



Potomac and Rappahannock
Transportation Commission

RELEASE DATE: May 17, 2013
INVITATION FOR BID: IFB # 13-08
SUBJECT: CONCRETE PADS REPAIR-PHASE IV

PRE-BID MEETING

DATE: May 20, 2013
TIME: 10:30 A.M. LOCAL TIME
LOCATION: PRTC
14700 Potomac Mills Road
Woodbridge, VA 22192

BIDS DUE

DATE: May 31, 2013
TIME: 2:00 P.M. LOCAL TIME
SUBMIT TO: Mr. Nick Alexandrow
Project Manager

PRTC
14700 Potomac Mills Road
Woodbridge, VA 22192

Email: nalexandrow@omniride.com
703-580-6164
703-583-1377 (fax)

www.PRTCtransit.org

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SECTION I

INTRODUCTION

I.1 Purpose of the Request

The Potomac and Rappahannock Transportation Commission (“PRTC”) seeks a qualified company to reconstruct / repair selected concrete pads at PRTC’s Transit Center. The successful bidder will provide construction services in accordance with the Construction Drawings and Technical Specifications listed herein.

This section of the IFB sets forth information to all potential bidders to facilitate preparation of suitable bids for the services identified in this IFB. Section II outlines the general terms and conditions related to this IFB, the Specific Provisions for this procurement are addressed Section III while the bid submission requirements are handled in Section IV including the required forms that must be submitted with this IFB. Section V is a sample contract, in Section VI is the Davis-Bacon Wage Determination, and details of the “Federal Aid Project Sign” for this project are in Section VII. In Section VIII are the Construction Drawings and Technical Specifications. The requirements and process set forth therein shall be binding on all Bidders.

Throughout this RFP the following terms apply:

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

I.2 Background Information

PRTC is a suburban Washington, D.C. transportation agency offering a variety of services to meet community needs. Its member jurisdictions include Prince William, Stafford, and Spotsylvania Counties and the Cities of Manassas, Manassas Park, and Fredericksburg. Bus service is operated from its Transit Center located at 14700 Potomac Mills Road, Woodbridge. The buses are also maintained and stored at the same facility in the bus yard.

Concrete pads within the bus loop are failing and cracking, and the pads slated for replacement are the only areas that have not been replaced in the last few years. Some of the curb and gutter located around the bus loop is crumbling because of repeatedly being hit by bus tires. In addition, there are drainage problems in front of the transit center, which result in ice on the sidewalk during winter months. Drainage improvements need to be made to ensure safety at this location.

I.3 Scope of Work

The Potomac and Rappahannock Transportation Commission is seeking a firm to provide construction services. The successful Offeror shall provide the means to fulfill the requirements listed herein. Requirements include, but are not limited to, IFB and Contract documents, and all services as stated in the Construction Drawings and Technical Specifications.

I.4 Period of Contract

The term for this Contract shall be until the successful completion of all work as outlined in the Construction Drawings and Technical Specifications. The term of this Contract will be begin July 2013 and have a duration of **60 calendar days** from mobilization.

I.5 Type of Contract

PRTC expects to award a firm-fixed price type of contract for the services specified in the Scope of Work to the lowest responsive and responsible bidder.

I.6 Decision Not to Respond

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

Accordingly, if your firm elects not to submit a bid, we ask that you communicate why you are unable or unwilling to respond. Due to the large number of firms listed on PRTC's qualified list of offerors, it is necessary to delete from these lists, the names of those persons, firms, or corporations who fail to respond after having been requested to respond on three (3) solicitations without giving a reason.

I.7 Pre-bid Meeting

A pre-bid meeting will be held on May 20 at 10:30 a.m., local time.

The location of the pre-bid meeting is:

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

Those offerors interested in attending should contact:

Nick Alexandrow
703-580-6164
nalexandrow@omniride.com

I.9 Posting/Notice of Award

PRTC intends to award this contract to the lowest responsive and responsible bidder and the Commission reserves the right to reject any and all bids received, although PRTC also reserves

the right to waive irregularities. Notice of Contract award made as a result of this solicitation will be made via official electronic mail or letter. All participants will receive either notification that they are not the lowest responsive and responsible bidder or “Intent to Award” to the actual lowest responsive and responsible bidder selected. The Commission will authorize the awarding of this contract at their June 6, 2013 meeting.

I.10 Contractor Qualifications

The Contractor must demonstrate to PRTC’s satisfaction that it has the necessary experience, skilled personnel, financial resources, licensing, certifications, etc. to perform the services required under this solicitation. Qualified Contractors shall have substantial and successful experience over the past five or more years as well as current contracts providing similar services on a scale equal to or greater than what PRTC is requesting. Contractor must hold a current valid Virginia Class “A” Contractors License and be registered to perform the requested services in the Commonwealth of Virginia.

I.11 Clarification of Terms

In order to ensure an impartial competitive process, questions and private communications with the prospective Bidders during the bid preparation and the evaluation period will not be accepted. If a prospective Contractor has questions about the SOW, specifications, or other solicitation documents, the prospective Contractor should contact in writing the Project Manager whose name appears on the cover page of this solicitation. Inquiries regarding this IFB will be accepted up to May 24, 2013 at 2:00 p.m.. All inquiries together with responses shall be distributed to all IFB recipients receiving an IFB package. Any revisions to the solicitation shall be made only by addendum issued by PRTC.

I.12 Procurement Timeline

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

May 20, 2013, 10:30 A.M.	Pre-Bid Conference at PRTC
May 24, 2013, 2:00 P.M.	Final Pre-bid Questions Due
May 28, 2013, 5:00 P.M.	PRTC response to Questions
May 31, 2013, 2:00 P.M.	Bids Due, Bid Opening
June 6, 2013, Board Meeting	Contract Award Recommendation

I.13 PRTC Contract Management

1. Contract Administrator - Matters relating to prices, terms and conditions, period of performance, quantities to be supplied, delivery schedule and financial adjustments shall be handled through the Contract Administrator. The Contract Administrator for

this Contract will be Betsy Massie, PRTC's Director of Grants and Project Management.

2. Project Manager - The Contract Administrator has designated Nick Alexandrow of PRTC to be Project Manager to assist in monitoring the work under the contract. Construction Management oversight shall be contracted to Stantec Consulting Services, Inc. The CM is responsible for the technical administration of the contract and technical liaison with the Contractor.
3. Contracting Officer - PRTC's Executive Director is the only individual who can legally commit or obligate the PRTC for the expenditure of federal/public funds. The technical administration of the contract shall not be construed to authorize the revision of the terms and conditions of the contract. Any such revision shall be authorized in writing only by the Contracting Officer.

I.14 Notice to Proceed

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

SECTION II

GENERAL TERMS AND CONDITIONS

II.1 Bid and Contract Requirements

Federal funds will be used for the contract. The PRTC also follows Virginia procurement laws. Accordingly, all applicable federal and state requirements will apply. Prospective contractors are expected to become familiar with these requirements, and should not submit bids if unable to execute a contract containing such provisions. The PRTC will provide a contract containing these provisions for execution by the prospective contractor that is selected. Prospective contractors should not expect to use their own standard contracts for this engagement. Federal requirements are subject to change; the prospective contractor is responsible for complying with the most current regulations. The prospective contractor agrees that the most recent of such Federal requirements will govern the administration of the contract at any particular time during the contract's performance, unless PRTC issues a written determination otherwise.

II.2 Governing Law and Choice of Forum

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

II.3 Precedence of Terms

In the event of an inconsistency between the Invitation for Bids, the Contract Terms and Conditions, other included documents, or the Federal Transit Administration (FTA) Master Agreement and the state procurement law, the inconsistency shall be resolved by the following order of precedence:

1. Federal Transit Administration Master Agreement (dated October 1, 2012, and amendments thereto) and FTA Circular 4220.1F, dated November 1, 2008, as amended
2. Virginia's Public Procurement Act, as amended
3. The executed Contract #13-08
4. Invitation for Bid (IFB) #13-08, including addenda
5. Contractor's Bid

II.4 Incorporation of Federal Transit Administration Terms

These terms include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The prospective contractor shall not perform any act, fail to perform any act, or refuse to comply with any PRTC requests that would cause the PRTC to be in violation of the FTA terms and conditions.

