



**POTOMAC AND RAPPAHANNOCK
TRANSPORTATION COMMISSION
(PRTC)**

INVITATION FOR BIDS

IFB No. 025-007

**PRTC Best Workplaces for Commuters (BWC)
Program Consultant**

IFB Issued: June 23, 2025

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I. INTRODUCTION

I.1 Purpose of the Request

The purpose of this Invitation for Bids (IFB) is to enter into a multi-year Contract for a Best Workplace for Commuters (BWC) Program Consultant to help Prince William County expand its Best Workplaces for Commuter program by providing outreach to those businesses interested in commuter benefits, ridesharing and other environmentally friendly commuting options for their businesses.

This project is funded in whole or part by Federal and State grants and is subject to certain provisions required by the respective Federal and State agencies. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any PRTC requests which would cause PRTC to be in violation of Federal and State agency terms and conditions.

Failure to provide all the required certifications and documents listed and described in this Invitation for Bids (IFB) may cause the bid to be rejected and be considered non-responsive.

I.2 Background Information

Located in Prince William County, about 25 miles southwest of Washington, D.C., the Potomac and Rappahannock Transportation Commission (PRTC) is a multimodal, multijurisdictional agency providing local and commuter bus services and Transportation Demand Management (TDM) services in Prince William County and the Cities of Manassas and Manassas Park. PRTC's services are operated under the _OmniRide brand name and PRTC is a partner in several regional services. PRTC prides itself on providing high quality, progressive and innovative transportation services for residents of its member jurisdictions.

I.3 PRTC Contract Management:

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, LaWana Glymph, PRTC's Procurement Contract Specialist.

Project Manager: **Sarah McGowan** will serve as the Project Manager (PM). The PMs are responsible for the technical administration of the Contract and technical liaison with the Contractor. The PMs are responsible for the day-to-day clarifications and guidance of the Contractor's personnel as may be required under the Contract.

Contracting Officer: PRTC's Executive Director is the only individual who can legally commit or obligate PRTC for the expenditure of federal/public funds. Only the Contracting Officer shall have

the authority to revise the terms and conditions of the Contract, and any such revisions shall be authorized in writing.

Contract or Agreement: The contractual agreement between PRTC and the successful Contractor to perform work described in this solicitation and successful Contractor's bid. **Note: The Contractual instrument for this project will be PRTC's standard form Contract provided as Attachment K, modified as required to conform to this project. PRTC will not use the Bidder's form contract.**

I.4 Scope of Work

The Potomac and Rappahannock Transportation Commission (PRTC) is soliciting bids for a Best Workplaces for Commuters (BWC) Program Consultant to help Prince William County expand its Best Workplaces for Commuter program by providing outreach to those businesses interested in commuter benefits, ridesharing and other environmentally friendly commuting options for their businesses. The full Scope of Services for the procurement is described in **Section III – Scope of Work** in this document. The successful Bidder shall provide the means to fulfill the types of requirements listed herein.

I.5 Contract Term

The term of this Contract will be effective October 1, 2025 and shall be for one (1) base year with four (4), one (1) year option periods.

I.6 Type of Contract

PRTC will award a firm-fixed price contract to the Bidder whose bid is the most responsive, responsible, and best meets the requirements set forth in this solicitation.

I.7 Pre-Bid Conference and Submission of Questions

An informational meeting, referred to here as a Pre-Bid Conference, will be conducted in person at PRTC Transit Center, located at 14700 Potomac Mills Road, Woodbridge, VA 22192 and virtually via Zoom on **July 10, 2025, at 11:00 AM**. Attendance is encouraged as it will assist PRTC in providing the best information on its requirements and resources for all parties.

Questions to be discussed at the meeting may be submitted as follows:

- in advance of the pre-bid conference
- orally at the pre-bid conference
- after the pre-bid conference but **no later than July 17, 2025, at 12:00 NOON**.

Questions submitted to PRTC in advance of the pre-bid conference may be sent by e-mail to lglymph@omniride.com and **must be titled "PRTC Best Workplaces for Commuters (BWC)"**

Program Consultant.” The company posing the question must be clearly identified. PRTC will provide responses to questions via an addendum.

I.8 Posting/Notice of Award

PRTC intends to award this Contract to the lowest responsive and responsible Bidder and the PRTC Board reserves the right to reject any and all bids received, although PRTC also reserves the right to waive irregularities. Notice of Award, made as a result of this solicitation, will be made via official electronic mail and posted on the PRTC Procurement webpage. All bidders will receive email notification whether or not they are the lowest responsive and responsible Bidder and the Notice of Award to the actual lowest responsive and responsible Bidder selected.

I.9 Clarification of Terms

In order to ensure an impartial competitive process, questions, and private communications with the Prospective Bidders during bid preparation and the evaluation period will not be accepted. If a Prospective Bidder has questions about the scope of work or other solicitation documents, the Prospective Bidder should contact PRTC's Contract Specialist, in writing, whose name appears on the cover page of this solicitation. Inquiries regarding this IFB will be accepted until **July 17, 2025, at 12:00 NOON** and the inquiries together with the responses shall be distributed in the form of an addendum to those who attended the Pre-Bid meeting. Any revisions to the solicitation shall be made only by addendum issued by PRTC.

I.10 Compliance

The Contractor agrees to and shall comply with all applicable Federal, State and Local laws, rules and regulations.

I.11 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. PROCUREMENT SCHEDULE

PRTC anticipates following the procurement schedule as shown below. PRTC reserves the right to make changes to the schedule. All such changes shall be made via an addendum to the solicitation. It is the responsibility of each vendor to check the PRTC's procurement webpage (<https://omniride.com/about/business/procurement/>) or eVA, Virginia's online, electronic procurement system (<https://mvendor.cgieva.com/Vendor/public/AllOpportunities.jsp>) for information concerning this solicitation, including any addenda or notices.

June 23, 2025	IFB Issued by PRTC
July 10, 2025	Pre-bid Conference 11:00 am EST In-Person at the PRTC Transit Center, 14700 Potomac Mills Rd, Woodbridge, VA 22192 and Virtually via Zoom
July 17, 2025	Final Questions Due 12:00 Noon EST
July 24, 2025	PRTC Response to Questions
August 5, 2025	BIDS DUE (Bid Opening) 12:00 Noon EST
September 4, 2025	Recommend Award to PRTC Board

III. SCOPE OF WORK

III.1 Purpose

The Potomac and Rappahannock Transportation Commission (PRTC) is soliciting bids for a Best Workplaces for Commuters (BWC) Program Consultant to help Prince William County expand its Best Workplaces for Commuter program by providing outreach to those businesses interested in commuter benefits, ridesharing and other environmentally friendly commuting options for their businesses.

III.2 Background

In 2024, PRTC kicked off its Best Workplaces for Commuter (BWC) program. Similar to BWC programs in nearby jurisdictions, PRTC's program provides both technical and financial support to businesses interested in pursuing the national Best Workplaces for Commuters designation.

III.3 Contractor Responsibilities

The selected contractor will provide PRTC with assistance conducting employer outreach and engagement for PRTC's BWC program. The Contractor's responsibilities will include the following:

- Employer outreach and soliciting, including researching potential candidates and cold-calling;
- Maintaining and updating the Association for Commuter Transportation (ACT) database
- Collateral update and graphic design, including outreach toolkits;
- Developing content for PRTC's website and wider marketing needs;
- Support for BWC applications, including answering questions and coordination between applicants and the BWC program; and
- Purchase of a Prince William employer list, BWC application fees, and any other tool that might assist with employer outreach.

In addition to the activities listed above, the selected contractor will hold bi-weekly check-ins with PRTC staff, as well as oversee monthly progress reports and billing. Activities will include the following:

- Scheduling, and facilitating bi-weekly check-in meetings with the client
- Meeting notes
- Monthly progress reporting
- Invoicing

IV. GENERAL TERMS AND CONDITIONS

IV.1 Bid and Contract Requirements

This IFB plus the resulting bid and contract shall be consistent with and governed by the Virginia Public Procurement Act, Va. Code §§ 2.2-4300 *et seq.* In the event of an inconsistency between the solicitation and the selection requirements set forth in this IFB 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 requirements and should not submit bids if unable to execute a contract containing such provisions.

PRTC will provide a contract for execution -to the Successful Contractor – a sample contract containing these provisions is included as **Attachment J**. 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 contractor's performance, unless PRTC issues a written determination otherwise.

IV.2 Obligation of Prospective Contractor

By submitting a bid, 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.

IV.3 Qualification of Bidders

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 contractors shall have substantial recent experience in providing similar services on a scale equal to or greater than what PRTC is requesting and meet the following requirements:

- Receive high praise from past clients for quality of work, timely delivery, and fair and equitable handling of change orders.
- Employ, or have the ability to hire, the necessary complement of personnel to complete all work in the specified time.

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

IV.4 Additional Information

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

IV.5 Qualification Acceptance Period

The bid and any modification thereof shall be binding upon the Prospective Contractor for ninety (90) calendar days following the bid due date. Any bid for which the Prospective Contractor shortens the acceptance period may be rejected. At the end of that time, the Prospective Contractor may retract its bid by giving written notice to PRTC.

