

# REQUEST FOR PROPOSAL

## Contract For Intercity Bus Services

There will be a Mandatory pre-proposal conference for this solicitation. The pre proposal will be held via a teleconference using the GOTOWebinar service. The mandatory pre-proposal will be **July 29, 2021 at 12:30pm. Step by step instructions on how to attend the meeting will be in an attachment after the RFP as well as in section XI of this RFP.**

**Offeror Registration:** In order to receive an award you must be a registered Offeror with eVA.

**Note:** This public body does not discriminate against faith based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against an Offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.



Request for Proposals

RFP #: 505-22-CC0001

Issue Date: July 19, 2021

Title: Intercity Bus Services

Issuing Agency: Commonwealth of Virginia  
Department of Rail and Public Transportation  
600 East Main Street, Suite 2102  
Richmond, VA 23219

Initial Period of Contract: Date of award through an initial two (2) year term with the possibility of three (3) one (1) year renewals.

All inquiries for information should be directed in writing to Melissa Myers, Procurement Officer at [melissa.myers@drpt.virginia.gov](mailto:melissa.myers@drpt.virginia.gov). All questions must be received no later than August 3, 2021 at 3:30pm

Sealed proposals for furnishing the services described herein will be received until **3:00 p.m. Eastern time on August 19, 2021. All proposals must be received via eVA. Instructions on how to do this are included in this RFP.**

In compliance with this Request for Proposals and to all conditions imposed therein and hereby incorporated by reference, the undersigned offers and agrees to furnish the services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation.

Name and Address of Firm:

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

\_\_\_\_\_  
Address \_\_\_\_\_ Signature in Ink

\_\_\_\_\_  
City, State, Zip \_\_\_\_\_ Printed or Typed Name of Above

\_\_\_\_\_  
FEI/FIN Number \_\_\_\_\_ Phone

\_\_\_\_\_  
E-mail \_\_\_\_\_ Fax

Small, Women, and Minority (SWAM) Owned Businesses are encouraged to participate.

**PROPOSAL CHECKLIST**

The following items must be submitted as part of your application for it to be considered complete. Mark each item and provide signature at the bottom attesting to the submittal of all required documentation:

<input type="checkbox"/>	Tab 1: Contact Person (preceding page and Attachment B)
<input type="checkbox"/>	Tab 2: Attachment D - Completed Proposal Application
<input type="checkbox"/>	Tab 3: Proposal Worksheets - Worksheets 6A-7D
<input type="checkbox"/>	Tab 4: Proposer's Drug and Alcohol Policy
<input type="checkbox"/>	Tab 5: Attachment C - Small Business Subcontracting Plan Part 8 State Certifications and Assurances <b>signed</b> by proposer
<input type="checkbox"/>	Tab 6: Attachment F- Completed and <b>signed</b> Federal Certifications
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	

This section to be completed by the person who validated the accuracy and completeness of this application.

Validated By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Signature

# **REQUEST FOR PROPOSALS**

## Contract for Intercity Bus Services

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#### ATTACHMENTS

Attachment A: Required General Terms and Conditions

Attachment B: Special Terms and Conditions

Attachment C: Small Business Subcontracting Plan

Attachment D: Application Forms

Part 1: Applicant Information

Part 2: Experience of Firm/Organization

Part 3: Financial Status and Insurance

Part 4: Project Staffing and Management Plan

Part 5: Maintenance, Safety and Emergency Response Plans

Part 6: Description of Services-Proposed Projects (Worksheets 6A and 6B)

Part 7: Budget (Worksheets 7A, 7B, 7C, and 7D)

Attachment E: Federal Clauses

Attachment F: Federal Certifications

#### INTRODUCTION

The Virginia Department of Rail and Public Transportation (DRPT) announces the availability of funding for additional intercity bus services (intercity service or service). Through a recent analysis conducted by DRPT which examined gaps in existing service, potential ridership, operational costs, and public input, several alternatives were developed which seek to implement an additional intercity bus route along I-81. The route identified aims to connect Bristol, Virginia to Union Station in Washington, D.C.

DRPT's initial intercity bus service was identified as a result of the [Virginia Statewide Intercity Bus Study, Final Report, from September 2013](#) and implemented by DRPT in December 2017. In August 2020, the bus service was expanded with two additional routes along the Route 29 and Route 360 corridors. The new route proposed under this RFP, combined with the Commonwealth's existing intercity bus routes, will be known collectively as "[The Virginia Breeze Bus Lines](#)".

## FEDERAL TRANSIT ADMINISTRATION (FTA) GUIDANCE

Program guidance for FTA's rural intercity bus program is provided in [\(FTA\) Circular 9040.1G \(49 U.S.C. 5311 - Formula Grants for Other Than Urbanized Areas\)](#), Chapter VIII, Intercity Bus. The Circular defines intercity bus service as "regularly scheduled bus service for the general public, operating with limited stops over fixed routes connecting two or more urban areas not in close proximity, which has the capacity for transporting baggage carried by passengers, and which makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available." Package express service may also be included, if incidental to passenger transportation<sup>1</sup>.

Services must be designed to provide for a meaningful connection with the national intercity bus network, including service to connecting points at times when passengers may make convenient connections.

### National Program Objectives

The National Program Objectives as prescribed by FTA in the Circular are as follows:

- To support the connection between rural areas and the larger regional or national system of intercity bus service.
- To support services to meet the intercity travel needs of residents in rural areas.
- To support the infrastructure of the intercity bus network through planning and marketing assistance and capital investment in facilities.

Visit the below sites for more information about FTA's intercity bus program:

- <https://www.transit.dot.gov/about/intercity-bus-program-section-5311-f>

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<sup>1</sup> Intercity service is not limited by the size of the vehicle used or by the identity of the carrier. Air, water, and rail service are not included. Assistance must support intercity bus service in rural and small urban areas (rural places are defined as under 50,000 persons). Charter and tour services are not eligible for FTA assistance per 49 CFR Part 604. Commuter bus services are not eligible for funding under this program.

- [https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA\\_Circular\\_9040\\_1Gwith\\_index\\_-\\_Final\\_Revised\\_-\\_vm\\_10-15-14%281%29.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA_Circular_9040_1Gwith_index_-_Final_Revised_-_vm_10-15-14%281%29.pdf)

## **VIRGINIA PROGRAM EMPHASIS**

A particular focus of the DRPT Section 5311(f) program is the provision of intercity bus connections to rural and small urban areas that have lost intercity connections, focusing the limited resources on new routes or services in areas that have the fewest alternatives as a means to provide intrastate connections as well as interstate links.

The definition of eligible intercity bus services under this program includes services that are:

- Open to the general public, and
- Regularly scheduled service (service offered five to seven days a week), and
- Fixed-route, and
- Fixed schedule, and
- Operated between two or more urban areas over long distances, and
- Capable of carrying baggage, and
- Provide a meaningful connection (in terms of coordinated stop locations, schedules, and information) to the national system of intercity bus transportation.

**Commuter bus service is not eligible under this program. Charter and tour services are not eligible under this program.**

Intercity service is not defined by the type of vehicle used (except for the requirement to carry baggage). All vehicles used to provide services under this program must be fully Americans With Disabilities Act (ADA) compliant<sup>2</sup>. The size and capacity of the vehicle used should support expected ridership, baggage, and ADA requirements.

DRPT requires that all services provided under this program offer users meaningful connections with the national intercity bus network, including interline (joint) ticketing and service connections that are shown in the public timetables for the services. Connections to local public transit, passenger rail, and air travel are strongly encouraged.

All carriers that offer direct service or as an interline partner offer service to points that cross state lines, must be in compliance and in good standing with the Federal Motor Carrier Safety Administration (FMCSA) by July 1, 2021. In addition, carriers must be in full compliance with motor carrier safety and vehicle registration regulations for the state of Virginia, which can be found at: <https://www.dmv.virginia.gov/webdoc/pdf/mcts247.pdf>.

A carrier that has previously operated service under contractual agreement with DRPT must have done so with no penalties imposed. The carrier shall remain ineligible for two years from the date of such penalty being imposed.

## **Eligible Expenses**

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<sup>2</sup> Over-the-Road buses that meet the requirements of 49 CFR Part 38, Subpart G (49 CFR 38.151 et seq.) will be considered accessible. If intercity services are operated by a public entity or under contract to a public entity, they must be compliant with both 49 CFR Part 38.23 and Subpart G of Part 38.

Eligible operating expenses for the intercity program will be based on either a line item budget showing costs related to this project specifically (Budget Form A) or on a fully-allocated cost per revenue mile (Budget Form B).

The line item budget can include items such as fuel, oil, replacement tires, replacement parts, maintenance and repairs, driver and mechanic salaries and fringe benefits, dispatcher salaries and fringe benefits, and licenses. It can also include administrative expenses, including items such as transit manager's salary, secretary and bookkeeper salaries, marketing expenses, office supplies, vehicle insurance, and facility and equipment rental.

All of these expenses are to be included in the fully-allocated cost per revenue mile, without showing separate line items. In addition, the fully-allocated cost per revenue mile can include depreciation and profit, as it is intended to be an all-inclusive rate per revenue mile.

Net operating expenses are those expenses that remain after operating revenues are subtracted from eligible operating expenses. At a minimum, operating revenues must include farebox revenue (passenger fares), but may also include revenue from bus package express, bus ticket sale commissions, or advertising on the vehicle. Operating revenues are all revenues accrued to the benefit of the project including farebox revenue and contract revenues. Farebox revenues include fares paid by passengers who are later reimbursed by a human service agency, or other user-side subsidy arrangements, but do not include payments made directly to the transit provider by human service agencies.

Commuter Bus service is not an eligible expense under the FTA Section 5311(f) program.