II.5 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.6 Progress Payments

Payment will only be made for work that has been delivered and which the PRTC has approved and accepted.

The Contractor shall follow the payment application procedure as stated below:

1. Review pencil draft of Application for Payment (AIA Document G702 and G703 or similar) with PRTC's Construction Manager (CM) for compliance with work accomplished on site. After acceptance of the draft by the CM, type the Application and forward with notarized signature to the CM.
2. Application for Payment for stored materials will require PRTC inventory and submittal of data substantiating product delivery. Payments shall only be made on account of materials incorporated in the work and/or stored and insured in a local warehouse, under conditions acceptable to PRTC.
3. Payment Period: Submit monthly on schedule developed with PRTC. Maintain payment schedule throughout the duration of project, unless directed otherwise.
4. PRTC may require substantiating information such as Release of Liens, Contractor's Affidavit of Payments, Subcontractor's Affidavit of Payments, invoices, etc.
5. **Five percent (5%) of all progress payments will be held as retainage by PRTC.**

II.7 Invoices

Invoices at a minimum, shall contain the following information:

- AIA Document G702 Application and Certificate for Payment – completed and notarized
- Name, Address and Telephone Number of Contractor;
- PRTC Contract Number;
- Invoice Number;
- Date of Invoice;

- Description of Service Performed;
- Total Invoice Amount;
- Total Cumulative Amounts Invoiced;
- Contractor's Signature; and
- **Certified Payroll for Davis-Bacon Compliance.**

The following documents shall be attached to each invoice;

- Subcontractors invoice;
- Personnel; Names, Titles, Hours, Billing Rates; and
- Details of reimbursable expenses, including receipts.

II.8 Certificates for Payment

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

PRTC's Construction Manager (Stantec) will within fifteen (15) days after receipt of the Application for Payment review it and either approve and sign the Application and Certificate for Payment copies, or notify the contractor in writing of the reasons the applications was not approved.

The issuance of a Certificate for Payment will constitute a representation by PRTC's Construction Manager to the Owner that, based on the PRTC Construction Manager's observations at the site and the data comprising the Application for Payment, the work has progressed to the point indicated; that, to the PRTC Construction Manager's knowledge, information and belief, the quality of work is in accordance with the contract documents (subject to an evaluation of the work for conformance with the Contract Documents upon substantial completion of the work, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to the completion and to any specific qualifications stated in the certificate); and that the Contractor is entitled to payment in the amount certified. However, the issuing of a Certificate for Payment does not constitute a representation that the PRTC Construction Manager has made exhaustive or continuous on-site inspections to check the quality of quantity of work, has reviewed the construction means, methods, techniques, sequences or procedures, or has made any examination to ascertain how or for what purpose the Contractor has used the monies previously paid on account of the Contract sum.

II.9 Subcontracting

No portion of the Contract shall be subcontracted or otherwise performed by a party not the contractor, except with the prior consent of PRTC. The Contract shall not be assignable by the Contractor in whole or in part without the written consent of PRTC.

II.10 Permits and Licenses

The contractor is responsible for the acquisition of all permits necessary for construction of the project improvements. The cost of such permits will not be paid for as a separate bid item. Contractor must have a Registered Land Disturber Trained Personnel on staff.

II.11 Insurance Checklist

A checklist of required insurance coverage is attached and identified as Insurance Checklist (Attachment IV-C). Items marked "X" are required to be provided. A certificate of insurance indicating these coverages must accompany the bid submission. A copy of the declarations page is acceptable for errors and omissions insurance. If insurance is incomplete, the prospective contractor should provide a letter from its insurance agent stating that the prospective contractor 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 the total cost of the project and re-mobilization cost.

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

Each Offeror shall comply with the Insurance Requirements set forth in the following numbered paragraphs, plus the coverage's and limits indicated on the "Insurance Checklist." Bids must note any desired exceptions to the insurance coverage which may include the submission of proposed alternatives.

1. The firm shall be responsible for its work and every part thereof, and for all materials, equipment, and property of any and all description used in connection therewith. The firm assumes all risks of direct and indirect damage or injury to any person or property wherever located, resulting from any action, omission, commission, or operation under the contract, or in connection in any way whatsoever with the contracted work.
2. The firm shall, during the continuance of all work under the contract provide and agree to maintain the following unless omitted from the attached "Insurance Checklist":
 - a) Worker's Compensation and Employers' Liability insurance under the Commonwealth of Virginia statutory requirements, to protect the firm from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or subcontractors, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.
 - b) General Liability insurance in the amount prescribed by PRTC, to protect the 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's for explosion, collapse, and underground hazards, where required. Completed Operations Liability coverage shall continue in force for one year after completion of work.

- c) Automobile Liability insurance, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy.
3. Liability insurance may be arranged by General Liability and automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
 4. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
 5. The Contractor will provide an original, signed Certificate of Insurance, evidencing such insurance and such endorsements as prescribed herein, and shall have it filed with the PRTC Executive Director before a contract is executed and any work is started.
 6. The Contractor will provide on demand, certified copies of all insurance coverage on behalf of the Contract within ten (10) days of demand by PRTC. These certified copies will be sent to PRTC from the Contractor's insurance agent or representative.
 7. No change, cancellation, or non-renewal shall be made in any insurance coverage without a thirty (30) day written notice to the PRTC Executive Director. The 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 PRC Executive Director.
 8. Insurance coverage required in these specifications shall be in force throughout the Contract term. Should the Contractor fail to provide acceptable evidence of current insurance within five (5) days of written notice at any time during the Contract term, PRTC shall have the absolute right to terminate the Contract without any further obligation to the Contractor, and the Contractor shall be liable to PRTC for the entire additional cost of procuring the incomplete portion of the Contract at time of termination.
 9. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of their liabilities and obligations under this hearing or under any other section or provisions of the Contract.
 10. 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 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.

11. Nothing contained herein shall be construed as creating any contractual relationship between the subcontractor and PRTC. The 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.
12. Precaution shall be exercised at all times for the protection of persons (including employees) and property.
13. The Contractor shall comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to the Contract.
14. If the Contractor does not meet the specifications of these insurance requirements, alternate insurance coverage, satisfactory to the PRTC Executive Director, may be considered.
15. PRTC shall be named an additional insured in the General Liability policies and stated so on the Certificate. This endorsement shall be added using form CG 2010(11/85) or its equivalent.
16. Waiver of subrogation endorsement under workers compensation shall be included to waive subrogation against PRTC or its officers and employees.

II.12 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.

II.13 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, subagreement, or third party contract, the federal government continues to have no obligations or liabilities to any party, including the third party contractor.

II.14 Qualification of Firm

The PRTC may make such reasonable investigations as deemed proper and necessary to determine the ability of the prospective contractor to perform the contract. The prospective contractor shall furnish to the PRTC such information and data for this purpose as may be requested. The PRTC reserves the right to inspect the prospective contractor's physical plant prior to award to satisfy questions regarding the prospective contractor's capabilities.

II.15 Key Individuals

Certain, skilled, experienced, professional and/or technical personnel are essential for successful

accomplishment of the work to be performed under the contract. These are defined as “Key Individuals.” No substitutions may be made except in accordance with this clause.

