



BID INVITATION # 0910-04

**SEALED BIDS WILL BE RECEIVED UNTIL
September 2, 2010 at 3:00 PM in the PDRTA's
Conference Room at 313 S. Stadium Road,
Florence, SC 29506**

PUBLICLY OPENED

U.S. MAIL BIDS TO:
Pee Dee Regional Transportation Authority
Procurement Department
Post Office Box 2071
Florence, SC. 29503

HAND CARRIED, UPS, FEDEX ETC.
Pee Dee Regional Transportation Authority
Procurement Department
313 S. Stadium Road
Florence, SC 29506
Telephone no. (843) 664-5710 - Sandy Garris

BID TITLE: Coffee and Water Services

MAILING DATE: **DIRECT INQUIRIES TO:** sandygarris@pdrta.org

VENDOR NAME: **REQUEST NO. IFB# 0910-04**

VENDOR MAILING ADDRESS **FEDERAL I.D. OR SOCIAL SECURITY NUMBER**

CITY - STATE - ZIP

AREA CODE TELEPHONE NUMBER **AUTHORIZED SIGNATURE (MANUAL)**

I CERTIFY THAT THIS BID IS MADE WITHOUT PRIOR UNDERSTANDING, AGREEMENT, OR CONNECTION WITH ANY CORPORATION, FIRM, OR PERSON SUBMITTING A BID FOR THE SAME MATERIALS, SUPPLIES, OR EQUIPMENT, AND IS IN ALL RESPECTS FAIR & WITHOUT COLLUSION OR FRAUD. I AGREE TO ABIDE BY ALL CONDITIONS OF THIS BID AND CERTIFY THAT I AM AUTHORIZED TO SIGN THIS BID FOR THE BIDDER

AUTHORIZED SIGNATURE (TYPED)

TITLE DATE

IF A STATEMENT OF AWARD IS DESIRED PLEASE ENCLOSE A SELF ADDRESSED STAMPED ENVELOPE

IMPORTANT

DISCUSSIONS/NEGOTIATIONS

By submission of a bid, vendor agrees that during the period following issuance of a bid and prior to notification of intent and/or award of contract, vendor shall not discuss this procurement with any party except members of the PDRTA's procurement office or other parties designated in this solicitation. Vendor shall not attempt to discuss with or negotiate with the end user any aspects of the procurement with prior approval of the procurement officer responsible for the procurement.

BID ACCEPTANCE AND DELIVERY STATEMENT

In compliance with the invitation, and subject to all conditions thereof, the above signed offers and agrees, if this bid is accepted within **40 days** from date of opening to furnish any or all items/services quoted at prices set forth and make delivery **within 30 days** after receipt of order with all transportation costs included and prepaid.

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PART I-INSTRUCTIONS TO BIDDERS

1. One copy of bid invitation is required. All bids must be sealed.
2. Bids, amendments thereto or withdrawal requests must be received by the time advertised for bid opening to be timely filed. It is the vendor's sole responsibility to insure that these documents are received by the person (or office) at the time indicated in the solicitation document. Any withdrawal request received after time of opening shall be by the regulations in SC Consolidated Procurement Code.
3. When specifications or descriptive papers are submitted with bid invitation, enter bidder's name thereon.
4. Submit your signed bid on this form. Show bid number on envelope as instructed. The PDRTA assumes no responsibility for unmarked or improperly marked envelopes. All envelopes received showing a bid number are placed directly under locked security until the date and time of opening. **DO NOT INCLUDE MORE THAN ONE BID INVITATION PER ENVELOPE.** If directing any other correspondence, address the envelope to the procurement officer but **DO NOT** include the bid number on this envelope since it does not include your bid.