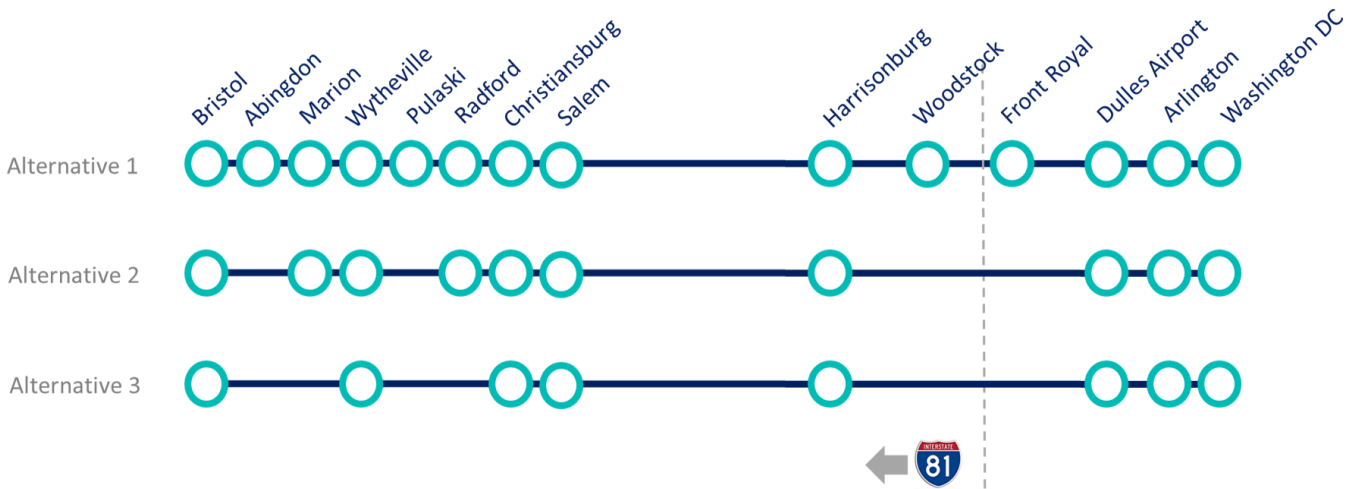
### **Operating Assistance and In-kind Match**

DRPT typically funds operating assistance at the maximum federal participation ratio of 50 percent of net operating expenses. However, the Section 5311(f) program is unique in that FTA permits a state to use the value of unsubsidized connecting intercity bus service as the local match for operating projects under this program.

DRPT intends to utilize the in-kind match funding method. The project is defined to include both the unsubsidized route segment and the subsidized segment. Under current FTA guidance DRPT can count 50% of the value of the fully-allocated cost of the unsubsidized segment (unsubsidized revenue-miles times the fully-allocated cost per mile) as the non-federal share of the combined project. DRPT intends to use in-kind match along with matching FTA funds to fund the entire net operating deficit of the subsidized segments. The carrier operating the unsubsidized segment must provide DRPT with a letter certifying their willingness to provide the match, the schedules and routes involved, and the dollar value of the match.

### **SCOPE OF SERVICES**

**Overview:** DRPT is seeking Offerors to provide intercity bus service along the I-81 corridor from Bristol, Virginia to Union Station in Washington, D.C. In an effort to address the absence of and need for intercity bus service along the I-81 corridor south of its current terminus in Blacksburg, three Virginia Breeze expansion concepts were developed by DRPT and analyzed for ridership potential, farebox recovery and net cost. This service would operate as an additional daily trip northbound and southbound along the corridor. These trips would add additional frequencies to any stops already serviced by the existing Virginia Breeze.



DRPT recommends Virginia Breeze Extension Alternative 3 based on ridership potential, cost, and length of trip. The projected run time from Bristol to Washington D.C. is expected to be between 9 and 10 hours. Federal regulations require drivers to rest for a minimum of 8 hours after 10 hours of driving, which presents a potential operational conflict.

DRPT is seeking turnkey intercity bus services, in which the Offeror will provide the following: all vehicles and equipment; sufficient staffing to provide daily operation of the services; regularly scheduled, year-round service on the proposed intercity route(s); obtain all required permits and authority; obtain required insurance; conduct appropriate maintenance; retain records; enter into agreements with other carriers as required to support the use of interline ticketing; obtain access to private or public intermodal terminals of connecting services; obtain access to and enter into agreements with private property owners when necessary; and obtain access to and enter into agreements with local jurisdictions when necessary.

Offerors are encouraged to propose a detailed route map and example timetable, based on their experience in operating intercity bus services, local knowledge of the corridor, and the need to provide connectivity to the national intercity bus network.

Offerors can describe their proposed service by including specific information such as:

- A route map showing proposed stop locations;
- Local area maps and/or satellite imagery (e.g. Google Street View screenshots) depicting proposed stop locations;
- Details regarding the frequency of service; and
- A timetable presenting the proposed schedule (including scheduled arrival/departure times for connecting services, where applicable).

**Routing:** DRPT is seeking proposals to provide service along the I-81 corridor from Bristol, Virginia to Union Station in Washington, D.C.

**Anticipated Stops:** To provide connectivity, the route should connect with the national intercity bus network where possible. Connections to local public transit service, passenger rail, and air travel are strongly encouraged. Possible stops along the Bristol to Union Station route may include but are not limited to: Bristol, Wytheville, Radford, Christiansburg, Salem, Harrisonburg, Dulles International Airport, West Falls Church, and Union Station.

As mentioned above, Offerors should take the following factors into consideration when selecting stop locations:

- Distance from interstate;



- Ease of access for bus;
- Proximity between stops;
- Local public transit connections;
- Availability of overnight parking;
- ADA compliance; and
- Availability of pedestrian amenities (potential shelter from the elements, access to restrooms, seating, lighting, general safety, bicycle storage options, etc.).

Offerors are encouraged to meet with localities and organizations where stops are proposed and submit documentation of the meetings and the input received. Potential local contacts include the following:

- Local public transit operators;
- Local Chambers of Commerce;
- Universities and Colleges;
- Metropolitan and Planning District Commissions; and
- Private property owners and property management staff.

**Schedule:** Offerors should propose timetables that provide scheduled connectivity to and from other intercity bus services linking the region with the national intercity bus network. Meaningful connections to the national intercity bus network are critical to the operation of these routes as the FTA allows the local portion of the funding for intercity bus routes to be provided through an in-kind mileage match. Offerors should consider a meaningful connection to be scheduled opportunities for riders to transfer to connecting intercity bus services within a two-hour window. Offerors may propose schedules in this corridor based on their experience in operating intercity bus services, and local knowledge of the market and the corridor and the need to provide connectivity to the national intercity bus network.

**Frequency:** A minimum of one round-trip per day, seven days-a-week is required. Service must be year-round and include service on holidays.

**Estimated Ridership:** Exhibit 1 below presents ridership estimates as analyzed by DRPT. Note that it is anticipated that ridership will take time to develop, and that ridership in the first year of service could be lower than ridership in the second year of service. Note that reimbursement of net operating expenses will be based on actual costs and revenues by month. The service may be subject to modification or discontinuance if ridership fails to achieve the minimum performance goals identified in this Request for Proposals (RFP).

Proposed Route	Annual Vehicle Trips	Mean Demand	Boardings per Trip
Bristol-Harrisonburg-Union Station (DC)	730	16,600	23

**Exhibit 1: Estimated Ridership**

## **Period of Performance**

It is anticipated that this contract will be for an initial period of two years. It may be renewed by DRPT upon written agreement of both parties for three (3) successive one (1) year periods, under the terms of the current contract, and no less than ninety (90) days prior to the expiration.

## **OTHER REQUIREMENTS**

### **Performance Expectations and Requirements**

The on-time performance of this service shall be monitored. It is expected that the Offeror who is awarded the contract ("Contractor") will be able to meet all scheduled departure times except in cases of emergency, inclement weather, or the need to hold for late connections. Failure to meet schedules due to maintenance or dispatch problems or equipment failure that are the responsibility of the Contractor will be considered a failure to perform and will result in appropriate adjustments to invoices and may result in additional actions by DRPT to ensure satisfactory service for the citizens of Virginia. DRPT will cooperate with the Contractor to address any related incident if it should arise; however, the Contractor must notify DRPT immediately of such an occurrence and implement a contingency to continue operations in a safe manner. The Contractor will be responsible for all additional costs to passengers for missing departure connections.

### **Interline Ticketing and Information**

Offerors must be interline partners on the national intercity bus network. An interline partner is able to sell tickets that allow a passenger to buy a single ticket that provides travel through two or more different bus companies. The National Bus Traffic Association (NBTA) clearinghouse allows the numerous firms that provide transportation on a particular ticket to collect their proportionate share of the revenue based on the part of the trip that particular carrier provided. More information on this can be found at: <http://www.bustraffic.org/>. Participation in the NBTA revenue clearinghouse is possible at minimum cost for firms and public transit agencies providing rural intercity service as a sponsored member. Contact NBTA for more information.

### **Vehicle**

Vehicles must be fully operated and maintained by the Contractor.

Intercity service is not defined by the type of vehicle used (except for the requirement to carry baggage). All vehicles used to provide services under this program must be fully ADA compliant. The size and capacity of the vehicle used must support expected ridership, baggage, and ADA requirements. In the event that ticket sales approach maximum vehicle capacity, Offerors should allow DRPT the option to add supplementary vehicle(s) to the trip. The decision to add supplementary vehicles will be made at DRPT's discretion. Supplementary vehicles must adhere to the service schedule while supporting baggage and ADA requirements.

Vehicles must offer fully functioning passenger amenities at no cost to riders including Wi-Fi, in-seat power outlets, and restrooms. If restrooms are not fully ADA accessible, Offerors must provide reasonable accommodation for passengers by allowing for rest stops at fully ADA accessible locations. Should supplementary or back-up vehicles be used to provide service in the event of primary vehicle maintenance or to provide additional capacity, all vehicles should offer fully functioning passenger amenities as described above.

**Buses must be fully branded and exclusively used for Virginia Breeze service.** Bus wrap designs will be provided by DRPT. Offerors are responsible for ordering wraps, wrap installation, and wrap maintenance and replacement. All costs associated with bus wraps shall be included in monthly invoicing. Back-up or supplementary vehicles are not required to be branded, as they should only be used to provide Virginia Breeze service temporarily.

## **Technology**

Offerors must maintain, update, and share General Transit Feed Specification – Real Time (GTFS- Realtime) with DRPT and must register in Google Transit at <http://google.com/transit>, providing schedule information in the required format and updating this information as schedule changes occur.

DRPT intends to offer riders a mobile application(s) that allows users to access real-time bus updates including but not limited to the ability to track buses in real time, view arrival time updates, view service delay and emergency cancellation messages, purchase tickets, and view customer service contact information and resources. Offerors must share all data sources required to make these functions possible through a third party mobile application. All vehicles used to provide service (including those supplementary or back-up vehicles that may be used to provide service in the event of primary vehicles being out of service or to add capacity) must be equipped with the necessary technology to track buses in real time and must share real time data in a way that can be processed by a third party mobile application. Offerors are responsible for ordering equipment, and for its installation, maintenance, and replacement. All costs associated with equipment should be included in monthly invoicing. All back-up and supplementary vehicles should be equipped with this technology.

Offerors must have a system in place for notifying ticket purchasers directly in the event of an emergency service cancellation.