IV.6 Delays in Award

Delays in the 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.

IV.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 bid to any Prospective Contractor whose bid is the most responsible and responsive and whose bid meets the requirements and criteria set forth in the _Invitation for Bids with respect to the items in question.

IV.8 Rejection of Bids

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

IV.9 Single Bid

If a single conforming bid is received, a price and/or cost analysis of the Bid 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.

IV.10 Inspection of Bids

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 Va. Code § 2.2-4342.F. are met.

IV.11 Protest of Award

A Prospective Contractor who wants to protest an award or a decision to award a contract must submit the protest, in writing, to PRTC no later than 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 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 the FTA should do so not later than five 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 C4220.1G, Chapter III, Section. 7.

IV.12 Anti-Discrimination

By submitting a bid, 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 VIII 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 Va. Code § 2.2-4311 of the Virginia Public Procurement Act.

IV.13 Debarment Status

The Commonwealth Transportation Board's (CTB) Policy of Debarment dated November 23, 2011 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 G**) and shall require all subcontractors to submit to the prospective contractor and PRTC such signed certifications.

IV. 14 Prohibition Against the Use of Federal Funds for Lobbying

The Contractor and all subcontractors agree to comply with the provisions of 31 U.S.C. § 1352, which prohibit the use of federal funds for lobbying any official or employee of any federal agency, or member or employee of Congress; and requires the recipient to disclose any lobbying of any official or employee of any federal agency, or member or employee of Congress in connection with federal assistance. In addition, no federal assistance funds shall be used for activities designed to influence Congress or State Legislature on legislation or appropriations, except through proper, official channels. The Contractor shall comply and assure the compliance of subcontractors at any tier with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20.

For contracts of \$100,000 or more, the Contractor shall submit to the PRTC a signed "Certification of Restrictions on Lobbying," (**Attachment E**) and shall require all subcontractors with contracts of \$100,000 or more to submit to the Contractor and the PRTC such signed certifications.

IV.15 Disadvantaged Business Enterprise (DBE)

Each Prospective Contractor is required to submit the Disadvantaged Business Enterprise (DBE) Form (**Attachment F**) to PRTC along with its proposal. This submission does not necessarily require the Prospective Contractor to utilize DBEs in the performance of the contract, but the Schedule Production Contractor contract is among PRTC's federal participating contract and it is expected that the contractor provides subcontractors that can help meet PRTC's DBE goal. Where it is practicable for any portion of the awarded contract to be subcontracted, the contractor is encouraged to offer such business to small, minority and/or women-owned businesses. All DBE's proposed must be certified by the U.S. DOT, or Virginia Department of Small Businesses and Supplier Diversity (VDSBSD), or the Metropolitan Washington Airports Authority (MWAA). 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 as a 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 any 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 businesses 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

IV.16 Insurance

PRTC will require the Contractor to purchase and maintain insurance coverage to the levels described in this section. A description of the proposed insurance as specified below, including insurance carrier names and policy numbers, should be included in Bidder's technical bid. The cost of insurance should be shown by line of coverage.

A checklist of required insurance coverage is attached and identified as Insurance Checklist (**Attachment D**). Items marked "X" are required to be provided. If such insurance is incomplete, provide a letter from your insurance agent stating that the Bidder is eligible to obtain insurance to the prescribed limits should a Contractual offer be extended.

PRTC may require that insurance be raised due to change orders to this 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 D**, 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 D**, Insurance Checklist. Technical proposals must note any desired exceptions to the insurance coverage, which may include the submission of proposed alternatives.

a. 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.

b. 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":

i. 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.

ii. General Liability insurance in the amount prescribed by PRTC, to protect the 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.

iii. 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.

c. 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.

- d. 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.
- e. The Successful Contractor will provide an original, signed Certificate of Insurance, showing PRTC as an additional insured, evidence 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.
- f. The Successful Contractor will secure and maintain all insurance policies of its subcontractors, which shall be made available to PRTC on demand.
- g. The Successful Contractor will provide on demand, certified copies of all insurance coverage on behalf of the Contract within ten (10) business days of demand by PRTC. These certified copies shall be sent to PRTC from the Contractor's insurance agent or representative.
- h. No change, cancellation, or non-renewal shall be made in any insurance coverage without a 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 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.
- i. 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 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.
- j. 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.
- k. 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.
- l. 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.
- m. Precaution shall be exercised at all times for the protection of persons (including employees) and property.

- n. 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.
- o. 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.
- p. PRTC shall be named an additional insured in the General Liability policies and stated so on the Certificate.

V. INSTRUCTIONS TO BIDDERS

V.1. General

The following general information is provided to all bidders to facilitate the preparation of suitable bids for the goods or services identified in this IFB, and the requirements set forth shall be binding on all bidders.

Bids must be based on the entire bid set and nothing else, and bidders are expected to take into consideration that the bid set, including any contract which is a part of the Invitation, will constitute the terms of the bargain between PRTC and the successful bidder. Where a contract is provided, it is intended that it shall incorporate the terms and conditions of the bid, rendering further reference to the bid set unnecessary.

PRTC is not at liberty to change the terms of the bargain after the opening of bids. Where questions and discussions prior to bid opening disclose a need for additional information or amendments, appropriate addenda to the IFB will be prepared and distributed so that all bidders will be offering price quotes based on the same information and specifications.

The PRTC Executive Director may extend the date and time for opening of bids if he believes it is necessary.

V.2 Bid Format

One (1) copy of the Bid Submission Package including the required forms must be returned.

The Bid Submission Package should include the following:

- a. Title Page – show the name of the Bidder's firm, local address, telephone number, name of contact person and date.
- b. Letter of Transmittal summarizing the bid and noting exceptions (if any).
- c. A written statement giving the name and address of all proposed subcontractors, the portion of the work and materials which the proposed subcontractors are to perform and any other information which indicates the proposed subcontractors have the necessary facilities, skills, integrity, past experience and financial resources to perform the work.
- d. Required Bid Submission Forms as listed below:
 1. Pricing Schedule (Attachment A)
 2. Reference Form (Attachment B)

3. IFB Submission Form (Attachment C)
4. Insurance Checklist and Bidder & Insurance Agent Statement (Attachment D)
5. Certification of Restrictions on Lobbying (Attachment E)
6. Disadvantaged Business Enterprise (DBE) Participation (Attachment F)
7. Certification of Primary Participants Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion (Attachment G)
8. Federal Tax Liability and Recent Felony Convictions Certification (Attachment H)
9. Seismic Safety Certificate of Compliance (Attachment I)

Additionally, Bidders may submit other materials describing their company, qualifications, etc.

Vendors can respond to PRTC's solicitations by submitting bids and proposals on paper and also in electronic format, using the Commonwealth of Virginia electronic procurement portal. eVA is Virginia's online, electronic procurement system. Paper bids shall be submitted in a sealed package which clearly identifies the Project or Procurement name, the name of the bidder, the due date and time of the bid opening and plainly states that the bid is not to be opened until bid opening. The bidder assumes the risk that an envelope not properly marked will be mistakenly opened, and thus may

be rendered ineligible for consideration. The PRTC Executive Director or his representative(s) shall not be responsible for the premature opening of a bid not properly addressed and identified as specified herein.

V.3 Completeness

All information required by the IFB must be supplied in order for the bid to be considered complete. Inadequate information may require disqualification of the bid. Bids cannot ordinarily be modified after they are opened. Any modifications not expressly provided for in the Invitation may require rejection of the bid.

V.4 Net Prices

Bid prices, unless otherwise specified, must be net, including transportation and handling charges fully prepaid by the contractor to destination, and subject only to any discount for prompt payment that may be provided in this Invitation.

V.5 Tax Exemption

PRTC is exempt from the payment of any Federal excise or any Virginia sales tax. However, when under established trade practice any Federal excise tax is included in the list price, the bidder may quote the list price and shall show separately the amount of Federal tax, as a flat sum, which shall be deducted by PRTC.

V.6 Only Authorized Parties to Sign

Each bid, and any contract, must be signed by a person authorized to bind the bidder to a valid Contract with PRTC. The PRTC Executive Director may require that any bidder submit powers of attorney or other appropriate documentation showing the authority of the signature to act on the Contractor's behalf. If, whether such proof of agency has been demanded or not, it later appears that the signatory was not authorized to act, PRTC may declare the Contract void if it is in its best interests to do so.

V.7 Time for Submission of Bids

Written sealed bids for the goods or services identified must be submitted not later than the date and time set forth elsewhere in this IFB.

V.8 Return of Bid Package

If a prospective Bidder is unable to submit a bid in response to this IFB, the bidder should return the IFB with a statement as to why the bidder is unable to bid. Because of the large number of firms listed on PRTC's qualified list of bidders, it is necessary to delete from these lists the names of those persons, firms or corporations who fail to respond after having been invited to bid on three successive solicitations. Furthermore, PRTC is interested in learning whether problems with the bid process have discouraged responses.

