



Potomac and Rappahannock  
Transportation Commission

**DATE:** **March 27, 2017**

**REQUEST FOR PROPOSAL:** **#17-04**

**SUBJECT:** **Website Development, Programming, Hosting,  
Management and Technical Support**

### **PRE-PROPOSAL CONFERENCE**

**DATE:** **April 5, 2017**

**TIME:** **11:00 AM LOCAL TIME**

**LOCATION:** **Potomac Rappahannock Transportation  
Commission**

**14700 Potomac Mills Road  
Woodbridge, VA 22192**

### **PROPOSAL DUE**

**DATE:** **May 5, 2017**

**TIME:** **12:00 Noon LOCAL TIME**

**SUBMIT TO:** **Althea Evans, Project Manager  
Director of Marketing and Communication**

**Potomac and Rappahannock Transportation  
Commission  
14700 Potomac Mills Road  
Woodbridge, Virginia 22192  
Email: [aevans@omniride.com](mailto:aevans@omniride.com)  
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[www.prtctransit.org](http://www.prtctransit.org)

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## SECTION I

### INTRODUCTION

#### I.1 Purpose of the Request

The Potomac and Rappahannock Transportation Commission (“PRTC”) seeks a qualified company to provide services for website development, programming, hosting, management and technical support for PRTC’s website ([www.prtctransit.org](http://www.prtctransit.org)).

Outside of the website hosting function, work will be issued on a task order basis. Specific tasks will be enhancing the appearance and functionality of the website, formatting of map graphic files in an easy-to-use interactive format, maintaining integration of Google Transit as trip planning tool, assisting with the integration of Rider Express email subscription service into website, offering guidance on ADA website compliance, providing dependable hosting of website, and 24/7 technical support and guidance on implementation of new technologies or enhancements for PRTC’s website.

This section of the RFP sets forth the general information to all potential Offerors to facilitate preparation of suitable proposals for the services identified in this RFP. Section II sets out the General Terms and Conditions applicable to this procurement. A detailed Scope of Work is provided in Section III. The Proposal Requirements are addressed in Section IV of this RFP, while PRTC’s process for Selection of the Contractor and developing a contract are discussed in Section V. The requirements and process set forth therein shall be binding on all Offerors.

Throughout this RFP the following terms apply:

- “Offeror” and “Prospective Contractor” are used interchangeably and mean vendors responding to this procurement
- “Successful Contractor” means the Offeror awarded a contract to perform the work that is the subject of this procurement
- “PRTC” means the Potomac and Rappahannock Transportation Commission or its agent

#### I.2 Background Information

PRTC is a suburban public transportation agency located 25 miles south of Washington, DC. PRTC offers a variety of publicly supported services to meet community transit needs. In 2016, the Commission celebrated its thirtieth (30<sup>th</sup>) anniversary. PRTC’s services include:

- OmniRide commuter bus service from Prince William County and the Cities of Manassas and Manassas Park to the Washington, DC metropolitan area.
- Metro Direct buses connect to nearby Metrorail stations from eastern Prince William, Manassas and
- OmniLink local buses serve routes within the Prince William and the Manassas areas
- Cross County Connector offers a direct connection between eastern Prince William and the Manassas area.
- OmniMatch, a free ridematching service that helps commuters chose carpools or vanpools that best meets their needs.

### **I.3 Scope of Work**

PRTC is seeking a firm to provide professional services for website development, programming, hosting, management, and technical support related to the PRTC website ([www.prtctransit.org](http://www.prtctransit.org)). The successful offeror shall provide the means to fulfill the requirements as listed in Section III Scope of Work.

### **I.4 Period of Contract**

The term for this Contract shall be for one year from the date of execution. PRTC shall have the option to extend the Contract for nine additional (1) one year periods, contingent upon availability of funds for the purpose. The option to renew shall be exercised at the sole discretion of PRTC.

PRTC shall give the Contractor reasonable written notice of intent to renew prior to the expiration date of the current Contract. In the absence of any notification to renew, the Contract shall automatically terminate on the expiration data specified in the Contract. Agreement to extend the contract term shall not be final until the Contractor provides written acknowledgement of the extension.

### **I.5 Type of Contract**

PRTC expects to award a contract with a fixed price for the monthly hosting services and fixed hourly rates for the task order work with yearly adjustments based on the Washington-Baltimore Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).

### **I.6 Decision Not to Respond**

Some recipients of this RFP may elect not to respond with a proposal for a variety of reasons. PRTC is very interested in learning whether problems with the solicitation process have discouraged responses, or whether there are other reasons.

Firms electing not to submit a proposal are asked to provide feedback describing what factors led to the decision not to submit a proposal to the project manager whose name and e-mail are on the cover of this package.

## **I.7 Pre-proposal Conference**

A pre-proposal conference will be held at the date, time, and location shown on the cover page for this procurement. The Successful Contractor shall be held accountable for all labor, materials, and other issues identified at this meeting and within the RFP. This meeting will assist PRTC in providing the best information on its requirements and resources.

Questions to be discussed at the meeting may be submitted in advance to the Project Manager via the email address or fax number shown on the cover page, or may be presented orally at the meeting. Please write "Attention: Website Development, Programming, Management, Hosting, and Technical Support" on the subject line of any communications. All questions and requests for clarifications sought by Prospective Contractors raised during the meeting will be presented to PRTC in writing following the meeting and then answered in writing by PRTC and provided to attendees and posted on the website significantly in advance of the proposal due date. Only those questions and clarifications presented to PRTC in writing will be considered relevant to this RFP.

Those Offerors interested in attending should contact:

Katy Nicholson  
(703)-580-6114 or by e-mail at [knicholson@omniride.com](mailto:knicholson@omniride.com)

## **1.8 Clarification of Terms**

In order to ensure an impartial competitive process, questions and private communications with Prospective Contractors during proposal preparation and the evaluation period will not be accepted. If a Prospective Contractor has questions about the Scope of Work or other solicitation documents, the Prospective Contractor should contact the Project Manager whose name appears on the cover page of this solicitation. Please write "Attention Website Development, Programming, Management, Hosting, and Technical Support" on the subject line of any communications. Inquiries regarding this RFP will be allowed up to one week after the pre-proposal meeting (see date, time, and location on the cover) and the inquiries together with the responses shall be distributed to all RFP recipients and posted on the website. Any revisions to the solicitation shall be made only by addendum issued by PRTC.

## **I.9 Emergency Order**

In the event of any emergency, PRTC reserves the right to order the contracted services from other sources which could provide a faster delivery time.

#### **I.10 Timeline**

PRTC anticipates following the timeline shown below. Changes, if any, will be communicated to all parties receiving this procurement package.

<b>March 27, 2017</b>	<b>RFP Issued</b>
<b>April 5, 2017</b>	<b>Pre-proposal Conference/Teleconference 11:00 AM</b>
<b>April 14, 2017</b>	<b>Final questions due 12:00 Noon</b>
<b>April 21, 2017</b>	<b>PRTC response to questions</b>
<b>May 5, 2017</b>	<b>Proposals due 12:00 Noon</b>
<b>May 8 – 19, 2017</b>	<b>Review and evaluate proposals</b>
<b>June 1, 2017</b>	<b>Board Meeting Contract Award Recommendation</b>

## SECTION II

### GENERAL TERMS AND CONDITIONS

#### II.1 Proposal and Contract Requirements

This RFP plus the resulting proposal and contract shall be consistent with and governed by the Virginia Public Procurement Act, § 2.2-4300, Va. Code Ann. In the event of an inconsistency between the solicitation and the selection requirements set forth in this RFP versus those set forth in the Virginia Public Procurement Act, the inconsistency shall be resolved by giving precedence to the solicitation and selection requirements of the Virginia Public Procurement Act.

Federal funds will be used for this contract. Accordingly, all applicable federal and state requirements will apply. Prospective Contractors are expected to become familiar with these requirements, and should not submit proposals if unable to execute a contract containing such provisions.

PRTC will provide a contract for execution by the Successful Contractor – a sample contract containing these provisions is included as **Attachment G**. Successful Contractors will not use their own standard contracts for this engagement. Federal requirements are subject to change; the Successful Contractor is responsible for complying with the most current regulations. The Successful Contractor agrees that the most recent of such Federal requirements will govern the administration of the contract at any particular time during the contract's performance, unless PRTC issues a written determination otherwise.

#### II.2 Obligation of Prospective Contractor

By submitting a proposal, the Prospective Contractor agrees that it has satisfied itself from a personal investigation of the conditions to be met, that the obligations herein are fully understood, and no claim may be made nor will there be any right to cancellation or relief from the contract because of any misunderstanding or lack of information.

#### II.3 Qualification of Offerors

The Prospective Contractor must demonstrate to the satisfaction of PRTC that it has the necessary experience, skilled personnel, and financial resources to perform the services required under this solicitation. Qualified Offerors shall have substantial recent experience in providing similar services to those that PRTC is requesting.

PRTC may make such reasonable investigations as deemed proper and necessary to determine the competency and financial stability of the Offeror to perform the contract.

The Offeror shall furnish to PRTC such information and data for this purpose as may be requested. PRTC reserves the right to inspect the Prospective Contractor's physical plant prior to award to satisfy questions regarding the Prospective Contractor's capabilities. If, after the investigation, the evidence of competency and financial stability is not satisfactory, in the sole opinion of PRTC, PRTC reserves the right to reject the proposal.

#### **II.4 Additional Information**

PRTC reserves the right to ask any Prospective Contractor to clarify its offer.

#### **II.5 Qualification Acceptance Period**

The proposal and any modification thereof shall be binding upon the Prospective Contractor for 120 calendar days following the proposal due date. Any proposal for which the Prospective Contractor shortens the acceptance period may be rejected. At the end of that time, the Prospective Contractor may retract its proposal by giving written notice to PRTC.

#### **II.6 Delays in Award**

Delays in award of a contract, beyond the anticipated starting date, may result in a change in the contract period indicated in the solicitation. If this situation occurs, PRTC reserves the right to award a contract covering the period equal to or less than the initial term indicated in the solicitation.

#### **II.7 Award for All or Part**

Unless otherwise specified, PRTC may, if it is in the best interest of PRTC to do so, award all or part of the proposal to any Prospective Contractor whose proposal is the most responsible and responsive and whose proposal meets the requirements and criteria set forth in the Request for Proposal with respect to the items in question.

#### **II.8 Rejection of Proposals**

PRTC expressly reserves the right to reject any or all proposals or any part of a proposal, and to re-solicit the services in question, if such action is deemed to be in PRTC's best interest. PRTC will not compensate Offerors for the cost of proposal preparation whether or not an award is consummated.

#### **II.9 Single Proposal**

If a single conforming proposal is received, a price and/or cost analysis of the proposal shall be made by PRTC. A price analysis is the process of examining and evaluating a prospective price without evaluation of the separate cost element. It should be



recognized that a price analysis through comparison to other similar contracts should be based on an established or competitive price of the elements used in the comparison. The comparison shall be made to the cost of similar projects and involve similar specifications.

## **II.10 Inspection of Proposals**

The Virginia Freedom of Information Act, 2.2-3700 et seq. shall govern the release of public records related to the contract. Trade secrets or proprietary information related to procurement may not be subject to public disclosure, provided the requirements at 2.2-4342F VA Code Ann. are met.

## **II.11 Protest of Award**

A Prospective Contractor wishing to protest an award or a decision to award a contract must submit the protest, in writing, to PRTC no later than ten (10) days after either the decision to award or the award, whichever occurs first. The protest must include the basis for the protest and the relief sought. Within ten (10) days after receipt of the protest, the Executive Director of PRTC will issue a written decision stating the reasons for the action taken. This decision is final. Further action, by a Prospective Contractor, may be taken by instituting action as provided by the Code of Virginia.

The Federal Transit Administration (FTA) will only review protests regarding the alleged failure of PRTC to have written protest procedures or to follow those procedures. Alleged violations on other grounds are under the jurisdiction of the appropriate state or local administrative or judicial authorities. Any party wishing to file a protest with FTA should do so not later than five (5) days after a final decision is rendered under the PRTC's protest procedure. Further details regarding this process may be found in the FTA Circular C4220.1F, Chapter VII, Section 1.b.