PART II - GENERAL PROVISIONS

1. The PDRTA reserves the right to reject any and all bids and to cancel the solicitation.
2. **PAYMENT TERMS:** Unit prices will govern over extended prices unless otherwise stated in the bid invitation. Payment terms will be net 30 after services are performed.
3. **BIDDERS QUALIFICATION:** Bidders must furnish satisfactory evidence of their ability to furnish products or services in accordance with the terms and conditions of these specifications. The PDRTA reserves the right to make final determination as to the bidder's ability to provide the products or services requested herein. By submission of a bid, you are guaranteeing that all goods and services meet the requirements of the solicitation during the contract period.
4. **AMENDMENTS:** All amendments to and interpretations of this solicitation shall be in writing from the procurement office. The procurement officer shall not be legally bound by any amendment or interpretation that is not in writing. If it becomes necessary to revise any part of the IFB, an amendment will be provided to all eligible bidders. The solicitation may be amended at any time prior to opening. All actual and prospective bidders shall acknowledge receipt of any amendment to this solicitation by signing and returning the amendment before closing the IFB.
5. **BIDDERS RESPONSIBILITY:** Each bidder shall fully acquaint himself with conditions relating to the scope of work and restrictions under the conditions of this bid and it is expected this may require on-site observation. The failure or omission of a bidder to acquaint himself with existing conditions shall in no way relieve him of any obligation with respect to this bid or to the contract.
6. **AWARD CRITERIA:** The contract shall be awarded to the lowest responsible and responsive bidder(s) whose bid meets the requirements and criteria set forth in the IFB and is most advantageous to PDRTA. All items unless otherwise stated will be assumed to meet all specifications and requirements as set forth in this invitation for bid. Ambiguous bids which are

uncertain as to terms, delivery, quantity or compliance with specifications may be rejected or otherwise disregarded. All notices of Awards or notice of Intent to Award will be posted in the lobby of the Administrative Office at 313 S. Stadium Road, Florence, SC 29506 unless stated otherwise in this solicitation.

7. **REJECTION:** The PDRTA reserves the right to reject any bid that contains prices for individual items or services that are unreasonable when compared to the same or other bids if such action is in the best interest of the PDRTA. This solicitation does not commit the PDRTA to award a contract, to pay any costs incurred in the preparation of a bid, or to procure or contract for the articles of goods or services.
8. **COMPETITION:** This solicitation is intended to promote competition. If the language, specifications, terms and conditions, or any combination thereof restricts or limits the requirements in this solicitation to a single source, it shall be the responsibility of the interested vendor to notify the PDRTA procurement office in writing within fifteen (15) days of the date of issue. The solicitation may or may not be changed but a review of such notification will be made prior to award.
9. **WAIVER:** The PDRTA reserves the right to waive any instruction to bidders, general or special provision, general or special condition, or specifications deviation in accordance with the authority provided in the regulations of the SC Consolidate Procurement Code.
10. **ORDER OF PRECEDENCE:** In the event of inconsistency between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following order:
 - A. The bidding schedule,
 - B. General provisions and general conditions,
 - C. Instruction to bidders,
 - D. Special provisions or special conditions of the contract whether incorporated by reference or otherwise, and
 - E. The specifications.
11. **CORRECTIONS OR ERRORS ON THIS BID FORM:** 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. Erasures or use of typewriter correction fluid may be cause for rejection. No bid shall be altered or amended after specified time for opening.
12. **BIDDING CONDITION OF PRICE:** Bid price must be fixed for the term of the contract, except the PDRTA shall be advised of, and receive the benefit of, any price decrease. The Contractor must agree to provide written price reduction information within ten (10) days of its effective date.
13. **TERM/OPTION TO EXTEND:** INITIAL CONTRACT PERIOD: ONE (1) YEAR. This contract will automatically extend with four (4) one year extensions on each anniversary date unless either party elects otherwise as allowed in the contract. If the Contractor elects not to extend on the anniversary date, the Contractor must notify the PDRTA's purchasing office of its intention in writing 60 days prior to the anniversary date.
14. **PRICE ADJUSTMENT BASED ON CONTRACTORS COST:** Any request for price increase must be submitted to the PDRTA's purchasing office at least ninety (90) days prior to the automatic renewal date. (Price increases will only become effective if approved in writing by the PDRTA's Purchasing office after negotiations).