V.9 Bidders Present

Contents of bids (pricing schedule) will be made public at the time fixed for the opening of bids. Bidders are strongly encouraged to attend all openings, and to offer constructive suggestions for improvements to bid procedures, format, or other matters.

V.10 Evaluation of Bids

Bids shall be evaluated on the basis of those requirements which are set forth in the IFB, the Specifications, and the requirements of these General Provisions, any Special Provisions, and the Virginia Public Procurement Act. Bids shall be awarded to the lowest responsive and responsible bidder as set forth in Va. Code § 2.2-4318.

V.11 Competency of Bidder

No bid will be accepted from, or contract awarded to any person, firm, or corporation that is in arrears, or is in default to PRTC upon any debt or contract, or that has defaulted as surety or otherwise upon any obligation to PRTC. The bidder, if requested, must present within forty-eight (48) hours evidence satisfactory to the PRTC Executive Director of performance ability, and possession of necessary facilities, pecuniary resources, and adequate insurance to comply with the terms of these Specifications and contract documents.

V.12 Waiver of Informalities or Irregularities

The PRTC Executive Director is authorized to waive any irregularity or informality in any bid; provided, however, bids or amendments which are received after the time specified for the opening of bids will be neither opened nor considered.

V.13 Withdrawals of Bids

Withdrawal of bids is strictly governed by Va. Code § 2.2-4330. If a bid may be lawfully withdrawn under that section, notice of withdrawal must be provided in writing within two (2) business days after the bid opening.

V.14 One Responsive and Responsible Bid

When only one responsive and responsible bid is received, the IFB may be cancelled and items rebid, unless the PRTC Executive Director determines the price bid is reasonable and in the best interests of PRTC, on the basis of price comparison, value analysis, prior price history, an engineering estimate, or other method which establishes the reasonableness of the price bid.

When the PRTC Executive Director personally determines that the above methods of establishing price reasonableness are not feasible, he may enter into negotiations with the single responsible and responsive bidder. Such negotiations shall consist of detailed discussions with regard to the cost of labor, materials, overhead and profit. The PRTC Executive Director shall establish a detailed cost/price objective that he determines to be in the best interest of PRTC, prior to the initiation of negotiations.

Any bidder who is a party to such negotiations shall be required to certify that its price proposal is complete, current, and accurate prior to the initiation of such negotiations.

A record of negotiations shall be prepared upon the completion thereof, which shall detail the most significant considerations which resulted in the agreed upon Contract price.

V.15 Cancellation of the Invitation for Bid

Virginia Code § 2.2-4319, permits the PRTC Executive Director to cancel any solicitation if it is in the best interest of PRTC to do so.

Bids received at PRTC after the date and time prescribed will not be considered for Contract award and will be returned to the Bidder. The names of the Bidders submitting bids will be available after the bid closing time and date.

VI. ATTACHMENTS

ATTACHMENT A	PRICING SCHEDULES
ATTACHMENT B	REFERENCE FORM
ATTACHMENT C	IFB SUBMISSION FORM
ATTACHMENT D	INSURANCE CHECKLIST
ATTACHMENT E	CERTIFICATION OF RESTRICTIONS ON LOBBYING
ATTACHMENT F	DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION FORM
ATTACHMENT G	CERTIFICATION OF PRIMARY PARTICIPANTS REGARDING DEBARMENT, SUSPENSION AND OTHER INELGIBILITY AND VOLUNTARY EXCLUSION
ATTACHMENT H	FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS CERTIFICATION
ATTACHMENT I	TRANSIT ADMINISTRATION (FTA) THIRD PARTY CONTRACT PROVISIONS
ATTACHMENT J	PRTC SAMPLE CONTRACT

ATTACHMENT A

PRICING SCHEDULE (Base Year)

PRTC BEST WORKPLACES FOR COMMUTERS (BWC) PROGRAM CONSULTANT PRICING SCHEDULE				
Pricing shall be based on services outlined in the SOW.				
NAME OF BIDDER OR CONTRACTOR:			SOLICITATION NUMBER:	
			IFB No. 025-007	
SCOPE OF WORK				
The Potomac and Rappahannock Transportation Commission (PRTC) is soliciting bids for Best Workplaces for Commuters (BWC) Program Consultant to help Prince William County expand its Best Workplaces for Commuter program by providing outreach to those businesses interested in commuter benefits, ridesharing and other environmentally friendly commuting options for their businesses.				
BASE YEAR				
Contract Line Item No.	Task Description	Task Hours	Rate Per Hour	Total Cost
001	Program Management	80		
002	Employer Outreach	650		
003	LinkedIn Premium			\$600
004	Prince William County Employer Contract List			\$5,000
005	Best Workplace Commuter Application Fees			\$2,000
Base Year Total				

Printed Name of Authorized Official: _____

Signature of Authorized Official: _____

Title of Authorized Official: _____

Date: _____

ATTACHMENT A (continued)

PRICING SCHEDULE (Option Year 1)

PRTC BEST WORKPLACES FOR COMMUTERS (BWC) PROGRAM CONSULTANT PRICING SCHEDULE				
Pricing shall be based on services outlined in the SOW.				
NAME OF BIDDER OR CONTRACTOR:			SOLICITATION NUMBER:	
			IFB No. 025-007	
SCOPE OF WORK				
The Potomac and Rappahannock Transportation Commission (PRTC) is soliciting bids for Best Workplaces for Commuters (BWC) Program Consultant to help Prince William County expand its Best Workplaces for Commuter program by providing outreach to those businesses interested in commuter benefits, ridesharing and other environmentally friendly commuting options for their businesses.				
OPTION YEAR 1				
Contract Line Item No.	Task Description	Task Hours	Rate Per Hour	Total Cost
001	Program Management	80		
002	Employer Outreach	650		
003	LinkedIn Premium			\$600
004	Prince William County Employer Contract List			\$5,000
005	Best Workplace Commuter Application Fees			\$2,000
Option Year 1 Total				

Printed Name of Authorized Official: _____

Signature of Authorized Official: _____

Title of Authorized Official: _____

Date: _____

ATTACHMENT A (continued)

PRICING SCHEDULE (Option Year 2)

PRTC BEST WORKPLACES FOR COMMUTERS (BWC) PROGRAM CONSULTANT PRICING SCHEDULE				
Pricing shall be based on services outlined in the SOW.				
NAME OF BIDDER OR CONTRACTOR:		SOLICITATION NUMBER:		
		IFB No. 025-007		
SCOPE OF WORK				
The Potomac and Rappahannock Transportation Commission (PRTC) is soliciting bids for Best Workplaces for Commuters (BWC) Program Consultant to help Prince William County expand its Best Workplaces for Commuter program by providing outreach to those businesses interested in commuter benefits, ridesharing and other environmentally friendly commuting options for their businesses.				
OPTION YEAR 2				
Contract Line Item No.	Task Description	Task Hours	Rate Per Hour	Total Cost
001	Program Management	80		
002	Employer Outreach	650		
003	LinkedIn Premium			\$600
004	Prince William County Employer Contract List			\$5,000
005	Best Workplace Commuter Application Fees			\$2,000
Option Year 2 Total				

Printed Name of Authorized Official: _____

Signature of Authorized Official: _____

Title of Authorized Official: _____

Date: _____

ATTACHMENT A (continued)

PRICING SCHEDULE (Option Year 3)

PRTC BEST WORKPLACES FOR COMMUTERS (BWC) PROGRAM CONSULTANT PRICING SCHEDULE				
Pricing shall be based on services outlined in the SOW.				
NAME OF BIDDER OR CONTRACTOR:			SOLICITATION NUMBER:	
			IFB No. 025-007	
SCOPE OF WORK				
The Potomac and Rappahannock Transportation Commission (PRTC) is soliciting bids for Best Workplaces for Commuters (BWC) Program Consultant to help Prince William County expand its Best Workplaces for Commuter program by providing outreach to those businesses interested in commuter benefits, ridesharing and other environmentally friendly commuting options for their businesses.				
OPTION YEAR 3				
Contract Line Item No.	Task Description	Task Hours	Rate Per Hour	Total Cost
001	Program Management	80		
002	Employer Outreach	650		
003	LinkedIn Premium			\$600
004	Prince William County Employer Contract List			\$5,000
005	Best Workplace Commuter Application Fees			\$2,000
Option Year 3 Total				

Printed Name of Authorized Official: _____

Signature of Authorized Official: _____

Title of Authorized Official: _____

Date: _____

ATTACHMENT A (continued)

PRICING SCHEDULE (Option Year 4)

PRTC BEST WORKPLACES FOR COMMUTERS (BWC) PROGRAM CONSULTANT PRICING SCHEDULE				
Pricing shall be based on services outlined in the SOW.				
NAME OF BIDDER OR CONTRACTOR:			SOLICITATION NUMBER:	
			IFB No. 025-007	
SCOPE OF WORK				
The Potomac and Rappahannock Transportation Commission (PRTC) is soliciting bids for Best Workplaces for Commuters (BWC) Program Consultant to help Prince William County expand its Best Workplaces for Commuter program by providing outreach to those businesses interested in commuter benefits, ridesharing and other environmentally friendly commuting options for their businesses.				
OPTION YEAR 4				
Contract Line Item No.	Task Description	Task Hours	Rate Per Hour	Total Cost
001	Program Management	80		
002	Employer Outreach	650		
003	LinkedIn Premium			\$600
004	Prince William County Employer Contract List			\$5,000
005	Best Workplace Commuter Application Fees			\$2,000
Option Year 4 Total				

Printed Name of Authorized Official: _____

Signature of Authorized Official: _____

Title of Authorized Official: _____

Date: _____

ATTACHMENT B REFERENCE FORM

Describe previous work experience for at least five (5) engagements that are similar in-service type, size, scope, and/or complexity in the past five (5) 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 C

IFB SUBMISSION FORM

Bids Due: **August 5, 2025**

IFB Number: **025-007**

Name of IFB: **PRTC Best Workplaces for Commuters (BWC) Program Consultant**

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 III - CONFLICTS OF INTEREST

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

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

ATTACHMENT C (continued)

IFB SUBMISSION FORM

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 results 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.

