



**Pee Dee Regional Transportation Authority**

**Request for Proposal (RFP) # 0510-01**

**COMPUTER MAINTENANCE SERVICES**

NOTE: SEE PAGE THREE (3) FOR INFORMATION ON SUBMISSION OF QUESTIONS

**Return Proposal No Later Than 3:00 PM May 12, 2010**  
**Proposal Opening will be at 3:00 PM May 12, 2010**

**Mail via US Postal Service**

Purchasing Manager  
 Pee Dee Regional Transportation Authority  
 P.O. Box 2071  
 Florence, SC 29503

**UPS/FedEx, etc/Hand Carry To:**

Purchasing Manager  
 Pee Dee Regional Transportation Authority  
 313 S. Stadium Road  
 Florence, SC 29506

**Description:**

**Provide Computer Maintenance Services for Pee Dee Regional Transportation Authority's service area.**

**Maximum Contract Period: From the date of award through one (1) year with option to extend four (4) years. No reimbursement will be made for any costs incurred prior to a formal notice to proceed. PDRTA shall have the option to extend or renew this contract upon the same terms and conditions as contained herein for a period not to exceed five (5) years; provided, however, that any rate increase shall not exceed 2% per year, negotiated, and set forth in writing and signed by both parties.**

By signing this proposal, I certify that we will comply with all requirements of Section 44-107-10, ET Seq., relating to the S.C. Drug Free Workplace Act and the proposal is firm for a period of at least ninety (90) days from the closing date for submission of proposals.

**THIS PROPOSAL MUST BE SIGNED TO BE VALID:**

**\*Solicitation Number and Opening Date must be shown on sealed envelope\*\*\***

<b>AUTHORIZED SIGNATURE</b>		<b>PRINTED NAME</b>		<b>DATE</b>	
<b>COMPANY</b>			<b>STATE VENDOR NO. (IF KNOWN)</b>		
<b>MAILING ADDRESS</b>			<b>SOCIAL SECURITY OR FEDERAL TAX NO.</b>		
<b>CITY</b>		<b>STATE</b>		<b>ZIP CODE</b>	<b>PHONE</b>
<b>EMAIL ADDRESS (Please Provide)</b>				<b>TELEPHONE NUMBER</b>	
<b>ACCEPTED BY PEE DEE REGIONAL TRANSPORTATION AUTHORITY (Representative's Signature)</b>					
<b>PRINTED NAME</b>				<b>DATE</b>	

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**PART I - GENERAL INFORMATION**

- A. Proposals will be considered as specified herein or attached hereto under the term and conditions of this proposal.
- B. Proposal must be in the official name of the firm or individual under which business is conducted (showing official business address) and must be signed in ink by a person duly authorized to legally bind the person, partnership, company or corporation submitting the proposal.
- C. Offerors are to include all applicable requested information and are encouraged to include any additional information they wish to be considered.
- D. **Proposals will be received by the Pee Dee Regional Transportation Authority until 3:00 PM May 12, 2010. Proposals and modifications thereof, received at the office designated in the RFP after the exact hour and date specified for receipt of proposal, will not be considered. Any proposals received after the scheduled opening date and time will be immediately disqualified in accordance with the S.C. Consolidated Procurement Code and Regulations.**
- F. **SUBMISSION OF QUESTIONS:**

**All questions, request for information, or requests for clarification regarding this RFP must be submitted as indicated below. Questions, request for information or requests for clarification must be submitted in writing and received by 10:00 AM on April 23, 2010 After this date no further questions will be addressed. After all written requests have been received a response in the form of a written amendment to the RFP will be mailed or emailed to all potential offerors. Oral explanations or instructions will not be binding.**

**Questions may be faxed to (843) 665-7552 or emailed to [sandygarris@pdrta.org](mailto:sandygarris@pdrta.org)**

Mail via US Postal Service  
Purchasing Manager  
Pee Dee Regional Transportation Authority  
P.O. Box 2071  
Florence, SC 29503

UPS/FedEx, etc/Hand Carry To:  
Purchasing Manager  
Pee Dee Regional Transportation Authority  
313 S. Stadium Road  
Florence, SC 29506

The Statement of Award will be posted on the window in the lobby of PDRTA's Administrative Office at 313 S. Stadium Road, Florence, SC 29506 on May 21, 2010.

As a public non-profit entity, the Pee Dee Regional Transportation Authority is subject to the following Prohibition of Gratuities:

Amended Section 8-13-420 of the 1976 CODE OF LAWS OF SOUTH CAROLINA states: "Whoever gives or offers to any public official or public employee any compensation including a promise of future employment to influence his action, vote, opinion or judgment shall be subject to the punishment as provided by 16-9-210 and 16-9-220."

## **PART II - SCOPE OF PROPOSAL**

It is the intent of the Pee Dee Regional Transportation Authority to solicit proposals from a computer company to provide service necessary to maintain all equipment and software currently installed and future installation, provide a two (2) hour dedicated response period to any issue covered under contract, provide loaner equipment until said item can be repaired, and perform necessary maintenance in a timely manner to minimize down time of system. The purpose of this RFP is to provide a fair evaluation for all candidates and to provide the candidates with the evaluation criteria against which they will be judged.

## **PART III - LIMITATION AND FORMAT**

The Authority may require the offerors selected to participate in negotiations to submit such items as price, technical, or other revisions of their proposals as may result from negotiations. Proposals should not be submitted in elaborate format or expensive binders. Legibility, clarity, and completeness are important and essential.