## **II.12 Debarment Status**

The Commonwealth Transportation Board's Policy of Debarment dated January 1, 1987, shall apply with the exception that the debarment period shall be for a period of up to thirty-six (36) months. By submitting a proposal, the Prospective Contractor certifies that it is not currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia, nor is an agent of any person or entity that is currently debarred from submitting proposals or contracts by any agency of the Commonwealth of Virginia.

By submitting this proposal, the Prospective Contractor further certifies that it is not debarred, suspended, declared ineligible, or voluntarily excluded from participating in contracts with the federal government, and that it will refrain from awarding any subcontract to a debarred or suspended subcontractor. In addition, Successful Contractors agree to comply with the requirements of Executive Orders Nos. 12549 and

12689, "Debarment and Suspension," 31 USC Section §6101 note; and U.S. DOT regulations, "Government Debarment and Suspension (Non-procurement)," within 49 CFR Part 29.

For all contracts, the prospective contractor shall submit to PRTC a signed **"Certification of Primary Participants Regarding Debarment, Suspension, Other Ineligibility and Voluntary Exclusion," (Attachment D)** and shall require all subcontractors to submit to the prospective contractor and PRTC such signed certifications.

## **II.13 Anti-Discrimination**

By submitting a proposal, the Prospective Contractor certifies to PRTC that it will conform to the provisions of Title VI of the Federal Civil Rights Act of 1964, as amended; DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation" -- Effectuation of Title VI of the Civil Rights Act; the Virginia Fair Employment Act of 1975, as amended, where applicable; all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 20003, and 49 U.S.C. §4332 and any implementing requirements FTA may issue; the provisions of 49 U.S.C, § 5332, "Nondiscrimination in Federal Transit Programs," which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity; and Section 2.2-4311 of the Virginia Public Procurement Act.

## **II.14 Disadvantaged Business Enterprise (DBE)**

Each Prospective Contractor is required to submit the **Disadvantaged Business Enterprise (DBE) Form (Attachment E)** to the PRTC along with its proposal. This submission does not necessarily require the Prospective Contractor to utilize DBE's in the performance of the contract. Where it is practicable for any portion of the awarded contract to be subcontracted, the contractor is encouraged to offer such business to minority and/or women-owned businesses. All DBE's proposed must be certified by the U.S. DOT, another federal agency using essentially the same definition and ownership and control criteria as DOT, or another recipient of DOT funds, the Washington Metropolitan Area Transit Authority, Virginia Department of Transportation, or the Metropolitan Washington Airports Authority. If the Prospective Contractor is not itself, nor plans to utilize an authorized DBE, the Prospective Contractor should write on the DBE Form "No DBE's" and submit the form.

The Successful Contractor and its subcontractors agree to ensure that disadvantaged business enterprises as defined in 49 C.F.R. Part 26 have a level playing field on which DBEs can compete fairly and participate fully in contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, PRTC and its contractors shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure that disadvantaged business enterprises have a level playing

field to compete for and perform contracts.

The PRTC and its contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts. The Successful Contractor cannot terminate a DBE subcontractor for convenience and then perform that work with its own forces or its affiliate. Failure by the contractor or his/her subcontractor 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 PRTC deems appropriate.

The Successful Contractor shall be required to submit a schedule of DBE use and payments made to DBEs on a biannual basis as determined by PRTC. The contractor is required to maintain records and documents of payments to DBE's for three years following the performance of the contract and will make these records available to PRTC upon request.

The Successful Contractor, its agents, employees, assigns or successors, any persons, firms, or agency of whatever nature with whom it may contract or make agreement, in connection with the contract shall cooperate with PRTC in meeting its commitment and goals with regard to the creation of a level playing field of disadvantaged business enterprises. The parties to the contract shall use their best efforts to ensure that disadvantaged business enterprises shall have a level playing field to compete for subcontract work under this contract.

Reference: Federal Regulation Sec. 49 CFR 26.49

## **II.15 Insurance**

A checklist of required insurance coverage is attached and identified as **Attachment C Insurance Checklist**. Items marked "X" are required to be provided.

PRTC may require that insurance be raised due to Contract Change Orders (see **Attachment G Sample Contract** Section II.2 Modifications or Changes to the Contract) and/or execution of "Options." At no time shall the insurance coverage be less than required.

The Successful Contractor agrees to include the provisions of the foregoing clause in every subcontract or purchase order so that the provisions shall be binding upon each subcontractor or vendor.

In addition to the terms and provisions set forth above, the Successful Contractor shall be required to provide evidence of the minimum coverage described in **Attachment C Insurance Checklist**. No contract shall be finalized and no work shall commence until PRTC's insurance requirements are met. The Successful Contractor shall comply with the insurance requirements set forth in the following numbered paragraphs, plus the coverage and limits indicated on **Attachment C Insurance Checklist**. Technical

proposals must note any desired exceptions to the insurance coverage, which may include the submission of proposed alternatives.

1. The firm shall be responsible for its work and every part thereof, and for all materials, equipment, and property of any and all description used in connection therewith. The firm assumes all risks of direct and indirect damage or injury to any person or property wherever located, resulting from any action, omission, commission, or operation under the contract, or in connection in any way whatsoever with the contracted work.
2. The firm shall, during the continuance of all work under the contract provide and agree to maintain the following unless omitted from the attached "Insurance Checklist":
  - a. Workers' Compensation and Employers' Liability insurance under the Commonwealth of Virginia statutory requirements, to protect the firm from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or subcontractors, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.
  - b. General Liability insurance in the amount prescribed by PRTC, to protect the Successful Contractor, its subcontractors, and the interest of PRTC, against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form General Liability endorsement, in addition to coverage for explosion, collapse, and underground hazards, where required. Completed Operations Liability coverage shall continue in force for one year after completion of work.
  - c. Automobile Liability insurance, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Successful Contractor. In addition, all mobile equipment used by the Successful Contractor in connection with the contracted work, shall be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy.
3. Liability insurance may be arranged by General Liability and automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.

4. The Successful Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A: VI.
5. The Successful Contractor will provide an original, signed Certificate of Insurance, evidencing such insurance and such endorsements as prescribed herein, and shall have it filed with the PRTC Executive Director before a contract is executed and any work is started.
6. The Successful Contractor will secure and maintain all insurance policies of its subcontractors, which shall be made available to PRTC on demand.
7. The Successful Contractor will provide on demand, certified copies of all insurance coverage on behalf of the Contract within 10 days of demand by PRTC. These certified copies shall be sent to PRTC from the Successful Contractor's insurance agent or representative.
8. No change, cancellation, or non-renewal shall be made in any insurance coverage without a thirty (30) day written notice to the PRTC Executive Director. The Successful Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Successful Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished to the PRTC Executive Director. As an additional insured PRTC understands that it cannot always be guaranteed 30 day written notice in the event of insurance cancellation or non-renewal, however the Successful Contractor shall use its best efforts to notify PRTC should any cancellation or non-renewal of insurance occur.
9. Insurance coverage required in these specifications shall be in force throughout the Contract term. Should the Successful Contractor fail to provide acceptable evidence of current insurance within five (5) days of written notice at any time during the Contract term, PRTC shall have the absolute right to terminate the Contract without any further obligation to the Successful Contractor, and the Successful Contractor shall be liable to PRTC for the entire additional cost of procuring the incomplete portion of the Contract at time of termination.
10. Compliance by the Successful Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Successful Contractor and all subcontractors of their liabilities and obligations under this hearing or under any other section or provisions of the Contract.

11. Contractual and other Liability insurance provided under the Contract shall not contain a supervision, inspection, or services exclusion that would preclude PRTC from supervising and/or inspecting the project as to the end result. The Successful Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors and any person employed by the subcontractor.
12. Nothing contained herein shall be construed as creating any contractual relationship between the subcontractor and PRTC. The Successful Contractor shall be as fully responsible to PRTC for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.
13. Precaution shall be exercised at all times for the protection of persons (including employees) and property.
14. The Successful Contractor and all subcontractors and sub-subcontractors shall comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to the Contract.
15. If the Successful Contractor does not meet the specifications of these insurance requirements, alternate insurance coverage, satisfactory to the PRTC Executive Director, may be considered.
16. PRTC shall be named an additional insured in the General Liability policies and stated so on the Certificate.

## **II.16 Prohibition Against the Use of Federal Funds for Lobbying – (Intentionally Omitted)**

## **II.17 Protest Policy**

PRTC procurement policy and procedures for the administrative resolution of protests is set forth in §3.8 of the Public Procurement Policy and Procedures Manual (Procurement Manual). The Procurement Manual contains rules for the filing and administration of protests. The Contract Administrator shall furnish a copy of §3.8 upon request.

Chapter VII, Sec. 1.b. of Federal Transit Administration (FTA) Circular 4220.1 F addresses protests where federal funds are involved. FTA will only review protests regarding the alleged failure of the grantee to have a written protest procedure; an alleged failure to follow such procedure; or violations of Federal law or regulation. A protestor must exhaust all administrative remedies with the Commission before pursuing a protest with FTA.

## SECTION III

### SCOPE OF WORK

#### III.1 Website Maintenance, Programming, Technical Assistance & Design

PRTC's website is viewed as a key marketing and information tool used by current customers, potential customers and to increase public awareness about PRTC. The agency's intent is to provide information in an easy-to-use format that supplies all the information a user or non-user may need about PRTC's transit services.

At the onset of the contract, the successful Offeror must transition PRTC's website to their hosting server, with minimal downtime. All features of the website must be fully operational. PRTC's current website includes these external interfaces: 1) auto language translator (Google Translate); 2) email and SMS subscription service (TransitNOW), and; 3) Google Transit trip planner. Over the life of the contract, at least one overall site redesign can be expected.

PRTC typically makes service changes twice a year (summer and winter), at which time all or much of the schedule information and zoomable maps posted on our website must be updated. All the schedules are viewable as HTML timetables and as downloadable PDF files. It is imperative that during the one to two week period preceding the date of the service change that both current and service change schedules be available for viewing and download. On the Sunday before the Monday service change date, all old schedules must be removed, leaving only the new ones.

The table below represents the total number of schedules and maps currently posted on PRTC's website. That number is expected to increase as growth in the system occurs.

Service Type	Number of Routes	Language Produced In		Total Number of Web Schedules
		English	Spanish	
OmniLink -- local	6	Yes	Yes	12
OmniRide -- commuter	13	Yes	No	13
Metro Direct -- to Metrorail	3	Yes	Yes	6
Cross County Connector - - between Manassas & eastern PWC	1	Yes	Yes	2
			<b>GRAND TOTAL</b>	<b>33</b>

In addition to the 33 web schedules and individual zoomable route maps, PRTC currently maintains a zoomable and interactive version of its system map on the

website, which enables users to click-through to individual route schedules. A new version may be required for each service change.

PRTC's schedule production contractor (currently Smartmaps, Incorporated) will provide files of the timetable and map information in a file format suitable for manipulation and posting to the website. The successful Offeror will be required to create and revise the HTML timetables, zoomable maps and downloadable PDF schedules. Proposers are expected to provide a description of the process and turnaround time needed to ready schedule updates for the website.

In addition to schedule updates, the successful Offeror will be required to provide design guidance that will minimize the time and effort of maintenance and/or maximize the website's functionality and ADA accessibility. They may also be expected to suggest enhancements to improve users experience across all platforms and they will be required to complete general site maintenance. The site is currently being redesigned, so the successful Offeror will accept it as is.

The website currently has a set of administrative tools (that don't require knowledge of programming) that permit PRTC staff to manage some of the site's contents. Exhibit 1 – Administrative Dashboard (attached) shows the sections of the site that are managed with the administrative tools. Staff also performs general content management using Adobe Contribute 6.5. There may be changes made to the administrative tools during the on-going redesign project.

The average cost of the contract over the past three years is \$64,900.

### **III.2 Training**

The successful Offeror must be able to provide instruction (on or offsite, online or via email) to train staff on use and maintenance of future site enhancements or changes in site functionality. It is particularly imperative that PRTC staff be able to post immediate service update notices to the website, to alert customers to services changes related to the weather, extreme traffic conditions, etc.

### **III.3 E-Commerce**

PRTC does not currently conduct e-commerce. However, it is possible that the agency may decide to sell fare media and/or merchandise at a later date. Therefore, the successful bidder must be experienced with e-commerce and be able to build, activate and maintain an online store.