Signature _____	Date _____
Name (Printed) _____	Title _____

BIDDER MUST RETURN THIS COMPLETED FORM WITH BID SUBMISSION

ATTACHMENT D

INSURANCE REQUIRED CHECKLIST

X = Required Coverage, Indicate compliance in blank with Yes/No

		COVERAGE REQUIRED		LIMITS (FIGURES DENOTE MINIMUM)	
Yes	No*	Required			
___	___	X	1. Workers' Compensation and Employers' Liability;	1.	Statutory Limits of the Commonwealth of Virginia:
___	___	X	Admitted in Virginia		Yes
___	___	X	Employer's Liability		\$500,000
___	___		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.	\$1,000,000 Combined
___	___	X	Owned, Hired & Rented		Single Limit Bodily
___	___		Motor Carrier Act End.		Injury and Property
					Damage Each Occurrence
___	___		4. Professional Errors and Omissions	4.	\$1,000,000 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 IFB #025-007 and IFB Title	12	
___	___	X	13. Umbrella Liability	13	\$1,000,000 Limit per Occurrence

OFFEROR AND INSURANCE AGENT STATEMENT

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

BIDDER

INSURANCE AGENCY

SIGNATURE

SIGNATURE

BIDDER MUST RETURN THIS COMPLETED FORM WITH BID SUBMISSION

ATTACHMENT E
CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, _____ hereby certify on behalf (name and title
of Firm/Contractor Official)

of _____ that:
(name of Firm/Contractor)

(1) No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. No federal assistance funds shall be used for activities designed to influence Congress or State Legislature on legislation or appropriations, except through proper, official channels.

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

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

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

Executed this _____ day of _____, _____

By: _____ Title: _____

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

ATTACHMENT F

DISADVANTAGED BUSINESS ENTERPRISE (DBE) 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. PRTC has established a goal of **14.7%** 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 14.7% goal.

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 (continued)
DISADVANTAGED BUSINESS ENTERPRISE (DBE) STATEMENT

SCHEDULE OF DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION
(One form must be completed for each DBE)

Name of Offeror

Project Name

Name of Certified DBE Contractor

Contact Name, Title

Address

Phone Number Fax Number

Age of Firm: _____ years

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**

Certified as a DBE by Date

Type of Product/Services Provided/SOW Tasks and Contract Items to be Provided by DBE

Projected Dates for Work Commencement/Completion

Contract Amount

The undersigned will enter into a formal agreement with the above DBE Contractors for work listed in the schedule conditioned upon execution of a contract.

feror Of

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

ATTACHMENT G
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 a federal department or agency.

(If the Prime Contractor or Subcontractor is unable to certify 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 H

FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS CERTIFICATION

The Bidder/Offeror must complete the following two certification statements. The Bidder/Offeror must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (☐) in the space following the applicable response. The Bidder/Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

The Bidder/Offeror represents that it is () is not () a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

The applicant represents that it is () is not () a corporation that was convicted of a criminal violation under any Federal law within the preceding twenty-four (24) months.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 USC § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

The Bidder/Offeror agrees to require all Subcontractors to provide this certification and to flow this requirement down to participants at all lower tiers, without regard to the value of any subcontract.

Company Name: _____

Name of Signatory: _____

Signature: _____

Title: _____

Date: _____

ATTACHMENT I

FEDERAL TRANSIT ADMINISTRATION (FTA) THIRD PARTY CONTRACT PROVISIONS

IFB Formal Solicitation Provisions/Required Contract Clauses

Contract Subject to Federal Financial Assistance/Application of Provisions and Clauses

This Contract/project is funded in whole or in part by grants from the Federal Transit Administration (FTA) of the United States Department of Transportation. The award of any contract is subject to the requirements of financial assistance contracts between the Virginia Railway Express (hereinafter referred to as "PRTC") and the U.S. Department of Transportation requiring compliance with purchasing procedures and standards as set forth in various federal statutes and regulations including 49 CFR Part 18, and Federal Transit Administration (FTA) Circular 4220.1F. The Contractor/Bidder/Offeror is required to comply with all terms and conditions prescribed for third-party contracts by the Department of Transportation (DOT), Federal Transit Administration (FTA).

Contractor/Bidder/Offeror is responsible for ensuring its compliance with all applicable FTA requirements. Additionally, Contractor/Bidder/Offeror is responsible for ensuring that subcontractors, at as many tiers of the Project as required, perform in accordance with the terms, conditions and specifications of the contract, including all applicable FTA requirements.

Upon request of PRTC or FTA, Contractor/Bidder/Offeror shall provide evidence of the steps it has taken to ensure its compliance with the FTA requirements, as well as evidence of the steps it has taken to ensure subcontractor performance, and/or submit evidence of each subcontractor's compliance at all tiers.

The following solicitation provisions and required contract clauses will be incorporated by reference in any contract resulting from this solicitation issued by PRTC. These solicitation provisions and required contract clauses are in addition to other General Specifications, Special and Technical Specifications, Bidding or Proposal Procedures, and Bid or Proposal Forms set forth in other sections of this solicitation which may also be incorporated by reference in any resulting contract. Some provisions and clauses require the bidder/offeror to execute and submit certain required certifications with the bid/proposal or contract, which are included herein. Failure to execute and submit required certifications with the bid/proposal or contract documents may render a bid/proposal non-responsive or a contract null and void.

Clauses may not be listed in consecutive numerical order as only those provisions and required clauses that apply to this contract/project have been referenced.

1. ENERGY CONSERVATION REQUIREMENTS

**42 U.S.C. 6321 et seq.
49 CFR Part 622, subpart C**

Applicability to Contracts

Applicable to all contracts.

Flow Down

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

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.

2. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Applicability to Contracts

Applicable to all contracts and subcontracts exceeding \$150,000.

Flow Down

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

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251-1387. The Contractor agrees to report each violation to PRTC and understands and agrees that PRTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

3. LOBBYING

31 U.S.C. 1352

**49 CFR Part 20 2 CFR 200.450
2 CFR Part 200 Appendix II (J)**

Applicability to Contracts

Applicable to all contracts exceeding \$100,000.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5).

Mandatory Clause/Language

Clause and specific language therein are mandated by 49 CFR Part 20.

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

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

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

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]

Contractors who submit a Bid/Proposal for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

The certificate entitled *Certification of Restrictions on Lobbying* (included in the Representations, Certifications and Other Statements of Bidders/Offerors Attachment) must be completed and submitted with the Bid/Proposal.

4. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

49 CFR 18.36 (i)

49 CFR 633.17

2 CFR 200.333

Applicability to Contracts

Applicable to all contracts as listed below.

Flow Down

The record keeping and access requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

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

Where PRTC is not a State but a Transportation District Commission and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide PRTC, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or their 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.

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

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

The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor agrees to maintain same until PRTC, the FTA Administrator, the US Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

5. FEDERAL CHANGES **49 CFR Part 18**

Applicability to Contracts

Applicable to all contracts.

Flow Down

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

Federal Changes – The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between PRTC and FTA, as they may be amended or

promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.

6. CLEAN AIR
42 U.S.C. 7401 et seq 40 CFR 15.61
2 CFR Part 200, Appendix II (G)

Applicability to Contracts

Applicable to all contracts exceeding \$150,000.

Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$150,000.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 - 7671q. The Contractor agrees to report each violation to PRTC and understands and agrees that PRTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

7. RECYCLED PRODUCTS
42 U.S.C. 6962
40 CFR Part 247 Executive Order 12873
2 CFR Part 200.322

Applicability to Contracts

Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

These regulations apply to all procurement actions involving items designated by the EPA, where the Contractor purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year exceeds \$10,000.

Flow Down

These requirements flow down to all contractors and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

Recovered Materials - The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with all the requirements of Section 6002 of the

Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

8. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
40 U.S.C. 3701-3708
29 CFR Part 5

Applicability to Contracts

Applicable to all contracts exceeding \$100,000. The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

Clause Language

Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies, materials, or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section 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 the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

Withholding for unpaid wages and liquidated damages - PRTC shall upon its own action or upon written request of 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 in paragraph (2) of this section.

Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

The Contractor 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. Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

9. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

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

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

10. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

49 CFR Part 31

31 U.S.C. 3801 et seq. 18 U.S.C. 1001

49 U.S.C. 5323

Applicability to Contracts

Applicable to all contracts.

Flow Down

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

Program Fraud and False or Fraudulent Statements or Related Acts.

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

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed as a 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.

11. TERMINATION

Applicability to Contracts

Applicable to all contracts exceeding \$10,000.

Refer to PRTC General Provisions, "Termination for the Convenience of PRTC" and "Termination for Default."

12. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

2 CFR Part 1200

2 CFR Part 180

Applicability to Contracts

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.

The certificate entitled *Certification of Primary Participants Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion* (included in the Representations, Certifications and Other Statements of Bidders/Offerors Attachment) must be completed and returned with the Bid/Proposal.

13. PRIVACY ACT **5 U.S.C. 552**

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information can be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down

The Federal Privacy Act requirements flow down to each third-party contractor and their contracts at every tier.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

14. CIVIL RIGHTS REQUIREMENTS
29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6101, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts

Applicable to all contracts.

Flow Down

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

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

Non-discrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, the Age Discrimination Act of 1975, as amended, 42

U.S.C. § 6101, section 202 of the Americans with Disabilities Act of 1990, 42

U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Age - In accordance with the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations,

“Age Discrimination in Employment Act,” 29 C.F.R. part 1625, U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,”

45 C.F.R. Part 90 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

15. BREACHES AND DISPUTE RESOLUTION

Applicability to Contracts

Applicable to all contracts exceeding \$100,000.

16. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Applicability to Contracts

Applicable to all DOT-assisted contracting activities.

Flow Down

The DBE contracting requirements flow down to all third-party contractors and their contracts at every tier.

Disadvantaged Business Enterprises

It is the policy of PRTC and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBEs”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of PRTC to ensure nondiscrimination in the award and administration of DOT-assisted contracts; create a level playing field on which DBEs can compete fairly for DOT- assisted contracts; to ensure that the DBE program is narrowly tailored in accordance with applicable law; to ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBEs; to help remove barriers to the participation of DBEs in DOT assisted contracts; to promote the use of DBEs in all types of

federally assisted contracts and procurement activities; and to assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. PRTC shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, PRTC may consider during its review of the Bidder's/Offeror's submission package, the Bidder's/Offeror's documented history of non-compliance with DBE requirements on previous contracts with PRTC.

PRTC's overall goal for DBE participation is set at **14.7%**. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than 14.7%** of the total Contract price.

The contractor and subcontractor(s) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as PRTC deems appropriate, which may include, but is not limited to:

Withholding monthly progress payments;

Assessing sanctions;

Liquidate damages; and/or

Disqualifying the Contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

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

The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than seven days after the Contractor's receipt of payment for that work from PRTC. In addition, the Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. The Contractor shall be obligated to pay interest to a subcontractor on all monies owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from PRTC for work performed by a subcontractor under the Contract, except for amounts withheld for retainage under subsection (e) 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.

The Contractor shall utilize the specific DBEs listed unless the Contractor obtains PRTC's written consent; and that, unless PRTC's consent is provided, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

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

17. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA)

TERMS

FTA Circular 4220.1F

Applicability to Contracts

Applicable to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

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

18. ACCESS FOR INDIVIDUALS WITH DISABILITIES

Applicability to Contracts

Applicable to all contracts.

The Contractor agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial

assistance; 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 individuals with disabilities; 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 individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Contractor agrees to comply with applicable implementing Federal regulations and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing.

19. SAFE OPERATIONS OF MOTOR VEHICLES

**23 U.S.C. part 402 Executive Order No. 13043 Executive Order No. 13513
U.S. DOT Order No. 3902.10**

Applicability to Contracts

The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. In compliance with Federal Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third-party agreements supported with Federal assistance.

Flow Down

The Safe Operation of Motor Vehicles requirements flow down to all third -party contractors at every tier.

Seat Belt Use- The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or PRTC.

Distracted Driving- The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle the Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this contract.

20. VETERANS PREFERENCE

Applicability to Contracts

Applicable to all contracts.

The Contractor, if working on a capital project funded using FTA assistance, shall give a hiring preference, to the extent practicable, to veterans (as defined in Section 2108 of Title V) who have the requisite skills and abilities to perform the construction work required under the Contract.

This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

21. NOTICE TO FTA AND U.S DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE OR OTHER LEGAL MATTERS

Applicability to Contracts

Applicable to all contracts exceeding \$25,000.

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify PRTC, which will promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which PRTC is located.

The Contractor must include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the award, the accompanying Underlying Agreement between the FTA and PRTC, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

Additional Notice to U.S.DOT Inspector General. - The Contractor must promptly notify PRTC, which will promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which PRTC is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the project is subject to this Agreement or another agreement with PRTC involving a principal, officer, employee, agent, or Third-Party Participant of the Contractor. It also applies to subcontractors at any tier. Knowledge, as used herein,

includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this provision, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.

22. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Applicability to Contracts

Applicable to all contracts.

Flow Down

This requirement flows down to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

Procure or obtain;

Extend or renew a contract to procure or obtain; or

Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

Telecommunications or video surveillance services provided by such entities or using such equipment.

Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

See Public Law 115-232, section 889 for additional information.

See also § 200.471.

23. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

The contractor certifies that it:

Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

Was not convicted of the felony criminal violation under any Federal law within the preceding twenty-four (24) months.

If the Contractor cannot so certify it, PRTC will refer the matter to FTA and not enter into any Third-Party Agreement with the Third-Party Participant without FTA's written approval.

The Contractor agrees to flow this requirement down to participants at all lower tiers, without regard to the value of any sub agreement.

The certificate entitled *Federal Tax Liability and Recent Felony Convictions* (included in the Representations, Certifications and Other Statements of Bidders/Offerors Attachment) must be completed and submitted with the Bid/Proposal.

**ATTACHMENT J
SAMPLE CONTRACT**

**Potomac and Rappahannock
Transportation Commission
Services Contract**



CONTRACT: #025-007

SUBJECT: PRTC Best Workplace for Commuters (BWC) Program Consultant

Between:

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

and the Contractor:

This Contract is entered into this ____ day of _____, 2025, by and between the Potomac and Rappahannock Transportation Commission aka PRTC, or its authorized agents, and the Contractor identified above for supplies and services identified herein, on the following terms and conditions. This Contract is prepared in accordance with the Virginia Public Procurement Act, Va. Code §§ 2.2-4300, *et seq.*, 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.

“Contract Administrator” - Matters relating to prices, terms and conditions, period of performance, qualities to be supplied, delivery schedule and financial adjustments shall be handled through the Contractor Administrator. The Contract Administrator for this Contract for PRTC is LaWana Glymph, Contract Specialist.

“Project Manager” (PM) assists in monitoring the work under the contract. The PM is responsible for the day-to-day clarifications and guidance of Contractor’s personnel as may be required under the Contract. The PM for this Contract is Sarah McGowan, TDM Manager.

“Contracting Officer” for this Contract is the PRTC Executive Director Dr. Bob Schneider (“PRTC Executive Director”/“Executive Director”).

“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 of this Contract will begin on October 1, 2025, and shall be for one (1) base year from the date of award, with four (4), one (1) year option periods.

I.3 Incorporation of Documents

The following documents are hereby incorporated by reference into this Contract:

1. PRTC’s Solicitation Number IFB No. 025-007, entitled “PRTC Best Workplaces for Commuters (BWC) Program Consultant,” and dated June 23, 2025.
2. Contractor’s Bid Response dated, _____.

I.3b Precedence Terms

In the event of an inconsistency between the above-referenced documents, the inconsistency shall be resolved by the following order of precedence:

- a. The Virginia Public Procurement Act, Va. Code §§ 2.2-4300 et seq.
- b. PRTC Public Procurement Policy and Procedures Manual
- c. This executed Contract #025-007,
- d. Invitation for Bids, IFB No. 025-007, entitled, “PRTC Best Workplaces for Commuters (BWC) Program Consultant,” dated June 23, 2025.
- e. Contractor’s Response dated, _____.

I.4 Provision of Services

The chosen Contractor is to provide both technical and financial support to PRTC for employer outreach and engagement to businesses interested in pursuing the national Best Workplaces for Commuters designation.

I.5 Contract Amount

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 for services outlined in Section III of the Scope of Work and at the rates outlined on the Pricing Schedule, which are attached to this contract.

I.6 Method of Payment

The Contractor shall submit invoices identifying the services performed. The invoice should cite the Purchase Order Number, Contract Number, and date of services.

PRTC will make payment to the Contractor, net 30 days or in accordance with discount terms, if offered, after receipt of an acceptable invoice.