## **PART IV - PROPOSAL SUBMISSION**

Proposals shall be submitted with one original and four copies marked "Proposal-RFP# 0510-01 "Computer Maintenance Services" " and one cost proposal for each appendix, sealed in a separate cover marked, "RFP# 0510-01 Cost Proposal". **See Appendix A for cost format. Bid Price Sheet attached must be used.**

## **PART V – INFORMATION FOR OFFERORS**

### **Overview of the Transit System**

The Pee Dee Regional Transportation Authority is a public transit system servicing six (6) counties in north and eastern South Carolina. These counties are Chesterfield, Marlboro, Dillon, Marion, Darlington, and Florence. The service area is primarily rural. The PDRTA became an Authority in 1976 and has since provided uninterrupted service.

PDRTA has 3 offices in the service area. The main office is located on the outskirts of the City of Florence and houses administration, maintenance, and operations. The Florence Transit System, a fixed route system with 6 routes, is managed by the Florence office. Other fixed route service, intended as commuter service that connects to the Florence Transit System, is expected to be online within the next fiscal year. These fixed routes include Hartsville-Darlington-Florence, Timmonsville-Florence, Lake City - Johnsonville-Myrtle Beach and Lake City-Florence. Limited inner city fixed route service will be added in the towns of Hartsville and Darlington. Scheduling and dispatching for paratransit in Darlington and Florence counties are handled at the Florence office. Proposers should note that trips originating in these counties may have destinations elsewhere within the service area or outside the service area. PDRTA is currently conducting a feasibility study for a new downtown intermodal transit hub in the city of Florence, and is working with Francis Marion University officials to add university transportation that is open to the public.

The Marion office is a scheduling/dispatch office. Paratransit for Marion and Dillon counties are scheduled from this office. Proposers should note that trips originating in these counties may have destinations elsewhere within the service area or outside the service area. The Marion office also controls fixed route commuter service to various points in the greater Myrtle Beach area. Within the next fiscal year, PDRTA anticipates regular commuter service between Marion and Florence.

The Cheraw office is a scheduling/dispatch office. Paratransit for Chesterfield and Marlboro counties are scheduled from this office. Proposers should note that trips originating in these counties may have destinations elsewhere within the service area or outside the service area. The Cheraw office also manages fixed route transportation among the towns of Chesterfield, Cheraw, and Bennettsville.

### **Service Area**

The PDRTA provides service throughout the 6 county Pee Dee region of South Carolina. The service area is approximately 5000 square miles serving an estimated population of 336,000 residents. The proposed software must be capable of expansion to allow for growth of the PDRTA system.

### **Fares and Contract Rate Structure**

The PDRTA rate structure for fixed routes is a cash/ticket/pass system. Rate structure is based upon the type of service. Florence Transit System's rates are fixed, the Chesterfield-Cheraw-Bennettsville rates are fixed, and Marion to Myrtle Beach rates are fixed. However, each has a different rate. The proposed software must be capable of expansion to allow for fare rate changes and new service rates.

The PDRTA rate structure for paratransit varies. Contract service may be provided on a passenger mile, vehicle mile, trip, or other agreed upon rate. Each contract has a separate funding code that delineates the charge for service. General public fares are established by a grid system related to length of trip.

### **Hours and Days of Service**

PDRTA currently operates 24 hours per day, depending upon service type. Most paratransit service begins around 6am and ends around 6pm, Monday through Friday. Saturday paratransit service is primarily for dialysis clients and generally follows the same times as Monday-Friday service. Commuter service to Myrtle Beach operates 24/7 to accommodate primarily hospitality industry workers on various shifts. Since the hospitality industry is somewhat seasonal, 3<sup>rd</sup> shift service may be eliminated during winter months. The Florence Transit System operates Monday through Saturday, except for major holidays, when mid-day service is eliminated.

It should be noted that the PDRTA plans to expand service hours in the future to include evening hours and Saturday hours.

### **Capacity Constraints**

PDRTA is committed to assuring that all of its services comply with the Americans with Disabilities Act (ADA). All fleet vehicles are fully accessible for passengers with mobility issues. PDRTA generally does not practice or enforce any policy that materially restricts consumer access to the system.

## **PART VI – SCOPE OF WORK**

### **SCOPE:**

The Pee Dee Regional Transportation Authority (PDRTA) is purchasing computer maintenance services necessary to maintain all equipment and software currently installed and for future installations, to provide a two (2) hours dedicated response period to any issue covered under this contract, to provide loaner equipment until said items can be repaired, and to perform necessary maintenance in a timely manner to minimize down time of system.

This specification covers provisions for furnishing computer maintenance services to include all labor, transportation, equipment and material necessary to provide the required level of service for designated PDRTA.

**REQUIREMENTS:**

The work specified will comply and adhere to all requirements of OSHA, State, and local applicable safety requirements while at PDRTA, comply with all Federal, State, and local building rules and regulations to complete installation of equipment, to include cable routing and positioning of all equipment and necessary cabling.

The computer company shall provide support for all existing and new networking equipment purchased by PDRTA. The computer company shall provide support for all software that PDRTA is currently running (See below- List of Equipment and Software). Should PDRTA choose to upgrade any of its present equipment, the computer company will provide assistance in the configuration and installation. If new products or parts are required PDRTA will be provided a quote for said product(s) at state contract pricing or below. Efficient methods of shipping will be determined before ordering. All ground orders will be free of shipping and handling charges. Orders will be shipped directly to all site locations. Troubleshooting of the internet lines and email accounts will be provided by the computer company, and reported to the company who owns or operates such technologies (AT & T). Under this contract the computer company will report to all hardware and software support calls immediately and will be on said site within two (2) hours of work order being reported. PDRTA's operation hours are 5:30 AM to 7:00 PM. PDRTA will need after hours contact numbers from the offeror that is chosen. Below is a listing of services that will be provided under this contract.