## **Reporting & Data Sharing**

In addition to the GTFS and real time tracking capabilities detailed above, DRPT requires Offerors to share various data used for performance monitoring and operations management. The lists below identify the data and reporting frequency required by DRPT from the Offerors:

Monthly reporting (due to DRPT within 3 business days of the last day of each month):

- Ridership by origin and destination (with the ability to view by date, direction, and trip)
- Ticket sales by origin and destination including ticket cost (with the ability to view by date, direction, and trip)
- In-kind mileage report (details the number of unsubsidized interlining intercity bus trips available, and their trip length in miles)
- On-time performance (details the actual arrival and departure times for each bus, ability to view by day of the week, date, stop, direction, and trip)
- Vehicle service maintenance records (to include preventative maintenance, work orders, date service was performed)

As requested by DRPT:

- Ticket sales by origin and destination including ticket cost (with the ability to view by date, direction, and trip)
- Ticket availability/vehicle capacity remaining
- Ticket purchaser email address list (by date, direction, and trip).

## **Bus Stop Signage**

Bus stop sign designs will be provided by DRPT. Offerors are responsible for sign fabrication (including sign posts and all required hardware), installation, maintenance and replacement as needed. All costs associated with signage shall be included in monthly invoicing. Replacement of signage is required in the event that DRPT re-brands or redesigns bus stop signs.

### **On-Board Notices**

As mandated by federal Title VI and ADA regulations, DRPT requires Offerors to post on-board notices. These notices will be provided by DRPT and must be posted clearly and visibly in all vehicles in Virginia Breeze service at all times, including any back-up or supplementary vehicles. These documents may be updated periodically. All updated documents provided by DRPT shall replace existing documentation on all vehicles.

Additionally, as part of DRPT's Title VI policy, DRPT offers Virginia Breeze riders a translation service. Offerors are required to train all operators on the use of the translation service and submit documentation listing which operators have been trained. Offerors must post notices and instructions on how to use the service clearly and visibly in all vehicles in Virginia Breeze service at all times.

### **On-Board Surveys**

DRPT will periodically conduct on-board surveys of riders. These surveys may be paper or electronic and will be provided by DRPT. Offerors must present the survey to riders and collect and mail completed paper surveys to DRPT. All costs associated with mailing surveys shall be included in monthly invoicing.

### **Federal Motor Carrier Safety Administration**

Intercity service Offerors crossing State lines are required to be in compliance with Federal Motor Carrier Safety Administration (FMCSA) regulations. Also, Offerors of intrastate service that interline with services to provide interstate trips must meet FMCSA regulations. More information can be found at: <http://www.fmcsa.dot.gov/>.

### **Drug and Alcohol Policy and Procedures**

Offerors must meet Drug and Alcohol Policy and Procedures requirements and ensure that employees adhere to the policy. For Offerors who receive FTA financial assistance which supports the majority of their overall operations, please submit an approved FTA Drug Free Workplace Policy and an approved Drug and Alcohol Testing Policy (refer to the FTA website: <http://transit-safety.volpe.dot.gov/DrugAndAlcohol/Default.aspx> for information). For Offerors who are private-for-profit carriers that already report to FMCSA, please submit proof of an approved FMCSA Drug and Alcohol policy (refer to FMCSA website: <http://www.fmcsa.dot.gov/safety-security/safety-initiatives/drugs/drugs-alcohol.htm> for more information). IMPORTANT: For private-for-profit carriers whose Drug and Alcohol policies are not updated with updated FTA Drug & Alcohol requirements will need to be as they apply to services operated under this grant. For example, FTA definitions of the individuals involved in safety-sensitive functions differ from those used by FMCSA, and there are other differences. A "Sample Drug and Alcohol Policy - FTA and FMCSA" incorporating the requirements of both agencies is available on the FTA website at <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/PolicyBuilder/CreatePolicy.aspx>. The link to the Word file with the sample policy is in the "\*Note" that follows the "Click to Begin" line on that page.

### **National Transit Database Reporting**

Offerors are required to report 5311(f) intercity bus program activities annually to the National Transit

Data Base (<http://www.ntdprogram.gov/ntdprogram/rural.htm>). The reporting period is from July to June, with the report due to DRPT by September. Data collected includes the amount of federal funding utilized, annual vehicle revenue-miles and regular unlinked passenger trips.

### **Americans with Disabilities Act Requirements**

Americans with Disabilities Act (ADA) Requirements: All Offerors must comply with 49 CFR Part 37. All vehicles proposed to operate these services must be fully wheelchair accessible and operators trained to proficiency in the use of accessibility features.

### **Title VI Requirements**

All intercity bus service must be in full compliance with DRPT's Title VI plan (<http://www.drpt.virginia.gov/about/non-discrimination/http://www.drpt.virginia.gov/about/non-discrimination/>) which prohibits the inequitable treatment of persons as a result of projects which are undertaken with federal financial assistance. This plan details what actions DRPT will take to prevent discrimination in federally funded projects and addresses environmental justice among minority and low income populations and improves access to services for persons with limited English proficiency.

### **Section 5333(b) Special Warranty for Labor Protection**

All Section 5311 operational projects, including intercity bus (5311(f)) projects, require agreement to the terms and conditions of the standard Section 5333(b) special warranty for the Section 5311 program. The assurance is included in the Certifications and Assurances section of this application.

### **Coordination with Local Public Transit**

Evidence of coordination efforts with local agencies or transportation services is required as part of the application. Information should be provided by Offerors in the appropriate section of the application documenting details about the Offeror's efforts to coordinate services with local agencies or public transportation providers.

### **Pre-Trip Inspection and Vehicle Maintenance Records**

The Contractor will be required to maintain appropriate vehicle maintenance and pre-trip inspection records. DRPT may conduct a site visit to review such records. The purpose of the site visit is to ensure appropriate recordkeeping and to inspect the fleet used in these services.

### **Compliance with All Federal and State Requirements**

The Contractor must comply with all Federal and State requirements pertaining to the 5311 program.

### **Performance Measures**

There are two sets of relevant performance measures. One set applies to the Contractor during the pre-service phase, before scheduled service is initiated, and the other set applies to the service itself over time as ridership and revenues build.

**Pre-Service Phase:** This consists of a series of tasks that must be accomplished prior to service initiation:

- Finalize schedule and stops, including arrangements with commission agents or those in control of unstaffed stops. Present listing to state and connecting carriers (providers of in-kind match);

- Develop communication procedures and contacts with transportation partners, including connecting intercity bus carriers, other intercity bus providers, Amtrak (if applicable), local transit operators in the service area, and any other public or private providers;
- Obtain sponsored membership in the National Bus Traffic Association or make alternative arrangements before service begins in order to interline successfully with the national intercity bus network;
- Work with connecting carriers to be included in their ticketing and payment systems.
- Must document FMCSA authority as an interstate carrier as required to be able to sell or accept interline (interstate) tickets;
- Document that all vehicles to be used on these services are fully ADA compliant, including all wheelchair accessibility features, and that staff are trained to proficiency in the use of these features;
- Provide an updated Vehicle Inventory (see Worksheet 6B) to DRPT; and
- Provide updated Drug and Alcohol Policy to DRPT, initiate testing, set up reporting protocol.

**In-Service Phase:** Based on the reporting required with monthly invoices, the ridership, revenues and costs of Virginia's rural intercity bus services will be monitored to determine progress toward the following performance goals:

- Annual ridership of at least 1,200 persons on each route;
- Revenue per bus-mile of at least \$0.50;
- A farebox recovery of at least 20 percent; and
- A maximum subsidy per passenger-trip of no more than \$60.

It is recognized that these levels will not be achieved immediately, but DRPT will evaluate performance with respect to these goals at the end of the first year with the expectation that at a minimum the service will meet 50% of these levels at that time. DRPT reserves the right to terminate services or request changes to service that do not meet these minimums at any point after the end of the initial year of service.

## I. PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

### A. General Requirements

1. In order to be considered for selection, Offerors must submit a complete sealed electronic response to this RFP. RFP must be submitted electronically using eVA. <https://eva.virginia.gov/index.html> If you are not registered in eVA, you must do so in order to submit a proposal and have a contract with the state of Virginia.

Proposals must be received **in eVA by August 19, 2021 at 3pm.**

In addition, the Offeror may be required to make a subsequent oral presentation detailing how the Offeror would approach the specific elements outlined in the Scope of Work.

### 2. Electronic Proposal Preparation

A. Proposals shall be electronically signed by an authorized representative of the Offeror. All information requested should be submitted. Failure to submit all information requested may result in the DRPT requiring prompt submission of missing information

and/or giving a lowered evaluation of the proposal. Proposals, which are substantially incomplete or lack key information, may be rejected by the DRPT at its discretion.

- B. Proposals should be organized in the order in which the requirements are presented and follow the requirements in Section V: Specific Proposal Requirements of this RFP. All pages of the proposal should be numbered. The proposal should contain a table of contents which cross-references the RFP requirements. Information which the Offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
- C. Proposals should be prepared simply and economically, providing straightforward concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. Each tab must be submitted separately as an attachment in eVA. Each attachment can be no more than 60MB. You can submit up to five attachments at a time and as many as necessary. Elaborate brochures and other representations beyond that sufficient to present a complete and effective proposal are neither required nor desired. Proposals should use a font size of 12 (or larger) and have no less than ¾" margins. **No proposal, in its entirety, should exceed 50 pages one-sided.**

## **SPECIFIC PROPOSAL REQUIREMENTS**

Proposals should be as thorough and detailed as possible so that DRPT may properly evaluate the Offerors' capabilities to provide the required services. Offerors are required to submit the following items in order for their proposal to be considered complete.

**RFP Cover Sheet** – The RFP Cover Sheet (page 2 of this RFP) shall be completely filled out and signed as required.

**Tab 1 Contact Person** – The Offeror must identify the name, telephone number and e-mail address for the contact person who will be responsible for coordinating the efforts and personnel of all parties and/or sub-Consultants involved in the proposal.

**Tab 2 Completed Attachment D. Applications Forms** – The Offeror must provide a detailed description of its understanding of the services to be provided with descriptions of the approach and procedures employed on similar projects elsewhere. The Offeror must describe the process it will follow to respond to a specific purchase order request from DRPT. The Offeror should also describe the management procedures it will follow to provide the required transportation services. Attachment D includes specific questions to be answered by the proposal to provide DRPT with this information, including:

- A. A detailed statement indicating the organizational structure under which the firm proposes to conduct business. If more than one firm is involved in this project, state the type of arrangement between the firms and the percentage of work to be performed by each.
- B. A list of the key personnel including sub-consultants who could be assigned to the various tasks identified. Give the relevant experience record of each and include resumes and any certifications.

- C. A list of references to include name, address, telephone number, project, and amount of project.

**Tab 3 Completed Worksheets** – Attachment D references Excel worksheets 6A and 6B, and 7A, 7B, 7C, and 7D. These must be completed and provided both in hard copy and electronically.