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

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

b. Any request for substitution must include a detailed explanation of the circumstances necessitating the proposed substitution, a resume for the proposed substitute, and any other information requested by the PRTC contract administrator. Any proposed substitute must have qualifications equal to or superior to the qualifications of the incumbent. PRTC will evaluate such requests and promptly notify the Contractor in writing of its approval or disapproval.

c. The provisions of this clause shall be applicable to any subcontract, which may be entered into.

d. In the event that any of the identified key personnel cease to perform under the contract and the substitute is disapproved, the contract may be immediately terminated in accordance with the Termination clause of the contract.

People identified in response to this IFB as key individuals who will work on the project, are expected to work on the contract for its duration, so long as they continue to be employed by the contractor, unless removed from work on the contract with the consent of, or at the request of, the PRTC.

II.16 Additional Information

The PRTC reserves the right to ask any prospective contractor to clarify its offer.

II.17 Qualification Acceptance Period

The bid and any modification thereof shall be binding upon the prospective contractor for 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 the PRTC.

II.18 Delays in Award

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

II.19 Award for All or Part

Unless otherwise specified, the PRTC may, if it is in the best interest of the 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 Bid with respect to the items in question.

II.20 Rejection of Bids

The PRTC expressly reserves the right to reject any or all proposals or any part of a bid, and to resolicit the services in question, if such action is deemed to be in the best interest of the PRTC.

II.21 Single Bids

If a single conforming bid is received, a price and/or cost analysis of the bid shall be made by the 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 shall be based on an established or competitive price of the elements used in the comparison.
- The comparison shall be made to the cost of similar projects and involve similar specifications.

II.22 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 a procurement may not be subject to public disclosure, provided the requirements at 2.2-4342F VA Code Ann. are met. Proposals not in compliance with 2.2-4342 F will be subject to disclosure.

II.23 Protest of Award

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

The Federal Transit Administration (FTA) will only review protests regarding the alleged failure of the 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 (5) days after a final decision is rendered under the PRTC's protest procedure. Further details regarding this process may be found in the FTA Circular C4220.1F, Chapter VII, Section 1.b.

II.24 Availability of Funds

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

II.25 Disallowed Costs Including Interest

The contractor agrees to remit to the PRTC, which in turn will remit to the Federal government, any excess payments made to the contractor disallowed by the Federal government, as well as any interest required by Subsection 9.2 f(2)(b) of the FTA Master Agreement. PRTC will exclude any project costs incurred by the Contractor before the date of the Notice to Proceed unless otherwise authorized by PRTC in writing. PRTC will also exclude any cost not included in the approved project budget, any ordinary governmental or non-project operating cost consistent with prohibitions of 49 USC§5323(h)(1) and any cost ineligible for FTA participation as required by Federal law, regulation or guidelines for Federal participation included the cost soliciting response. Payment does not constitute a final decision about whether a cost is eligible for reimbursement and does not constitute a waiver of any violation by the Contractor of the terms and conditions of the contract.

II.26 Anti-Discrimination

By submitting a bid, the prospective contractor certifies to the PRTC that it will conform to the provisions of Title VI of the Federal Civil Rights Act of 1964, as amended; DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation" -- Effectuation of Title VI of the Civil Rights Act; the Virginia Fair Employment Act of 1975, as amended, where applicable; all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 20003, and 49 U.S.C. §4332 and any implementing requirements FTA may issue; the provisions of 49 U.S.C, § 5332, "Nondiscrimination in Federal Transit Programs," which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity; and Section 11-51 of the Virginia Public Procurement Act.

SECTION III

SPECIAL PROVISIONS

III.1 Performance Bond and Payment Bond

All bids for construction contracts in excess of \$500,000 shall provide performance and payment bonds.

The prospective contractor shall deliver to PRTC within ten (10) calendar days of the notification of award a duly executed Commonwealth of Virginia Standard Performance Bond and Payment Bond or Irrevocable Letters of Credit payable to the “Potomac and Rappahannock Transportation Commission”.

The Performance Bond shall be in the amount equal to one hundred percent (100%) of the contract as guarantee to the faithful performance of the contract.

The Payment Bond shall be in the amount of the contract value as guarantee for the payment to all persons who have and fulfill contracts to supply labor or materials which are directly with the Contractor.

The Sureties of all bonds shall be from a surety company or companies as are approved by Virginia and are authorized to transact business in the Commonwealth of Virginia. No contract shall be deemed to be in effect until the bonds have been approved by the PRTC.

PRTC may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100% of the increase in contract price. Upon the contractor's request, the PRTC may decrease bond amounts as deliverables are received.

A copy of the revised bonds shall be provided by the contractor to the PRTC. Contractors shall execute change orders with the consent of the surety or sureties on the Performance and Payment Bonds unless otherwise directed by the surety or sureties.

III.2 Bid Bond

All bids for construction contracts in excess of \$250,000 shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent (5%) of the amount bid.

III.3 Davis Bacon Act (for all construction contracts over \$2,000):

The Contractor shall agree to comply with all Davis Bacon requirements by reference:

a. **Minimum Wages:** All laborers and mechanics employed or working onsite will be unconditionally and not less often than once a week, and without subsequent deduction or rebate

on any account (except such deductions that are permitted by regulation), issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment, computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part thereof, regardless of any contractual relationship which may be alleged to exist between the contractors and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to provisions of paragraph (1) of this section. Also, regular contributions made or costs incurred for more than a weekly period (but not less than quarterly) under plans, funds, or programs that cover the particular weekly period are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth time spent in each classification.

The wage determination and the Davis Bacon Poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of work in a prominent and accessible place where it can be easily seen by workers.

b. Subcontracts: The Contractor or subcontractor shall inset in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may require. A clause requiring the subcontractors to include these clauses in any lower tier subcontracts should also be included in those lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

c. Disputes Concerning Labor Standards: Disputes arising out of the labor standard provisions of the contract shall not be subject to the general dispute language of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include those between the contractor (or any of its subcontractors) and PRTC, the US Department of Labor, or their employees or representatives.

d. Certification of Eligibility: By entering into the contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis Bacon Act of 29 CFR 5.12.

III.4 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 VI-D**) and shall require all subcontractors with contracts of \$100,000 or more to submit to the Contractor and the PRTC such signed certifications.

III.6 Debarment Status

The Commonwealth Transportation Board's Policy of Debarment dated January 1, 1987, shall apply with the exception that the debarment period shall be for a period of up to thirty-six (36) months. By submitting a bid, the prospective contractor certifies that it is not currently debarred from submitting bids 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 bids or contracts by any agency of the Commonwealth of Virginia.

By submitting this bid, 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, prospective 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 VI-F**) and shall require all subcontractors to submit to the prospective contractor and PRTC such signed certifications.

III.7 Disadvantaged Business Enterprise (DBE)

Each prospective contractor is required to submit the Disadvantaged Business Enterprise (DBE) Form (**Attachment IV-E**) to the PRTC along with its bid. 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 minority and/or women-owned businesses. All DBE's proposed must be certified by the U.S. DOT, another federal agency using essentially the same definition and ownership and control criteria as DOT, or another recipient of DOT funds, the Washington Metropolitan Area Transit Authority, Virginia Department of Transportation, or Amtrak. 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 prospective contractor or its subcontractors agree to ensure that disadvantaged business enterprises as defined in 49 C.F.R. Part 26 have a level playing field on which DBEs can compete fairly and participate fully in contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, the 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. Failure by the contractor his/her subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as PRTC deems appropriate.

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

The prospective 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 the 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

III.8 Buy America

The Contractor agrees to comply with 49 U.S.C. §5323(j), FTA's Buy America regulations at 49 CFR Part 661, and any amendments thereto, and any implementing guidance issued by FTA, with respect to the contract and any subcontracts. Buy America requirements apply to purchases greater than \$100,000.

III.9 Incidental Items

This contract contains bid items that are considered incidental. These items shall only be utilized at the direction of the contract manager and will be paid for at the unit cost bid. Quantities given for these items are expected to vary significantly from those shown in the unit price schedule.