1. Onsite and remote hardware and software troubleshooting.
2. Onsite and remote hardware and software repairs.
3. Onsite printer repairs (excluding cost of consumables – toner, drums, fusers, and rollers).
4. Remote monitoring of Network Servers and computers.
5. Constant monitoring and upkeep of virus definitions, spyware and spam filters agents.
6. Deployment and follow-up of software patches and updates.
7. Installation services with all new product purchases.
8. Consultant services available with all network and software purchasing decisions.
9. New cabling services and runs at existing offices (less materials).
10. Mileage and expense of technicians.
11. Monitoring of Web Filter Application

This contract will cover all of PDRTA's office sites located at:

313 Stadium Road  
Florence, SC 29506

140 Airport Road  
Mullins, SC 29574

3908 Highway 9  
Cheraw, SC 29520

## VII-LIST OF EQUIPMENT AND SOFTWARE

EQUIPMENT	QUANTITY
Dell CPU	6
Hewlett Packard Computer CPU with Windows XP	19
Hewlett Packard Compaq DC 5800 Factor PC	12
Hewlett Packard Laptop computer	2
Hewlett Packard Laserjet Printers	5
Savin Laserjet Printer	1
Hewlett Packard Deskjet Printers	8
Cannon Table Copier	1
Hewlett Packard printer/scanner/copier	3
Canon Laser Fax/printer	1
Hewlett Packard Fax/scanner/printer	2
Brother Fax	4
Epson Projector	1
Server	7
Fortimail 100 Spam Virus Equipment	1
<b>SOFTWARE</b>	
Microsoft Professional 2007 Suite	
MAS90	
FAS	
ABRA	
Vehicle Maintenance Software	
ITMS Scheduling Software	
Q & A Scheduling	
Transched Scheduling/ Maintenance Software (beginning implementation phase) – This will replace ITMS Scheduling Software, Q & A Scheduling and the present Maintenance Software. Additional equipment will be added as the new software is being installed.	

## VIII–TIMELINE

4/12/2010	Request for Proposal Issued
4/12/2010	South Carolina Business Opportunities (SCBO ) advertisement
4/23/2010	Questions submitted by fax or electronic mail to Sandy Garris, PDRTA 10:00 A.M.
4/30/2010	All questions will be answered by Sandy Garris, PDRTA
5/12/2010	Request for Proposal due at PDRTA, 3:00 P.M.
5/21/2010	Statement of Award to be posted on window in the lobby of PDRTA’s administrative office at 313 S. Stadium Road, Florence, SC 29506

## PART IX- PROPOSAL CONTENT AND OUTLINE

**Section 1: Proposal coverage.** Cover the scope of work and general objectives to which the proposal is addressed.

**Section 2: 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:

1. A work plan indicating that the proposer understands the nature, scope and scale of the work to be done.
2. Activities to be undertaken under each work task
3. Time to be devoted to each task
4. Describe your experience in producing sites for non-profit and/or community-focused projects.
5. Provide current reference information for three former or current clients.
6. Provide a company profile, length of time in business and core competencies.
7. Briefly describe your firm’s project management process.
8. Please discuss any hardware/software vendor partnerships.
9. Please discuss your testing and support plan.
10. Please explain your service level agreement (SLA) structure.

**Section 3: 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 used. Statement of Incorporation, Partnership or Proprietorship of Proposer, including the names, titles and home addresses of all officers, partners or principals of the proposer

**Section 4: 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.



**Section 5:** 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.

**Section 6:** 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, addresses, 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 with providing your product to Transit Authorities and other State, Local, or Federal Authorities. A contact person with telephone number for each reference should be included.

**Section 7:** 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.

**Section 8:** Provide any pertinent information needed to describe your services.

## **PART X –INFORMATION REQUESTED FROM THE OFFEROR**

The following outline includes all the information called for in the RFP.

1. Title Page – Show the RFP subject, the name of the Offeror’s company name, local address, telephone number, name and title of the contact person, and the date of submission.
2. Contain separately submitted and sealed Technical and Cost Proposals;
3. Include a Letter of Transmittal signed by the person(s) with the authority to bind your firm and answer questions or provide clarification concerning submitted proposals;
4. Be typed on 8 ½” by 11” paper;
5. Include 1 signed original and 4 copies;
6. Not include promotional materials;
7. Complete profile of the offeror;
8. Completely and accurately fill out all attached Cost Proposal; Make sure to use cost sheet attached:

## **PART XI-EVALUATION OF PROPOSALS**

Proposal will be evaluated by a selection committee, in accordance with the criteria identified below. Firms may be required to make an oral presentation of their proposal to this committee.

This project will require the services of a knowledgeable and well-equipped consultant or consultant team who will be responsible for all aspects of the project. Technical and management factors which will be used in the evaluation of the proposals are set forth below:

1. Personnel Qualifications/ References -provide documentation of industry certifications and/or qualifications and list at least 3 references relating to computer maintenance and prior work which enables the contractor to be abreast of current developments in the areas of concern addressed by this request.
2. Firms ability to meet dedicated response time.

3. Cost.
4. Emphasis which organizational management would place on this effort; specifically its ability to commit capable staff.
5. Quality of the proposal.