### **III.4 Hosting and Support**

PRTC's website is vital to the agency's communications effort. Therefore, it must be completely functional at all times – 24 hours a day, 7 days a week. Additionally, PRTC must be ensured 24/7 technical support. Proposers must provide a hosting plan, which



should include any back-up plans for ensuring reliable website presence. The plan must include a full description of hosting system's redundancies and security measures that will be used to failsafe PRTC's web presence.

## **SECTION IV**

### **PROPOSAL REQUIREMENTS**

All information requested and the requirements of this RFP must be supplied in writing in order for PRTC to consider the proposal complete.

#### **IV.1 Effect of Proposal Submission**

Submission of a proposal shall constitute agreement to include the provisions contained in this RFP and/or in the Offeror's proposal in any contract negotiated between the parties unless an exception or clarification specifically refers to the applicable objective or specification included in the Scope of Work.

By submitting a proposal, the Offer also agrees that it is satisfied from its own investigation of the conditions and requirements to be met, that it fully understands their obligation, and that it will not make any claim for or have the right to cancellation of or relief from the contract because of any misunderstanding or lack of information.

#### **IV.2 Due Date and Copies Returned**

Responses are due no later than the date and time shown on the cover page of this procurement document. Proposals received by PRTC after the date, time and location prescribed shall not be considered for contract award and shall be returned unopened to the Offeror.

#### **IV.3 Proposal Submission**

One (1) original, three (3) copies, and a searchable .pdf (e.g., Adobe) electronic version of Offerors' proposals will be submitted to the Procurement Officer, Cynthia Porter-Johnson, at the mailing address and by the due date/time listed on the cover page of this procurement document. Submissions will be clearly labeled "Website Development, Programming, Management, Hosting, and Technical Support." Cost Proposals must be packaged and sealed separately from the Technical Proposals and must be clearly marked "Cost Proposal."

#### **IV.4 Confidentiality**

In addition to the terms and provisions set forth in Section II.10 of the RFP, PRTC shall not discuss or disclose proposals or their proposed cost with competing firms during the selection process or otherwise disclose them to the public except as may be required by the State Freedom of Information Acts (FOIA) and other relevant law (i.e., Virginia's Public Procurement Act). Proprietary information, which is submitted, must be identified as such at the time of submission, and shall not be disclosed to the public or competing

Offerors at any point in time, provided the requirements at 2.2-4342F VA Code Ann. are met. Proposals not in compliance with 2.2-4342 F will be subject to disclosure.

No responsibility shall be attached to the PRTC Executive Director or his representative(s) for the premature opening or disclosure of a proposal not properly addressed and identified.

### **III.5 Proposal Format Instructions**

PRTC will follow the evaluation process and selection criteria described in Section IV of this RFP. In order to enhance this process and provide each firm an equal opportunity for consideration, adherence to a standardized proposal format is required. The format of each proposal must contain the following elements organized into separate Parts and sub-sections:

- Part 1: Understanding PRTC's Requirements
- Part 2: Contractor Qualifications, Experience and References
- Part 3: Required Forms
- Part 4: Cost Proposal

These elements parallel the basis of PRTC's proposal evaluation criteria. PRTC is not responsible for failure to locate, consider, and evaluate qualification factors presented outside of this format. The following paragraphs provide guidelines to each Offeror for information to include in the proposal.

#### **Part 1: Understanding PRTC's Requirements**

This section should confirm that the Offeror understands this RFP and the planned project. The Offeror:

- A. Shall outline the scope of the proposed project and the requested product deliverables.
- B. Present any modifications to PRTC's requirements in the form of exceptions and additions
  - Clearly reference the specific section of this document for any exceptions and additions.
  - Clearly state the rationale for each exception and addition.

#### **Part 2: Contractor Qualifications, Experience and References**

In this section, the Offeror will present qualifications, experience and references that best demonstrate why it should be considered for this project.

## A. Qualifications

- Designate a Project Manager
- Include the organization, functional discipline, and the responsibilities of project team members.
- Provide the link to your website.
- Provide resumes for each of the proposed key team members.
- Clearly state if the Offeror is proposing to subcontract any of the work herein and, if so, provide the same information for each subcontractor.

## B. Experience

- Summarize the organizational structure and size of the company, plus its date of organization, and current principal place of business.
- Outline and briefly discuss the scope of services provided and the approximate percentage of the total business devoted to the type of services requested in this RFP.
- Describe the Offeror's experience with similar projects and any experience working with transit related projects or agencies. (Provide examples.)
- Indicate whether or not the company has an organized practice addressing the requested scope of services, area covered, who formally heads that practice, and where that person is located.
- Describe any local office(s) that will service PRTC, including size, services, area covered, and principal contact person.
- Specify in a similar manner with references, etc., the qualifications of any subcontractors to be used in this proposed project.
- Described any e-commerce experience

## C. References

- Using the form labeled "Attachment A References," provide a list of at least five engagements that are similar in service type, size, scope and complexity in the past five years. Examples of website work performed for the references should be included in Part 2.

- Also use Attachment A to provide five references for any proposed subcontractor. Be sure to clearly note which forms are for the Offeror and which pertain to subcontractors.

### **Part 3: Required Forms**

In addition to **Attachment A References**, the following forms must be included with the Offeror's proposal:

- **Attachment B RFP Submission Form**
- **Attachment C Insurance Checklist**
- **Attachment D Certification of Primary Participants Regarding Debarment**
- **Attachment E Disadvantaged Business Enterprise**

The RFP Submission Form must bear an original signature and may be included with a letter of transmittal. Failure by the Offeror to include this RFP Submission Form with its proposal may be cause for rejection of the proposal. A brief explanation of the certifications on this form follows.

- **Conflicts of Interest** - This solicitation is subject to the provisions of §§ 2.2-3100, *et seq.*, Va. Code Ann., the "Virginia Conflicts of Interest Act." No member of the Potomac and Rappahannock Transportation Commission, or any other officer or employee of PRTC, or the spouse or any other relative who resides in the same household as any of the foregoing, may be a contractor or subcontractor in connection with any bid, or have a personal interest therein as defined by § 2.2-3101, Va. Code Ann.
- **Collusion** - All proposals submitted must be made without prior understanding, agreement, or connection with any corporation, partnership, firm, or person submitting a proposal for the same requirements, without collusion or fraud. Collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards.
- **Ownership** - PRTC requires all firms submitting proposals to indicate their form of organization and current principal place of business. In addition, proposals must list the names and addresses of any ownership interest of 3% or more in the firm(s) responding to this RFP.

**Part 4: Cost Proposal (Packaged and Sealed Separately)**

Offerors shall complete the **Attachment F, Cost Sheet**. Cost Proposals must be packaged and sealed separately from the Technical Proposals and must be clearly marked "Cost Proposal."

## SECTION V

### SELECTION OF CONTRACTOR

#### V.1 Approving Authority

The Approving Authority for this RFP is the Potomac and Rappahannock Transportation Commission and the authority to approve acquisition is contingent upon appropriation of funds for the total amount of the Contract within each fiscal year.

#### V.2 Selection Committee

For this RFP, PRTC will appoint a Technical Evaluation Team (TET) to review and evaluate all proposals received. In turn, the Technical Evaluation Team will make its recommendation for selection of a firm to the Approving Authority.

#### V.3 Basis for Award

The TET will base its recommendation on the "Evaluation Criteria" set forth in this RFP. The TET shall conduct an evaluation based on information set forth in the proposal, past performance, and references of each firm.

Based on the results of the preliminary evaluation and at the TET's sole discretion, the highest rated firms may be invited by the PRTC TET to make oral presentations. Such presentations may include, but are not necessarily limited to, explanations of the proposed approach, Work Plan, and qualifications of the firm. The TET will then conduct a final evaluation of the firms.

The award shall be made to the responsive and responsible Offeror whose offer conforms to the solicitation and is most advantageous to PRTC, cost or price and other factors considered. For this solicitation, technical quality is more important than cost or price. As proposals become more equal in their technical merit, the evaluated cost or price becomes more important.

#### V.4 Evaluation Criteria

The TET will base the initial and final evaluation on the following criteria:

30 points	Understanding PRTC's Requirements
50 points	Contractor and Team Members Qualifications, Experience, References, and Work Samples
20 points	Cost Proposal

Proposals should be submitted initially on the most complete and favorable terms from a technical standpoint. Should proposals require clarification and/or supplementary information, firms should be prepared to submit such clarification and/or supplementary information, in a timely manner, when so requested. PRTC may arrange for discussion with firms submitting proposals, if required, for the purpose of obtaining additional information or clarification.

The TET may make reasonable investigations it deems proper and necessary to determine the ability of the firm to perform the work. The TET and/or its representative(s) reserve the right to inspect the firm's physical premises prior to award to satisfy questions regarding the firm's capabilities. If site visits are made, PRTC may elect to have Offerors make oral presentations at that time.

In addition to the terms and provisions set forth in Section II.8 Rejection of Proposals, after review and evaluation, and based on its sole discretion, PRTC reserves the right to reject any or all proposals received in response to this request and will not compensate offers for the cost of proposal preparation whether or not an award is consummated.

#### **IV.5 Notification of Award**

All Offerors will be notified in writing, electronically or otherwise, as to selection of contractor for this project.

#### **IV.6 Prime Contractor**

The Successful Contractor will be required to assume full responsibility for the complete effort as required by this RFP whether work is performed by the Successful Contractor or subcontractors. The Successful Contractor is to be the sole point of contact with regard to all contractual responsibilities.

PRTC also reserves the right to contract with more than one firm for specific aspects of the RFP if that is in PRTC's best interest.

#### **IV.7 Contract Development**

Once a firm is tentatively selected based on the "Evaluation Criteria," PRTC reserves the right to negotiate further with the selected firm to achieve a binding price and agreement on contract terms.

This RFP and the firm's proposal will be incorporated by reference directly into the final contract.

Offerors are reminded that the proposal will form the basis of the contract negotiations phase between PRTC and the selected firm. Accordingly, the proposal should be written in a concise, forthright manner, and respond in the manner described in Section III



Proposal Requirements of the RFP. PRTC reserves the right to incorporate all statements and claims made in the proposal (including any attachments) in the final contract.

If a satisfactorily proposed contract cannot be negotiated with the highest ranked firm, negotiations will be formally terminated. Negotiations shall then be undertaken with the firm ranked second highest, and so on. The Technical Evaluation Team will make appropriate recommendations to the Approving Authority prior to actual award of the contract.

#### **IV.8 Contingency of the Contract**

Award of the contract to the selected firm is contingent upon:

- the budget and appropriation of funds (if necessary); and
- the successful negotiation of contractual terms agreeable to both parties

Failure to achieve the foregoing will result in no award at this time.

#### **IV.9 Standard Contract for Services**

PRTC expects to enter into its “Standard Contract for Services” in a form substantially as attached hereto (**Attachment G Sample Contract**).

#### **IV.10 Notice to Proceed**

A Notice to Proceed (NTP) shall be issued by the PRTC Executive Director or designee following execution of the Contract and receipt by PRTC of all required documents. Services are not to begin until receipt of the NTP by the Successful Contractor.

#### **IV.12 Acceptance, Invoicing, Billing Format and Payment**

Tasks and all reports shall be conducted and completed in accordance with recognized and customarily accepted industry practices, and shall be considered complete when the products are approved as acceptable by the PRTC Contract Administrator.

The Successful Contractor shall submit invoices listing the services performed and completed to PRTC’s Project Manager. The invoice should cite the Purchase Order number, Contract number, Task Order number (if applicable) date of services or delivery of an end product.

PRTC will make payment to the firm, net 30 days or in accordance with discount terms, if offered, after receipt of an acceptable invoice and satisfactory completion of the requested services.