**Tab 4 Drug and Alcohol Policy** – The Offeror should include a copy of their Drug and Alcohol Policy document as called for in the “Other Requirements”

**Tab 5 Virginia Department of Small Business and Supplier Diversity (DSBSD/SWAM) Participation** – The Offeror shall indicate the percentage of DSBSD/SWAM participation and specify the types of work to be performed by DSBSD/SWAM sub-Consultant. In order to be considered for the selection of this Request for Proposals, the Offeror must submit six (6) copies of the Small Business Subcontracting Plan. A blank copy of this document is included as **Attachment C**.

All DSBSD/SWAM Offerors must be certified with the Virginia Department of Small Business and Supplier Diversity. If the DSBSD/SWAM Offeror is not certified they must demonstrate that they are eligible to be certified, and they must receive such certification prior to the solicitation due date. The Virginia Department of Small Business and Supplier Diversity can be contacted at (804) 786-6585. The DSBSD/SWAM goal for this contract is 25%. If the DSBSD/SWAM Offeror is the Prime Offeror, the Offeror will receive full credit for planned involvement.

**Tab 6 Federal Certifications** Signed Federal Certifications (Application attachments that are in Attachment F).

**EVALUATION AND AWARD CRITERIA**

An Offeror for this intercity bus service will be qualified and selected by DRPT’s Selection Committee based on the following weighted criteria:

<u>FOR SERVICES</u>	<u>POINT VALUE</u>
1. Experience	20 points
2. Commitment to SWAM Utilization	20 points
3. Staffing and management	10 points
4. Maintenance, Safety, and Emergency response plans	10 points
5. Price	10 points
6. Description of Services (innovation of services will be weighted in this section)	30 points
Total Points	<u>100 points</u>

**REPORTING AND DELIVERY REQUIREMENTS**

**A. MEETINGS AND REVIEWS** - DRPT shall hold an initial conference with the Contractor at a place and time selected by DRPT for the purpose of reviewing the Contractor’s proposed schedules, procedures, and methods, and to clarify any ambiguities that may then exist. The Contractor’s Principal Officer and others requested by DRPT shall attend the conference. DRPT may request



additional reviews during the contract period to evaluate Contractor performance and provide feedback.

**B. PROGRESS REPORTS** – The Contractor must meet all due dates on all tasks assigned. To provide feedback to DRPT concerning this requirement, the Contractor shall submit monthly progress reports providing detailed information on the status of the work effort on each of the various project tasks. The progress reports shall include total authorized funds and expended funds to date. The total expended must be broken down by amounts paid to SWAM and non-SWAM businesses each month and paid to date. It shall summarize all work efforts in the reporting period including personnel and hourly utilization. It shall also discuss any anticipated difficulties and proposed resolution.

**C. SWAM REPORTING AND DELIVERY REQUIREMENTS**

- The Contractor shall provide to DRPT, in a form as required by DRPT, documentation that it has utilized SWAM businesses in accordance with its SWAM utilization plan (**Attachment C** of the RFP). Said documentation shall be provided semi-annually or as required by DRPT.
- The Contractor shall use **Attachment F** (Monthly DSBSD/SWAM Certified Subcontractor Report) or other form approved by DRPT to report amounts paid to SWAM and non-SWAM businesses on a monthly basis as well as paid to date. Said attachment or other approved form shall be submitted with the monthly progress reports addressed above.

**II. MANDATORY PRE-PROPOSAL CONFERENCE**

There will be a Mandatory pre-proposal conference for this RFP on July 29, 2021 at 12:30pm. The pre proposal will be held via teleconference using the GOTOWebinar service. The Step by step instructions on how to attend the meeting will be in an attachment after the RFP. DRPT is requesting only two representatives from each firm be on phone/registered. Please register for Rail Project Oversight Project Manager Mandatory Pre Proposal before July 29, 2021 at 12:00pm <https://attendee.gotowebinar.com/register/356313652095379214>. Webinar ID 104-167-427 Call in number is 562/247-8422 Attendee Code is 443-916-560. After registering, you will receive a confirmation email containing information about joining the webinar.

Please make sure you are able to log in, register, and are familiar with the gotowebinar service in advance. If you dial in late you will miss important information and DRPT will not go back over what has already gone over.

Any changes resulting from this conference will be issued as a written addendum to the RFP.

**REQUIRED GENERAL TERMS AND CONDITIONS** - For a listing of the Required General Terms and Conditions, please see **Attachment A**.

**SPECIAL TERMS AND CONDITIONS** - For a listing of the Special Terms and Conditions, please see **Attachment B**.

**METHOD OF PAYMENT** - Payments will be made monthly within 30 days after receipt of a properly presented invoice and acceptance of completed work.

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Attachment A  
General Terms and Conditions

1. VENDOR'S MANUAL: This solicitation is subject to the provisions of the *Commonwealth of Virginia Vendors Manual (Vendors Manual)* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at <http://www.dgs.virginia.gov/Services/tabid/121/Default.aspx> under "Procurement Manuals."
2. APPLICABLE LAW AND COURTS: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia ("Commonwealth") and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the Offeror who is awarded a contract are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia* § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The Offeror shall comply with applicable federal, state and local laws, rules and regulations.
3. ANTI-DISCRIMINATION: By submitting their proposals, Offerors certify to the Commonwealth that they will conform to the provisions of the *Federal Civil Rights Act of 1964*, as amended, as well as the *Virginia Fair Employment Contracting Act of 1975*, as amended, where applicable, the *Virginians With Disabilities Act*, the *Americans with Disabilities Act* and *Code of Virginia* § 2.2-4311 (1950), as amended. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender, sexual or gender identity, or national origin, and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body (*Code of Virginia* § 2.2-4343.1(E) (1950), as amended). In every contract over \$10,000, the provisions in (A) and (B) below apply:
  - A. During the performance of this contract, the Offeror who is awarded a contract agrees as follows:
    1. The Offeror who is awarded a contract 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 Offeror who is awarded a contract. The Offeror who is awarded a contract will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Offeror who is awarded a contract, in all solicitations or advertisements for employees placed by or on behalf of the Offeror, will state that such Offeror 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 these requirements.
- B. The Offeror who is awarded a contract will include the provisions of (A) above in every sub-contract or purchase order over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.
4. **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, Offerors certify their proposals are made without collusion or fraud and they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and 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.
  5. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their proposals, the Offerors certify that they do not and will not during the performance of this contract employ unauthorized aliens or otherwise violate the provisions of the *Federal Immigration Reform and Control Act of 1986*.
  6. **DEBARMENT STATUS:** By submitting their proposals, Offerors certify that they are not currently debarred by the Commonwealth from submitting proposals on contracts for the type of services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
  7. **ANTITRUST:** By entering into a contract, the Offeror who is awarded a contract conveys, sells and transfers to the Commonwealth all rights, title and interest in and to all causes of the action it may now or hereafter acquire under the antitrust laws of the United States and the Commonwealth, relating to the particular services purchased or acquired by the Commonwealth under said contract.
  8. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS:** Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, DRPT reserves the right to decide, on a case by case basis, in its sole discretion, whether or not to reject such a proposal.
  9. **CLARIFICATION OF TERMS:** If any prospective Offeror has questions about the specifications or other solicitation documents, the prospective Offeror should contact Melissa Myers (Melissa.myers@drpt.virginia.gov) no later than five (5) working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the Melissa Myers.
  10. **PAYMENT TO OFFERORS AWARDED CONTRACTS AND TO THEIR SUBCONTRACTORS:**
    - A. To the Offeror who is awarded a contract:
      1. Invoices for items ordered, delivered and accepted by DRPT shall be submitted by the Offeror who is awarded a contract directly to the payment address shown on the purchase order. All invoices shall show the DRPT contract number and/or purchase

order number, and the social security number (for individual contractors) or federal employer identification number (for proprietorships, partnerships, and corporations).

2. Any payment terms requiring payment in less than thirty (30) days will be regarded as requiring payment thirty (30) days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than thirty (30) days.
3. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the Offeror who is awarded a contract at the contract price, regardless of which public agency is being billed.
4. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the *Virginia Debt Collection Act*.
5. Unreasonable Charges – Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Offerors who are awarded a contract should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, DRPT shall promptly notify the Offeror who is awarded a contract, in writing, as to those charges which it considers unreasonable and the basis for the determination. An Offeror who is awarded a contract may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia* § 2.2-4363 (1950), as amended).

B. To Subcontractors:

1. An Offeror awarded a contract under this solicitation is hereby obligated:
  - a. To pay their subcontractor(s) within seven (7) days of the Offeror's receipt of payment from DRPT for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
  - b. To notify the agency and the subcontractor(s), in writing, of the Offeror's intention to withhold payment and the reason.
2. The awarded Offeror is obligated to pay its subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the awarded Offeror that remain unpaid seven (7) days following receipt of payment from DRPT, except for amounts withheld as stated in (b) above. The date of mailing of any payment by U.S. Mail is deemed to be the payment date to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. An Offeror's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of DRPT.

- C. Each Offeror who wins an award in which provision of a SWAM procurement plan is a condition of award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from sub-consultants' default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered

and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

11. PRECEDENCE OF TERMS: Paragraphs 1-11 of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
12. QUALIFICATIONS OF OFFERORS: DRPT may make such reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to perform the services and the Offeror shall furnish to DRPT all such information and data for this purpose as may be requested. DRPT reserves the right to inspect Offeror's physical facilities prior to award to satisfy questions regarding the Offeror's capabilities. DRPT further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Offeror fails to satisfy DRPT that such Offeror is properly qualified to carry out the obligations of the contract and to provide the services contemplated therein.
13. TESTING AND INSPECTION: DRPT reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
14. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the Offeror who is awarded a contract in whole or in part without the written consent of DRPT.
15. CHANGES TO THE CONTRACT: Changes can be made to the contract in any one of the following ways:
  - A. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  - B. DRPT may order changes within the general scope of the contract at any time by written notice to the Offeror who is awarded a contract. Changes within the scope of the contract include, but are not limited to, things such as services to be performed. The Offeror who is awarded a contract shall comply with the notice upon receipt. The Offeror who is awarded a contract shall be compensated for any additional costs incurred as the result of such order and shall give DRPT a credit for any savings. Said compensation shall be determined by one of the following methods:
    1. By mutual agreement between the parties in writing; or
    2. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units and the Offeror who is awarded a contract accounts for the number of units of work performed, subject to DRPT's right to audit the Offeror who is awarded a contract's records and/or to determine the correct number of units independently; or
    3. By ordering the Offeror who is awarded a contract to proceed with the work and to keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Offeror who is awarded a contract shall present DRPT with all vouchers and records of expenses incurred and savings realized. DRPT shall have the right to audit the records of the Offeror who is awarded a contract as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to DRPT within thirty (30) days from the date of receipt of the written

order from DRPT. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the *Vendors Manual*. Neither the existence of a claim or a dispute resolution process, litigation or any other provision of this contract shall excuse the Offeror who is awarded a contract from promptly complying with the changes ordered by DRPT with the performance of the contract generally.

16. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, DRPT, after due oral or written notice, may procure them from other sources and hold the Offeror who is awarded a contract responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which DRPT may have.
17. **INSURANCE:** By signing and submitting a proposal under this solicitation, the Offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. DRPT reserves the right to request a copy of the Certificate of Insurance. The Offeror further certifies that, if awarded the contract, it and any sub-consultants will maintain this insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

1. **Workers' Compensation:** Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Offerors who are awarded a contract who fail to notify DRPT of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
  2. **Employer's Liability:** \$100,000.
  3. **Commercial General Liability:** \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
  4. **Automobile Liability -** \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)
18. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the DRPT Fiscal Division will publicly post such notice on the eVA VBO website <https://vendor.epro.cgipdc.com/webapp/VSSAPPX/Advantage>.
  19. **DRUG-FREE WORKPLACE:** During the performance of this contract, the Offeror who is awarded a contract agrees to (i) provide a drug-free workplace for the Offeror'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 Offeror'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 Offeror that the Offeror maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each sub-consultant 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 an Offeror, 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.

20. **NON-DISCRIMINATION:** An Offeror shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment, or because the Offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization, and an individual who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
21. **eVA Business-To-Government Vendor Registration:** The eVA Internet electronic procurement solution, web site portal [www.eVA.virginia.gov](http://www.eVA.virginia.gov) streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to DRPT shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All Offerors must register in eVA; failure to register will result in the proposal being rejected.
  - A. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
  - B. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments,
  - C. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
    - (i) Department of Small Business and Supplier Diversity ("DSBSD")-certified Small Business: 1%, capped at \$500 per order.
    - (ii) Businesses that are not DSBSD-certified Small Business: 1% capped at \$1500 per order.
22. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that DRPT shall be bound only to the extent of the funds available or which may hereafter become available for the purpose of this agreement. All financial obligations of DRPT are subject to appropriation by the General Assembly of Virginia and, if required, allocation by the Commonwealth Transportation Board.
23. **SET-ASIDES:** This solicitation is set-aside for DMBE-certified small business participation only when designated "SET-ASIDE FOR SMALL BUSINESSES" in the solicitation. Small businesses must be certified by the Virginia Department of Minority Business Enterprise not later than the solicitation due date and time. DSBSD-certified women and minority owned businesses are also considered small businesses when they have received DSBSD small business certification.
24. **BID PRICE CURRENCY.** Unless stated otherwise in the solicitation, Offerors shall state prices in U.S. dollars.



25. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH: An Offeror organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

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# Attachment B

## SPECIAL TERMS AND CONDITIONS

### 1. PROPOSED PROCUREMENT SCHEDULE:

Issue Date of RFP	July 19, 2021
Pre-Proposal Conference	July 29, 2021 at 12:30 pm
Deadline for receipt of Proposals	August 19, 2021 at 3:00 pm
Oral Presentations (if required)	Week of September 13, 2021
Negotiations	Week of September 27, 2021
Proposed Contract Award (Dependent upon timing of oral presentations)	Week of October 11, 2021

- 2. CHANGES TO THE RATES ON THE PRICE SCHEDULE:** Changes to the rates on the price schedule may only occur during the renewal period. Said rates may be revised by mutual agreement of DRPT and the Offeror who is awarded a contract sixty (60) days prior to the renewal period starting date. If DRPT elects to exercise the option to revise rates for the two (2) one-year renewal periods, the contract price(s) for the increases shall not exceed the contract price(s) stated for the third year of the original contract increased/decreased by more than the percentage increase/decrease of the Services Category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve (12) months for which statistics are available. The Offeror who is awarded a contract shall convey (in writing) its request to raise/lower prices to the Department no later than sixty (60) days prior to the renewal period starting date. Applications for price increases shall be substantiated in writing with the request. DRPT shall have sole discretion to allow price increases.
- 3. APPROPRIATE LICENSURE, CERTIFICATIONS, AND/OR CREDENTIALS:** Offerors who are awarded a contract must submit copies of appropriate licensure, certifications, and/or credentials subsequently upon award and as requested by DRPT.
- 4. AUDIT:** The Offeror who is awarded a contract ("Contractor") shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period. The Contractor shall permit the authorized representative of DRPT, the U. S. Department of Transportation, and the Comptroller General of the United States to inspect and audit all data and records of the Offeror who is awarded a contract relating to its performance under this Contract.
- 5. ADVERTISEMENT:** In the event a contract is awarded for supplies, equipment, or services resulting from this proposal, no indication of such sales or services to DRPT will be used in product literature or advertising without prior written approval from DRPT.
- 6. CLAIMS:** The Contractor shall be responsible for resolution of any and all claims resulting from work performed under this contract. Claims made to DRPT under this contract will be referred to the Contractor for handling. Failure to properly respond to and resolve property damage and claims constitutes unsatisfactory performance and may result in cancellation of the contract.
- 7. CANCELLATION OF CONTRACT:** DRPT reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon sixty (60) days written notice to the Contractor. After the initial three (3) year contract period, the resulting contract may be terminated by either party, without penalty, upon sixty (60) days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver any outstanding orders issued prior to the effective date of cancellation.
- 8. QUALIFICATIONS/RESPONSIBILITIES:**

## Attachment B

### SPECIAL TERMS AND CONDITIONS

- A. The Contractor agrees that competent, experienced and qualified staff properly trained and certified for the type of work described in this RFP shall perform all work.
- B. The Contractor shall assign a person as their representative who will have the authority to execute this contract work. The person's name and phone number, and an alternate representative's name and phone number, shall be provided to DRPT in the Offeror's proposal.
9. **DAMAGES:** It is the Contractor's responsibility to repair any property damage caused in the performance of this contract. Repairs will be made to DRPT's satisfaction.
10. **SPECIAL DISCOUNTS:** During the contract period, if the Contractor offers promotional discounts as a general practice for items available under this contract, with the result that those prices are lower than the prices available under this contract, then the promotional discounts shall be made available to DRPT under this contract, the effective date for price changes/discounts will be the date that the lower prices/discounts were made available to the Offeror's customers generally.
11. **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, DRPT reserves the right to award a contract covering the period equal to or less than the initial term indicated in the solicitation.
12. **CONTRACTUAL DISPUTES:** Contractual claims arising after final payment shall be governed by § 2.2-4363(A) of the *Code of Virginia* (1950), as amended. This claim shall be submitted to the Director of DRPT who will render a decision within thirty (30) working days. Contractual disputes arising during the course of performance shall be submitted to the DRPT CFO, who will make a decision in thirty (30) working days, which will be final. Contractors will not be precluded from filing a claim at the conclusion of performance as a result of the decision made during the course of contract performance.
13. **PROTEST OF AWARD:** An Offeror wishing to protest an award or a decision to award a contract must submit a written protest to the DRPT Fiscal Division, 600 East Main Street, Suite 2102, Richmond, Virginia 23219, no later than ten (10) days after public notice of award or announcement of the decision to award whichever occurs first. The public notice will be in the area designated for solicitation/proposal and award notices. The protest must include the basis for the protest and the relief sought. Within ten (10) days after receipt of the protest, the DRPT CFO will issue a written decision stating the reasons for the action taken. This decision is final unless within ten (10) days after receipt of such decision, the Offeror institutes legal action as provided in *Code of Virginia* § 2.2-4364 (1950), as amended.
14. **DELIVERY POINT:** Except when otherwise specified herein, all items shall be F.O.B. delivered to any of the locations specified herein.
15. **ADDITIONAL INFORMATION:** DRPT reserves the right to ask any Offeror to submit information missing from its offer, to clarify its offer, and to submit additional information which DRPT deems desirable, and does not affect quality, quantity, price or delivery.
16. **SMALL BUSINESS SUBCONTRACTING PLAN:** If the Offeror on the contract is a DSBSD-certified small business, the Offeror shall indicate such in Section A of Attachment C. This shall include DSBSD-certified women-owned and minority-owned businesses that meet the small business definition and have received the DSBSD small business certification. If the Offeror is not a DSBSD-certified small business, the Offeror is required to identify the portions of the contract

## Attachment B

### SPECIAL TERMS AND CONDITIONS

the Offeror plans to subcontract to DSBSD-certified small business by completing and returning Section B of Attachment C. If the Offeror is not a DSBSD-certified small business and cannot practicably subcontract any portion of the requirements being solicited, in order to be considered responsive to the solicitation, the non-DSBSD-certified Offeror must document on Attachment C, Section C, past efforts made to provide subcontracting opportunities to DSBSD-certified small businesses for other contracts within the past 24 months.

17. **SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**  
Each Contractor in which provision of a small business subcontracting plan is a condition of the award, shall deliver to DRPT on a semi-annual basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from sub-consultant default) with the small business subcontracting plan. When such business has been subcontracted to these firms and upon completion of the contract, the Contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by DRPT. DRPT reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.
  
18. **INTELLECTUAL PROPERTY RIGHTS:** DRPT shall have exclusive rights to all data and intellectual property generated in the course of the project. Intellectual property, which includes all inventions, is subject to the U. S. Patent System. This shall be inclusive of, but not limited to, new processes, materials, compounds and chemicals, and all creations subject to the U. S. Copyright Act of 1976, as amended, including but not limited to printed material, software, drawings, blueprints, and compilations such as electronic databases. Furthermore, DRPT shall have all rights, title, and interest in or to any invention reduced to practice pursuant to a resulting contract. Proposals should recognize the requirements of public sector agencies and of public policy generally, including the Virginia Freedom of Information Act, State statutes and agency rules on release of public records, and data confidentiality.

All copyright material created pursuant to this contract shall be considered work made for hire and shall belong exclusively to DRPT. Neither DRPT nor the Offeror who is awarded a contract intends that any copyright material created pursuant to the contract, together with any other copyright material with which it may be combined or used, be a "joint work" under the copyright laws. In the case that either whole or part of any such copyright material not be deemed work made for hire, or is deemed a joint work, then the Offeror who is awarded a contract agrees to assign and does hereby irrevocably assign its copyright interest therein to DRPT. DRPT may reasonably request documents required for the purpose of acknowledging or implementing such assignment.