PDRTA reserves the right to weigh its evaluation criteria in any manner it deems appropriate.

## **PART XII -AWARD CRITERIA**

**AWARD CRITERIA – PROPOSALS:** Award will be made to the highest ranked, responsive and responsible Offeror whose offer is determined to be the most advantageous to PDRTA.

**AWARD TO ONE OFFEROR:** Award will be made to one Offeror.

**EVALUATION FACTORS – PROPOSALS:** Offers will be evaluated using only the factors stated above. Evaluation factors are stated in the relative order of importance. Once evaluation is complete, all responsive Offerors will be ranked from most advantageous to least advantageous.

**NEGOTIATIONS:** The Procurement Officer may elect to make an award without conducting negotiations. However, after the offers have been ranked, the Procurement Officer may elect to negotiate price or the general scope of work with the highest ranked offeror. If a satisfactory agreement cannot be reached, negotiations may be conducted with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the Procurement Officer.

## **PART XIII- RESPONSIBLE PROSPECTIVE CONTRACTORS**

Contracts will be awarded only to responsible prospective contractors. To be eligible for award of a contract, a prospective contractor must be responsible. An offeror must, upon request, furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable inquiry may be grounds for determining that you are ineligible to receive an award. In order to qualify as responsible, a prospective contractor must, in the opinion of the Authority, meet the following standards as they relate to this RFP:

- 1 Have adequate financial resources for performance, or have the ability to obtain such resources as required during performance;
- 2 Have the necessary experience, organization, technical qualifications, skills and facilities, or have the ability to obtain them;
- 3 Be able to comply with required suspense dates;
- 4 Have satisfactory record of performance;
- 5 Be able to comply with the requirements of the Disadvantaged Business Enterprise and Equal Employment Opportunity statement indicated below; and
- 6 Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

### Disadvantaged Business Enterprise (DBE) and Equal Employment Opportunity (EEO) Statement

The PDRTA is committed to utilizing DBE's whenever possible.

Disadvantaged Business Enterprise (DBE) - In connection with the performance of this contract, the selected contractor shall cooperate with the PDRTA in meeting its commitments and goals with regard to the maximum utilization of Disadvantaged Business Enterprises and shall use its best efforts to insure that Disadvantaged Business Enterprises shall have the maximum practicable opportunity to compete for subcontract work under this contract.

Equal Employment Opportunity (EEO) - In connection with the execution of this contract, the contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during their employment, without regard to their race, religion, color, sex or origin. Such actions 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.

#### **PART XIV-GENERAL CONDITIONS**

1. **FORCE MAJURE**: The Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the contractor. Such causes may include, but are not restricted to acts of God or of the public enemy, acts of the Governments in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the contractor and subcontractor, and without the fault or negligence of either of them, the contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet the required delivery schedule.
2. **SOUTH CAROLINA GOVERNING LAW**: The Agreement and any dispute, claim, or controversy relating to the Agreement shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland 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 State's Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. The parties expressly agree that the UN Convention on the International Sale of Goods shall not apply to this agreement.
3. **OFFEROR'S QUALIFICATION**: Offeror must, upon request of the Pee Dee Regional Transportation Authority, furnish satisfactory evidence of its ability to furnish products or services in accordance with the terms and conditions of this proposal. The Pee Dee Regional Transportation Authority reserves the right to make the final determination as to the offeror's ability to provide the services requested herein.
4. **OFFEROR RESPONSIBILITY**: Each offeror shall fully acquaint himself with conditions relating to the scope and restrictions attending the execution of the work under the conditions of this

proposal. It is expected that this will sometimes require on-site observation. The failure or omission of an offeror to acquaint himself with existing conditions shall in no way relieve him of any obligation with respect to this proposal or to the contract.

5. AFFIRMATIVE ACTION: The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, national origin or physical handicap. The following are incorporated herein by reference: 41 C.F.R. 60-1.4, 60-250.4 and 60-741-4.
6. TERMINATION: Subject to the Provisions below, any contract resulting from this proposal may be terminated by the Pee Dee Regional Transportation Authority provided a thirty (30) days advance notice in writing is given to the contractor.
  - 6.1. Non-Appropriations: Funds for this contract are payable from State and/or Federal appropriations. In the event sufficient appropriations are not made to pay the charges under the contract it shall terminate without any obligation to the State of South Carolina.
  - 6.2. Convenience: In the event that this contract is terminated or canceled upon request and for the convenience of the Pee Dee Regional Transportation Authority without the required thirty (30) days advance written notice, then the Pee Dee Regional Transportation Authority shall negotiate reasonable termination costs, if applicable.
  - 6.3. Cause: Termination by the Pee Dee Regional Transportation Authority for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provisions; termination costs, if any shall not apply. The thirty (30) days advance notice requirement is waived and the default provision listed herein shall apply.
    - a. Default: In case of default on contractor, the Pee Dee Regional Transportation Authority reserves the right to purchase any or all items/services in default in open market, charging contractor with any excessive costs. **SHOULD SUCH CHARGE BE ASSESSED, NO SUBSEQUENT PROPOSALS OF THE DEFAULTING CONTRACTOR WILL BE CONSIDERED UNTIL THE ASSESSED CHARGE HAS BEEN SATISFIED.**
7. PRIME CONTRACTOR RESPONSIBILITIES: The contractor will be required to assume sole responsibility for the complete effort as required by this RFP. The Pee Dee RTA will consider the contractor to be the sole point of contact with regard to contractual matters.
8. SUBCONTRACTING: If any part of the work covered by this RFP is to be subcontracted, the contractor shall identify the subcontracting organization and the contractual arrangements made therewith. All subcontractors must be approved by the Pee Dee Regional Transportation Authority. The successful offeror will also furnish the corporate or company name and the names of the officers of any subcontractors engaged by the offeror.
9. OWNERSHIP OF MATERIAL: Ownership of all data, material and documentation originated and prepared for the Pee Dee Regional Transportation Authority pursuant to this contract shall belong exclusively to the Pee Dee Regional Transportation Authority.
10. LEGAL OR CONSULTANT SERVICES: If this contract is for legal or consultant services, it is subject to the provisions of Section 11-9-105 of the 1976 Code of Laws of South Carolina as