III.10 Traffic Control and Coordination with Bus Operations

In no way should the actions of the Contractor or any subcontractors interfere with the normal operations of bus service and maintenance at PRTC, which include but are not limited to, buses using the bus loop and buses coming and going from the bus yard.

SECTION IV

INSTRUCTIONS TO BIDDERS

IV.1 General

The following general information is provided all bidders to facilitate the preparation of suitable bids for the goods or services identified in this Invitation, 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 Invitation 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.

IV.2 Bid Format

One (1) original and two (2) copies of the Bid Submission Package including the required forms (Attachment IV) 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 draft construction schedule that identifies the major milestones/deliverables. The schedule shall be prepared under the assumption that construction will **begin July 2013**. PRTC will review and approve this schedule prior to providing the Notice to Proceed.
- d. 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.
- f. A warranty representation must be provided as to what the builder's warranty is (minimum one year) as well as the procedures that will be used to correct warranty problems. In addition, any relevant standard material and/or service warranty will need to be provided at the end of the project for any manufactured product installed.

- g. Required Bid Submission Forms as listed below:
1. Qualifications and References (Attachment IV-A)
 2. IFB Submission Form (Attachment IV-B)
 3. Insurance Checklist, including Offeror and Insurance Agent Statement (Attachment IV-C)
 4. Certification of Restrictions on Lobbying (Attachment IV-D)
 5. Disadvantaged Business Enterprise Statement (Attachment IV-E)
 6. Certification of Primary Participants Regarding Debarment (Attachment IV-F)
 7. Buy America Certification (Attachment IV-G)
 8. Bid Form and Measurement and Payment descriptions (Attachment IV-H)
 9. Evidence of Class "A" Contractor's License
 10. Bid Bond (if required)

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

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.

IV.3 Completeness

All information required by the Invitation 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.

IV.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.

IV.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.

IV.6 Only Authorized Parties to Sign

Each bid, and any contract, must be signed by a person authorizing 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.

IV.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 Invitation.

IV.8 Return of Bid Package

If a prospective Bidder is unable to submit a bid in response to this Invitation, the bidder should return the Invitation, bid and contract 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 at all times interested in learning whether problems with the bid process have discouraged responses.

IV.9 Bidders Present

Contents of bids 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.

IV.10 Evaluation of Bids

Bids shall be evaluated on the basis of those requirements which are set forth in the Invitation, the Specifications, 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 § 2.2-4318, Va. Code Ann.

IV.11 Acceptance of Bid Prices

Bidder warrants by virtue of bidding that prices, terms and conditions quoted will be firm for acceptance for a period of ninety (90) days from the date of bid opening, unless otherwise stated by the bidder.

IV.12 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.

IV.13 Bids Awarded for all or Part

Unless otherwise specified, PRTC may award all or part of the bid to any bidder whose bid is the lowest responsible and responsive bid with respect to the items in question.

IV.14 Waiver of Informalities or Irregularities

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

IV.15 Withdrawals of Bids

Withdrawal of bids is strictly governed by § 2.2-4330 Va. Code Ann. 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.

IV.16 One Responsive and Responsible Bid

When only one responsive and responsible bid is received, the Invitation for Bids 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.

IV.17 Cancellation of the Invitation for Bid

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

ATTACHMENT IV-A REFERENCES

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

Client company's name _____

Address _____

Type of business, if not public transportation _____

Detailed scope of services

Beginning and ending dates _____

Contract value \$ _____

Other information:

ATTACHMENT IV-B IFB SUBMISSION FORM

Bids Due: **May 31, 2013, 2:00 p.m.** Name of RFP: **Concrete Pads Repair – Phase IV**
RFP Number: **#13-08**

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 _____ Less than _____ \$500,000 _____ \$1,000,000 _____ \$4,000,000 _____ more than
Receipts: \$500,000 to \$1,000,000 to \$4,000,000 to \$7,000,000 \$7,000,000

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

SECTION II - CONFLICTS OF INTEREST

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

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

SECTION III - COLLUSION

I certify that this offer is made without prior understanding, agreement, or in connection with any corporation, firm, or person submitting an offer for the same services, materials, or equipment, and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of the State and Federal law and result in fines, prison sentences, and civil damage awards.

I hereby certify that the responses to the above representations, certifications, and other statements are accurate and complete. I agree to abide by all conditions of this Invitation for Bid and certify that I am authorized to sign for the Bidder

ATTACHMENT IV-B (continued)
IFB SUBMISSION FORM

Signature _____ Date _____

Name (Printed) _____ Title _____

BIDDER MUST RETURN THIS COMPLETED FORM WITH BID SUBMISSION

**ATTACHMENT IV.C
POTOMAC AND RAPPAHANANOCK TRANSPORTATION
COMMISSION
INSURANCE CHECKLIST**

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

		COVERAGE REQUIRED	LIMITS (FIGURES DENOTE MINIMUM)
Yes	No*	Required	
___	___	X	1. Workers’ Compensation and Employers’ Liability; Admitted in Virginia
___	___	X	Employer’s Liability
___	___	X	USL&H Endorsement
___	___	X	Voluntary Compensation
___	___	X	2. General Liability
___	___	X	Products
___	___	X	Complete Operations
___	___	X	Contractual Liability
___	___	X	Personal Injury
___	___	X	Independent Contractors
___	___	X	XCU Prop. Damage
___	___	X	Excl. Deleted
___	___	X	3. Automobile Liability
___	___	X	Owned, Hired & Non-Owned
___	___		Motor Carrier Act End.
___	___		4. Professional Errors and Omissions
___	___		5. Garage Liability
___	___		6. Garage keepers’ Legal Liability
___	___		7. Fire Legal Liability
___	___	X	8. Other Insurance: Builder’s Risk Insurance
___	___	X	9. PRTC named as additional insured on General Liability (This coverage is primary to all

- | | | | | | |
|-----|-----|----------|-----|--|-----------------|
| ___ | ___ | X | 10. | other coverages PRTC
may possess)
30 day cancellation
notice required | |
| ___ | ___ | X | 11. | Best's Guide Rating -
A:VI or Better, or
Equivalent | |
| ___ | ___ | X | 12. | The Certificate must
state Bid/RFP # and
Bid/RFP Title | |
| ___ | ___ | X | 13. | Umbrella Liability | 13. \$1,000,000 |

OFFEROR AND INSURANCE AGENT STATEMENT

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

OFFEROR

INSURANCE AGENCY

SIGNATURE

SIGNATURE

**ATTACHMENT IV-D
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: _____

ATTACHMENT IV- E
DISADVANTAGED BUSINESS ENTERPRISE STATEMENT

The Commission commits itself to an active effort to involve Disadvantaged Business Enterprises (DBE) in contracting opportunities, to increase competition, and to broaden the base of support for public transit. The PRTC has established a goal of 5.6% 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 5.6% 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 IV-E (continued)
DISADVANTAGED BUSINESS ENTERPRISE 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: ___ Less than \$500,000 ___ \$500,000- \$1,000,000 ___ \$1,000,000- \$4,000,000 ___ \$4,000,000 \$7,000,000 ___ more than \$7,000,000

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.