I.7 Time of the Essence and Completion

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

I.8 Key Personnel

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

During the period of performance, the Contractor shall make no substitutions of key personnel unless approved in writing by the Contract Administrator.

The Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumés 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 will be modified to reflect any approved changes of key personnel.

I.9 Insurance

The Contractor shall maintain insurance shall otherwise comply with the Insurance Requirements set forth in the following numbered paragraphs, plus the coverages and limits indicated on the “Insurance Checklist.”

1. The Contractor 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 Contractor 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 Contract work.
2. The Contractor shall, during the continuance of all work under the Contract provide and agree to maintain Insurance Requirements as provided on the Insurance Checklist (**Attachment D**) and in Section III.15 of IFB No. 025-007, PRTC Best Workplaces for Commuters (BWC) Program Consultant.

1.10 Hold Harmless, Indemnify, and Defend PRTC

The Contractor agrees to indemnify, defend at its own expense, and hold harmless PRTC, its officers, agents, employees, and volunteers, from any and all claims for property damage, bodily injuries, and personal injuries, including cost of investigation, all reasonable attorney’s fees, and the cost of appeals arising out of any such claims or suits, because of any and all acts or omissions of the Contractor, including its agents, subcontractors, employees and volunteers, in connection with work under this Contract.

SECTION II

GENERAL PROVISIONS

II.1 Assignability of Contract

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

II.2 Modifications or Changes to the Contract

All modifications and changes to the Contract shall be in writing.

The PRTC Executive Director 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.

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.

The Contractor shall make a demand for payment for completed changed work within 30 days of receipt of a change order, unless such time period is extended in writing, or unless the Executive Director requires submission of a cost proposal prior to the initiation of any changed work or supplies. Later notification shall not bar the honoring of such claim or demand unless PRTC is prejudiced by such delay.

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

II.3 Employment Discrimination

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, sexual orientation, gender identity, national origin, age, disability, status as a service-disabled veteran, 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 every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or contractor.

II.4 Drug-free Workplace to be Maintained by Contractor

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 subcontract or contractor.

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 this Contract.

II.5 Claims/Disputes

Contractual Disputes and Claims: In accordance with Va. Code § 2.2-4363, this provision shall be followed for consideration and handling of all disputes and claims by the Contractor under this Contract. Va. Code § 2.2-4365 is not applicable to this Contract. Under no circumstances is this section an administrative appeals procedure governed by Va. Code § 2.2-4365.

Notice of the intent to submit a claim setting forth the basis for any claim shall be submitted in writing within ten (10) business days after the occurrence or the event giving rise to the claim or within ten (10) business 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.

Claims by the Contractor with respect to this Contract shall be submitted in writing in the first instance for consideration by the Contract Administrator. The decision of the Contract Administrator shall be rendered in writing within 30 calendar 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 PRTC Executive Director within 30 calendar days of the decision of the Contract Administrator. The Executive Director 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 shall be final and binding.

Should any decision-maker designated under this procedure fail to make a decision on a claim within the specified time period, 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 Va. Code § 2.2-4363, full compliance with the 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.6 Termination for Convenience of the Potomac and Rappahannock Transportation Commission

The parties agree that PRTC may terminate this Contract, or any work or delivery required hereunder, from time to time either in whole or in part, whenever the PRTC Executive Director shall determine that such termination is in the best interests of PRTC.

Termination, in whole or in part, shall be affected by delivery of a Notice of Termination signed by the Executive Director or his designee, mailed or delivered to the Contractor, and specifically setting forth the effective date of termination.

Upon receipt of such Notice, the Contractor shall:

1. cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice;
2. place no further orders with any subcontractors except as may be necessary to perform that portion of this Contract not subject to the Notice;
3. terminate all subcontracts except those made with respect to Contract performance not subject to the Notice;
4. settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Executive Director; and
5. use its best efforts to mitigate any damages which may be sustained by it as a consequence of termination under this clause.

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 Executive Director.

PRTC shall pay reasonable costs of termination, including a reasonable amount for profit on supplies or 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 supplies not delivered, or the services not provided. This Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

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, PRTC shall pay to the Contractor the amounts determined as follows, without duplicating any amounts which may have already been paid under the preceding paragraph of this clause:

1. With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:

- a. cost of work performed or supplies delivered;
- b. the cost of settling and paying any reasonable claims as provided in subparagraph (4) above;
- c. a sum as profit on (a) determined by the Executive Director to be fair and reasonable.

2. The total sum to be paid under (a) above shall not exceed the Contract price, as reduced by the number of payments otherwise made, and as further reduced by the Contract price of work or supplies not provided. In the event that the Contractor is not satisfied with any payments, which the Executive Director shall determine to be due under this clause, the Contractor may appeal any claim in accordance with the "Claims and Disputes" clause of this Contract.

The Contractor shall include similar provisions in any subcontract and shall specifically include a requirement 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 PRTC whatsoever of loss or damage sustained by a subcontractor as a consequence of termination for convenience.

II.7 Termination for Default

Either party may terminate this 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.

II.8 Examination of Records

The Contractor agrees that PRTC, or any duly authorized representative, shall, until the expiration of three (3) years after final payment hereunder, have access to and the right to examine and copy any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this Contract.

The Contractor further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that PRTC or any duly authorized representative shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine and copy any directly pertinent books, documents, papers and records of such Contractor involved in transactions related to such subcontract, or this Contract. The term "subcontract" as used herein shall exclude subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public. The period of access provided herein for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this Contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

II.9 Termination for Non-Appropriation of Funds

If funds are not appropriated for any succeeding fiscal year subsequent to the one in which this Contract is entered into, for the purposes of this Contract, then PRTC may terminate this Contract upon thirty (30) calendar days prior written notice to the Contractor. Should termination be accomplished in accordance with this Section, PRTC shall be liable only for payments due through the date of termination.

II.10 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 (7) business 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.

c. The prime contractor agrees further to return retainage payments to each subcontractor within seven (7) business days after subcontractor's work is satisfactorily completed. Work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required.

2. The Contractor shall be obliged to pay interest to a subcontractor on all monies owed by the Contractor that remain unpaid after seven (7) business 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 one percent (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.

II.11 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, Va. Code §§ 2.2-4367 through 2.2-4377, and that all amounts received by it, pursuant to this Procurement, are proper and in accordance therewith.

II.12 Governing Law and Forum

This Contract and any disputes hereunder shall be governed by the Constitution and laws of the Commonwealth of Virginia. Any legal action arising out of or related to this Contract shall be filed in a state court located in Prince William County, Virginia, or the United States District Court for the Eastern District of Virginia, Alexandria Division, to the exclusion of the courts of any other jurisdiction.

II.13 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. 14 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 within in five (5) business days 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 way, 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 or pandemic 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.15 Immigration and Control Act of 1986

Pursuant to Va. Code § 2.2-43311.1, the Contractor certifies that it does not, and shall not during the performance of the Contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

II.16 Fly America – Intentionally Omitted

II.17 Buy America – Intentionally Omitted

II.18 Cargo Preferences– Intentionally Omitted

II.19 Seismic Safety – Intentionally Omitted

II.20 Change in Law

If a change in law or regulations or the interpretation thereof by any court of law or other governing body having jurisdiction, subsequent to the date of the Contract, has a material and unexpected impact on the cost and timing of performance of work under the Contract, either party may request an equitable adjustment in accordance with the Modifications or Changes to the Contract clause.

II.21 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, revised March 18, 2013, 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 OMNIRIDE requests that would cause the OMNIRIDE to be in violation of the FTA terms and conditions. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between OMNIRIDE and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of this Contract.

II.22 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.23 Availability of Funds

It is understood and agreed that OMNIRIDE 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.24 Disallowed Costs Including Interest

The Contractor agrees to remit to the OMNIRIDE, 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 7 (f)(6)(ii) of the FTA Master Agreement. OMNIRIDE will exclude any project costs incurred by the Contractor before the date of the Notice to Proceed unless otherwise authorized by OMNIRIDE in writing. OMNIRIDE 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.25 Default

In case of failure to deliver goods or services in accordance with the Contract terms and conditions, the OMNIRIDE, after due oral or written notice and a 30-day minimum opportunity to cure, 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 OMNIRIDE may have.

II.26 Stop Work or Suspension of Work

The 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 60 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 60 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 OMNIRIDE."

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 OMNIRIDE, the reasonable costs resulting from the Stop Work Order will be allowed in arriving at the termination settlement.

II.27 Contractual Claims and Disputes

In accordance with VA. Code Section 2.2-4363, this provision shall be followed for consideration and handling of all disputes and claims by the Contractor under this Contract. VA. Code 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 VA. Code Section 2.2-4365.

Notice of the intent to submit a claim setting forth the basis for any claim shall be submitted in writing within ten (10) days after the occurrence or the event giving rise to the claim or within ten (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 final payment is received 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 Contracting Officer within

30 days of the decision of the Contract Administrator. The Contracting Officer 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 Contracting Officer OMNIRIDE 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 Va. Code Section 2.2-4363, 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.28 Subcontracts

No portion of the work shall be subcontracted without prior written consent of OMNIRIDE. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish to OMNIRIDE 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.29 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 OMNIRIDE 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 OMNIRIDE. The Contractor shall notify OMNIRIDE within five (5) 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. OMNIRIDE will notify the Contractor within ten (10) calendar days after the

receipt of all required information if this change is approved and the OMNIRIDE and the Contractor shall subsequently amend the required Contract documents.