amended. "Any contract for legal or consultant services entered into by a state agency or institution shall include a provision which requires completion of all services. The Provisions shall further require that in the event all services are not fully rendered as provided for in the contract, any Monies which have been paid by the agency under the contract must be refunded to the agency along with a twelve (12) percent penalty".

11. INDEMNIFICATION: The Pee Dee Regional Transportation Authority, its officers, agents, and employees, shall be held harmless from liability from any claims, damages and actions of any nature arising from a resultant contract, provided that such liability is not attributable to negligence on the part of the using agency or failure of the using agency to comply with the offer as outlined in the offeror's proposal.
12. COMPLIANCE WITH FEDERAL REQUIREMENTS: State or Federal requirements that are more restrictive shall be followed.
13. CONTRACT FORMAT: When applicable, the contractor shall also be required to abide by all the covenants, conditions, responsibilities, terms and stipulations as set forth in the contract format (attachment and accompanying schedules). Said contract format is subject to change prior to final execution of any contract which is awarded subsequent to this Request for Proposal.
14. DRUG-FREE WORKPLACE: (Note: This clause applies to any resultant contract of \$50,000 or more). The State of South Carolina has amended Title 44, code of Laws of South Carolina, 1976, relating to health, by adding Chapter 107, so as to enact the Drug-Free Workplace Act. (See Act No. 593, 1990 Acts and Joint Resolutions). By submission of a signed proposal, you are certifying that you will comply with this Act. (See Section 44-107-30). This will certify to the using agency your compliance.
15. PURCHASING LIABILITY: The Pee Dee Regional Transportation Authority is acting under the authority given to it in the Consolidated Procurement Code to procure contracts on behalf of governmental agencies and acts only as their agent in this respect. The resulting contract is between the Pee Dee Regional Transportation Authority and the successful offeror.
16. CONTRACT AMENDMENTS: Amendments to any contract between the Pee Dee Regional Transportation Authority and the contractor must be reviewed and approved by the Executive Director, Pee Dee Regional Transportation Authority.
17. ASSIGNMENT: No contract or its provisions may be assigned, sublet, or transferred without the written consent of the Pee Dee Regional Transportation Authority.
18. RECORDS RETENTION & RIGHT TO AUDIT: The Pee Dee Regional Transportation Authority shall have the right to audit the books and records of the contractor as they pertain to this contract, both independent of, and pursuant to, S.C. Code Section 11-35-2220. Such books and records shall be maintained for a period of five (5) years from the date of final payment under the contract.

The Pee Dee Regional Transportation Authority may conduct, or have conducted, performance audits of the contractor. The Pee Dee Regional Transportation Authority may conduct, or have conducted, audits of specific requirements of this bid as determined necessary by the State.

Pertaining to all audits, contractor shall make available to the Pee Dee Regional Transportation Authority access to its computer files containing the history of contract performance and all other

documents related to the audit. Additionally, any software used by the contractor shall be made available for auditing purposes at no cost to the Pee Dee Regional Transportation Authority.

## **PART XV-GENERAL INSTRUCTIONS**

1. **INTENT TO PERFORM:** It is the intent and purpose of the Pee Dee Regional Transportation Authority that this request permits competition. It shall be the offeror's responsibility to advise the Pee Dee Regional Transportation Authority if any language, requirements, etc., or any combinations thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source. Such notification must be submitted in writing, and must be received by the Pee Dee Regional Transportation Authority within fifteen (15) days of the date of issue. A review of such notifications will be made.
2. **PUBLIC OPENING:** Offers will be publicly opened at the date / time and at the location identified on the Cover Page, or last Amendment, whichever is applicable
3. **PREPARATION OF PROPOSAL:**
  - a. All proposals should be complete and carefully worded and must convey all of the information requested by the Pee Dee Regional Transportation Authority. If significant errors are found in the offeror's proposal, or if the proposal fails to conform to the essential requirements of the RFP, the Pee Dee Regional Transportation Authority and the Pee Dee Regional Transportation Authority alone will be the judge as to whether that variance is significant enough to reject the proposal. PDRTA may cancel this solicitation in whole or in part. The PDRTA may reject any or all proposals in whole or part.
  - b. Each copy of the proposal should be bound in a single volume where practical. All documentation submitted with the proposal should be bound in that single volume.
  - c. If your proposal includes any comment over and above the specific information requested in our Request for Proposal, you are to include this information as a separate appendix to your proposal.
  - d. 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.)
4. **DISCUSSION/NEGOTIATION:**

By submission of a proposal, offeror agrees that during the period following issuance of a proposal and prior to final award of contract, offeror shall not discuss this Procurement with any party except members of the Pee Dee Regional Transportation Authority or other parties specifically designated in this solicitation. Offeror shall not attempt to discuss with or attempt to negotiate with the using Agency any aspect of the procurement without prior approval of the Pee Dee Regional Transportation Authority procurement officer responsible for the procurement.