Offeror Date

ATTACHMENT IV-F

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

(The Contractor)

or

(Subcontractor)

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

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

(PrimeContractor) _____

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 IV-G
BUY AMERICA CERTIFICATION**

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

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

The Bidder or Offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

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

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

Date _____

Signature _____

Company Name _____

Title _____

**ATTACHMENT VI-H
BID FORM**

The undersigned hereby proposes and agrees, if this Bid is accepted, to Contract with the Potomac and Rappahannock Transportation Commission to furnish all equipment, materials, labor and services necessary to construct the project in accordance with the Contract Documents. **(Also provided as an excel file.)**

PAVEMENT REPLACEMENT - PHASE IV, MULTI-PURPOSE TRANSIT CENTER, WOODBRIDGE, VA

BID FORM

ITEM	DESCRIPTION	UNIT	UNIT PRICE	ESTIMATED	DOLLARS/CENTS
GENERAL					
1	MOBILIZATION/DEMOLITION	LS	\$ -	1	\$ -
2	CONSTRUCTION SCHEDULE	LS	\$ -	1	\$ -
	SUBTOTAL				\$ -
DEMOLITION/EARTHWORK					
3	CURB & GUTTER DEMOLITION	LF	\$ -	150	\$ -
4	FULL DEPTH PAVEMENT SAWCUT	LF	\$ -	80	\$ -
5	CONCRETE PAVEMENT DEMOLITION	SY	\$ -	750	\$ -
6	ASPHALT PAVEMENT DEMOLITION	SY	\$ -	75	\$ -
7	CONCRETE SIDEWALK DEMOLITION	SY	\$ -	15	\$ -
8	UNDERCUT EXCAVATION (CONTINGENT ITEM)	CY	\$ -	85	\$ -
9	REGULAR EXCAVATION	CY	\$ -	200	\$ -
	SUBTOTAL				\$ -
SITE IMPROVEMENTS					
10	CURB & GUTTER	LF	\$ -	95	\$ -
11	CURB & GUTTER TYPE MOUNTABLE	LF	\$ -	55	\$ -
12	BM-25A (CONTINGENT ITEM)	SY/INCH	\$ -	300	\$ -
13	IM-19.0 (CONTINGENT ITEM)	SY/INCH	\$ -	150	\$ -
14	SM-9.5A - 2"	SY	\$ -	75	\$ -
15	21A OR 21B BASE MATERIAL - 8"	SY	\$ -	825	\$ -
15A	21A OR 21B BASE MATERIAL (CONTINGENT ITEM)	SY/INCH	\$ -	600	
16	SELECT MATERIAL, TYPE 1, MIN CBR 30 (CONTINGENT ITEM)	CY	\$ -	85	\$ -
17	CONCRETE PAVEMENT	SY	\$ -	775	\$ -

18	CONCRETE SIDEWALK	SY	\$ -	15	\$ -
19	TRENCH DRAIN	LS	\$ -	1	\$ -
20	STORM DRAIN PIPE - 6" PVC	LF	\$ -	55	\$ -
21	SEEDING	SY	\$ -	50	\$ -
	SUBTOTAL				\$ -
MISCELLANEOUS					
22	TYPE II CHANNELIZING DEVICES	DAY	\$ -	21	\$ -
23	ALLAYING DUST (CONTINGENT ITEM)	HR	\$ -	10	\$ -
24	FLAGGER (CONTINGENT ITEM)	HR	\$ -	40	\$ -
25	INLET PROTECTION, TY B, EC-6	EA	\$ -	1	\$ -
26	PRINCE WILLIAM COUNTY RLD PAPERWORK	LS	\$ -	1	\$ -
27	TYPE B, CLASS I PAVEMENT LINE MARKING (YELLOW) 4"	LF	\$ -	720	\$ -
	SUBTOTAL				\$ -

PROJECT TOTAL:

Notes: Contractor must have a Registered Land Disturber on Staff

W/ = WITH

***Bid unit prices shall take into account Payment Bonds and Performance Bonds, if needed.**

****Section VII "Federal Aid Project Sign" -- Installation/removal/manufacture of project sign shall be part of the mobilization/demobilization charges.**

The contractor shall include in the unit prices coordination with the Owners Geotechnical Engineer.

If there is a discrepancy in the documentation the most restrictive guideline shall be followed.

The bid proposal is based on unit prices. The undersigned acknowledges that the unit price for each item shall include all incidental work and other items that may not be specified or shown yet are necessary for proper installation and operation.

The bidder hereby agrees, if this bid is accepted, to commence work with adequate workforce and equipment beginning July 2013 and to complete the work within sixty (60) consecutive calendar days from mobilization. The Contractor agrees that liquidated damages in the amount of \$100.00/day will be assessed for work not completed within the stipulated time period.

The undersigned also acknowledges the receipt of the following addenda to the Contract Documents:

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Signature _____ Date _____

Name (Printed) _____ Title _____

SECTION V
SAMPLE CONTRACT

SAMPLE CONTRACT
POTOMAC AND RAPPAHANNOCK
TRANSPORTATION COMMISSION
Services Contract



CONTRACT: #13-08

SUBJECT: Concrete Pads Repair – Phase IV

Between:

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

And the Contractor:

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

**SECTION I
SPECIAL PROVISIONS**

I.1 Definitions

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

“Contractor” shall mean:

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

I.2 Contract Term

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

I.3 Incorporation of Documents

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

1. PRTC’s Solicitation #13-08 entitled “Concrete Pads Repair-Phase IV,” and dated May 15 , 2013.
2. Contractor’s Solicitation Response dated _____

1.4 Precedence of Terms

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

1. Federal Transit Administration Master Agreement (dated October 1, 2012, and amendments thereto) and FTA Circular 4220.1F, dated November 1, 2008, as amended
2. Virginia’s Public Procurement Act, as amended
3. This executed Contract #13-08
4. Invitation for Bid (IFB) #13-08, including addenda
5. Contractor’s Response

I.5 Provision of Services

The Contractor hereby agrees to provide professional services for the construction of concrete pads in the PRCT Bus Yard, as described herein and further outlined in IFB #13-08, Concrete Pad Repairs – Phase IV.

I.6 Contract Amount

In addition to the terms and provisions contained in Section II.4 of this Contract, and in return for the services identified above and subject to the “Non-Appropriation of Funds” clause herein, PRTC certifies that sufficient funds are budgeted and appropriated and shall compensate the Contractor as described in Section II.8 in the IFB.

I.7 Method of Payment

Payment shall be made as described in Sections II.6 and II.7 of the IFB.

I.8 Final Payment

Final payment and release of retained payment is dependent on completion of the work and submission of the Contract deliverables. This approval will constitute a representation that, to the best of PRTC’s knowledge, information and belief, and on the basis of observations and inspections, the work has been completed in accordance with the Terms and Conditions of the Contract Documents and that the entire balance is found to be due the Contractor.

The final payment shall be made after the Contractor submits to PRTC:

1. An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which PRTC or PRTC’s property might be in any way responsible, have been paid or otherwise satisfied.
2. Consent of surety, if any, to final payment.
3. If required by PRTC, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by PRTC. If any subcontractor refuses to furnish a release or waiver required by PRTC, the Contractor may furnish a bond satisfactory to PRTC to indemnify PRTC against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to PRTC all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney’s fees.

I.8 Time of the Essence and Completion

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

I.9 Key Personnel

Certain, skilled, experienced, professional and/or technical personnel are essential for successful accomplishment of the work to be performed under the contract. These are defined as “key personnel” and are those persons whose resumes were submitted as part of the technical bid/proposal for evaluation. During the period of performance, the Contractor shall make no

substitutions of key personnel except in accordance with this clause and unless approved in writing by the Contract Administrator.

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

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

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

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

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

I.10 PRTC Contract Management

1. Contract Administrator - Matters relating to prices, terms and conditions, period of performance, quantities to be supplied, delivery schedule and financial adjustments

shall be handled through the Contract Administrator. The Contract Administrator for this Contract will be Nick Alexandrow, PRTC's Transit Project Manager.

2. Construction Manager - The Contract Administrator has designated Stantec, as Construction Manager (CM) to assist in monitoring the work under the contract. The CM is responsible for the technical administration of the contract and technical liaison with the Contractor. The CM is responsible for the day-to-day clarifications and guidance of Contractor's personnel as may be required under the contract.
3. Contracting Officer - PRTC's Executive Director is the only individual who can legally commit or obligate the PRTC for the expenditure of federal/public funds. The technical administration of the contract shall not be construed to authorize the revision of the terms and conditions of the contract. Any such revision shall be authorized in writing only by the Contracting Officer.