15. **REFERENCES:** Bidder **must submit three (3) references** from current or past customers with bid.

PART III-GENERAL CONDITIONS

1. **DEFAULT:** In case of default by the Contractor, the PDRTA reserves the right to purchase any or all items in default in the open market, charging the Contractor with any additional costs. The defaulting Contractor shall not be considered a responsible bidder until the assessed charge as been satisfied.
2. **NON-APPROPRIATIONS:** Any contract entered into by the PDRTA resulting from this bid invitation shall be subject to cancellation without damages of further obligation when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period or appropriated year.
3. **CONTRACT ADMINISTRATION:** Questions or problems arising after Award of this contract shall be directed to: PDRTA, Attn: Sandy Garris, P.O. Box 2071, Florence, SC 29503 or via email (sandygarris@pdrt.org).
4. **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 government in either its sovereign or contractual capacity, fire, 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 default of a 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.
5. **SAVE HARMLESS:** (This general condition does not apply to solicitations for service requirements). The successful bidder shall indemnify and save harmless the PDRTA and its officers, agents, and employees, from all suits or claims of any character brought by reason of infringing on any patent, trade mark or copyright. Bidder shall have no liability to the PDRTA if such patent trade mark or copyright infringement or claim is based upon the bidder's use of material furnished to the bidder by the PDRTA.
6. **PUBLICITY RELEASES:** Contractor agrees not to refer to award of this contract in commercial advertising in such a manner as to state or imply that the products or services provided are endorsed or preferred by the user.
7. **QUALITY OF PRODUCTS:** (This general condition does not apply to solicitations for printing or service requirements). Unless otherwise indicated in the bid it is understood and agreed that any item offered or shipped on this bid shall be new and in first class condition, that all containers shall be new and suitable for storage or shipment, and that prices include standard commercial packaging. For information technology procurements as defined in the SC Consolidate Procurement Code and Regulations, if items that are other than new (i.e. remanufactured or refurbished) are desired to be bid, the bidder must obtain written permission to bid such items at least five (5) days in advance of bid opening from the person to whom inquiries are to be directed as listed on the front page of the bid invitation.

8. **TAX CREDIT AVAILABILITY:** Vendors interested in income tax credit availability by subcontracting with certified minority firms should contact the office of Small & Minority Business Assistance, 1205 Pendleton Street, Columbia, South Carolina (803-734-0562).
9. **S.C. LAW CLAUSE:** Upon award of a contract under this bid, the person, partnership, association, or corporation to whom the award is made must comply with the laws of South Carolina which require such person or entity to be authorized and/or licensed to do business in this state. Notwithstanding the fact that applicable statutes may exempt or exclude the successful bidder from requirements that it be authorized and/or licensed to do business in this state, by submission of this signed bid, the bidder agrees to subject himself to the jurisdiction and process of the courts of the State of South Carolina as to all matters and disputes arising or to arise under the contract and the performance thereof, including any questions as to the liability for taxes, licenses, or fees levied by the state.
10. **TERMINATION:** Subject to the provisions below, the contract may be terminated for any reason by the PDRTA's procurement office providing a thirty (30) day advance notice in writing is given to the Contractor.
 - A. **TERMINATION FOR CONVENIENCE:** In the event that this contract is terminated or cancelled upon request and for the convenience of the PDRTA without the required thirty (30) days advance written notice, then the PDRTA may negotiate reasonable termination costs, if applicable.
 - B. **TERMINATION FOR CAUSE:** Termination by the PDRTA 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 in this bid shall apply (see general conditions #1).
11. **ASSIGNMENT:** No contract or its provisions may be assigned, sublet, or transferred without the written consent of the PDRTA's procurement office.
12. **AFFIRMATIVE ACTION:** The successful bidder will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, national origin or physical disability.
13. **ITEM SUBSTITUTION:** This general condition does not apply to solicitations for printing or service requirements. No substitutions will be allowed on purchase orders issued by the agency without permission of the PDRTA's procurement office.
14. **RESTRICTION/LIMITATIONS:** No purchases are to be made from this contract of any item that is not listed or of any item that is currently authorized under any contract awarded prior to this contract.
15. **PURCHASES FROM OTHER SOURCES:** (This general condition does not apply to solicitations for printing or service requirements). The PDRTA reserves the right to bid separately any unusual requirements or large quantities of the items specified in this proposed contract.
16. **INDEMNIFICATION:** The PDRTA, its officers, agents, and employees shall be held harmless from liability from any claims, damages and actions of any nature arising from the use of any materials furnished by the Contractor, provided that such liability is not attributable to negligence on the part of the using agency or failure of the using agency to use the materials in the manner outlined by the Contractor in descriptive literature or specifications submitted with the Contractor's bid.