The Contractor warrants that no individual, other than regular employees and sub-consultants of the Offeror or DRPT regular employees, agents, or assigns while working within the scope of their employment or contracted duty, shall participate in the creation of any intellectual property pursuant to the contract. If this situation should arise, such individual and his or her employer, if any, must agree in writing to assign the intellectual property rights, as described herein, for work performed under this contract to DRPT either directly or through the Contractor.

DRPT shall have all rights, title and interest in or to any invention reduced to practice pursuant to this contract. The Contractor shall not patent any invention conceived in the course of performing this contract. The Contractor agrees that, notwithstanding anything else in this contract, in the event of any breach of this contract by DRPT, the remedies of the Contractor shall not include any right to rescind or otherwise revoke or invalidate the provisions of this

## **Attachment B**

### **SPECIAL TERMS AND CONDITIONS**

section. Similarly, no termination of this contract by DRPT shall have the effect of rescinding the provisions of this section.

DRPT is only entitled to the intellectual property rights for deliverables and associated documentation produced by the Contractor for which DRPT has fully paid the Contractor as the contract is completed or as the contract is terminated for any reason.

Copyright or pre-existing work of the Contractor shall remain the property of the Contractor. The Contractor grants to DRPT a perpetual, royalty-free, irrevocable, worldwide, non-exclusive license to use such pre-existing work in connection with exercising the rights of ownership granted to DRPT pursuant to this section.

Notwithstanding anything herein to the contrary, DRPT acknowledges that as part of the Contractor's provision of services hereunder, the Contractor may license third-party software or acquire proprietary works of authorship (collectively referred to as "Products"), which have been developed by third parties. DRPT must approve the third-party license agreements and the acquisition of these third-party Products prior to their use by the Contractor and DRPT agrees that these Products will remain the sole property of the third party.

The Contractor shall grant DRPT license to use all software developed by the Contractor under this contract in other applications within Virginia as DRPT sees fit. Should the Contractor desire to re-use software developed under this contract for other projects (both DRPT contracts and others), DRPT must be notified in writing sixty (60) days prior to such use. Furthermore, DRPT shall be justly compensated for the re-use of such software. Compensation shall be negotiated and agreed upon prior to DRPT releasing software rights. Typically, DRPT prefers increased software capabilities and/or functionality instead of monetary compensation.

19. **POLICY OF EQUAL EMPLOYMENT:** DRPT is an equal opportunity/affirmative action employer. Women, minorities, and persons with disabilities are encouraged to apply. DRPT encourages all vendors to establish and maintain a policy to ensure equal opportunity employment. To that end, Offerors should submit, along with their proposals, their policy of equal employment.
20. **PROPOSAL PRICES:** Proposed hourly rates shall not change for work performed on a weekend, night work, or for any hours worked beyond a normal 40-hour week.
21. DRPT reserves the right to approve any personnel or sub-consultants proposed for the work described in this RFP and/or any subsequent contract resulting from this RFP. DRPT will provide written justification to the Contractor when approval is not granted.
22. **PATENT RIGHTS:** If any invention, improvement or discovery of the Contractor or any of its sub-consultants is conceived or first actually reduced to practice in the course of or under this project which invention, improvement or discovery may be patentable under the Patent Laws of the United States of America or any foreign country, the Contractor shall immediately notify DRPT and provide a detailed report. The rights and responsibilities of the Contractor, his sub-consultants and DRPT with respect to such invention will be determined in accordance with applicable Federal laws, regulations, policies, and waivers thereof.
23. **KEY PERSONNEL:** People identified in terms of this RFP as "key personnel" who will work on the service contract must continue to work on this 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 DRPT.

## **Attachment B**

### **SPECIAL TERMS AND CONDITONS**

24. RENEWAL OF CONTRACT: This contract may be renewed by DRPT upon written agreement of both parties for up to three (3) successive one (1) year periods, under the terms of the current contract no less than ninety (90) days prior to the expiration.

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# Attachment C

## SMALL BUSINESS SUBCONTRACTING PLAN

### Definitions

**Small Business:** "Small business" means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. Note: Department of Small Business and Supplier Diversity (DSBSD)-certified women- and minority-owned businesses shall also be considered small businesses when they have received DSBSD small business certification.

**Women-Owned Business:** Women-owned business means a business concern that is at least 51 percent owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

**Minority-Owned Business:** Minority-owned business means a business concern that is at least 51 percent owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

**All small businesses must be certified by the Commonwealth of Virginia, Department of Small Business and Supplier Diversity (DSBSD) to participate in the SWAM program. Certification applications are available through DSBSD online at [www.DSBSD.virginia.gov](http://www.DSBSD.virginia.gov) (Customer Service).**

Offeror Name: \_\_\_\_\_

Preparer Name: \_\_\_\_\_ Date: \_\_\_\_\_

### Instructions

(Failure to complete and submit this form may result in your proposal not being considered.)

- A. If you are certified by the DSBSD as a small business, complete only Section A of this form. This shall include DSBSD-certified women-owned and minority-owned businesses when they have received DSBSD small business certification.
- B. If you are not certified by DSBSD as a small business and plan to subcontract part of this contract with a DSBSD-certified business, complete only Section B of this form.
- C. If you are not certified by DSBSD as a small business and cannot identify any subcontracting opportunities to subcontract part of this contract with a DSBSD-certified business, only provide the information requested in Section C of this form.

### Section A

If your firm is certified by the DSBSD, are you certified as a (check only one below):

\_\_\_\_\_ Small Business

\_\_\_\_\_ Small and Women-owned Business

\_\_\_\_\_ Small and Minority-owned Business

Certification number: \_\_\_\_\_ Certification date: \_\_\_\_\_

## Attachment C

### SMALL BUSINESS SUBCONTRACTING PLAN

#### Section B

Populate the table below to show your firm's plans for utilization of DSBSD-certified small businesses in the performance of this contract. This shall include DSBSD-certified women-owned and minority-owned businesses that meet the small business definition and have received the DSBSD small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

#### B. Plans for Utilization of DSBSD-Certified Small Businesses for this Procurement

Small Business Name & Address  DSBSD Certificate #	Status if Small Business is also: Women (W), Minority (M)	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Contract Involvement	Planned Annual Contract Dollar Expenditure Amount
<b>Totals \$</b>					

#### Section C

Respond to how your business has met or exceeded at least two of the following indicators within the past 24 months. Your response may include any good faith efforts made regarding this procurement.

## **Attachment C**

### **SMALL BUSINESS SUBCONTRACTING PLAN**

#### **C. Good Faith Effort Indicators by the Offeror**

1. Identify areas of work your business has subcontracted to DSBSD-certified small businesses for other contracts. Include company names, dates, dollar amounts, and percentages on a per contract basis.
2. List research efforts conducted by your business in the past to locate DSBSD-certified small businesses by advertising in publications or in the classified section of the newspaper where small businesses are likely to see it. List specific publications and dates.
3. List small business outreach meetings, conferences, or workshops conducted by your firm to locate DSBSD-certified small businesses—including the dates, participation numbers, and results.
4. Provide documented correspondence (i.e., certified mail, email, receipt of fax transmissions, etc.) to small businesses from the lists provided by DSBSD and other outreach agencies and organizations which indicates your solicitation of such for utilization of subcontracting opportunities on other contracts for which your business has competed.
5. List areas of work which your business has subcontracted with DSBSD-certified small businesses for upcoming contracts—including the name of the business, certification number, dates, dollar amounts, and percentages on a per contract basis.
6. Provide documentation of any assistance offered to interested small businesses in obtaining bonds, lines of credit, and/or insurance for any present or past contracts your business has in place.
7. Provide documentation of follow-up on initial contacts with DSBSD-certified small businesses (e.g., telephone call logs, emails, certified letters, etc.). Be sure to list the small business name and dates of contact.

## Attachment D: Proposal Forms

### **APPLICATION forms (Word and Excel Files)**

Parts 1 through 8 are included in this document, including Word files and Excel sheets for budget information. Instructions for completing each part are discussed below in each section.

**Part 1: Offeror Information**

**Part 2: Experience of Firm/Organization**

**Part 3: Financial Status**

**Part 4: Project Staffing and Management Plan**

**Part 5: Maintenance, Safety and Emergency Response Plans**

**Part 6: Description of Services-Proposed Projects**

**Part 7: Budget**

**Part 8: Certifications and Assurances**

**NOTE:** Detailed information about the proposed project is requested in the Excel Forms.

Attachment D: Proposal Forms

**PROPOSAL PART 1: OFFEROR INFORMATION**

Lead Agency's/Organization/Firm Name:

Contact person's name:

Contact person's title:

Address:

City:

Phone:

Fax:

Email:

Website address:

Federal Employee ID No.:

1. Please check if you are a new or current Offeror with DRPT.

- New
- Current

2. Please check the box that most accurately describes your organizations

- Non-profit
- Local government
- Transportation Authority
- Transit District
- Tribal Government
- Private for profit
- Other (describe) \_\_\_\_\_

**PLEASE TYPE INSIDE THE BOX PROVIDED TO ANSWER EACH QUESTION BELOW. If additional space is needed or there are references to other documents please identify in the text box and provide as attachments in the same Tab.**

3. Provide a brief description of your firm's or organization's primary business or mission

4. Current Services: Please provide a general description of the services you currently provide, including the types of routes operated, i.e. fixed-route, local, intercity, commuter, rural, tourism, and so forth.

Attachment D: Proposal Forms

**PROPOSAL PART 2: EXPERIENCE OF FIRM/ORGANIZATION**

This part of the proposal is divided into several sections, each covering a different aspect of your firm or organization. Offerors are urged to provide thorough but concise answers to the questions.

1. Please describe the experience of your firm or organization in providing passenger transportation services. How many years has your organization provided passenger transportation services? What types of services have been provided—fixed-route, fixed-schedule (local, regional or intercity), charter, tour, demand-response, limousine, taxi? Where have you provided these services (service area, routes, etc.) and what are the general service area boundaries? What aspects of these services have been provided by your firm—operation of vehicles, marketing, reservations and ticketing, vehicle maintenance, tour guides, terminal operations, etc. Have any of these services involved coordination of services with other providers or organizations (such as interline ticketing, use of shared facilities, airport access, terminals, participation in web or other shared information providers)? What type of markets does your firm have experience in serving (such as particular charter markets, airport services, commuters, human service trips, regular-route intercity riders, etc.)?

2. Include a list of contracts or grants that the Offeror has had during the past five years that relate to the ability of the Offeror to manage grants or contracts while providing the services requested in the RFP.

3. Please provide information on any other relevant experience providing evidence of the Offeror’s qualifications to perform the services requested in the RFP. This could include relevant contract transportation, staff experience, etc. Please include contract or grant numbers, period of performance, client or customer name and contact information. Offeror must include in the response to this section “[Offeror Name] grants permission to DRPT to independently contact these references at DRPT’s convenience”.