SECTION II GENERAL TERMS AND CONDITIONS

II.1 Governing Law and Choice of Forum

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

II.2 Incorporation of Federal Transit Administration Terms

These terms include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any PRTC requests that would cause the PRTC to be in violation of the FTA terms and conditions.

II.3 No Federal Government Obligations to Third Parties

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

II.4 Availability of Funds

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

II.5 Disallowed Costs Including Interest

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

reimbursement and does not constitute a waiver of any violation by the Contractor of the terms and conditions of the contract.

II.6 Default

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

II.7 Termination for the Convenience of the PRTC

1. The parties agree that PRTC may terminate the contract or any work or delivery required thereunder, from time-to-time either in whole or in part, without cause whenever the Contract Administrator shall determine that such termination is in the best interest of PRTC.
2. Termination, in whole or in part, shall be effected by delivery of a Notice of Termination signed by the Contract Administrator, mailed or delivered to the contractor, and specifically setting forth the effective date of termination. Upon receipt of such Notice, the contractor shall:
 - Cease any further deliveries or work due under the contract on the date and to the extent which may be specified in the Notice;
 - Place no further orders with any subcontractors except as may be necessary to perform that portion of the contract not subject to the Notice;
 - Terminate all subcontractors except those made with respect to contract performance not subject to the Notice;
 - Settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of PRTC;
 - Use its best effort to mitigate any damages, which may be sustained by him as a consequence of termination under this clause;
 - As directed by the PRTC Contract Administrator, transfer title and deliver to PRTC:
 - i. The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
 - ii. The completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to PRTC.
 - Complete performance of the work not terminated; and
 - Take any action that may be necessary, or that the PRTC Contract Administrator may direct, for the protection and preservation of the property related to this Contract that is

in the possession of the Contractor and in which PRTC or the Government has or may acquire an interest.

3. After complying with the foregoing provisions, the contractor shall submit a termination claim, in no event later than six (6) months after the effective date of its termination, unless an extension is granted by the Contract Administrator. If the Contractor fails to submit the claim within the time allowed, the PRTC Contract Administrator may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
4. The Contract Administrator, with the approval of PRTC's signatory to the contract, shall pay reasonable costs of termination, including a reasonable amount for profit on services delivered or completed. In no event shall this amount be greater than the original contract price, reduced by any payments made prior to Notice of Termination, and further reduced by the price of the services not delivered, or those services not provided. The contract shall be amended accordingly, and the contractor shall be paid the agreed upon amount.
5. In the event that the parties cannot agree on the whole amount to be paid to the contractor by reason of termination under this clause, the Contract Administrator shall pay to the contractor the amounts determined as follows, without duplicating any amount which may have already been paid under the preceding paragraph of this clause:

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

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

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

6. In the event that the contractor is not satisfied with any payments, which the Contract Administrator shall determine to be due under this clause, the contractor may appeal any claim to PRTC in accordance with the "Contractual Claims and Disputes" clause of the contract.
7. Unless otherwise provided in this Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the PRTC Contracting Officer or his/her designee, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

8. When termination for the convenience of the PRTC is a provision of this Contract, the Contractor shall include similar provisions in any subcontract, and shall specifically include requirements that subcontractors make all reasonable efforts to mitigate damages which may be suffered. Failure to include such provisions shall bar the Contractor from any recovery from the PRTC whatsoever of loss or damage sustained by a subcontractor as a consequence of termination for convenience.

II.8 Termination for Default

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

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

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

II.9 Termination for Non-Appropriation of Funds

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

II.10 Stop Work or Suspension of Work

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

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

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

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

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

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

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

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

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

II.11 Contractual Claims and Disputes

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

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

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

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

Should any decision-maker designated under this procedure fail to make a decision on a claim within the time period specified, then the claim is deemed to have been denied by the decision-

maker. Pending a final determination of a claim, the Contractor shall proceed diligently with the performance of the work under this Contract.

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

II.12 Subcontracts

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

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

II.13 Prime Contractor Responsibilities

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

The Contractor shall submit to PRTC for approval and attachment to the contract, a list of subcontractors and their required signed certifications/contracts and contact information. During the period of performance, the Contractor shall not substitute subcontractors without the written approval of PRTC. The Contractor shall notify PRTC within five calendar days after the occurrence of any of these events and provide information as to the circumstances necessitating the proposed change, new subcontractor information and other information as requested. Proposed substitutions must have comparable qualifications and experience to those being replaced. PRTC will notify the Contractor within 10 calendar days after the receipt of all required information if this change is approved and the PRTC and the Contractor shall subsequently amend the required contract documents.

II.14 Payments to Subcontractors

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

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

- a. Pay a subcontractor for the proportionate share of the total payment received from PRTC attributable to the work performed by that subcontractor under the Contract; or
 - b. Notify PRTC and any subcontractors, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
2. The Contractor shall be obligated to pay interest to a subcontractor on all monies owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from PRTC for work performed by a subcontractor under the Contract, except for amounts withheld under subsection 1.b. of this section. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the provisions of this section may not be construed as an obligation by PRTC. A contract modification may not be made for the purpose of providing reimbursement for any such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.
 3. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of 1% per month.
 4. The Contractor is hereby required to include in each of its subcontracts a provision requiring each subcontractor to otherwise be subject to the same payment and interest requirements set forth in subsection 2 and 3 of this section with respect to each lower-tier subcontractor. Failure to pay subcontractors in an expedient manner may result in the use of the payment bond and/or termination of the contract.

II.15 Assignability of Contract

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

II.16 Antitrust

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

II.17 Testing/Inspection/Review of Work

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

II.18 Releases, Licenses, Permits and Authorizations

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

II.19 Buy America

The Contractor agrees to comply with 49 U.S.C. §5323(j), FTA's Buy America regulations at 49 CFR Part 661, and any amendments thereto, and any implementing guidance issued by FTA, with respect to the contract and any subcontracts. Buy America requirements apply to purchases greater than \$100,000.

II.20 Inspection

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

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

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

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

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

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

If any inspection or test is made by PRTC on the premises of the Contractor or a subcontractor to the Contractor, then the respective party (of the inspection) shall provide all reasonable facilities

and assistance for the safety and convenience of PRTC's inspectors in the performance of their duties without additional charge.

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

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

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

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

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

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

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

II.21 Responsibility for Inspection

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

II.22 Contractor's Title to Materials

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

II.23 Ownership of Material and Intellectual Properties

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

Upon completion of the services of the contract, the Contractor shall deliver all such appropriate materials including, but not limited to, camera ready artwork, computer disks, specifications, samples, photographs, video tapes, audio tapes, original artwork and drawings to the PRTC. Should the Contractor fail to deliver the materials, all expenses incurred by the PRTC in obtaining these materials shall be chargeable to the Contractor, and may be withheld for any future sums due the Contractor.

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

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

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

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

II.24 Copyrights (Intentionally Omitted)

II.25 Rights in Data (Intentionally Omitted)

II.26 Federal Rights in Data and Copyrights (Intentionally Omitted)

II.27 Patent Rights (Intentionally Omitted)

II.28 Covenant against Contingent Fees

The Contractor warrants that it has not employed or retained any company or person, other than bona fide employees working solely for the Contractor, to solicit or secure the contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, percentage, brokerage fee, or other considerations, contingent upon or resulting from the award of making of the contract. For breach or violation of this warranty, the PRTC shall have the right to annul the contract without liability, or, at its discretion,

to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, percentage, brokerage fee, gift, or contingent fee. The firm shall therefore comply with all relevant federal, state, and local laws.

II.29 Fair Employment Contracting Act

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

II.30 Convict Labor

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

II.31 Conflict of Interest

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

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

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

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

II.32 Immigration Reform and Contract Act of 1986

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

II.33 Indemnification

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

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

II.34 Ethics in Public Contracting

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

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.35 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," (attached) and shall require all subcontractors with contracts of \$100,000 or more to submit to the Contractor and the PRTC such signed certifications.