# EXHIBIT 1 – ADMINISTRATIVE DASHBOARD

**Navigation Menu:**

- SERVICE UPDATES (SHOW)
- PRESS RELEASES (SHOW)
- PUBLIC HEARINGS (SHOW)
- RFP'S (SHOW)
- EMPLOYMENT (SHOW)
- CUSTOMER FEEDBACK (SHOW)
- COMMISSIONERS (SHOW)
- PRTC HOME PAGE (SHOW)
- GIT'S FEEDS (SHOW)
- FILE MANAGEMENT (SHOW)
- FORUMS (SHOW)
- ADMIN (SHOW)

**STATS**

TODAY	YESTERDAY	THIS MONTH	LAST MONTH
VISITS	VISITS	VISITS	VISITS
VISITORS	VISITORS	VISITORS	VISITORS
NEWS	NEWS	NEWS	NEWS

**LINKS**

- Google Analytics
- GrandCenter Online Survey
- AITG
- VRE
- M metro

# ATTACHMENT A REFERENCES

Describe previous work experience for at least five engagements that are similar in service type, size, scope, and/or complexity in the past five years. Information shall include, but is not limited to, the following.

Client Company's Name \_\_\_\_\_

Contact Name \_\_\_\_\_ Telephone Number \_\_\_\_\_

Fax Number \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Type of business, if not public transportation \_\_\_\_\_

Detailed scope of services

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Beginning and ending dates \_\_\_\_\_

Contract value \$ \_\_\_\_\_

Other information:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# ATTACHMENT B RFP SUBMISSION FORM

Proposals Due: **May 5, 2017**  
RFP Number: **#17-04**

Name of RFP: **Website Development, Programming,  
Management, Hosting, and  
Technical Support**

## SECTION I - COMPANY IDENTIFICATION AND OWNERSHIP DISCLOSURE

Company \_\_\_\_\_ Contact Person \_\_\_\_\_  
Address \_\_\_\_\_ Title \_\_\_\_\_  
\_\_\_\_\_ Telephone No. \_\_\_\_\_  
Remittance Address \_\_\_\_\_ FAX No. \_\_\_\_\_  
\_\_\_\_\_ Email \_\_\_\_\_

Indicate Which Apply:

Corporation.  Partnership  Sole Proprietorship  -Small Business

Disadvantaged Business Enterprise (DBE) Certified by: \_\_\_\_\_

Organized under the laws of the State of \_\_\_\_\_ Age of Firm: \_\_\_\_\_ years  
Principal place of business at \_\_\_\_\_

Annual gross Receipts: Indicate by checking X the appropriate block that applies to your firm:

**Less than \$7,500,000**  **More than \$7,500,000**

Following are the names and addresses of all persons having an ownership interest of 3% or more in the company: (Attach more sheets if necessary)

\_\_\_\_\_  
\_\_\_\_\_

## SECTION II - CONFLICTS OF INTEREST

This solicitation is subject to the provisions of §§ 2.2-3100, *et seq.*, Va. Code Ann., the "State and Local Government Conflicts of Interest Act."

The Offeror **is** [ ] **is not** [ ] aware of any information bearing on the existence of any potential organizational conflict of interest.

## SECTION III - COLLUSION

I certify that this offer is made without prior understanding, agreement, or in connection with any corporation, firm, or person submitting an offer for the same services, materials, or equipment, and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of the State and Federal law and result in fines, prison sentences, and civil damage awards. I hereby certify that the responses to the above representations, certifications, and other statements are accurate and complete. I agree to abide by all conditions of this Invitation for Bid and certify that I am authorized to sign for the Bidder.

**ATTACHMENT B (continued)  
RFP SUBMISSION FORM**

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

Name (Printed) \_\_\_\_\_ Title \_\_\_\_\_

**BIDDER MUST RETURN THIS COMPLETED FORM WITH BID SUBMISSION**

## ATTACHMENT C INSURANCE CHECKLIST

Items marked "X" are required to be provided if award is made to your firm. Prospective Contractor's Insurance Agent shall mark a "check" ("Yes" or "No") as to availability of insurance. Note: If you have answered "No" to any of the requirements, provide written explanation on a separate sheet.

		COVERAGE REQUIRED		LIMITS (FIGURES DENOTE MINIMUM)		
Yes	No*	Required				
___	___	X	1.	Workers' Compensation and Employers' Liability;	1.	Statutory Limits of the Commonwealth of Virginia:
___	___			Admitted in Virginia		Yes
___	___	X		Employer's Liability		\$100,000
___	___			All Sates Endorsement		
___	___			USL&H Endorsement		
___	___			Voluntary Compensation		
___	___	X	2.	General Liability	2.	\$1,000,000 Combined
___	___			Products		Single Limit Bodily
___	___	X		Complete Operations		Injury and Property
___	___	X		Contractual Liability		Damage Each Occurrence
___	___	X		Personal Injury		
___	___	X		Independent Contractors		
___	___			XCU Prop. Damage Excl.		
___	___	X	3.	Automobile Liability	3.	\$500,000 Combined
___	___	X		Owned, Hired & Rented		Single Limit Bodily
___	___			Motor Carrier Act End.		Injury and Property
___	___					Damage Each Occurrence
___	___	X	4.	Professional Errors and Omissions	4.	\$750,000 Per Claim & Aggregate Limit
___	___		5.	Garage Liability	5	
___	___		6.	Garage keepers' Legal Liability	6	
___	___		7.	Fire Legal Liability		
___	___		8.	Other Insurance:		
___	___	X	9.	PRTC named as additional insured on General Liability (This coverage is primary to all other coverage's PRTC may possess)	9	
___	___	X	10.	30 day cancellation notice required	10	
___	___	X	11.	Best's Guide Rating - A:VI or Better, or Equivalent	11	
___	___	X	12.	The Certificate must state Bid/RFP # and Bid/RFP Title	12	
___	___	X	13.	Umbrella Liability	13	\$1,000,000 Limit per Occurrence

# ATTACHMENT C (continued) INSURANCE CHECKLIST

## OFFEROR AND INSURANCE AGENT STATEMENT

We understand the insurance requirements of these specifications and will comply in full if awarded this Contract.

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OFFEROR

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INSURANCE AGENCY

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SIGNATURE

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SIGNATURE

**ATTACHMENT D  
CERTIFICATION OF PRIMARY PARTICIPANTS REGARDING  
DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY  
AND VOLUNTARY EXCLUSION**

\_\_\_\_\_  
(The Contractor)

or

\_\_\_\_\_  
(Subcontractor)

certifies, by submission of this bid/proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by an federal department or agency.

(If the Prime Contractor or Subcontractor is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this bid/offer).

(Prime Contractor) \_\_\_\_\_

or

(Subcontractor) \_\_\_\_\_

certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 ET. SEQ. are applicable thereto.

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Title of Authorized Official

\_\_\_\_\_  
Date

**(This form must be completed by the Contractor and Subcontractors)**



## **ATTACHMENT E**

### **DISADVANTAGED BUSINESS ENTERPRISE STATEMENT**

The Commission commits itself to an active effort to involve Disadvantaged Business Enterprises (DBE) in contracting opportunities, to increase competition, and to broaden the base of support for public transit. The PRTC has established a goal of 7.5% for the utilization of DBEs. To ensure that DBEs have a level playing field to compete for contract and subcontract work, we ask that you describe below, how your organization will assist the Commission with its commitment toward achieving our 7.5% goal.

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Complete the following form if you plan to utilize Disadvantaged Business Enterprise subcontractors during the contract period (One form must be completed for each DBE).

Submit proof of DBE contractor certification, if applicable.



## ATTACHMENT F COST PROPOSAL

*Note: Costs submitted are for the first year of the contract. Subsequent year prices shall be increased based on the Final posted “Washington – Baltimore Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI – W).”*

Provide Cost proposal for Website Hosting and Maintenance, \$\_\_\_\_\_/month  
Including security and redundancy (*monthly lump sum fee*)

Provide Cost Proposal of Posting various items (Commission Agenda, \$\_\_\_\_\_/hour  
Procurements, Public Hearing notices, etc.) (*Fixed Hourly Rate*)

Provide Cost Proposal for additional technical support (*Fixed Hourly Rate*) \$\_\_\_\_\_/hour

Provide Cost Proposal for Programming (*Fixed Hourly Rate*) \$\_\_\_\_\_/hour

Provide Cost Proposal for design services (*Fixed Hourly Rate*) \$\_\_\_\_\_/hour

Provide Cost Proposal for additional development (*Fixed Hourly Rate*) \$\_\_\_\_\_/hour

**ATTACHMENT G  
SAMPLE CONTRACT**

**POTOMAC AND RAPPAHANNOCK  
TRANSPORTATION COMMISSION  
Services Contract**



CONTRACT: #17-04

SUBJECT:

Between:

Potomac and Rappahannock Transportation Commission  
14700 Potomac Mills Road  
Woodbridge, VA 22192

And the Contractor:

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This Contract is entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the Potomac and Rappahannock Transportation Commission, or its authorized agents, and the Contractor identified above for services identified herein, on the following terms and conditions. This Contract is prepared in accordance with the Virginia Public Procurement Act, § 2.2-4300, Va. Code Ann., which is incorporated herein by reference.

**SECTION I  
SPECIAL PROVISIONS**

**I.1 Definitions**

“Potomac and Rappahannock Transportation Commission” or “PRTC” shall mean the Potomac and Rappahannock Transportation Commission authorized by the Virginia Public Procurement Act or other law to enter into Contracts.

The “Contract Administrator” assigned to administer this Contract for PRTC is Althea Evans, Director of Marketing and Communications.

“Contractor” shall mean:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

whose authorized representative is \_\_\_\_\_, \_\_\_\_\_,  
who is responsible for the performance obligation of the Contractor under this Contract.

**I.2 Contract Term**

The term for this Contract shall begin with the execution of this Contract and shall continue as stated in Section 1.4 of the RFP.

**I.3 Incorporation of Documents**

In addition to the terms and conditions contained in Section 1.4 of this Contract, the following documents are hereby incorporated by reference into this Contract:

1. PRTC’s Solicitation # 17-04 entitled “Website Development, Programming, Management, Hosting, and Technical Support” and dated March 27, 2017.
  
2. Contractor’s Solicitation Response dated \_\_\_\_\_

**1.4 Precedence of Terms**

In the event of an inconsistency between the Request for Proposals, the Contract Terms and Conditions, other included documents, and the state procurement law, the inconsistency shall be resolved by the following order of precedence:

1. Federal Transit Administration Master Agreement (dated October 1, 2012, and amendments thereto) and FTA Circular 4220.1F, dated November 1, 2008, as amended
2. Virginia's Public Procurement Act, as amended
3. This executed Contract #17-04
4. Request for Proposal (RFP) #17-04, including addenda
5. Contractor's Response

### **I.5 Provision of Services**

The Contractor hereby agrees to provide professional services for website hosting, management and technical support for PRTC's WEBISTE ([www.prtctransit.org](http://www.prtctransit.org)) as described herein and further outlined in RFP #17-04, Website Development, Programming, Management, Hosting, and Technical Support.

### **I.6 Contract Amount**

In addition to the terms and provisions contained in Sections II.5 and II.6 of this Contract, and in return for the services identified above and subject to the "Non-Appropriation of Funds" clause herein, PRTC certifies that sufficient funds are budgeted and appropriated and shall compensate the Contractor as described in Section V.10 of the RFP.

### **I.7 Method of Payment**

Payment shall be made as described in Section V.12 of the RFP, Acceptance, Invoicing, Billing Format, and Payment.

### **I.8 Time of the Essence and Completion**

Time shall be of the essence to this Contract, except where it is herein specifically provided to the contrary.

### **I.9 Key Personnel**

Certain, skilled, experienced, professional and/or technical personnel are essential for successful accomplishment of the work to be performed under the contract. These are defined as "key personnel" and are those persons whose resumes were submitted as part of the technical bid/proposal for evaluation. During the period of performance, the Contractor shall make no substitutions of key personnel except in accordance with this clause and unless approved in writing by the Contract Administrator.

The Contractor shall assign to this Contract the following key personnel:

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The Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete résumés for the proposed substitutes, and any additional information requested by the Contract Administrator. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contract Administrator will notify the Contractor within 15 calendar days after receipt of all required information of the decision on substitutions. This clause shall be modified to reflect any approved changes of key personnel.

1. The Contractor understands that during the first 30 days of the contract performance period, no personnel substitutions shall be permitted unless these substitutions are unavoidable because of sudden illness, death or termination of employment. In any of these events, the Contractor shall promptly notify PRTC's Contract Administrator and provide the information described in paragraph b) below.