5. AMENDMENTS:

- a. VERBAL COMMENTS OR DISCUSSIONS BY THE PEE DEE REGIONAL TRANSPORTATION AUTHORITY RELATIVE TO THIS SOLICITATION CANNOT ADD, DELETE OR MODIFY ANY WRITTEN PROVISION. ANY ALTERATION MUST BE IN THE FORM OF A WRITTEN AMENDMENT TO ALL OFFEROR'S.
- b. If it becomes necessary to revise any part of the RFP, an amendment will be provided to all eligible offerors. The solicitation may be amended at any time prior to opening. All actual and prospective offerors shall acknowledge receipt of any amendment to this solicitation by signing and returning the amendment before the closing of the RFP

6. ORAL PRESENTATIONS OR INTERVIEWS:

Offerors may be requested to make oral presentations of their proposals to the Pee Dee Regional Transportation Authority. Such presentations provide an opportunity for the offerors to clarify their proposals and to ensure a thorough understanding. In addition, interviews with selected responsible firms may be scheduled. Each firm may be expected to make a formal presentation on the content of its proposal and its ability to under take the required work.

7. FUNDING:

The offeror shall agree that funds expended for the purposes of the contract must be appropriated by the Federal Transit Administration and the South Carolina Department of Transportation for each fiscal year included within the contract period. Therefore, the contract shall automatically terminate without penalty or termination costs if such funds are not appropriated. In the event that funds are not appropriated for the contract, the offeror shall not prohibit or otherwise limit the State Agency's right to pursue and contract for alternate solutions and remedies as deemed necessary by the State Agency for the conduct of its affairs. The requirements stated in this paragraph shall apply to any amendment or the execution of any option to extend the contract.

8. RESPONSIVENESS / IMPROPER OFFERS (JANUARY 2006)

(a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.

(b) 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, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.

(c) Responsiveness. Any offer that fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers that 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 Pee Dee Regional Transportation Authority 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 Officer.

(d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price.

(e) Unbalanced Bidding. The Pee Dee Regional Transportation Authority may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or sub-line 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 the Authority even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

9. AWARD:

An award resulting from this request shall be awarded to the responsive and responsible offeror(s) whose proposal is determined to be most advantageous to the Pee Dee Regional Transportation Authority, taking into consideration price, when required, and the evaluation factors set forth herein; however, the right is reserved to reject any and all proposals received and in all cases, the Pee Dee Regional Transportation Authority will be the sole judge as to whether an offeror's proposal has or has not satisfactorily met the requirements of this RFP.

10. SUBMITTING CONFIDENTIAL INFORMATION (August 2002):

(An overview is available at [www.state.sc.us/mmo/legal/foia.htm](http://www.state.sc.us/mmo/legal/foia.htm)) 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 contend contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a) (1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. 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 as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to 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 officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Offeror marked as "CONFIDENTIAL" or "TRADE SECRET" or "PROTECTED". (All references to S.C. Code of Laws.)

11. RIGHT OF NON/COMMITMENT OR REJECTION:

This solicitation does not commit the Pee Dee Regional Transportation Authority to award a contract, to pay any costs incurred in the preparation of a proposal, or to procure or contract for the articles of goods or services. The Pee Dee Regional Transportation Authority reserves the right to accept or reject any or all proposals received as a result of this request, or to cancel in part or in its entirety this proposal if it is in the best interest of the Pee Dee Regional Transportation Authority to do so.

12. RIGHT TO PROTEST:

Any offeror desiring to exercise rights under Section 11-35-4210 (Right to Protest) of the South Carolina Consolidated Procurement code should direct all correspondence to Executive Director, Pee Dee Regional Transportation Authority, P.O. Box 2071,313 S. Stadium Road, Florence, SC 29503.

13. COST:

Cost submitted with proposal shall be firm for a period of at least 90 days from the closing date.

14. UNSUCCESSFUL OFFERORS:

Offerors not awarded a contract under this solicitation, may request return of their proposals within thirty (30) days after notification of award is mailed. All cost of returns will be paid by the offeror. If Federal Express, UPS, or other shipping number is not received with request, all materials will be destroyed.

15. DISCUSSION WITH RESPONSIVE OFFERORS:

Discussions may be conducted with responsive offerors who submit proposals for the purpose of clarification to assure full understanding of the requirements of the request for proposals. All offerors, whose proposals, in the procuring agency's sole judgment, needing clarification shall be accorded such an opportunity.

16. PAYMENT FOR GOODS & SERVICES:

Payment for goods & services received by the State shall be processed in accordance with Pee Dee Regional Transportation Authority's Finance Policy.

17. TAXES:

The Pee Dee Regional Transportation Authority is a Public Entity of the State of South Carolina and does not pay tax. A copy of the PDRTA's Tax Exemption Certificate will be furnished upon request.

#### **PART XVI- TERMS AND CONDITIONS – A. GENERAL**

**ASSIGNMENT:** No contract or its provisions may be assigned, sublet, or transferred without the written consent of the Procurement Officer.

**CHOICE-OF-LAW:** 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.

**FIXED PRICING REQUIRED:** 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 and this clause does not prohibit contractor from offering lower pricing after award.

**TERMINATION DUE TO UNAVAILABILITY OF FUNDS:** Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. 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.

