor in connection with the offer, and they have not conferred on any public employee, public member, or public official having official responsibility for this procurement or transaction, any payment, loan, subscription, advance, deposit of money, services, or anything of value as defined in Section 8-13-100 of the South Carolina Code of Laws; and
6. Furthermore, neither the Bidder, nor any of its officers, partners, owners, agents representatives, employees or parties in interest has any relationship with the City, another person, or organization that interferes with fair competition or that constitutes a conflict of interest with respect to a contract with the City.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
COMPANY/BUSINESS

BY: \_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

SWORN to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20 \_\_\_\_\_

ITS: \_\_\_\_\_  
TITLE

Notary Public for \_\_\_\_\_ (state)

My commission expires \_\_\_\_\_

By: \_\_\_\_\_  
(signature)

**APPENDIX K: NON-COLLUSION AFFIDAVIT OF PRIME BIDDER**

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn, deposes and says that:

1. He/She is \_\_\_\_\_ of \_\_\_\_\_, the Bidder that has submitted the attached Bid;
2. He/She is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
3. Such Bid is genuine and is not a collusive or sham Bid;
4. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the attached Bid or of any other bidder, or to secure through any other bidder, or to fix any overhead, profit or cost element of the bid price or the bid price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against Pee Regional Transportation Authority or any person interested in the proposed contract; and
5. The price or prices quoted in the attached Bid are fair and proper and are not tainted by a collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(signed) \_\_\_\_\_

\_\_\_\_\_  
(title)

Subscribed and sworn to before me

this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
(signature)

My commission expires \_\_\_\_\_

**APPENDIX L: SUB-CONTRACOR/SUB-CONSULTANT PARTICIPATION**

IFB/RFP No. \_\_\_\_\_

Project: \_\_\_\_\_

We, \_\_\_\_\_,

(Name of Bidder/Proposer)

do hereby certify that the following list contains all subcontractors and/or sub-consultants associated with this project, if applicable. I will notify PDRTA of any changes that occur.

## APPENDIX M: OFFEROR'S CHECKLIST

### 1. AVOID COMMON BID/PROPOSAL MISTAKES

Review this checklist prior to submitting your bid/proposal. If you fail to follow this checklist, you risk having your bid/proposal rejected.

- Do not include any of your standard contract forms.
- Unless expressly required, do not include any additional boilerplate contract clauses.
- Reread your entire bid/proposal to make sure your bid/proposal does not take exception to any of the state's mandatory requirements.
- Make sure you have properly marked all protected, confidential, or trade secret information in accordance with the instructions entitled: SUBMITTING CONFIDENTIAL INFORMATION. DO NOT mark your entire bid/proposal as confidential, trade secret, or protected! Do not include a legend on the cover stating that your entire response is not to be released.
- Have you properly acknowledged all amendments? Instructions regarding how to acknowledge an amendment should appear in all amendments issued.
- Make sure your bid/proposal includes a copy of the solicitation cover page. Make sure the cover page is signed by a person that is authorized to contractually bind your business.
- Make sure your Bid/proposal includes the number of copies requested.
- Check to ensure your Bid/proposal includes everything requested.
- If you have concerns about the solicitation, do not raise those concerns in your response! After opening, it is too late! If this solicitation includes a pre-bid/proposal conference or a question & answer period, raise your questions as a part of that process! Please see instructions under the heading "submission of questions" and any provisions regarding pre-bid/proposal conferences.

### 2. OFFERS CHECK LIST/PROPOSAL SUBMISSION SHEETS

The following Documents must be included along with the Proposal:

- Cover pages 1 and 2, must be filled out and sign in ink
- Spreadsheet in SOW
- BID SHEET AND PRICE/BUSINESS PROPOSAL APPENDIX A
- TAX NOTICE- NON-RESIDENTS ONLY APPENDIX B
- CERTIFICATION AND RESTRICTIONS ON LOBBYING APPENDIX C
- CERTIFICATION OF COMPLIANCE WITH THE SOUTH CAROLINA ILLEGAL IMMIGRATION REFORM ACT APPENDIX D
- DEBARMENT, SUSPENSION CERTIFICATION APPENDIX E
- SCHEDULE OF DISADVANTAGE BUSINESS ENTERPIRSE (DBE) PARTICIPATION APPENDIX F
- SUMMARY OF REFERENCES APPENDIX G
- BUY AMERICA REQUIREMENT APPENDIX H
- CERTIFICATION OF PRIMARY PARTICIPANT REGARDING PROHIBITION OF CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE EQUIPMENT APPENDIX I
- ETHICS IN PUBLIC CONTRACTING AFFIDAVIT APPENDIX J
- NONCOLLUSION AFFIDEVIT OF PRIME BIDDER APPENDIX K
- SUB-CONTRACTOR/SUB-CONSULTANT PARTICIPATION APPENDIX L
- Certification of Insurance showing present coverage
- Copy of the Offeror's City Business License (A Business License is not required to submit an offer, however, if an award is made, the offeror will have ten (10) days to furnish a copy of the license to the Procurement Manager).



## **APPENDIX N: SELECTION PROCESS AND EVALUATION CRITERIA**

PDRTA intends to evaluate all submitted proposals and will select contractors to meet with in an interview format, to discuss the proposal and contractor qualifications, in greater detail. The selected contractor will meet with PDRTA to negotiate compensation for the proposal. Therefore, the offeror's initial proposal should contain the offeror's best terms from a performance and design standpoint.

### **1. EVALUATION CRITERIA**

Evaluation criteria to be used in determining the selected firm in order of importance are:

Proposal evaluation criteria will be grouped into percentage factors as follows:

**A. Qualifications and Experience of the Firm (*Maximum 25 Points*)**

Demonstrated knowledge of state laws relating to municipal corporations and public transportation benefit areas, experience in working with agencies of a similar size as PDRTA, knowledge of federal laws and grant regulations of FTA and SCDOT, and other types of services offered by the firm, and response time to requests for assistance.

**B. Qualifications and Experience of Members of the Firm assigned to work with PDRTA Board and Staff. (*Maximum 20 Points*)**

Demonstrated knowledge of state laws relating to municipal corporations and public transportation benefit areas, experience in working with agencies of a similar size as PDRTA, knowledge of federal laws and grant regulations of FTA and SCDOT, and other types of services offered by the firm, and response time to requests for assistance (for the Firms Employee(s) working with PDRTA).

**C. Audit Methodology. (*Maximum 20 Points*)**

Work plan and activities (see Part III (D)(ii.))

**D. Cost Proposal. (*Maximum 10 Points*)**

**E. References. (*Maximum 25 Points*)**

### **II. SELECTION PROCESS**

**A. Details**

An evaluation committee shall be formed to review and evaluate the proposals. The evaluation committee shall complete the evaluation form giving consideration to information provided in the proposals.

The evaluation committee may elect to interview firms short-listed but reserves the right to award the contract based on the evaluation committee's review and ranking of proposals. If the evaluation committee chooses to short-list and interview for those services, 10 additional points will be allocated for this phase, and these points will be added to the total from the qualifications review phase.

**B. Contract Negotiations**

The selected firm will be responsible for developing and submitting a detailed Project Scope and Time Schedule to be included in the contract documents. This scope and schedule shall be consistent with the requirement of this RFP and is subject to approval by PDRTA.