17. **OTHER INFORMATION:** State and Federal funds received by PDRTA will be used as a component of the overall funding. Accordingly, the selected firm will be required to comply with all applicable State/Federal regulations and contracting provisions required by the State and Federal funding authority, including Civil Rights, Disadvantaged Business Enterprises (DBE), Drug Free Workplace and other applicable assurance provisions. In addition, the contract must be in compliance with Federal, State, and Local requirements applicable to such contract.

PART IV - GENERAL INSTRUCTIONS

1. **RECEIPT AND DEADLINE OF PROPOSAL:** State law requires that a copy of the bid be submitted no later than the date and time specified in the Invitation for Bid. Bidders mailing bids should allow a sufficient mail delivery period to insure timely receipt of their proposals by the issuing office. Any bid received after the scheduled opening date and time will be immediately disqualified in accordance with the SC Consolidated Procurement Code and Regulations.
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. **QUESTIONS FROM BIDDERS:** Any prospective Offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions must be received by the Procurement Officer no later than **10:00 A.M. September 15, 2010** prior to opening unless otherwise stated on the cover page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. Any information given a prospective Offeror concerning a solicitation will be furnished promptly to all other prospective Bidders as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective Bidders. PDRTA seeks to permit maximum practicable competition. Bidders are urged to advise the Procurement Officer as soon as possible regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition.
4. **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 PDRTA'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.
5. **RESPONSIVENESS / IMPROPER OFFERS (JANUARY 2006):** Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation responsiveness. Any offer that fails to conform to the material requirements of the Solicitation may be rejected as non-responsive. 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 PDRTA cannot be determined. Bidders 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.
 - A. Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price.

- B. Unbalanced Bidding. The PDRTA may reject any bid as non-responsive 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.

6. **SUBMITTING CONFIDENTIAL INFORMATION** (August 2002): An overview is available at 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 every page, or portion thereof, with the word "CONFIDENTIAL", that Offeror contends 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 every page, or portion thereof, with the words "TRADE SECRET", 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 every page, or portion thereof, with the word "PROTECTED" 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 non-responsive. 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:

- A. 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",
- B. 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
- C. 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.)