After the initial 30 day period, the Contractor must submit to the PRTC Contract Administrator all proposed substitutions, in writing, at least 15 days in advance and provide the information required by paragraph b) below.

2. Any request for substitution must include a detailed explanation of the circumstances necessitating the proposed substitution, a resume for the proposed substitute, and any other information requested by the PRTC Contract Administrator. Any proposed substitute must have qualifications equal to or superior to the qualifications of the incumbent. PRTC will evaluate such requests and promptly notify the Contractor in writing of its approval or disapproval.
3. The provisions of this clause shall be applicable to any subcontract, which may be entered into.
4. In the event that any of the identified key personnel cease to perform under the contract and the substitute is disapproved, the Contract may be immediately terminated in accordance with the Termination for Default clause of the Contract.

## **I.10 PRTC Contract Management**

1. Contract Administrator - Matters relating to prices, terms and conditions, period of performance, quantities to be supplied, delivery schedule and financial adjustments shall be handled through the Contract Administrator. The Contract Administrator for this Contract will be Althea Evans, PRTC's Director of Marketing and Communications.
2. Project Manager – Althea Evans will also be the Project Manager (PM). The PM is responsible for the technical administration of the contract and technical liaison with the Contractor. The PM is responsible for the day-to-day clarifications and guidance of Contractor's personnel as may be required under the contract.
3. Contracting Officer - PRTC's Executive Director is the only individual who can legally commit or obligate the PRTC for the expenditure of federal/public funds. The technical administration of the contract shall not be construed to authorize the revision of the terms and conditions of the contract. Any such revision shall be authorized in writing only by the Contracting Officer.



## **SECTION II GENERAL TERMS AND CONDITIONS**

### **II.1 Governing Law and Choice of Forum**

This contract and any disputes hereunder shall be governed by the laws of the Commonwealth of Virginia. It is further agreed that all disputes and matters whatsoever arising under, in connection with or incident to this Contract, shall be litigated, if at all, in and before a state Court located in the County of Prince William in the Commonwealth of Virginia or a federal Court located in the Eastern District of Virginia, and any appropriate appellate Court thereof, to the exclusion of the courts of any other state, territory, county, or other jurisdiction.

### **II.2 Incorporation of Federal Transit Administration Terms**

These terms include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated March 18, 2013, as amended, 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 PRTC requests that would cause the PRTC to be in violation of the FTA terms and conditions.

### **II.3 No Federal Government Obligations to Third Parties**

The federal government shall not be subject to any obligations or liabilities of any Contractor, or any other person not a party to a Grant Agreement or Cooperative Agreement in connection with the performance of the contract. Notwithstanding any concurrence provided by the federal government in or approval of any solicitation, sub-agreement, or third party contract, the federal government continues to have no obligations or liabilities to any party, including the third party Contractor.

### **II.4 Availability of Funds**

It is understood and agreed that the PRTC shall be bound to this Contract only to the extent of the funds appropriated or which may hereafter become available for the purpose of this Contract. If funds are reduced or eliminated by the Commonwealth of Virginia or Federal Transit Administration, this Contract can be terminated accordingly under the provisions of this Contract.

## **II.5 Disallowed Costs Including Interest**

The Contractor agrees to remit to the PRTC, which in turn will remit to the Federal government, any excess payments made to the Contractor disallowed by the Federal government, as well as any interest required by Subsection 9.g. of the FTA Master Agreement. PRTC will exclude any project costs incurred by the Contractor before the date of the Notice to Proceed unless otherwise authorized by PRTC in writing. PRTC will also exclude any cost not included in the approved project budget, any ordinary governmental or non-project operating cost consistent with prohibitions of 49 USC §5323(h)(1) and any cost ineligible for FTA participation as required by Federal law, regulation or guidelines for Federal participation included the cost soliciting response. Payment does not constitute a final decision about whether a cost is eligible for reimbursement and does not constitute a waiver of any violation by the Contractor of the terms and conditions of the contract.

## **II.6 Default**

In case of failure to deliver goods or services in accordance with the contract terms and conditions, the PRTC, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the PRTC may have.

## **II.7 Termination for the Convenience of the PRTC**

1. The parties agree that PRTC may terminate the contract or any work or delivery required thereunder, from time-to-time either in whole or in part, without cause whenever the Contract Administrator shall determine that such termination is in the best interest of PRTC.
2. Termination, in whole or in part, shall be effected by delivery of a Notice of Termination signed by the Contract Administrator, mailed or delivered to the contractor, and specifically setting forth the effective date of termination. Upon receipt of such Notice, the contractor shall:
  - Cease any further deliveries or work due under the contract on the date and to the extent which may be specified in the Notice;
  - Place no further orders with any subcontractors except as may be necessary to perform that portion of the contract not subject to the Notice;
  - Terminate all subcontractors except those made with respect to contract performance not subject to the Notice;

- Settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of PRTC;
  - Use its best effort to mitigate any damages, which may be sustained by him as a consequence of termination under this clause;
  - As directed by the PRTC Contract Administrator, transfer title and deliver to PRTC:
    - i. The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
    - ii. The completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to PRTC.
  - Complete performance of the work not terminated; and
  - Take any action that may be necessary, or that the PRTC Contract Administrator may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which PRTC or the Government has or may acquire an interest.
3. After complying with the foregoing provisions, the contractor shall submit a termination claim, in no event later than six (6) months after the effective date of its termination, unless an extension is granted by the Contract Administrator. If the Contractor fails to submit the claim within the time allowed, the PRTC Contract Administrator may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
  4. The Contract Administrator, with the approval of PRTC's signatory to the contract, shall pay reasonable costs of termination, including a reasonable amount for profit on services delivered or completed. In no event shall this amount be greater than the original contract price, reduced by any payments made prior to Notice of Termination, and further reduced by the price of the services not delivered, or those services not provided. The contract shall be amended accordingly, and the contractor shall be paid the agreed upon amount.
  5. In the event that the parties cannot agree on the whole amount to be paid to the contractor by reason of termination under this clause, the Contract Administrator shall pay to the contractor the amounts determined as follows, without duplicating any amount which may have already been paid under the preceding paragraph of this clause:

With respect to all contract performance prior to the effective date of Notice of Termination, the total of:

- Cost of the work performed;
- The cost of settling and paying any reasonable claims as provided in subparagraph (2) above; and
- A sum as profit on paragraph (5) determined by the Contract Administrator to be fair and reasonable.

The total sum to be paid shall not exceed the contract price, as reduced by the amount of payments otherwise made, and as further reduced by the contract price of services not terminated.

6. In the event that the contractor is not satisfied with any payments, which the Contract Administrator shall determine to be due under this clause, the contractor may appeal any claim to PRTC in accordance with the "Contractual Claims and Disputes" clause of the contract.
7. Unless otherwise provided in this Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the PRTC Contracting Officer or his/her designee, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.
8. When termination for the convenience of the PRTC is a provision of this Contract, the Contractor shall include similar provisions in any subcontract, and shall specifically include requirements that subcontractors make all reasonable efforts to mitigate damages which may be suffered. Failure to include such provisions shall bar the Contractor from any recovery from the PRTC whatsoever of loss or damage sustained by a subcontractor as a consequence of termination for convenience.

## **II.8 Termination for Default**

Either party may terminate the contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein.

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under the contract, or if the Contractor shall violate any of the covenants, agreements or stipulations of the contract, the PRTC shall thereupon have the right to terminate the contract by giving written notice to the Contractor of such termination. The written notice shall specify the effective date of termination and shall be delivered to the Contractor prior to the effective date of termination.

The Contractor shall have the right to cure its default, and thereby avoid termination, during the aforesaid notice period by remedying the circumstances which constitute the default or, where completion of such a remedy is not reasonably possible, then by taking all reasonable steps possible designed to remedy the default promptly. Successive defaults of the same nature, regardless of the Contractor efforts to cure, shall not prevent the PRTC from terminating the contract.

## **II.9 Termination for Non-Appropriation of Funds**

If funds are not appropriated for the current or any succeeding fiscal year subsequent to the one in which the contract is entered into, for purposes of the contract, then the PRTC may terminate the contract upon prior written notice to the Contractor. Should termination be accomplished in accordance with this section, the PRTC shall be liable only for payments due through the date of termination.

## **II.10 Stop Work or Suspension of Work**

The PRTC Contract Administrator may at any time, by written order to the Contractor, stop all, or any part, of the work called for by the contract for a period of 90 days after the order is delivered to the Contractor and for any further period to which the parties may agree.

Any such order shall be specifically identified as a Stop Work Order issued pursuant to this section.

Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

Within a period of 90 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contract Administrator shall either:

1. Cancel the Stop Work Order; or
2. Terminate the work covered by such order as provided in the section, "Termination for Convenience of the PRTC."

If a Stop Work Order issued under this Section is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work.

An equitable adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if:

1. The Stop Work Order results in an increase in the time required for completion or in the Contractor's cost properly allocable to the performance of any part of the contract; and
2. The Contractor asserts a claim for such adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contract Administrator decides the facts justify such action, he may receive and act upon such claim asserted at any time prior to final payment under the contract.

If a Stop Work Order is not canceled and the work covered by such order is terminated for the convenience of PRTC, the reasonable costs resulting from the Stop Work Order will be allowed in arriving at the termination settlement.

## **II.11 Contractual Claims and Disputes**

In accordance with Section 2.2-4363, VA Code Ann., this provision shall be followed for consideration and handling of all disputes and claims by the Contractor under this Contract. Section 2.2-4365, VA Code Ann. is not applicable to this Contract. Under no circumstances is this Section an administrative appeals procedure governed by Section 2.2-4365, VA Code Ann. because Section 2.2-4365, VA Code Ann. is not applicable to this procurement.

Notice of the intent to submit a claim setting forth the basis for any claim shall be submitted in writing within 10 days after the occurrence or the event giving rise to the claim or within 10 days of discovering the condition giving rise to the claim, whichever is later. In no event shall any claim arising out of this Contract be filed after submission of the request for Final Payment by the Contractor.

Disputes or claims by the Contractor with respect to this Contract shall be submitted in writing within five working days of the aforementioned notice for consideration by the Contract Administrator. The decision of the Contract Administrator shall be rendered in writing within 30 days from the receipt of the claim from the Contractor.

If the Contractor is not satisfied with the decision or resolution of the Contract Administrator, the Contractor may file a formal dispute with regard to the claim with the Executive Director of PRTC within 30 days of the decision of the Contract Administrator. The Executive Director of PRTC shall reduce his/her decision to writing and shall mail or otherwise furnish a copy of its decision to the Contractor within 30 days of the receipt of

the claim from the Contractor. The decision of the Executive Director of PRTC shall be final and binding.

Should any decision-maker designated under this procedure fail to make a decision on a claim within the time period specified, then the claim is deemed to have been denied by the decision-maker. Pending a final determination of a claim, the Contractor shall proceed diligently with the performance of the work under this Contract.

In accordance with the provisions of Section 2.2-4363, VA Code Ann., full compliance with this disputes and claim resolution procedure set forth in this Section shall be a precondition of the filing of any lawsuit by the Contractor against the Commission arising out of the Contract.

## **II.12 Subcontracts**

No portion of the work shall be subcontracted without prior written consent of PRTC. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish to PRTC the names, qualifications and experience of the proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by his subcontractor(s) and shall assure compliance with all requirements of the contract.

The Contractor agrees to require its subcontractors and sub-subcontractors to include adequate provisions to ensure compliance with applicable Federal requirements in each subcontract and sub-subcontract. Furthermore, the Contractor agrees to include appropriate clauses in each subcontract stating the subcontractor's responsibilities under Federal law, regulation, or directive, including any necessary provisions requiring the subcontractor to extend applicable requirements to its subcontractors to the lowest tier necessary.

## **II.13 Prime Contractor Responsibilities**

The Contractor shall be responsible for completely supervising and directing the work under the contract and all subcontractors that it may utilize, using its best skill and attention. Subcontractors who perform work under the contract shall be responsible to the prime Contractor. The Contractor agrees that it is as fully responsible for the acts and omissions of its subcontractors and of persons employed by the Contractor as it is for the acts and omissions of its own employees.