4. Please provide information regarding your firm’s Federal Motor Carrier Safety Administration (FMCSA) authority to operate interstate services, including the MC number.

Attachment D: Proposal Forms

**PROPOSAL PART 3: FINANCIAL STATUS AND INSURANCE**

Offerors must demonstrate the financial and managerial capacity to meet DRPT program guidelines. It is also imperative that the organization have the ability to absorb costs and continue operation of services while waiting for reimbursements from DRPT, for interline revenues, and to deal with seasonal variations in revenue. While DRPT processes invoices in a timely manner, incorrect or insufficient documentation can extend this process. DRPT will work with the chosen operator to ensure a clear understanding of invoicing requirements.

In addition, the Offeror who is awarded the contract must be able to obtain and maintain the required insurance. DRPT is requiring that the services provided in response to this proposal be fully interlined with the national intercity bus network to facilitate the ability of passengers to make trips involving more than one carrier on a single ticket. Consequently, the selected Offeror will have to provide liability insurance at the levels required by FMCSA for interstate trips (as the contractor will be selling and accepting tickets for interstate trips). The standards vary by size of vehicle: \$5 million for vehicles with passenger capacities equal to or exceeding 16 passengers, and \$1.5 million for vehicles with passenger capacities between nine and 15 passengers. Connecting interline carriers may also have additional or different insurance requirements, and the Offeror should contact its potential interline partners or terminal operators to determine their insurance requirements. The Offeror must indicate in the proposal and as a condition of contract award that they provide proof of insurance from their insurance carrier explicitly listing the extent of the proposer's liability coverage.

1. The Offeror must provide the last two (2) years of comparative financial statements or annual reports with the name, address, and telephone number of a contact in the company's principal financing or banking organization.

2. In this section, the Offeror should describe its current insurance coverage levels, and if those do not meet the requirements described above, provide evidence that it has the ability to obtain and keep in force the required insurance. The Offeror should state that it will, as a condition of grant award, provide proof of insurance from the Offeror's insurance carrier.

3. Describe the internal accounting system of the Offeror and how it accumulates and summarizes project costs and revenues as it would apply to this project. Would mileage costs be determined based on firm or organization average costs, and then applied to the miles operated for the project, or would the Offeror accumulate costs specifically for the project in separate accounts? How would revenues from these services be accounted for?

4. The Offeror can provide any other pertinent information that would enable proposal evaluators to determine the stability and financial strength of the organization.

Attachment D: Proposal Forms

**PROPOSAL PART 4: PROJECT STAFFING AND MANAGEMENT PLAN**

1. Please describe the proposed project team structure and internal lines of authority for the personnel involved in the performance of this project. List the employees that will be involved with this service and the job title for each (e.g. drivers, mechanics, administrative, etc.). Please also attach a current Organizational chart for this project team and show the relationship of these staff members (and any sub-contractors) to the other functions or staff of the Offeror. Indicate who within the firm will have prime responsibility and final authority for the services in this proposal.

2. Identify the staff, including any potential sub-contractors, who will be assigned to this project. Briefly describe their experience as it relates to the proposed project, and include resumes for the named staff. Include a statement committing the named staff to actually perform the designated functions on the proposed project services.

3. Please describe the Offeror's experience in managing programs that include Federal and/or state funds and the related requirements.

5. How will the Offeror inform minority individuals, low-income families, and persons with disabilities about the availability of the proposed service in the communities?

6. How does the Offeror provide an opportunity for the public to comment on services? How will they be able to submit comments? How will complaints be addressed? Has the Offeror received any complaints regarding the accessibility of the system in the past year (lifts not working, drivers not announcing stops, etc.), and if so, how was it resolved?

7. How will the Offeror distribute information to riders and the general public about proposed service or fare changes?

8. Explain how customers can access real time service level information (for example find out if their trip is delayed or cancelled) or get an answer to a general customer service question (schedule information, ticket reservations, baggage policy, etc.).

9. Describe the process the Offeror will use to monitor ticket sales and vehicle capacity and how you plan to add capacity in the event that a trip sells out. How much time in advance will you require DRPT to make a decision regarding added capacity?



Attachment D: Proposal Forms

**PROPOSAL PART 5: MAINTENANCE, SAFETY AND EMERGENCY RESPONSE PLANS**

In this section information is requested regarding the maintenance, safety, emergency response and Americans with Disabilities Act (ADA) practices as they would be applied to the proposed services.

1. Describe the Offeror's vehicle maintenance plan. How often is preventive maintenance performed (i.e., transmission servicing, oil changes, tune ups, etc.)?

2. What maintenance services are provided in-house and what is out-sourced? Are there contracts with local maintenance shops? What are the contract arrangements? How are charges assessed?

3. How does the Offeror keep track of vehicles' maintenance history? Who reviews repair and expense records? Where are maintenance files kept?

4. Does the Offeror require a pre-trip vehicle inspection? Who performs the inspection? Are the inspection forms kept on file, and if so where? What procedure is followed if the inspection identifies a problem, and how does the procedure vary with the nature of the problem?

5. Are there established policies or guidelines regarding use of vehicles, loan of vehicles, sign out of vehicles, accident reporting, etc.? If so, what are they?

6. Explain, in detail, how the Offeror intends to address service disruptions, such as a vehicle breakdown en route. This is to ensure that passengers are swiftly transferred at any possible point along the service route and beyond so the passengers can make it to their intended destination/connection in a safe and timely manner, with the least inconvenience possible.

7. Describe how the Offeror will communicate significant schedule delays or cancellations due to inclement weather, unexpected high traffic volume, or other unforeseeable emergency situations to customers?

8. Please describe the Offeror's driver safety program. Include information about any driver training courses that are required for new drivers, as well as ongoing training. Please also describe how the training is provided, e.g. consultants, in-house certified trainers, and so forth.

9. Please describe the Offeror's Drug and Alcohol safety program. Please note if you currently report to FTA or FMCSA, and include a copy of your Drug and Alcohol policy under Tab 5 of the overall proposal.

10. Describe the Offeror's risk management policy in case of an accident, liability claim, or legal action.

Attachment D: Proposal Forms

11. Describe the Offeror's accident history in the last year. List the number and type of accidents, if there was property damage or injuries, and identify if they were preventable or non-preventable. For any preventable accidents, what action was taken?

12. Please describe how the Offeror will meet the Americans with Disabilities Act (ADA) requirements applicable to the scheduled intercity service called for in this application. Note that a condition of the contract is that all vehicles used in the service funded with Section 5311(f) must be fully wheelchair accessible, and that operators must be trained to proficiency to operate accessibility features.

The ADA rule is available at <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/part-37-transportation-services-individuals-disabilities>.

For additional ADA guidance, view the latest ADA circular here: <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/americans-disabilities-act-guidance-pdf>.

13. Describe how the ADA requirements are included in the Offeror's training program.

14. Describe the Offeror's policy and/or procedure for the reasonable accommodation of passengers that may not be able to access the on-board restroom in the event that the restroom is not ADA compliant.

Attachment D: Proposal Forms

**PART 6: DESCRIPTION OF SERVICES-PROPOSED PROJECTS**

In this part of the application, the Offeror should provide additional detail on how it proposes to operate the specified services should it be selected in response to this proposal. As noted in the program description above, DRPT is seeking proposals to provide intercity bus services on two separate routes (identified above), but the Offeror can elect to propose alternative stops or schedules—but it must make clear in the proposal the parameters of the service that is the basis for its proposal.

In this section, the responses should address the specific route(s) and service that is proposed. Schedules can be entered for the route in the attached worksheets (if an Offeror is submitting proposals for both routes, two separate copies of the worksheet should be submitted – one for each route), and if additional information or tables are required that cannot be entered in the box the Offeror can make reference in the box to any needed attachments.

1. Route(s)—Although DRPT is requesting applications for one particular corridor, please describe in detail the routing that the Offeror plans to use. If the Offeror is intending to propose alternative routes, please describe.

2. Identify stops by type (bus stop sign at roadside, public transit agency stop, existing local transit provider or intercity bus provider terminal). To the extent possible, list addresses or intersections where stops are proposed. If additional space is needed, provide as attachments. Note that DRPT will assist the Contractor in identifying exact stop locations and in obtaining the necessary agreements for access and use.

3. Using Worksheet 6A (making a separate copy for each proposed route), provide the anticipated schedules for the services, including days of the week service will be provided, holiday services (or exceptions), and times at stops for each direction (recognizing need for fine-tuning when operations commence). List the one-way route-miles (revenue-miles) for the proposed service, along with the weekly and annual bus-miles for that route.

4. List other transportation and public transportation providers, including rail, air or other bus service to which the proposed route will connect. Provide schedules of connecting intercity bus services, demonstrating times of connections. Note whether or not the proposed services will have interline ticketing with connecting intercity bus service, or only separate fares. If separate fares, attach a copy of fare schedule information. If additional space is needed, provide as attachments. Please attach and describe the proposed fare structure and the method(s) customers may use to purchase fares.

5. Please provide the physical location of connecting points (bus stop, terminal, or station), including proximity of stops of connecting services, to demonstrate that passengers will be able to make a usable and convenient connection to the national intercity bus network.

6. Proposed vehicle fleet—please use the attached Worksheet 6B to list the vehicles that will be used to provide the proposed services. Include spare, peak, or backup vehicles (noting which vehicles are so designated). Include information on the accessibility equipment on each vehicle—lift or ramp, number of wheelchair tie-down positions, additional doors, folding seats, presence of restrooms (noting if ADA accessible or not), etc.

Attachment D: Proposal Forms

7. Describe efforts to communicate with and involve communities along the route, including efforts as part of this proposal and planned efforts at coordination and involvement once the Contract is awarded.

8. Coordination and partnerships with local public transit providers is strongly encouraged. Please describe any current or proposed efforts or plans to coordinate or partner with providers/carriers on the route, including shared stops, ticket sales, etc.

9. Describe connecting intercity bus services, specifically noting those that are unsubsidized and can be used in in-kind match calculations (see Part 8 below), and note the attachment of a letter of support for the Offeror from the provider of the unsubsidized connecting services.

10. Describe ticketing procedures or systems to be used, including Interlining arrangements, use of National Bus Ticketing System (NBTS) or other carrier ticketing systems, forms of payment (credit card, cash, use of internet), use of agents/agencies for ticket sales, and how passengers boarding en route (not at staffed stations) will be able to purchase a ticket or pay for transportation.