II.30 Antitrust

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the OMNIRIDE 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 OMNIRIDE under said Contract.

II.31 Testing/Inspection/Review of Work

The OMNIRIDE 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 OMNIRIDE, 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.32 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 OMNIRIDE, and shall save OMNIRIDE 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 OMNIRIDE on account of or arising out of such use. OMNIRIDE shall obtain the same for any such items obtained by OMNIRIDE 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 OMNIRIDE on account of or arising out of any assertions, claims, slogans, headlines or the like made for any OMNIRIDE 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 OMNIRIDE's products.

II.33 Inspection

All supplies shall be subject to inspection and testing by OMNIRIDE, 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, OMNIRIDE 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, OMNIRIDE may either:

- Replace or correct such supplies and back charge the Contractor the cost occasioned OMNIRIDE thereby; or
- Terminate the Contract for default.

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 OMNIRIDE 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 OMNIRIDE’s inspectors in the performance of their duties without additional charge.

If OMNIRIDE’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 OMNIRIDE except as otherwise provided in the Contract; provided, that in the case of rejection, OMNIRIDE 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 OMNIRIDE shall be performed in such a manner as not to unduly delay the work.

OMNIRIDE reserves the right to charge to the Contractor any additional cost of OMNIRIDE’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 OMNIRIDE therefore.

The inspection(s) and test(s) by OMNIRIDE 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 OMNIRIDE covering the supplies hereunder.

Records of all inspection work by the Contractor shall be kept complete and available to OMNIRIDE during the performance of the Contract and for such longer period as outlined in the clause of this contract "Examination of Records."

II.34 Responsibility for Inspection

Notwithstanding the requirements for any OMNIRIDE inspection(s) and test(s) contained in the specifications applicable to the Contract, except where specialized inspections or tests are specified for performance solely OMNIRIDE, 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.35a 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 OMNIRIDE upon payment of invoice.

II.35b Title

Title to the work and materials shall pass to OMNIRIDE upon placement of the equipment within the OMNIRIDE sites prior to commencement of its installation, subject to OMNIRIDE inspection thereof.

If for any reason the Work is terminated in whole or in part prior to its completion, the title to all hardware and documentation portions of the terminated Work performed to that time, and the possession of, together with the right to use and all applicable licenses for, all software portions of the terminated Work performed to that time, whether in the Contractor's facility, in transit, or on OMNIRIDE sites shall immediately pass to OMNIRIDE unless the OMNIRIDE notice of termination specifically declines title to or possession of all or some of the terminated Work.

The Contractor warrants and guarantees that title of all materials and equipment furnished under this Contract and accepted by OMNIRIDE will pass to OMNIRIDE free and clear of all liens, claims, security interests, or encumbrances.

II.36 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 OMNIRIDE unless specific rights are expressly waived by the OMNIRIDE.

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 OMNIRIDE. Should the Contractor fail to deliver the materials, all expenses incurred by the OMNIRIDE 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 OMNIRIDE 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 OMNIRIDE 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.37 Copyrights

All copyrightable works created pursuant to this agreement shall be considered work made for hire and shall belong solely and exclusively to the OMNIRIDE. If, despite the foregoing, the OMNIRIDE is not deemed the author and initial owner of any copyrightable works created pursuant to this agreement, the Contractor agrees to irrevocable assign and does hereby irrevocably assign to the OMNIRIDE the sole, exclusive and complete copyright interest in such works, and Contractor shall execute and deliver such further documents as the OMNIRIDE 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 OMNIRIDE 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 OMNIRIDE 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 OMNIRIDE, 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 OMNIRIDE shall have the effect of rescinding, terminating or otherwise invalidating the provisions of this section.

II.38 Rights in Data

The term "subject data," as used herein means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

Data and information submitted to the Federal Government may be required to be made available for dissemination under the Freedom of Information Act, or other federal statute(s) in accordance with implementation instructions contained in 49 C.F.R. §19.36, revised March 2000, to the extent applicable, and any subsequent applicable federal requirements that may be promulgated.

All "subject data" first produced in the performance of the contract shall be the sole property of the PRTC. The Contractor agrees not to assert any rights at common law or equity and not to establish any claim to statutory copyright in such data. Except for its own internal use, the Contractor shall not publish or reproduce such data, in whole or in part, or in any manner or form, nor authorize others to do so without the written consent of the Federal Government or the PRTC, until such time as the Federal Government or the PRTC may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes;" any subject data or copyright described in subsections (1) and (2) of this clause below. As used in the previous sentence, "for Federal Government purposes," means only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

(1) Any subject data developed under the contract, whether or not a copyright has been obtained; and

- (2) Any copyright rights purchased by the PRTC or the Contractor using Federal assistance in whole or in part provided by FTA.

Unless prohibited by state law, upon request by the Federal Government, the PRTC and the Contractor agree to indemnify, save and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract.

II.39 Federal Rights in Data and Copyrights

- a. The Contractor agrees to provide to the Federal Government a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the "subject data" described in the following subparagraphs 28.a(1) and 28.a(2). As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government's license to:

1. Any subject data developed under the subcontract or lower-tier subcontract financed by the Grant Agreement or Cooperative Agreement, whether or not a copyright has been obtained; and
2. Any rights of copyright to which the Contractor or subcontractor purchases ownership with Federal assistance.

a. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies (Planning) Projects. FTA's purpose in providing financial assistance for special studies (planning), research, development, or demonstration Projects, is to increase transportation knowledge, rather than limit the benefits of the Project to participants in the Project. Therefore, unless FTA determines otherwise, the Contractor of FTA financial assistance to support a research, development, demonstration, or a special studies (planning) Project agrees that, in addition to the rights in data and copyrights of this section, FTA may make available to any FTA recipient, subcontractor or lower-tier subcontractor, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under that Project shall become subject data as defined in the clause entitled "Rights in Data," and shall be delivered as the Federal Government may direct.

This subparagraph; however, does not apply to adaptations of automatic data processing equipment or programs for the Recipient's use whose costs are financed with Federal funds for capital Projects.

b. Hold Harmless. Except as prohibited or otherwise limited by State law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Contractor shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

c. Restrictions on Access to Patent Rights. Nothing in this Clause on rights in data shall imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

d. Data Developed Without Federal Funding or Support. In connection with the Project, the Contractor may find it necessary to provide data developed without any Federal funding or support to the Federal Government. The requirements of Clause 28.a. and 28.b. of the contract do not apply to data developed without Federal funding or support, even though that data may have been used in connection with the Project. Nevertheless, the Contractor understands and agrees that the Federal Government will not be able to protect any data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

e. Statutory Requirements to Release Data. The Contractor understands and agrees that the Federal Government may be required to make available data and information submitted to the Federal Government for dissemination under the Freedom of Information Act, or other Federal statute(s) in accordance with implementation instructions contained in 49 C.F.R. § 19.36, revised March, 2000, to the extent applicable, and any subsequent applicable Federal requirements that may be promulgated.

The Contractor shall include the above paragraph in any subcontracts.

II.40 Patent Rights – Intentionally Omitted

II.41 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, OMNIRIDE 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.42 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, Va. Code Section 2.2-4200 *et seq.*, the terms of which are incorporated herein by reference.

II.43 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.44 Conflict of Interest

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

OMNIRIDE 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 OMNIRIDE at any time during the life of the Contract.

OMNIRIDE's standards of conflict prohibit OMNIRIDE 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.

OMNIRIDE 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.45 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.46 Prohibition Against the Use of Federal Funds for Lobbying

The Contractor and all subcontractors agree to comply with the provisions of 31 U.S.C. § 1352, which prohibit the use of federal funds for lobbying any official or employee of any federal agency, or member or employee of Congress; and requires the recipient to disclose any lobbying of any official or employee of any federal agency, or member or employee of Congress in connection with federal assistance. In addition, no federal assistance funds shall be used for activities designed to influence Congress or State Legislature on legislation or appropriations, except through proper, official channels. The Contractor shall comply and assure the compliance of subcontractors at any tier with U.S. DOT regulations, “New Restrictions on Lobbying,” 49 C.F.R. Part 20.

For contracts of \$100,000 or more, the Contractor shall submit to the OMNIRIDE a signed “Certification of Restrictions on Lobbying,” (attached) and shall require all subcontractors with contracts of \$100,000 or more to submit to the Contractor and the OMNIRIDE such signed certifications.

II.47 Officials not to Benefit

No member of or delegate to the Virginia General Assembly, and no member of OMNIRIDE or the Virginia Department of Transportation, or the Virginia Department of Rail and Public 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 OMNIRIDE during his/her tenure or one (1) year thereafter shall have any interest, direct or indirect, in the Contract or the proceeds thereof.