The Contractor shall submit to PRTC for approval and attachment to the contract, a list of subcontractors and their required signed certifications/contracts and contact information. During the period of performance, the Contractor shall not substitute subcontractors without the written approval of PRTC. The Contractor shall notify PRTC within five calendar days after the occurrence of any of these events and provide information as to the circumstances necessitating the proposed change, new

subcontractor information and other information as requested. Proposed substitutions must have comparable qualifications and experience to those being replaced. PRTC will notify the Contractor within 10 calendar days after the receipt of all required information if this change is approved and the PRTC and the Contractor shall subsequently amend the required contract documents.

## **II.14 Payments to Subcontractors**

In the event that the Contractor utilizes a subcontractor for any portion of the work under this Contract, the Contractor hereby agrees to:

1. The Contractor shall take one of the two following actions within seven days after receipt of amounts paid to the Contractor by PRTC for work performed by a subcontractor under the Contract.

a. Pay a subcontractor for the proportionate share of the total payment received from PRTC attributable to the work performed by that subcontractor under the Contract; or

b. Notify PRTC and any subcontractors, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. The Contractor shall be obligated to pay interest to a subcontractor on all monies owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from PRTC for work performed by a subcontractor under the Contract, except for amounts withheld under subsection 1.b. of this section. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the provisions of this section may not be construed as an obligation by PRTC. A contract modification may not be made for the purpose of providing reimbursement for any such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

3. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of 1% per month.

4. The Contractor is hereby required to include in each of its subcontracts a provision requiring each subcontractor to otherwise be subject to the same payment and interest requirements set forth in subsection 2 and 3 of this section with respect to each lower-tier subcontractor. Failure to pay subcontractors in an expedient manner may result in the use of the payment bond and/or termination of the contract.

## **II.15 Assignability of Contract**

Neither this Contract, nor any part hereof, may be assigned by the Contractor to any other party without the express written permission of PRTC.



## **II.16 Antitrust**

By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the PRTC all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the PRTC under said contract.

## **II.17 Testing/Inspection/Review of Work**

The PRTC reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to specifications. The Contractor is responsible for performing work according to specifications in a professional, high quality standard. Authorized representatives or agents of PRTC, the Commonwealth of Virginia and/or the Federal Transit Administration may, during normal office hours, review and inspect the project activities, data, reports/studies, drawings, specifications, estimates, maps computations and financial records of the Contractor or subcontractor at their offices.

## **II.18 Releases, Licenses, Permits and Authorizations**

It is the Contractor's responsibility to obtain all releases, licenses, permits and other usage authorizations for all matters within its ordinary sphere of activity, including photographs, copyrighted materials, artwork or any other property or rights belonging to third parties obtained by the Contractor for use in performing services for the PRTC, and shall save the PRTC harmless from all claims, demands, expenses (including reasonable attorney's fees), liabilities, suits, and proceedings (including any brought in or before any court, administrative body, arbitration panel or other tribunal) against or involving the PRTC on account of or arising out of such use. The PRTC shall obtain the same for any such items obtained by the PRTC which are used by the Contractor harmless from all claims, demands, expenses (including reasonable attorneys' fees), liabilities, suits, and proceeding (including any brought in or before any court, administrative body, arbitration panel or other tribunal) against or involving the PRTC on account of or arising out of any assertions, claims, slogans, headlines or the like made for any PRTC products, as well as for all claims, demands, expenses, liabilities, suits and proceedings as able set forth arising out of the nature or use of the PRTC's products.

## **II.19 Buy America – (Intentionally Omitted)**

## **II.20 Inspection**

All supplies shall be subject to inspection and testing by PRTC, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.

In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of the contract, PRTC shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction.

Supplies or lots of supplies, which have been rejected or required to be corrected shall be removed or, if permitted or required by the Contract Administrator, corrected in place by and at the expense of the Contractor promptly after notice.

If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed or promptly to replace or correct such supplies or lots of supplies, PRTC may either:

- Replace or correct such supplies and backcharge the Contractor the cost occasioned PRTC thereby; or
- Terminate the contract for default as provided in the contract.

Unless the Contractor corrects or replaces such supplies or lots of supplies within the delivery schedule, the Contract Administrator may require the delivery of such supplies or lots of supplies at a reduced price, which is equitable under the circumstances. Failure to agree to such price reductions shall be a dispute concerning a question of fact within the meaning of the clause of the contract entitled "Contractual Claims and Disputes."

If any inspection or test is made by PRTC on the premises of the Contractor or a subcontractor to the Contractor, then the respective party (of the inspection) shall provide all reasonable facilities and assistance for the safety and convenience of PRTC's inspectors in the performance of their duties without additional charge.

If PRTC's inspection(s) or test(s) are made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of PRTC except as otherwise provided in the contract; provided, that in the case of rejection, PRTC shall not be liable for any reduction in value of samples used in connection with such inspection(s) or test(s).

All inspections and tests by PRTC shall be performed in such a manner as not to unduly delay the work.

PRTC reserves the right to charge to the Contractor any additional cost of PRTC's inspection(s) and test(s) when supplies are not ready at the time such inspection and test is requested by the Contractor, or when re-inspection or retest is necessitated by prior rejection.

Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in the contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on PRTC therefore.

The inspection(s) and test(s) by PRTC of any supplies or lots of supplies does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in the contract, acceptance shall be conclusive except as regards to latent defects, fraud, or such gross mistakes or negligence as to amount to fraud.

The Contractor shall provide and maintain a Quality Assurance and Inspection system acceptable to PRTC covering the supplies hereunder.

Records of all inspection work by the Contractor shall be kept complete and available to PRTC during the performance of the contract and for such longer period as may be specified elsewhere in the contract.

## **II.21 Responsibility for Inspection**

Notwithstanding the requirements for any PRTC inspection(s) and test(s) contained in the specifications applicable to the contract, except where specialized inspections or tests are specified for performance solely PRTC, the Contractor shall perform or have performed the inspections and tests required to substantiate that the supplies and services provided under the contract conform to the drawings, specifications and contract requirements.

## **II.22 Contractor's Title to Materials**

No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The Contractor warrants that he has clear title to all materials and supplies for which he invoices for payment and such title passes to PRTC upon payment of invoice.

## **II.23 Ownership of Material and Intellectual Properties**

All materials and/or intellectual properties, and the rights thereto, which are produced in the course of the contract or which result from the work executed as the result of the contract shall be the exclusive property of the PRTC unless specific rights are expressly waived by the PRTC.

Upon completion of the services of the contract, the Contractor shall deliver all such appropriate materials including, but not limited to, camera ready artwork, computer

disks, specifications, samples, photographs, video tapes, audio tapes, original artwork and drawings to the PRTC. Should the Contractor fail to deliver the materials, all expenses incurred by the PRTC in obtaining these materials shall be chargeable to the Contractor, and may be withheld for any future sums due the Contractor.

If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this clause has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the PRTC or Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the PRTC and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements," 37 C.F.R. Part 401.

The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

The Contractor also understands and agrees that any technical information developed using federal funds may be subject to export control regulations under the Bureau of Export Administration of the U.S. Department of Commerce or of other Federal agencies. Any technical information regulated by U.S. export control regulations, or the direct product thereof, will not be directly or indirectly exported to any countries or foreign persons without complying with export control regulations.

## **II.24 Copyrights**

All copyrightable works created pursuant to this agreement shall be considered work made for hire and shall belong solely and exclusively to the PRTC. If, despite the foregoing, the PRTC is not deemed the author and initial owner of any copyrightable works created pursuant to this agreement, the Contractor agrees to irrevocably assign and does hereby irrevocably assign to the PRTC the sole, exclusive and complete copyright interest in such works, and Contractor shall execute and deliver such further documents as the PRTC may reasonably request for the purpose of acknowledging, implementing or recording this assignment.

The Contractor agrees and warrants that no individual, other than regular employees of the Contractor or the PRTC working within the scope of their employment, shall

participate in the creation of any copyrightable works to be delivered under this agreement, unless such individual and his or her employer, if any, have signed an intellectual property agreement satisfactory to the PRTC before commencing such participation.

The Contractor hereby agrees that, notwithstanding anything else in this agreement, in the event of any breach of this agreement by the PRTC, the Contractor's remedy shall not include any right to rescind or otherwise revoke or invalidate the provisions of this section. Similarly, no expiration or termination of this agreement by the PRTC shall have the effect of rescinding, terminating or otherwise invalidating the provisions of this section.

## **II.25 Rights in Data – Intentionally Omitted**

## **II.26 Federal Rights in Data and Copyrights – Intentionally Omitted**

## **II.27 Patent Rights – Intentionally Omitted**

## **II.28 Covenant against Contingent Fees**

The Contractor warrants that it has not employed or retained any company or person, other than bona fide employees working solely for the Contractor, to solicit or secure the contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, percentage, brokerage fee, or other considerations, contingent upon or resulting from the award of making of the contract. For breach or violation of this warranty, the PRTC shall have the right to annul the contract without liability, or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, percentage, brokerage fee, gift, or contingent fee. The firm shall therefore comply with all relevant federal, state, and local laws.

## **II.29 Fair Employment Contracting Act**

The Contractor, its agents, employees, assigns or successors, and any persons, firm, or agency of whatever nature with whom it may contract or make a contract, shall comply with the provisions of the Virginia Fair Employment Contract Act, Section 2.2-4200 et seq., VA Code Ann. the terms of which are incorporated herein by reference.

## **II.30 Convict Labor**

In connection with the performance of work under the contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1985.

## **II.31 Conflict of Interest**

The Contractor and its officers and employees shall comply with the provisions of the Virginia Conflict of Interest Act (Section 2.2-3100 et. seq., VA Code Ann.), the terms of which are incorporated herein by reference.

The PRTC is intent on avoiding conflicts of interest associated with the award of the contract. To these ends, Contractors must identify existing and prospective contractual relations they have (or could have) with organizations that could present sources of conflict as part of the bid/proposal submission. The Contractor ultimately awarded the contract must ensure that there is no real or perceived conflict of interest of the PRTC at any time during the life of the contract.

PRTC standards of conflict prohibit PRTC employees, officers, board members, or agents from participating in the selection, award, or administration of a third party contract or sub agreement supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the entity selected for award (a) an employee, officer, board member or agent (b) any member of his or her family (c) his or her partner or (d) an organization that employs or intends to employ any of the above.

PRTC standards of conflict also prohibit real or apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a third party contract or sub agreement may, without some restriction on future activities, result in an unfair competitive advantage to the third party Contractor or sub-recipient or impair its objectivity in performing the contract work.

### **II.32 Immigration Reform and Contract Act of 1986**

The Contractor certifies that it does not and will not during the performance of this contract violate the provisions of the Federal Immigration Reform and Control Act of 1986 which prohibits employment of illegal aliens. The Contractor agrees that its employment of any person without legal status may subject it to termination of this contract for default and agrees to include a similar provision in any subcontract.

### **II.33 Indemnification**

The Contractor shall not seek to hold liable the PRTC, or any of their officers, agents and employees for any claims of any nature whatsoever arising out of the contract or arising out of the activities funded in whole or in part of the contract. The Contractor shall defend, indemnify, save, and hold harmless the PRTC, and their officers, agents, and employees against all claims and liability, including cost and expenses, due to the acts or omissions of the Contractor or the acts or omissions of the Contractor's subcontractors, agents or employees. The Contractor agrees to maintain adequate insurance in an amount and form approved by the PRTC to protect the PRTC and its officers, agents, and employees from liability arising out of the contract.

Absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any sub-recipient, any third party Contractor, or any other person not a party to the Grant Agreement or Cooperative Agreement in connection with the performance of the contract. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, sub agreement or third party contract, the Federal Government continues to have no obligations or liabilities to any party, including the sub-recipient and third party Contractor.

#### **II.34 Ethics in Public Contracting**

The Contractor certifies that this Contract is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other Contractor, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

#### **II.35 Prohibition Against the Use of Federal Funds for Lobbying – Intentionally Omitted**

#### **II.36 Officials not to Benefit**

No member of or delegate to the Virginia General Assembly, and no member of the PRTC or the Virginia Department of Transportation, shall be admitted to any share or part of the contract, or to any benefit that may arise there from; but this provision shall not be construed to extend to the contract if made with a corporation for its general benefits.