II.36 Officials not to Benefit

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

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

II.37 Independent Contractor

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

II.38 Anti-Discrimination

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

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, religion, or national origin. The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, religion, or national origin. Such action shall include, but not be limited to, the following: employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Contractor also agrees to comply with any implementing requirements FTA may issue.
2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
3. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.
4. The Contractor will comply with all applicable requirements of Title IX of Education Amendments of 1972, as amended, 20 U.S.C. §§1681-1683, 1685-1688, with U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, and with any implementing directives that U.S. DOT or FTA may promulgate, which prohibit discrimination on the basis of sex.
5. The Contractor will comply with applicable federal guidance issued in compliance with Executive Order Number 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. §2000d-1 note, and with the requirements

and provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Fed. Reg. 6733 *et seq.*, January 22, 2001.

6. With respect to activities deemed by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Contractor agrees to comply, and assures the compliance of each subcontractor at any tier with all applicable EEO requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note,) and any Federal statutes, executive orders, regulations, and Federal policies affecting construction undertaken as part of the Project.

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

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

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

II.39 Access Requirements for Individuals with Disabilities

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

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

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

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

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

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

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

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

For the purposes of this section “drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale,

distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

II.42 Labor Provisions

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

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

1. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week. Determinations pertaining to these requirements shall be made in accordance with the requirements of section 102 of the Act, 40 U.S.C. §§ 327 - 332; and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; and with section 107 of the Act, 40 U.S.C. § 333, and U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926.
2. In the event of any violation of the requirements of 29 C.F.R. §5.5(b)(1), the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of 29 C.F.R. §5.5(b)(1) in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by 29 C.F.R. § 5.5(b)(1).
3. The FTA or the recipient shall upon its own action or upon written request for an authorized representative of the Department of Labor withhold or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth at 29 C.F.R. § 5.5(b)(2).

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

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

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

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

II.43 Royalties

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

II.44 Metric System

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

II.45 Energy Conservation

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

II.46 Environmental Regulations

The Contractor and any subcontractors are required to comply with all applicable federal environmental standards, orders or requirements issued under Section 306 of the Clean Air Act, as amended, 42 U.S.C. §7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§7401 *et seq*, and Section 508 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1368, and other provisions of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251 *et seq*; Environmental Protection agency regulations (40 C.F.R. Part

15); National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§4321 et seq; Executive Order Number 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. §4321 note; FTA statutory requirements at 49 U.S.C. §5324(b); Council on Environmental Quality regulations pertaining to compliance with the National Environmental Quality Act of 1969, as amended, 40 C.F.R Part 1500 et seq; the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622, and, when promulgated, FHWA/FTA joint regulations, "NEPA and Related Procedures for Transportation Decision making, Protection of Public Parks, Wildlife and waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 1420 and 49 C.F.R Part 623.

As stated in the aforementioned regulations, if projects cause or result in adverse environmental effects, all reasonable measures to minimize those adverse effects must be taken. In addition, all environmental mitigation measures identified as commitments in applicable environmental documents, such as environmental assessments and documents required by 49 U.S.C. §303, must be completed. These commitments include any conditions the Federal Government imposes on a finding of no significant impact or record of decision. These mitigations measures are incorporated by reference and made part of the Grant Agreement and may not be modified or withdrawn without written approval of the Federal Government.

The Contractor agrees to include in subcontracts exceeding \$100,000, adequate provisions to ensure that Project participants report the use of facilities placed or likely to be placed on EPA's "List of Violating Facilities," refrain from using violating facilities, report violations to FTA and the Regional EPA Office. The PRTC will report and requires the Contractor and any subcontractor to report any violation of these requirements resulting from implementation of the contract by the Contractor, subcontractor (at any tier), or the PRTC to FTA and the appropriate U.S. EPA Regional Office. All plans, drawings, and other documents produced as a result of the contract should comply with these regulations when applicable.

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

II.47 Planning (Intentionally Omitted)

II.48 Audit

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

II.49 False or Fraudulent Statements and Claims

The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et. seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31 apply to its actions pertaining to the Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any

statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which the contract work is being performed. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project which is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate. The Contractor agrees to include the above two clauses on each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

II.50 Support of Exclusionary of Discriminatory Specifications

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

II.51 Authorized Funding

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

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

II.52 Taxes

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

II.53 Extra Charges Not Allowed

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

II.54 Modifications or Changes to the Contract

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

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

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

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

II.55 Examination of Records

The Contractor agrees as follows:

1. Reports. The Contractor agrees to provide to PRTC those reports required by the U.S. DOT's grant management rules and any other reports the federal government may require.
2. Record Retention. The Contractor agrees to provide the PRTC, the FTA Administrator, the Comptroller General of the United States or any authorized representatives access to any books, documents, paper and records of the Contractor which are directly pertinent to the contract for the purpose of making audits, examinations, excerpts and transcriptions even after the project has been closed-out. The Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO

Contractor access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309, or 5311.

The Contractor agrees that it will maintain intact and readily accessible all data, books, accounts, documents, reports, records, contracts, and supporting materials relating to the contract as the federal government and Commonwealth of Virginia governments may require during the course of the contract and for three (3) years thereafter, except in the event of litigation or settlement of claims arising from the performance of the contract, in which case the Contractor agrees to maintain the same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation or settlement of claims or exceptions related thereto.

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

The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that PRTC, its authorized agents, state auditors, the Secretary of Transportation, and the Comptroller of the United States, or their authorized representatives, until the expiration of five years after final payment under the subcontract, be permitted to inspect and audit all data and records of the subcontractor relating to his performance under the subcontract.

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

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

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

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

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

II.56 Geographic Restrictions

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

II.57 Employment of Personnel

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

II.58 Publications

Articles, papers, bulletins, reports or other material reporting the results and findings of the work conducted under the Contract shall not be presented publicly or published without prior approval in writing of the PRTC and all materials remain the sole property of PRTC.

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

II.59 Electronic and Information Technology

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

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

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

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

b. General Federal Requirements. A Contractor that is an institution of higher education, or a private nonprofit organization, agrees to comply with 49 C.F.R. §§ 19.30 through 19.37,

including any amendments thereto, and other applicable guidelines or regulations the Federal Government may issue. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.34, and to 49 C.F.R. §§ 19.30 through 19.37, requires the express approval of the PRTC. A Contractor that is a for-profit organization agrees to comply with property management standards satisfactory to PRTC. In addition, the Contractor consents to FTA's established reimbursement requirements for premature dispositions of certain Contract equipment (*i.e.*, when Contract equipment is withdrawn from appropriate use before the expiration of the equipment's useful life established by FTA), as explained in this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Equipment and Supplies. Unless otherwise determined in writing by PRTC, the Contractor agrees that fair market value shall be calculated by straight-line depreciation of the equipment or supplies, based on the useful life of the equipment or supplies established or approved by FTA. In addition, the fair market value of equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of that property from use. In the case of equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of that property immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. The Contractor may use its own disposition procedures, provided that those procedures comply with the State's laws.

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

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

(c) Obligations to the PRTC. Unless otherwise approved in writing by the PRTC, the Contractor agrees to remit to the PRTC the Federal interest in the fair market value of

Contract real property, equipment, or supplies prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Contractor may fulfill its responsibilities with respect to the Federal interest remaining in the damaged equipment or supplies by either:

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

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

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

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

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

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

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

II.61 Protection of Sensitive Security Information

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

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

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

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

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

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

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

II.63 Liability for Loss or Damage

The Contractor shall be liable for any loss of, or damage to, PRTC property caused by the negligence, wanton or willful misconduct of the Contractor, his agents, servants and employees, and shall indemnify and save PRTC harmless against all actions, proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to, or death of, any person, or damage to property other than PRTC property, resulting from the performance of the Contract. The Contractor shall submit to the PRTC Executive Director within 24 hours following the occurrence of such damage, loss or injury, a full written report.