II.48 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 OMNIRIDE 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 OMNIRIDE or its employees.

II.49 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, religion, national origin, sex (including sexual orientation and gender identity), disability, or age. 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, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. 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.50 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 OMNIRIDE shall reflect the requirements of the codes and regulations listed above.

II.51 Employment Discrimination

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 every subcontract or purchase order over \$10,000, so that the provisions shall be binding upon each subcontractor or Contractor.

II.52 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.53 Drug-Free Workplace to Be Maintained by Contractor

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.54 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 Non-construction 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 Non-construction 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.55 Royalties – Intentionally Omitted

II.56 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.57 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.58 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 OMNIRIDE, 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.59 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.60 Support of Exclusionary of Discriminatory Specifications

Apart from inconsistent requirements by Federal statute or regulations, the OMNIRIDE 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.61 Authorized Funding

If at any time the Contractor has reason to believe that the costs to OMNIRIDE 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 OMNIRIDE 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 OMNIRIDE 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.

OMNIRIDE 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 OMNIRIDE 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.62 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 OMNIRIDE excise tax exemption registration number shall be furnished upon request. OMNIRIDE 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 OMNIRIDE.

II.63 Extra Charges Not Allowed – intentionally Omitted

II.64 Modifications or Changes to the Contract

Changes in the Work and changes in the Contract can only be made by written amendments signed by both the Contractor and OMNIRIDE, prior to implementation of such changes. Any part of the Contract that is not specially mentioned in an amendment or set of amendments shall not be changed. No implied changes are acceptable to either party to the Contract. The Contractor shall be liable for

all costs resulting from, and for satisfactorily correcting, any change not properly ordered by written amendment to the Contract and signed by the both parties.

OMNIRIDE may initiate a request for change by drafting amendments defining the intended changes in requirements and delivering these to the Contractor. The Contractor is required to respond to OMNIRIDE within fifteen (15) calendar days, or such time as OMNIRIDE shall specify for a particular change request. The response provided by the Contractor shall include:

- a. The requested amendment, modified if necessary, describing in detail the changes to the Work,
- b. An impact statement describing how, if at all, other provisions of the Contract will be affected, including purchase price and payment terms, performance bond, schedule, hardware and software deliverables, spare capacities, system performance, processor loading, training, testing, documentation, and spare parts.

If the change requested is one that was included in the Contractor's proposal as an option, the initial draft amendment provided by OMNIRIDE will include the pertinent information in the specification and proposal.

The Contractor may initiate a request for change. The procedure defined in the preceding paragraphs would be followed except that the Contractor prepares the initial draft of the amendment as well as the impact statement.

The change in price associated with a change under consideration, if it is large enough to have an impact on the amount of the Performance Bond, must include a separate amount for the required change in premium so that at OMNIRIDE's option the Performance Bond will still be in accord with the total value of the Contract after the change is executed. OMNIRIDE is not obligated to notify the sureties when making a change.

Each amendment that is adopted by the parties shall be dated, numbered in sequence beginning with Amendment Number 1, and duly executed by both OMNIRIDE and the Contractor.

II.65 Examination of Records

The Contractor agrees as follows:

1. Reports. The Contractor agrees to provide to OMNIRIDE 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 OMNIRIDE, 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 OMNIRIDE, 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 OMNIRIDE, 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.

OMNIRIDE 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 OMNIRIDE 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 OMNIRIDE.

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.66 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.67 Employment of Personnel

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

II.68 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 OMNIRIDE and all materials remain the sole property of OMNIRIDE.

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 OMNIRIDE shall give recognition to the OMNIRIDE in the text and title page to the nature of its cooperative character.

II.69 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.70 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 in 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 OMNIRIDE. 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 OMNIRIDE 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 OMNIRIDE. A Contractor that is a for-profit organization agrees to comply with property management standards satisfactory to OMNIRIDE. 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 OMNIRIDE 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 OMNIRIDE 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

OMNIRIDE 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 OMNIRIDE'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 OMNIRIDE determines otherwise in writing. Upon request by OMNIRIDE, the Contractor agrees to provide a copy of any relevant documents.

g. Disposition of Contract Property. With prior OMNIRIDE 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 OMNIRIDE 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 OMNIRIDE'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 OMNIRIDE 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 OMNIRIDE, 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 OMNIRIDE 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 OMNIRIDE 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 OMNIRIDE. Unless otherwise approved in writing by the OMNIRIDE, the Contractor agrees to remit to the OMNIRIDE 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 OMNIRIDE 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 OMNIRIDE 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 Packaging," 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.71 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.72 Liability for Loss or Damage

The Contractor shall be liable for any loss of, or damage to, OMNIRIDE property caused by the negligence, wanton or willful misconduct of the Contractor, his agents, servants and employees, and shall indemnify and save OMNIRIDE 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 OMNIRIDE property, resulting from the performance of the Contract. The Contractor shall submit to the OMNIRIDE Executive Director within 24 hours following the occurrence of such damage, loss or injury, a full written report.

II.73 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.74 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.75 Warranty

The Contractor warrants that the Work, and all parts thereof, shall be of the kind and quality described in this Contract, shall perform in the manner specified, and shall be fit for the purpose for which it is supplied. The Contractor shall correct, without delay and at its own expense, any portion of the Work that does not meet the warranty and that is discovered within one (1) year after final acceptance of the Work by correcting the defective portion of the Work, including any required correction in defective

design, or by providing a non-defective replacement on OMNIRIDE's premises, whichever is appropriate. The costs of correction shall be at the Contractor's expense and shall include all shipping costs, both to and from the Contractor's facility, and the appropriate technical advice and direction for removal of the defect and installation of the corrected Work, including on-site services as required.

Any repair, replacement, or modification performed pursuant to the provisions of this clause shall be supplied or repaired on the same terms and conditions as provided for herein for the supply of the Work and in particular a new warranty period shall apply. Such new warranty period shall expire on the date twelve (12) months from the date of such acceptance of replacement, repair, or modification.

For software defects, the Contractor shall provide telephone consultation to OMNIRIDE at no charge. If the Contractor cannot correct the defect by remote telephone support, or if, in the sole discretion of OMNIRIDE, the Contractor fails to make significant progress in the repair of the software defects by remote telephone support, the Contractor, at the request of OMNIRIDE, shall supply knowledgeable software engineers on site to correct the deficiencies. Assistance by OMNIRIDE to the Contractor shall not relieve the Contractor of any responsibilities associated therewith.

If the Contractor shall fail to correct any defect within a reasonable time, OMNIRIDE shall have the right to employ others to do so. The Contractor shall be liable for all costs and expenses thereby incurred by OMNIRIDE.

Nothing herein shall be deemed to restrict the obligations of the Contractor under the Indemnity provision of the Contract.

II.76 Emergency Order

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

II.77 Non-Discrimination against Faith-Based Organizations

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

II.78 Preference for Recycled Products

To the extent practicable and economically feasible, the Contractor agrees to provide a competitive preference for recycled products to be used in the project pursuant to U.S. Environmental Protection Agency (U.S. EPA) guidelines at 40 CFR 247-253, which implements Section 6002 of the Resource Conservation and Recovery act, as amended 42 USC 6962.

II.79 Acquisition of Management, Architectural, and Engineering Services – Intentionally Omitted

II.80 Performance Bond and Payment Bond - Intentionally Omitted

II.81 Provision for Flagman - Intentionally Omitted

II.82 Railroad Safety - Intentionally Omitted

II.83 Davis Bacon Act– Intentionally Omitted

II.84 Special Requirements for Clean Fuels Formula Projects - Intentionally Omitted

II.85 Disputes, Breaches, Defaults, And Litigation

The Contractor must notify OMNIRIDE immediately when any current or prospective legal matter related to this contract, including but not limited to, default, breach, major dispute or litigation, emerges that may affect the Federal Government. Contractor must include this language in all subcontracts of \$25,000 or more.

II.86 Debarment, Suspension, Ineligibility and Voluntary Exclusion

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 36 months. The 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.

The 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.

The Contractor shall require all subcontracts greater than \$25,000 to also comply with these requirements.

II.87 Disadvantaged Business Enterprise (DBE)

Contractor has submitted the Disadvantaged Business Enterprise (DBE) Form to OMNIRIDE along with its proposal. This submission does not necessarily require 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 small, minority and/or women-owned businesses.

The 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 contract. In this regard, OMNIRIDE 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.

OMNIRIDE 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 OMNIRIDE deems appropriate.

The Contractor shall be required to submit a schedule of DBE use and payments made to DBEs on a biannual basis as determined by OMNIRIDE. The Contractor is required to maintain records and documents of payments to DBE's for three (3) years following the performance of the Contract and will make these records available to OMNIRIDE upon request.

The 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 OMNIRIDE 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



POTOMAC AND RAPPAHANNOCK
TRANSPORTATION COMMISSION

CONTRACTOR:

Executive Director/ Contracting Officer

Contractor Representative

Date

Title

Date

APPROVED AS TO FORM PRTC ATTORNEY

Attorney's Signature

Date