No member, officer, or employee of the PRTC during his/her tenure or one year thereafter shall have any interest, direct or indirect, in the contract or the proceeds thereof.

#### **II.37 Independent Contractor**

The Contractor is and shall be in all events, an independent Contractor. Nothing herein shall be construed as constituting the Contractor as an agent, partner, employee, or legal representative of the PRTC for any purpose. Neither the Contractor nor its employees shall be entitled to or be eligible to participate in any benefits, privileges or plans given by or established for the benefit of PRTC or its employees.

## II.38 Anti-Discrimination

During the performance of the contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, religion, or national origin. 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, sex, disability, age, religion, or national origin. Such action shall include, but not be limited to, the following: employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Contractor also agrees to comply with any implementing requirements FTA may issue.
2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
3. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.
4. The Contractor will comply with all applicable requirements of Title IX of Education Amendments of 1972, as amended, 20 U.S.C. §§1681-1683, 1685-1688, with U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, and with any implementing directives that U.S. DOT or FTA may promulgate, which prohibit discrimination on the basis of sex.
5. The Contractor will comply with applicable federal guidance issued in compliance with Executive Order Number 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. §2000d-1 note, and with the requirements and provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Fed. Reg. 6733 *et seq.*, January 22, 2001.
6. With respect to activities deemed by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Contractor agrees to comply, and assures the compliance of each subcontractor at any tier with all applicable EEO requirements of 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. § 2000(e) note,) and any Federal statutes, executive orders, regulations, and Federal policies affecting construction undertaken as part of the Project.

7. The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.

8. The Contractor agrees to comply with all applicable requirements of any other nondiscrimination statutes(s) that may apply.

9. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **II.39 Access Requirements for Individuals with Disabilities**

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d), which states the Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the Contractor agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

- U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)", 49 C.F.R. Part 37;
- U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance", 49 C.F.R. Part 27;
- U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles", 49 C.F.R. Part 38;

- Department of Justice (DOJ) regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services”, 28 C.F.R. Part 35;
- DOT regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities”, 28 C.F.R. Part 36;
- General Services Administration regulations, “Construction and Alteration of Public Buildings, “Accommodations for the Physically Handicapped”, 41 C.F.R. Part 101-19;
- Equal Employment Opportunity (EEOC) “Regulations to Implement the Equal Employment Provisions of the Americans With Disabilities Act”, 29 C.F.R. Part 1630;
- Federal Communications regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled”, 47 C.F.R. Part 64, Subpart F; and
- FTA regulations, “Transportation for Elderly and Handicapped Persons”, C.F.R. Part 609.
- Architectural and Transportation Barriers Compliance Board regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194; and
- Any implementing requirements FTA may issue.

Any and all materials, drawings or plans produced for the PRTC shall reflect the requirements of the codes and regulations listed above.

#### **II.40 Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections**

The Contractor agrees to comply with confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1174 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4581 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd-3 and 290ee-3, and any subsequent amendments to these acts.

#### **II.41 Drug-Free Workplace to Be Maintained by Contractor for Contracts over \$10,000**

During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor’s employees; (ii) post in conspicuous places, available to

employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

## **II.42 Labor Provisions**

The Contractor and any subcontractors shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this clause shall be made available by the Contractor or subcontractor for inspection, copying or transcription by authorized representatives of the FTA, the U.S. DOT, or the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

The following clauses are applicable to any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act:

1. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week. Determinations pertaining to these requirements shall be made in accordance with the requirements of section 102 of the Act, 40 U.S.C. §§ 327 - 332; and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; and with section 107 of the Act, 40 U.S.C. § 333, and U.S. DOL regulations, "Safety and Health Regulations for

Construction," 29 C.F.R. Part 1926.

2. In the event of any violation of the requirements of 29 C.F.R. §5.5(b)(1), the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of 29 C.F.R. §5.5(b)(1) in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by 29 C.F.R. § 5.5(b)(1).

3. The FTA or the recipient shall upon its own action or upon written request for an authorized representative of the Department of Labor withhold or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth at 29 C.F.R. § 5.5(b)(2).

The Contractor agrees to comply, and assures to comply, and assures the compliance of each subcontractor at any tier, with the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874 and 40 U.S.C. § 276c, and U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3. The Contractor, in addition to other requirements that may apply, agrees that it will not induce, by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which that employee is otherwise entitled. In addition, the Contractor agrees to report every suspected or reported violation of the Act or its federal implementing regulations to FTA.

Activities Not Involving Construction. The Contractor agrees to comply, and assures to comply, and assures the compliance of each subcontractor at any tier, with any applicable employee protection requirements for non-construction employees of section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 - 332, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

References to the Fair labor Standards Act, 29 U.S.C. §§ 201 et. Seq. is substituted for the reference to specific sections of the Act.

The Contractor agrees to comply and assures the compliance of these requirements for each subcontract at any tier.

#### **II.43 Royalties**

While PRTC recognizes that certain materials or component parts may be produced under the terms of licensing or cross licensing agreements, it must be understood that the use of such materials and component parts requiring the application of recurring royalty charges, costs or payments is specifically prohibited.

#### **II.44 Metric System**

In accordance with Section 30 of the FTA Master Agreement, the FTA reserves the right to impose specific metric requirements for the contract.

#### **II.45 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.

#### **II.46 Environmental Regulations – Intentionally Omitted**

#### **II.47 Planning – Intentionally Omitted**

#### **II.48 Audit**

The Contractor hereby agrees to maintain all books, records, accounts, and reports required under the contract for a period of not less than three (3) years after the date of termination or expiration of the contract, except in the event of litigation or settlement of claims arising from the performance of the contract, in which case the Contractor agrees to maintain same until the PRTC, the FTA Administrator, the Comptroller General, or any their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Reference 49 CFR 18.39(i)(11). The agency, its authorized agents, Federal Government, and/or state auditors shall also have full access to and the right to examine any of said materials during said period.

#### **II.49 False or Fraudulent Statements and Claims**

The Contractor recognizes that the requirements 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 the 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 the contract work is being performed. In addition to other penalties that may be applicable, the Contractor also 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. 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 which 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. The Contractor agrees to include the above two clauses on each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **II.50 Support of Exclusionary of Discriminatory Specifications**

Apart from inconsistent requirements by Federal statute or regulations, the PRTC complies with the requirements of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to procurements with exclusionary or discriminatory specifications.

## **II.51 Authorized Funding**

If at any time the Contractor has reason to believe that the costs to PRTC which will accrue in the performance of the contract in the next succeeding 30 days, when added to all other payments previously accrued, will exceed 75% of the then current total authorized funding, the Contractor shall notify the PRTC to that effect, advising the estimate of additional funds required for completion of the task order. The Contractor shall be under no obligation to perform any work hereunder, and PRTC shall not be obligated to reimburse Contractor for any work performed, if in the performance thereof the total funding then allotted to contract will be exceeded.

PRTC shall not be obligated to pay the Contractor any amount in excess of the ceiling price reflected in the contract, and the Contractor shall not be obligated to continue performance if to do so would exceed the price set forth in the contract, unless and until the PRTC Executive Director shall have notified the Contractor in writing that the price has been increased and shall have specified in the notice a revised price that shall constitute the price for performance under the contract, and the contract has been duly modified. When and to the extent that the price set forth in the contract has been increased, any hours expended and material costs incurred by the Contractor in excess of the price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the price.

## **II.52 Taxes**

Deliveries against the contract shall be free of federal excise and transportation taxes as well as sales tax to the extent permitted by law. The PRTC excise tax exemption registration number shall be furnished upon request. PRTC is exempt from the payment of any Federal excise tax and Virginia sales tax. However, when under established trade practice, any Federal excise tax is included in the list price, the Offeror may quote the list price and shall show separately the amount of Federal tax, as a flat sum, which shall be deducted by PRTC.

## **II.53 Extra Charges Not Allowed**

The negotiated price shall be for the complete installation ready for PRTC use, and shall include all applicable freight and installation charges; extra charges will not be allowed.

## **II.54 Modifications or Changes to the Contract**

The Executive Director of the Potomac and Rappahannock Transportation Commission shall, without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a "Change Order." Such orders shall be limited to reasonable changes in the services to be performed or the time of performance; provided that the Contractor shall not be excused from performance under the changed contract by failure to agree to such changes, and it is the express purpose of this provision to permit unilateral changes in the Contract subject to the conditions and limitations herein. Changes may also be made by mutual agreement between the parties in writing. The Contractor shall promptly comply with the notice and shall perform all services in conformity to the notice.

The Contractor need not perform any work described in any change order unless it has received a certification from PRTC that there are funds budgeted and appropriated sufficient to cover the cost of such changes.

If any such changes causes an increase or decrease in the Contractor's cost of performance or the time required for performance, an equitable adjustment in the contract price and/or the time allowed for performance of the contract shall be negotiated and the contract modified accordingly. Any claim by the Contractor for adjustment under this clause must be asserted by written notice to PRTC within 30 days from the date of receipt by the Contractor of the change notice. If the parties fail to agree to an adjustment, the question of an increase or decrease in the contract price or time allowed for performance shall be resolved in accordance with the procedures for resolving disputes provided by the "Contractual Claims and Disputes" clause of the contract, or if there is none, in accordance with the disputes provision of the Commonwealth of Virginia's Vendor's Manual. Neither the existence of a claim, a

dispute, submission of the dispute or the dispute resolution process, litigation or any portion of this provision or changes shall excuse the Contractor from promptly proceeding with performance of the contract as changed by the notice.

No claim for changes ordered hereunder shall be considered if made after final payment in accordance with the Contract.

## **II.55 Examination of Records**

The Contractor agrees as follows:

1. Reports. The Contractor agrees to provide to PRTC those reports required by the U.S. DOT's grant management rules and any other reports the federal government may require.

2. Record Retention. The Contractor agrees to provide the PRTC, the FTA Administrator, the Comptroller General of the United States or any authorized representatives access to any books, documents, paper and records of the Contractor which are directly pertinent to the contract for the purpose of making audits, examinations, excerpts and transcriptions even after the project has been closed-out. The 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 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.

The Contractor agrees that it will maintain intact and readily accessible all data, books, accounts, documents, reports, records, contracts, and supporting materials relating to the contract as the federal government and Commonwealth of Virginia governments may require during the course of the contract and for three (3) years thereafter, except in the event of litigation or settlement of claims arising from the performance of the contract, in which case the Contractor agrees to maintain the 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.

3. Access to Records. Upon request, the Contractor agrees to permit PRTC, its authorized agents, state auditors, the Secretary of Transportation, and the Comptroller General of the United States, or their authorized representatives, to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts pertaining to the project.

The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that PRTC, its authorized agents, state auditors, the Secretary of Transportation, and the Comptroller of the



United States, or their authorized representatives, until the expiration of five years after final payment under the subcontract, be permitted to inspect and audit all data and records of the subcontractor relating to his performance under the subcontract.

The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$100,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

PRTC shall continue to have a period beyond five years after final payment under the contract to inspect and audit all data and records which relate to:

- Appeals under the "Claims/Disputes" clause of the contract;
- Litigation of claims arising out of the performance of the contract; or
- Costs and expenses of the contract as to which exception has been taken by PRTC or the Commonwealth of Virginia or any of its duly authorized representatives.

The extended right of inspection shall continue for such period beyond five years after final payment under the contract until such appeals, litigations, claims or exceptions have been disposed of, and for such period thereafter as required for review by the Virginia Department of Transportation and PRTC.

4. Notification of Federal Participation. In the announcement of any contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the Contractor agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract.

## **II.56 Geographic Restrictions**

The Contractor agrees to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by federal statute, and as permitted by FTA, such as for professional services in areas where such a restriction does not unduly limit competition.

## **II.57 Employment of Personnel**

The Contractor shall not employ any persons or persons in the employment of PRTC for any work required by the terms of the contract, without written permission of the PRTC.

## **II.58 Publications**

Articles, papers, bulletins, reports or other material reporting the results and findings of

the work conducted under the Contract shall not be presented publicly or published without prior approval in writing of the PRTC and all materials remain the sole property of PRTC.

Publications and reports officially released after the date of execution of then contract describing the results of any investigation or study hereunder participated in by PRTC shall give recognition to the PRTC in the text and title page to the nature of its cooperative character.