**CONTRACT DOCUMENTS & ORDER OF PRECEDENCE:** (a) 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 Officer, (2) documentation regarding the clarification of an offer [e.g., 11-35-1520(8) or 11-35-1530(6)], if applicable, (3) the solicitation, as amended, (4) modifications, if any, to your offer, if accepted by the Procurement Officer, (5) your offer, (6) any statement reflecting the state's final acceptance (a/k/a "award"), and (7) 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. (b) The terms and conditions of documents (1) through (6) above shall apply notwithstanding any additional or different terms and conditions in either (i) a purchase order or other instrument submitted by the State or (ii) any invoice or other document submitted by Contractor. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) 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 Officer shall be void and of no effect

#### **PART XVII- TERMS AND CONDITIONS –SPECIAL**

**CONTRACTOR PERSONNEL:** 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.

**MATERIAL AND WORKMANSHIP:** Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended

**SHIPPING / RISK OF LOSS F.O.B. Destination.** Destination is the Pee Dee Regional Transportation Authority; 313 S. Stadium Road, Florence, SC 29506 designated receiving site, or other location, as specified herein.

## PART XVIII-REQUIRED FEDERAL TRANSIT ADMINISTRATION CLAUSES

### LOBBYING

**31 U.S.C. 1352**  
**49 CFR Part 19**  
**49 CFR Part 20**

#### Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

#### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

#### Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

#### Mandatory Clause/Language

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

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

contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

*(To be submitted with each bid or offer exceeding \$100,000)*

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

## **GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

### **49 CFR Part 29 Executive Order 12549**

#### **Background and Applicability**

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

#### **Clause Language**

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

#### **Suspension and Debarment**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or bid, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Pee Dee Regional Transportation Authority. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Pee Dee Regional Transportation Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of

49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **ACCESS TO RECORDS AND REPORTS**

**49 U.S.C. 5325  
18 CFR 18.36 (i)  
49 CFR 633.17**

### **Applicability to Contracts**

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### **Flow Down**

FTA does not require the inclusion of these requirements in subcontracts.

### **Model Clause/Language**

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

**Access to Records** - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers

and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

### Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u>	None	Those imposed on state pass thru to Contractor	None	None	None	None
a. Contracts below SAT (\$100,000)	None unless <sup>1</sup> non-competitive award		Yes, if non-competitive award or if funded thru <sup>2</sup> 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
b. Contracts above \$100,000/Capital Projects						
<u>II Non State Grantees</u>	Yes <sup>3</sup>	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
a. Contracts below SAT (\$100,000)	Yes <sup>3</sup>		Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects						

#### Sources of Authority:

<sup>1</sup> 49 USC 5325 (a)

<sup>2</sup> 49 CFR 633.17

<sup>3</sup> 18 CFR 18.36 (i)



## **ENERGY CONSERVATION REQUIREMENTS**

**42 U.S.C. 6321 et seq.  
49 CFR Part 18**

### **Applicability to Contracts**

The Energy Conservation requirements are applicable to all contracts.

### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### **Flow Down**

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

### **Model Clause/Language**

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.

**Energy Conservation** – The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## **FEDERAL CHANGES**

**49 CFR Part 18**

### **Applicability to Contracts**

The Federal Changes requirement applies to all contracts.

### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### **Flow Down**

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

### **Model Clause/Language**

No specific language is mandated. The following language has been developed by FTA.

**Federal Changes** – Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the [Master Agreement](#) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

### **Applicability to Contracts**

Applicable to all contracts.

### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### **Flow Down**

Not required by statute or regulation for either primary contractors or sub-contractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

### **Model Clause/Language**

While no specific language is required, FTA has developed the following language.

### **No Obligation by the Federal Government.**

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

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

## **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

**31 U.S.C. 3801 et seq.  
49 CFR Part 31 18 U.S.C. 1001  
49 U.S.C. 5307**

### **Applicability to Contracts**

These requirements are applicable to all contracts.

### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### **Flow Down**

These requirements flow down to contractors and sub-contractors who make, present, or submit covered claims and statements.

### **Model Clause/Language**

These requirements have no specified language, so FTA proffers the following language.

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

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

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

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

### **TERMINATION**

#### **49 U.S.C. Part 18 FTA Circular 4220.1E**

#### **Applicability to Contracts**

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

#### **Flow Down**

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

#### **Model Clause/Language**

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

**a. Termination for Convenience (General Provision)** The Pee Dee RTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Pee Dee RTA to be paid the Contractor. If the Contractor has any property in its possession belonging to

the Pee Dee RTA, the Contractor will account for the same, and dispose of it in the manner the Pee Dee RTA directs.

**b. Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Pee Dee RTA may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Pee Dee Regional Transportation Authority that the 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 the Contractor, the Pee Dee Regional Transportation Authority, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**c. Opportunity to Cure (General Provision)** The Pee Dee Regional Transportation Authority in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the Pee Dee Regional Transportation Authority satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from the PDRTA setting forth the nature of said breach or default, the PDRTA shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the PDRTA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

**e. Termination for Convenience (Professional or Transit Service Contracts)** The PDRTA, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the PDRTA shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

**f. Termination for Default (Supplies and Service)** If the 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 PDRTA may terminate this contract for default. The PDRTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will 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 the termination had been issued for the convenience of the PDRTA.

**g. Termination for Default (Transportation Services)** If the 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 the Contractor fails to comply with any other provisions of this contract, the PDRTA may terminate this contract for default. The PDRTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of PDRTA's goods, the Contractor shall, upon direction of the PDRTA, protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and PDRTA shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will 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 the termination had been issued for the convenience of the PDRTA.