## Attachment D: Proposal Forms

### PART 7: BUDGET

In this solicitation only operating assistance is being offered, as the Offerors are expected to provide their own vehicles and include their cost in a fully-allocated project cost for each proposed route, and a fully allocated cost per revenue mile for each route. Operating assistance will be provided from the FTA via either the standard 5311(f) funding ratios where the Offeror provides the local cash match or the in-kind match program (both are described below) to offset the difference between the operating cost of the service and the revenues from that service, which is the net operating deficit.

- **Standard Section 5311(f) Funding Ratios:** Under this method, the maximum federal participation is limited to 50 percent of the net operating deficit. The remaining 50 percent of the net operating deficit must be provided by the Offeror as a local cash match.
- **In-Kind Match program:** Under this method, it is possible to fund 100 percent of the net operating deficit of a subsidized route by linking it with a connecting unsubsidized route segment, and valuing the unsubsidized service to provide the required match as in-kind, with no local or carrier cash required. The project definition is expanded to include both the subsidized segment (with the net operating deficit) and a connecting unsubsidized segment. The operating costs of the unsubsidized segment are calculated, and an amount equal to 50 percent of the total fully-allocated operating costs of the unsubsidized segment can be counted as an in-kind match toward the net operating deficit.

It is anticipated that the in-kind match method will most likely be used for the services requested in this solicitation, but budget instruction sheets are provided for both the standard and in-kind funding scenarios.

#### Operating Assistance Worksheets

The attached workbook includes several worksheets that should be completed to present the proposed budget for each proposed route. These include:

- **Worksheet 7A-Operating Expenses, Revenues, Net Operating Deficit and Total Project Budget:** This is an Excel table (provided in the workbook at the end of this section) that allows the Offeror to present its operating costs, which are then divided by the estimated revenue miles to result in a cost per revenue-mile which will be the basis for invoicing and reimbursement. This is combined with the Offeror's estimates of revenues per mile to arrive at a net operating deficit for each of the three years. Chapter 6 of the [Virginia Breeze Expansion Alternatives Analysis, Final Report, June 28, 2019](#), included estimates of ridership, revenue, and operating costs based on particular assumptions about fare levels. The Offeror may wish to utilize these estimates or revise them.

The Offeror should indicate the basis for its estimate of revenues (previous service experience, surveys, etc.). Worksheet 7A shall be completed separately for each route and clearly marked. Because the anticipated contract is a two-year contract (with three potential one-year extensions), Worksheet 7A requires the Offeror to present a separate operating cost estimate for each of the two years, allowing the Offeror to reflect anticipated cost increases.

- **Worksheet 7B: Funding Using Standard Section 5311(f) Funding Ratios:** The Offeror should complete this worksheet only if it intends to use this funding approach which requires local or carrier cash match. Otherwise the Offeror should complete Worksheets 7C and 7D, below, for in-kind funding. Worksheet 7B provides an annual calculation for each of the two years of the proposed project, including the maximum 50 percent federal share and the required local or carrier cash match. If the Offeror intends to utilize this funding approach, it is imperative that it identify the source of the local cash match and document the commitment of that source to provide the funding (with an attached letter or resolution). Note that fare revenue from this route cannot be used as a match.

#### Attachment D: Proposal Forms

- **Worksheet 7C: Description of Unsubsidized Connecting Service:** If the Offeror is planning to use the in-kind match method, this sheet is used to describe and determine the value of the service to be used as the match. Note that the unsubsidized connecting route does not have to be operated by the Offeror, but that the Offeror will have to document that the operator of the unsubsidized connecting service is willing to provide the value of that service as a match, along with a description of the service and its value based on the fully-allocated per-mile operating cost.
- **Worksheet 7D: Value of In-kind Match:** Based on the information developed in Worksheets 7A and 7C, this worksheet should be completed to determine if the value of the unsubsidized connecting service is adequate to provide the required match for the subsidized service to be operated by the Contractor.

**Offerors approved for participation in the intercity bus program must complete monthly report information documenting expenses by cost category, revenues by source, passenger trips, and days of operation and total miles, and the calculated performance measures of farebox recovery and subsidy per passenger for the route.**

## Federal Clauses

### ACCESS TO RECORDS AND REPORTS

a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-Contracts, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.

b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

### AMERICANS WITH DISABILITIES ACT(ADA)

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 right 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 any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

### BYRD ANTI-LOBBYING AMENDMENT

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Agency.”

### CHARTER SERVICE

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that Recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under: 1. Federal transit laws, specifically 49 U.S.C. § 5323(d); 2. FTA regulations, “Charter Service,” 49 C.F.R. part 604; 3. Any other federal Charter Service regulations; or 4. Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include: 1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA; 2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or 3. Any other appropriate remedy that may apply. The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

## **CIVIL RIGHTS LAWS AND REGULATIONS**

The following Federal Civil Rights laws and regulations apply to all contracts.

**1 Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:

a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

**2 Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

**3 Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

**4 Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### **Civil Rights and Equal Opportunity**

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

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

**2. Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees



to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**3. Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.

**4.Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**5.Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

## **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

### Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

### Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA."

## **CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

## **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

- a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

### Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

## **DEBARMENT AND SUSPENSION**

a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least \$25,000

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency and subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

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

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

(1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency’s written consent; and that, unless the Agency’s consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

It is the policy of the Agency and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

## **DHS SEAL, LOGO, AND FLAGS**

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FTA pre-approval.

## **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.

## **EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is

threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **FEDERAL CHANGES**

49 CFR Part 18 Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## **FLY AMERICA**

a) Definitions. As used in this clause—

1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) "United States" means the 50 States, the District of Columbia, and outlying areas. 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

### Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

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

Incorporation of Federal Transit Administration (FTA) Terms - The provisions within include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the current FTA Circular 4220 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

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

The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Agency, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance

provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **PROCUREMENT OF RECOVERED MATERIALS**

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>."

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

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract."

## **PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS**

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.

2. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.

1. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

## **PROMPT PAYMENT**

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

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

## **SIMPLIFIED ACQUISITION THRESHOLD**

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes

requirements that may apply. For example, Buy America's eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).

## **SAFE OPERATION OF MOTOR VEHICLES**

### **Seat Belt Use**

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

### **Distracted Driving**

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

## **SCHOOL BUS OPERATIONS**

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, "School Bus Operations," 49 C.F.R. part 605
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

## **SPECIAL NOTIFICATION REQUIREMENTS FOR STATES**

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
- (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
- (3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

## **SUBSTANCE ABUSE REQUIREMENTS**

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or Agency, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and

review the testing process. The Contractor agrees further to certify annually its compliance with part 655 and to submit the Management Information System (MIS) reports to the Agency.

## **TERMINATION**

### Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

### Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

### Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

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

### Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

### Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

### Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

### Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services,



within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

#### Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if: 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

#### Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency

### Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

## **VIOLATION AND BREACH OF CONTRACT**

### Rights and Remedies of the Agency

The Agency shall have the following rights in the event that the Agency deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors; 2. The right to cancel this Contract as to any or all of the work yet to be performed; 3. The right to specific performance, an injunction or any other appropriate equitable remedy; and 4. The right to money damages.

For purposes of this Contract, breach shall include.

### Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the Agency, the Contractor expressly agrees that no default, act or omission of the Agency shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the Agency directs Contractor to do so) or to suspend or abandon performance.

### Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Contract will be a default of this Contract. In the event of a default, the Agency will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Contract by the Contractor before the Agency takes action contemplated herein, the Agency will provide the Contractor with sixty (60) days written notice that the Agency considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

### Disputes

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by an authorized representative of Agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Agency's authorized representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Agency's authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision

of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Agency's direction or decisions made thereof.

#### Performance during Dispute

Unless otherwise directed by Agency, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

#### Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

#### Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Agency and the Contractor arising out of or relating to this Contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Agency is located.

#### Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

FTA Master Agreement, Section 39(b) If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§180.220 and 1200.220. 2 C.F.R. §§ 180.220(b)–(c) (b) Specifically, a contract for goods or services is a covered transaction if any of the following applies: (1) The contract is awarded by a participant in a nonprocurement transaction that is covered under §180.210, and the amount of the contract is expected to equal or exceed \$25,000. (2) The contract requires the consent of an official of a Federal agency. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part. (3) The contract is for Federally-required audit services. (c) A subcontract also is a covered transaction if,— (1) It is awarded by a participant in a procurement transaction under a nonprocurement transaction of a Federal agency that extends the coverage of paragraph (b)(1) of this section to additional tiers of contracts (see the diagram in the appendix to this part showing that optional lower tier coverage); and (2) The value of the subcontract is expected to equal or exceed \$25,000.

Section 39. Disputes, Breaches, Defaults, and Litigation. (a) FTA Interest. FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise. (b) Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel

and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220. (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements. (3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a 95 criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions. (c) Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA's prior written concurrence. (d) Enforcement. The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

Federal Certifications

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, \_\_\_\_\_, hereby certify (Name and title of official)  
On behalf of \_\_\_\_\_ that: (Name of Bidder/Company Name)

- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

The undersigned 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. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name \_\_\_\_\_

Type or print name \_\_\_\_\_

Signature of Authorized representative \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature of notary and SEAL \_\_\_\_\_

## GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

1. It will comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR part 180,
2. To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
  - a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
    1. Debarred
    2. Suspended
    3. Proposed for debarment
    4. Declared ineligible
    5. Voluntarily excluded
    6. Disqualified
  - b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
    1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
    2. Violation of any Federal or State antitrust statute, or
    3. Proposed for debarment commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property
  - c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
  - d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
  - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,
  - f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
    1. Equals or exceeds \$25,000,
    2. Is for audit services, or
    3. Requires the consent of a Federal official, and
  - g. It will require that each covered lower tier contractor and subcontractor:
    1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and

2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
- a. Debarred from participation in its federally funded Project,
  - b. Suspended from participation in its federally funded Project,
  - c. Proposed for debarment from participation in its federally funded Project,
  - d. Declared ineligible to participate in its federally funded Project,
  - e. Voluntarily excluded from participation in its federally funded Project, or
  - f. Disqualified from participation in its federally funded Project, and

3. It will provide a written explanation as indicated on a page attached in FTA's TrAMS-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

**Certification**

Contractor \_\_\_\_\_  
Signature of Authorized Official \_\_\_\_\_ Date \_\_\_\_/ \_\_\_\_/ \_\_\_\_\_  
Name and Title of Contractor's Authorized Official \_\_\_\_\_

Attachment G

**State Corporation Commission Form**

**Virginia State Corporation Commission (SCC) registration information. The bidder:**

is a corporation or other business entity with the following SCC identification number: \_\_\_\_\_ **-OR-**

is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**

is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the bidder in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder's out-of-state location) **-OR-**

is an out-of-state business entity that is including with this bid an opinion of legal counsel which accurately and completely discloses the undersigned bidder's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

**\*\*NOTE\*\*** >> Check the following box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for bids (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver):