II.64 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.65 Warranty

All materials and equipment furnished by the Contractor shall be fully guaranteed against defects in material and workmanship in accordance with the most favorable commercial warranties the Contractor gives any customer for such supplies or services.

II.66 Force Majeure

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

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

- (a) An act of war, whether or not declared, civil war, insurrection, riot, acts of terrorism, or any condition incident to the foregoing.
- (b) Acts of the Federal or State government or the entry of a court order, intended to, or having the effect of stopping or delaying the work.

- (c) An Act of God which for the purposes of this section shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of the party to foresee or make preparation in defense of. The performance of the work shall not be adjusted for normal inclement weather.

II.67 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.68 Non-Discrimination against Faith-Based Organizations

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

II.69 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.70 Hold Harmless

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

II.71 Acquisition of Management, Architectural, and Engineering Services

In acquiring management, architectural, and engineering services, the Contractor agrees to comply with the requirements of 49 U.S.C. Section 5325(b), either by negotiating for those services in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. §§ 541 *et seq.*, or by using an equivalent qualifications-based requirement of the State. Provided that a sufficient number of qualified firms are eligible to compete for the subcontract, the Contractor's geographic location may be a selection criterion. In addition, when awarding contracts for architectural, engineering, or related services, the Contractor agrees to accept undisputed audits conducted by other governmental agencies, in accordance with 23 U.S.C. § 112(b)(2) (C) through (F). To the extent the Contractor qualifies for an exception in accordance with 49 U.S.C. § 5325(b), however, this Subsection 15.i of this clause does not apply.

II.72 Davis Bacon Act – (for all construction contacts over \$2,000):

The Contractor shall agree to comply with all Davis Bacon requirements by reference:

a. **Minimum Wages:** All laborers and mechanics employed or working onsite will be unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such deductions that are permitted by regulation), issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment, computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part thereof, regardless of any contractual relationship which may be alleged to exist between the contractors and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to provisions of paragraph (1) of this section. Also, regular contributions made or costs incurred for more than a weekly period (but not less than quarterly) under plans, funds, or programs that cover the particular weekly period are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth time spend in each classification.

The wage determination and the Davis Bacon Poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of work in a prominent and accessible place where it can be easily seen by workers.

b. **Subcontracts:** The Contractor or subcontractor shall inset in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may require. A clause requiring the subcontractors to include these clauses in any lower tier subcontracts should also be included in those lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

c. **Disputes Concerning Labor Standards:** Disputes arising out of the labor standard provisions of the contract shall not be subject to the general dispute language of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include those between the contractor (or any of its subcontractors) and PRTC, the US Department of Labor, or their employees or representatives.

d. **Certification of Eligibility:** By entering into the contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis Bacon Act of 29 CFR 5.12.

II.73 Disadvantaged Business Enterprise (DBE)

The prospective contractor or its subcontractors agree to ensure that disadvantaged business enterprises as defined in 49 C.F.R. Part 26 have a level playing field on which DBEs can compete fairly and participate fully in contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, the 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. Failure by the contractor his/her subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as PRTC deems appropriate.

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

The prospective 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 the 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



POTOMAC AND RAPPAHANNOCK
TRANSPORTATION COMMISSION

CONTRACTOR:

Executive Director - Contracting Officer

Contractor Representative

Date

Title

Date

ATTEST:

Executive Assistant

Date

APPROVED AS TO FORM COUNTY ATTORNEY'S OFFICE

Attorney's Signature

Date

SECTION VI

U.S. Department of Labor

Davis-Bacon Wage Determination

GENERAL DECISION: VA130020

Prince William County

Highway Construction

General Decision Number: VA130020 01/04/2013 VA20

Superseded General Decision Number: VA20120020

State: Virginia

Construction Type: Highway

Counties: Alexandria*, Arlington, Clarke, Culpeper, Fairfax, Fairfax*, Falls Church*, Fauquier, Fredericksburg*, King George, Loudoun, Manassas Park*, Manassas*, Prince William, Spotsylvania, Stafford and Warren Counties in Virginia.

* INDEPENDENT CITIES

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Modification Number	Publication Date
0	01/04/2013

* SUVA2010-010 02/01/2011

	Rates	Fringes
CARPENTER (STRUCTURE).....	\$ 18.55	
CEMENT MASON/CONCRETE FINISHER...	\$ 19.00	
ELECTRICIAN.....	\$ 42.06	
FORM SETTER.....	\$ 18.76	
IRONWORKER, REINFORCING.....	\$ 34.18	
IRONWORKER, STRUCTURAL.....	\$ 17.95	
LABORER		
Asphalt Raker.....	\$ 15.85	
Blaster.....	\$ 35.00	
Construction Worker I		

(Skilled Laborer).....	\$ 14.41
Construction Worker II (Laborer).....	\$ 13.54
Fence Erector.....	\$ 10.60
Flagger.....	\$ 13.64
Grade Checker.....	\$ 14.00
Guardrail Erector.....	\$ 26.00
Pipe Layer.....	\$ 19.00
Power Tool Operator.....	\$ 15.00
Sign Erector.....	\$ 15.00
 PAINTER.....	 \$ 16.13
 POWER EQUIPMENT OPERATOR:	
Air Compressor.....	\$ 15.18
Asphalt Distributor.....	\$ 17.50
Asphalt Paver.....	\$ 16.50
Backhoe.....	\$ 20.59
Boom/Auger.....	\$ 18.50
Bulldozer (Utility).....	\$ 17.00
Bulldozer.....	\$ 20.40
Concrete Finisher Machine...\$	18.35
Concrete Saw.....	\$ 15.00
Crane, Derrick, Dragline (1 cm & under).....	\$ 24.00
Crane, Derrick, Dragline (over 1 cm).....	\$ 20.00
Crusher Tender.....	\$ 22.99
Drill Operator.....	\$ 14.00
Excavator (Gradall).....	\$ 18.00
Front End Loader (2 cm & under).....	\$ 19.00
Front End Loader (over 2 cm).....	\$ 20.42
Hydro Seeder.....	\$ 16.50
Mechanic.....	\$ 21.00
Mobile Mixer.....	\$ 17.00
Motor Grader (Fine Grade)...\$	27.25
Motor Grader (Rough Grade)..\$	24.82
Pavement Marking Operator...\$	17.00
Pavement Marking Truck Operator.....	\$ 13.45
Pavement Planing Groundman..\$	19.75
Pavement Planing Operator...\$	25.00
Pile Driver Operator.....	\$ 16.00
Roller (Finish).....	\$ 17.94
Roller (Rough).....	\$ 17.06

Slip-Form Paver.....	\$ 21.00
Slurry Seal Paver Machine...	\$ 12.00
Stone-Spreader.....	\$ 16.23
Tractor, Crawlers.....	\$ 17.31
Trenching Machine.....	\$ 19.00
Vacuum Machine.....	\$ 16.64

TRAFFIC SIGNALIZATION:

Traffic Signal Installation.....	\$ 21.16
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TRUCK DRIVER

Fuel & Lubricant Service	
Truck Driver.....	\$ 16.50
Truck Driver (Multi-Rear Axle).....	\$ 18.00
Truck Driver (Single Rear Axle).....	\$ 17.50
Truck Driver (Tandem Rear Axle).....	\$ 15.97
Truck Driver, Heavy Duty (7 c.y. & under).....	\$ 17.75
Truck Driver, Heavy Duty (over 7 c.y.).....	\$ 19.00
Truck, Utility.....	\$ 11.80

WELDER.....	\$ 13.00
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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical

order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters, PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative

Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

**SECTION VII
FEDERAL AID PROJECT SIGN**

Section VIII

The Construction Drawings and Technical Specifications are a separate document.