## **II.59 Electronic and Information Technology**

To the extent required by law, the Contractor agrees that any electronic and information technology financed with Federal assistance awarded for the contract will meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, by 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

## **II.60 Use of Real Property, Equipment, and Supplies**

The Contractor understands and agrees that the Federal Government retains a Federal interest in any real property, equipment, and supplies financed with Federal assistance until, and to the extent, that the Federal Government relinquishes its Federal interest that property. Unless otherwise approved by FTA, the Contractor agrees to comply with the following requirements with respect to real property, equipment, and supplies financed by the Contract:

a. Use of Property. The Contractor agrees to use Contract real property, equipment, and supplies for appropriate Contract purposes (which may include joint development purposes that generate program income, both during and after the award period used to support transit activities) for the duration of the useful life of that property, as required by PRTC. Should the Contractor unreasonably delay or fail to use Contract property during the useful life of that property, the Contractor agrees that it may be required to return the entire amount of the Federal assistance expended on that property. The Contractor further agrees to notify PRTC immediately when any Contract property is withdrawn from Contract use or when Contract property is used in a manner substantially different from the representations the Contractor has made in its bid/proposal for the Contract.

b. General Federal Requirements. A Contractor that is an institution of higher education, or a private nonprofit organization, agrees to comply with 49 C.F.R. §§ 19.30 through 19.37, including any amendments thereto, and other applicable guidelines or regulations the Federal Government may issue. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.34, and to 49 C.F.R. §§ 19.30 through 19.37, requires the express approval of the PRTC. A Contractor that is a for-profit organization agrees

to comply with property management standards satisfactory to PRTC. In addition, the Contractor consents to FTA's established reimbursement requirements for premature dispositions of certain Contract equipment (*i.e.*, when Contract equipment is withdrawn from appropriate use before the expiration of the equipment's useful life established by FTA), as explained in this section.

c. Maintenance. The Contractor agrees to maintain Contract real property and equipment in good operating order, in compliance with any guidelines, directives, or regulations FTA may issue.

d. Records. The Contractor agrees to keep satisfactory records regarding the use of Contract real property, equipment, and supplies, and submit to the PRTC upon request such information as may be required to assure compliance with this section of the contract.

e. Encumbrance of Contract Property. The Contractor agrees to maintain satisfactory continuing control of Contract real property or equipment. Thus, absent written authorization by PRTC permitting otherwise:

1. Written Transactions. The Contractor agrees to refrain from executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, grant anticipation note, alienation, or any other obligation that in any way would affect the Federal interest in any Contract real property or equipment.

2. Oral Transactions. The Contractor agrees to refrain from obligating itself in any manner to any third party with respect to Contract real property or equipment.

3. Other Actions. The Contractor agrees to refrain from taking any action that would either adversely affect the Federal interest or impair the Contractor's continuing control of the use of Contract real property or equipment.

f. Transfer of Contract Property. The Contractor understands and agrees as follows:

1. Contractor Request. The Contractor may transfer assets financed with Federal assistance authorized for 49 U.S.C. Chapter 53 to a public body to be used for any public purpose with no further obligation to the Federal Government, provided the transfer is approved by PRTC and Federal Transit Administrator and conforms with the requirements of 49 U.S.C. §§ 5334(g)(1) and (2).

2. Federal Government Direction. The Contractor agrees that the Federal Government may direct the disposition of, and even require the Contractor to transfer title to, any real property, equipment, or supplies financed with Federal assistance under the contract.

3. Leasing Contract Property to Another Party. If the Contractor leases any Contract asset to another party with PRTC's written permission, the Contractor agrees to retain ownership of the leased asset, and assure that the lessee will use the Contract asset appropriately, either through a "Lease and Supervisory Agreement" between the Contractor and lessee, or another similar document, unless the PRTC determines otherwise in writing. Upon request by PRTC, the Contractor agrees to provide a copy of any relevant documents.

g. Disposition of Contract Property. With prior PRTC approval, the Contractor may sell, transfer, or lease Contract property and use the proceeds to reduce the gross project cost of other eligible capital transit projects to the extent permitted by 49 U.S.C. § 5334(g)(4). Nevertheless, the Contractor agrees that PRTC may establish the useful life of Contract property, and that the Contractor will use Contract property continuously and appropriately throughout that useful life.

1. Contract Property Whose Useful Life Has Expired. When the useful life of Contract property has expired, the Contractor agrees to comply with PRTC's disposition requirements.

2. Contract Property Prematurely Withdrawn from Use. For property withdrawn from appropriate use before its useful life has expired, the Contractor agrees as follows:

(a) Notification Requirement. The Contractor agrees to notify PRTC immediately when any Contract real property, equipment, or supplies are prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

(b) Calculating the Fair Market Value of Prematurely Withdrawn Contract Property. The Contractor agrees that the Federal Government retains a Federal interest in the fair market value of contract property prematurely withdrawn from mass transportation use. The amount of the Federal interest in the property shall be determined on the basis of the ratio of the Federal assistance awarded by the Federal Government for the property to the actual cost of the property. The Contractor agrees that the fair market value of property prematurely withdrawn from use shall be calculated as follows:

(1) Equipment and Supplies. Unless otherwise determined in writing by PRTC, the Contractor agrees that fair market value shall be calculated by straight-line depreciation of the equipment or supplies, based on the useful life of the equipment or supplies established or approved by FTA. In addition, the fair market value of equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of that property from use. In the case of equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of that property immediately before the fire,

casualty, or natural disaster, irrespective of the extent of insurance coverage. The Contractor may use its own disposition procedures, provided that those procedures comply with the State's laws.

(2) Real Property. The Contractor agrees that the fair market value of real property shall be determined either by competent appraisal based on an appropriate date approved by the Federal Government, as provided by 49 C.F.R. Part 24, or by straight line depreciation, whichever is greater.

(3) Exceptional Circumstances. The Contractor agrees that the PRTC may require the use of another method of determining the fair market value of property. In unusual circumstances, the Contractor may request that another reasonable valuation method be used including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the PRTC may consider any action taken, omission made, or unfortunate occurrence suffered by the Contractor with respect to the preservation or conservation of Contract property withdrawn from appropriate use.

(c) Obligations to the PRTC. Unless otherwise approved in writing by the PRTC, the Contractor agrees to remit to the PRTC the Federal interest in the fair market value of Contract real property, equipment, or supplies prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Contractor may fulfill its responsibilities with respect to the Federal interest remaining in the damaged equipment or supplies by either:

(1) Investing an amount equal to the remaining Federal interest in like-kind equipment or supplies that are eligible for assistance within the scope of the Contract that provided financial assistance for the damaged equipment or supplies; or

(2) Returning to the PRTC an amount equal to the remaining Federal interest in the damaged property.

h. Insurance Proceeds. If the contract receives insurance proceeds as a result of damage or destruction to the Contract property, the Contractor agrees to:

1. Apply those insurance proceeds to the cost of replacing the damaged or destroyed Contract property taken out of service, or

2. Return to the PRTC an amount equal to the remaining Federal interest in the damaged or destroyed property.

i. Transportation - Hazardous Materials. The requirements of U.S. Research and Special Programs Administration regulations, "Shippers - General Requirements for Shipments and Packagings," 49 C.F.R. Part 173, apply to the transportation of

hazardous materials.

j. Misused or Damaged Project Property. If any damage to Contract real property, equipment, or supplies results from abuse or misuse of that property occurring with the Contractor's knowledge and consent, the Contractor agrees to restore that real property or equipment to its original condition or refund the value of the Federal interest in the damaged property, as the Federal Government may require.

## **II.61 Protection of Sensitive Security Information**

To the extent applicable, the Contractor is to comply with Section 101(e) of the Aviation and Transportation Security Act, 49 U.S.C. §4019(b), with U.S. Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520, and with any implementing regulations, requirements, or guidelines that the Federal Government may issue.

## **II.62 Employment Discrimination for Contracts Over \$10,000**

1. During the performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment notices setting forth the provision of this nondiscrimination clause.

b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

c. Notices, advertisements, and solicitations placed in accordance with Federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The Contractor will include the provisions of the foregoing paragraphs a, b, and c in ever subcontract or purchase order over \$10,000, so that the provisions shall be binding upon each subcontractor or Contractor.

## **II.63 Liability for Loss or Damage**

The Contractor shall be liable for any loss of, or damage to, PRTC property caused by the negligence, wanton or willful misconduct of the Contractor, his agents, servants and employees, and shall indemnify and save PRTC harmless against all actions,

proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to, or death of, any person, or damage to property other than PRTC property, resulting from the performance of the Contract. The Contractor shall submit to the PRTC Executive Director within 24 hours following the occurrence of such damage, loss or injury, a full written report.

#### **II.64 Ethics in Public Contracting**

The Contractor hereby certifies that it has familiarized itself with Article 6 of Title 2.2 of the Virginia Public Procurement Act, Sections 2.2-4367 through 2.2-4377, Va. Code Ann., and that all amounts received by it, pursuant to this Procurement, are proper and in accordance therewith.

#### **II.65 Integration**

This Contract shall constitute the whole agreement between the parties. There are no promises, terms, conditions or obligations other than those contained herein, and this Contract shall supersede all previous communications, representations or agreements, written or verbal, between the parties hereto.

#### **II.66 Warranty – Intentionally Omitted**

#### **II.67 Force Majeure**

If either party to this Contract is rendered unable, wholly or in part, to carry out its obligations under this Contract in a timely manner by reason of some cause beyond the control and without the fault or negligence of the party that amounts to Force Majeure, such party shall give to the other party prompt written notice thereof with reasonably full particulars, and if undisputed, the obligation of the party giving notice to perform its obligations shall be suspended during, but no longer than, the continuance of the Force Majeure, and such party shall act diligently to remove the Force Majeure as soon as practical and to reschedule the work or take such other action as is reasonable necessary to mitigate any delay.

For the purposes of this section, Force Majeure shall mean:

- (a) An act of war, whether or not declared, civil war, insurrection, riot, acts of terrorism, or any condition incident to the foregoing.
- (b) Acts of the Federal or State government or the entry of a court order, intended to, or having the effect of stopping or delaying the work.
- (c) An Act of God which for the purposes of this section shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of the

party to foresee or make preparation in defense of. The performance of the work shall not be adjusted for normal inclement weather.

## **II.68 Emergency Order**

In the event of any emergency, PRTC reserves the right to order the contracted services from other sources, which could provide a faster delivery time.

## **II.69 Non-Discrimination against Faith-Based Organizations**

PRTC does not discriminate against faith-based organizations in procuring supplies and services.

## **II.70 Preference for Recycled Products – Intentionally Omitted**

## **II.71 Hold Harmless**

In addition to the terms and provisions contained in Sections II.26(c) and II.33, the Contractor agrees to indemnify and hold harmless PRTC, its officers, agents and all employees and volunteers, from any and all claims for property damage, bodily injuries and personal injuries to the public, including cost of investigation, all reasonable attorneys fees, and the cost of appeals arising out of any such claims or suits, because of any and all acts of omission or commission of the Contractor, including its agents, subcontractors, employees and volunteers, in connection with work under this Contract.

## **II.72 Acquisition of Management, Architectural, and Engineering Services – Intentionally Omitted**

## **II.73 Fly America – Intentionally Omitted**

## **II.74 Performance Bond and Payment Bond - Intentionally Omitted**

## **II.75 Special Requirements for Clean Fuels Formula Projects – Intentionally Omitted**

## **II.76 Davis Bacon Act – Intentionally Omitted**

## **II.77 Cargo Preference Use of United States Flag Vessels – Intentionally Omitted**

## **II.78 Seismic Safety – Intentionally Omitted**

## **II.75 Veterans Employment - Intentionally Omitted**





POTOMAC AND RAPPAHANNOCK  
TRANSPORTATION COMMISSION

CONTRACTOR:

\_\_\_\_\_  
Executive Director - Contracting Officer

\_\_\_\_\_  
Contractor Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Executive Assistant

\_\_\_\_\_  
Date

APPROVED AS TO FORM COUNTY ATTORNEY'S OFFICE

\_\_\_\_\_  
Attorney's Signature

\_\_\_\_\_  
Date