**h. Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the PDRTA may terminate this contract for default. The PDRTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the PDRTA 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 PDRTA resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the 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

2. The contractor, within [10] days from the beginning of any delay, notifies the PDRTA in writing of the causes of delay. If in the judgment of the PDRTA, the delay is excusable, the time for completing the work shall be extended. The judgment of the PDRTA shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the PDRTA.

**i. Termination for Convenience or Default (Architect and Engineering)** The Pee Dee Regional Transportation Authority may terminate this contract in whole or in part, for the PDRTA's convenience or because of the failure of the Contractor to fulfill the contract obligations. The PD RTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services

affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the PDRTA, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the PDRTA may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the PDRTA.

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 the termination had been issued for the convenience of the Recipient.

**j. Termination for Convenience of Default (Cost-Type Contracts)** The PDRTA may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the PDRTA or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the PDRTA, or property supplied to the Contractor by the PDRTA. If the termination is for default, the PDRTA may fix the fee, if the contract provides for a fee, to be paid the 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 PDRTA and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the PDRTA, the Contractor shall be paid its contract close-out 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 PDRTA determines that the 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 the contractor, the PDRTA, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

### **CIVIL RIGHTS REQUIREMENTS**

**29 U.S.C. § 623, 42 U.S.C. § 2000  
42 U.S.C. § 6102, 42 U.S.C. § 12112  
42 U.S.C. § 12132, 49 U.S.C. § 5332  
29 CFR Part 1630, 41 CFR Parts 60 et seq.**

#### **Applicability to Contracts**

The Civil Rights Requirements apply to all contracts.

#### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

## **Flow Down**

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

## **Model Clause/Language**

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

**Civil Rights** - The following requirements apply to the underlying contract:

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

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

(a) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age.

Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

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

### **FTA Circular 4220.1E**

#### **Applicability to Contracts**

The incorporation of FTA terms applies to all contracts.

#### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

#### **Flow Down**

The incorporation of FTA terms has unlimited flow down.

#### **Model Clause/Language**

FTA has developed the following incorporation of terms language:

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in [FTA Circular 4220.1E](#) are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any the PDRTA's requests which would cause the PDRTA to be in violation of the FTA terms and conditions.

## **BREACHES AND DISPUTE RESOLUTION**

### **49 CFR Part 18 FTA Circular 4220.1E**

#### **Applicability to Contracts**

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

#### **Flow Down**

The Breaches and Dispute Resolutions requirements flow down to all tiers.

#### **Model Clauses/Language**

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in



developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

**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 the PDRTA's Executive Director. 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 Executive Director. 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 PDRTA's Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by the PDRTA, 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 therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the PDRTA 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 PDRTA is located.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available there under 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 PDRTA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

## **RECYCLED PRODUCTS**

**42 U.S.C. 6962**

**40 CFR Part 247**

**Executive Order 12873**

### **Applicability to Contracts**

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

## **Flow Down**

These requirements flow down to all to all contractor and subcontractor tiers.

## **Model Clause/Language**

No specific clause is mandated, but FTA has developed the following language.

**Recovered Materials** - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

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

49 CFR Part 26

### **Background and Applicability**

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

### **Clause Language**

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

### **Disadvantaged Business Enterprises**

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 3 %. A separate contract goal has not been established for this procurement.

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

c. *{If a separate contract goal has been established, use the following}* Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as

provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following [**concurrent with and accompanying sealed bid**] [**concurrent with and accompanying an initial proposal**] [**prior to award**]:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

[**Bidders**][**Offerors**] must present the information required above with initial proposals (see 49 CFR 26.53(3)).

*{If no separate contract goal has been established, use the following}* The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the . In addition, 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.

e. The contractor must promptly notify , 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 .

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## **BUY AMERICA REQUIREMENTS**

49 U.S.C. 5323(j)  
**49 CFR Part 661**

### Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

### Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

### Mandatory Clause/Language

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless 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 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

*Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

Certification requirement for procurement of buses, other rolling stock and associated equipment.

*Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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**CLEAN WATER REQUIREMENTS**

33 U.S.C. 1251

**Applicability to Contracts**

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

**Flow Down**

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

**Model Clause/Language**

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements.

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

**CLEAN AIR**

42 U.S.C. 7401 et seq  
40 CFR 15.61  
49 CFR Part 18

**Applicability to Contracts**

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Model Clauses/Language

No specific language is required. FTA has proposed the following language.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

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**APPENDIX A  
BID PRICE SHEET  
This sheet must be used.**

**PDRTA IS REQUESTING ONE MONTHLY RATE FOR THE SERVICES DESCRIPED IN THIS REQUEST FOR PROPOSAL:**

Price per month: \_\_\_\_\_

**PLEASE LIST BELOW ANY ADDITIONAL PER HOURLY CHARGES INCLUDING TRAVEL EXPENSES:**

Description of services	Price per Hour

The undersigned of this form as Offeror, upon receipt of contract acceptance hereby agrees to furnish the above items to the PDRTA in accordance with all the instructions that have been carefully reviewed and examined by the Offeror. The Offeror has submitted this proposal with the understanding that the acceptance in writing by the PDRTA of this offer to furnish the services described herein shall constitute a contract between the Offeror and the PDRTA which shall bind the Offeror on its part to furnish and deliver at the prices given and in accordance with the terms and conditions as set forth in the Request for Proposal.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company

\_\_\_\_\_  
Date