7. **RIGHT TO PROTEST:** Any Offeror desiring to exercise rights under the (Right to Protest) of the South Carolina Consolidated Procurement code should direct all correspondence to Executive Director, PDRTA, P.O. Box 2071, 313 S. Stadium Road, Florence, SC 29503.
8. **COST:** Cost submitted with bid shall be firm for a period of at least one year from the closing date.
9. **UNSUCCESSFUL BIDDERS:** Bidders not awarded a contract under this solicitation, may request return of their bids 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.
10. **DISCUSSION WITH RESPONSIVE BIDDERS:** Discussions may be conducted with responsive bidders who submit bids for the purpose of clarification to assure full understanding of the requirements of the request for bids. All bidders, whose bids, in the procuring agency's sole judgment, needing clarification shall be accorded such an opportunity.
11. **PAYMENT FOR GOODS & SERVICES:** Payment for goods and services received by the State shall be processed in accordance with PDRTA's Finance Policy.
12. **TAXES:** The PDRTA 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. Do not include any taxes in the bid price shown that the PDRTA may be required to pay. Federal taxes where applicable shall be eliminated.
13. **ASSIGNMENT:** No contract or its provisions may be assigned, sublet, or transferred without the written consent of the Procurement Officer.
14. **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.
15. **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. The Contractor must agree to provide written price reduction information within ten (10) days of its effective date.
16. **CONTRACT DOCUMENTS & ORDER OF PRECEDENCE:** Any contract resulting from this solicitation shall consist of the following documents:
 - A. A Record of Negotiations, if any, executed by you and the Procurement Officer
 - B. Documentation regarding the clarification of an offer, if applicable,
 - C. The solicitation, as amended,
 - D. Modifications, if any, to your offer, if accepted by the Procurement Officer,
 - E. Your offer,
 - F. Any statement reflecting the state's final acceptance (a/k/a "award"), and
 - G. 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. The terms and conditions of documents A through G above, shall apply notwithstanding any additional or different terms and conditions in either a purchase order or other instrument submitted by the PDRTA or 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. 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 V - TERMS AND CONDITIONS –SPECIAL

1. **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.
2. **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.
3. **SHIPPING / RISK OF LOSS F.O.B., freight prepaid.** Destination is the PDRTA, 313 S. Stadium Road, Florence, SC 29506. It is agreed by the parties hereto that delivery by the Contractor to the common carrier does not constitute delivery to the department. Any claim for loss or damage shall be between the Contractor and the carriers.

PART VI -SPECIAL PROVISIONS

The purpose of this bid invitation is to establish a source of supply for the purchase of coffee and water services.

1. An agency contract will be awarded by the PDRTA's Procurement Office for the period indicated and in accordance with the provisions and conditions of this solicitation. Award will be made to one bidder.
2. Bid prices must include any environmental charges and/or incidental cost.
3. SEE SCOPE OF WORK, SPECIFICATIONS, AND BID SHEET
4. SEE REQUIRED FEDERAL TRANSIT ADMINISTRATION CONTRACT CLAUSES

PART VII-TIMELINE

Below is the schedule for accepting and choosing bids:

Date	Task
9/7/10	Request For Bid Issued
9/9/2010	South Carolina Business Opportunities (SCBO) advertisement
9/15/2010	Questions submitted by fax or electronic mail to Sandy Garris, PDRTA, 10:00 A.M.
9/16/2010	All questions will be answered by Sandy Garris, PDRTA
9/23/2010	Request For Bids Due at PDRTA, 3:00 PM
9/24/2010	Statement to Award will be posted on the window in PDRTA's lobby at the Administrative Office, 313 S. Stadium Road, Florence, SC 29506 and PDRTA's website (www.pdrta.org)

PART VIII – SCOPE OF WORK AND SPECIFICATIONS

1. **SCOPE OF WORK:** The PDRTA is requesting a vendor to furnish all materials, labor and equipment to service PDRTA's three locations with coffee, chocolate and condiments. The Florence location will need water services also. The three locations are as follows:

- 313 South Stadium Road, Florence, SC 29506
- 3908 Hwy. 9, Cheraw, SC 29520
- 140 Airport Court Road, Mullins, SC 29574

This Contract will include but not limited to the following:

- Product delivery.
- Cleaning and servicing the brewing equipment.
- Rotating the inventory to assure freshness of product.
- Restocking the products when needed.
- For accounting purposes PDRTA will need an itemized invoice.

2. **SPECIFICATIONS AND STANDARDS:** This contract calls for a coffee brewing system that serves one cup (4 oz to 10 oz cups) at the time.

- The system should manually eject fresh packs into a bin or receptacle.
- Drinks should be ready for use and available in 30 to 60 seconds.
- A LCD screen should highlight the drink categories and options.
- PDRTA is requesting graphics to provide step by step instructions on how to make the drink and indicate when the drink is complete.
- A cup sensor on the brewer will alert if the cup is not in place to prevent accidental brews.
- A removable drip tray should be available for different size mugs and for easy cleaning.
- The water source is already plumbed for a coffee dispenser.
- The power supply should be 120V, 60Hz maximum 14 amps with an electrical cord
- The brewer should have the ability to make 2 pack drinks such as cappuccinos, mochaccinos and lattes.
- PDRTA is requesting a base cabinet for the coffee brewing system and a mini cabinet to store individual packs of coffee, chocolate and etc.
- The Florence location is requesting a hot and cold water filtration system.

3. **QUALITY ASSURANCE:** Manufacturer shall have a minimum of ten (10) years experience in coffee brewing services.

4. **WARRANTY:** The water cooler should have an annual filter change and maintenance service should be included. The coffee brewing system should be free of charge and include all maintenance services.

PART IX- REQUIRED FTA CONTRACT CLAUSE SECTION
(GOVERNMENT-WIDE DEBARMENT AND SUSPENSION NONPROCUREMENT)

49 CFR Part 29
Executive Order 12549

1. **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).

2. **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 bids, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by PDRTA. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to PDRTA, 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

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
I. <u>State Grantees</u>						
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass through to Contractor	None	None	None	None
b. Contracts above \$100,000 Capital Projects	None ,unless ¹ non-competitive award		Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
II. <u>Non State Grantees</u>						
a. Contracts below SAT (\$100,000)	Yes ³	Those imposed on non-state Grantee pass through to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000 Capital Projects	Yes ³		Yes	Yes	Yes	Yes

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 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 offers 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:

1. **Termination for Convenience (General Provision).** The PDRTA 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 PDRTA to be paid the Contractor. If the Contractor has any property in its possession belonging to the PDRTA, the Contractor will account for the same, and dispose of it in the manner the PDRTA directs.

2. **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 PDRTA 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 PDRTA 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 PDRTA, 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.

3. **Opportunity to Cure (General Provision)** The PDRTA 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 condition

If Contractor fails to remedy to the PDRTA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from 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.

4. **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.
5. **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.
6. **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.

7. **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.

8. **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 compete 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:

- A. 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
- B. The Contractor, within ten (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.

9. **Termination for Convenience or Default (Architect and Engineering).** The PDRTA 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 PDRTA 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
- A. Immediately discontinue all services affected (unless the notice directs otherwise), and
 - B. 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.

10. **Termination for Convenience or 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.

C. *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.*

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 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 Parts 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

1. 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.
2. 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)).

{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.

3. The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than thirty (30) days after the Contractor's receipt of payment for that work from the PDRTA. In addition, is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to this contract is satisfactorily completed.
4. 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 PDRTA.

**APPENDIX A – BID SHEET FOR COFFEE AND WATER SERVICES
 BIDDER MUST BID ALL ITEMS AND USE THIS BID SHEET**

In compliance with Invitation for Bid Number 0910-04 and subject to the conditions therein, the undersigned offers and agrees to furnish coffee and water services for the PDRTA: Provide all literature describing the products requested including coffee brewer and water filtration system. Provide three (3) references. **BID PRICE SHALL NOT INCLUDE SALES TAX.**

ITEM DESCRIPTION	PRICE
Sugar Canister – 20 oz	
Creamer Canister – 11.5 oz	
Splenda, 400 count	
Equal, 500 count	
Coffee Mate Liquid Creamer, 180 count	
Stryro Hot Cup 10 oz, 100 ct.	
Stryro Hot Cup 12 oz, 100 ct.	
Poly Coated Paper Hot Cups, 50 ct.	
Plastic Beverage Stirrers, 1000 ct	
Coffee (all flavors) 20 cups	
Hot Chocolate, 18 cups	
	PRICE PER MONTH
Hot and Cold Water Filtration System	

Receipt of Addendum (if any)

1. _____

 Authorized Signature

2. _____

 Authorized Signature

3. _____

 Authorized Signature

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 Invitation for Bid.

 Signature

 Company

 Date