



HAMPTON ROADS TRANSIT

***Transportation District Commission  
of Hampton Roads***

## **INVITATION FOR BIDS**

**IFB No. 17-76503**

### **LIBERTY STREET TRANSFER STATION- SITE CONSTRUCTION SERVICES**

**ISSUE DATE: September 26, 2017**

**BID DUE DATE: October 23, 2017**

**TABLE OF CONTENTS**

<b>Section I</b>	<b>Schedule and Solicitation Documents</b>	<b>Page No.</b>
	EXECUTIVE SUMMARY	1
	SOLICITATION, OFFER, AND AWARD FORM	2
	ACKNOWLEDGMENT OF AMENDMENTS	3
	SCOPE OF WORK	4
	BID ITEM – PRICE SCHEDULE	5
<b>Section II</b>	<b>Instructions to Bidders</b>	Starts at 6
	1. DEFINITIONS	
	2. CAUTIONS TO OFFERORS	
	3. BID SECURITY REQUIREMENTS	
	4. DISADVANTAGED BUSINESS ENTERPRISE GOAL	
	5. OBTAINING BID DOCUMENTS	
	6. PRE-BID CONFERENCE	
	7. QUESTIONS AND CLARIFICATIONS	
	8. ORGANIZATIONAL CONFLICT OF INTEREST	
	9. ACKNOWLEDGEMENT OF BID REQUIREMENTS	
	10. PROTEST PROCEDURES	
	11. PREPARATION OF BIDS	
	12. OMISSIONS	
	13. SUBMITTAL OF BIDS	
	14. WITHDRAWAL OF BIDS	
	15. BID OPENING	
	16. EVALUATION AND AWARD	
	17. PUBLIC RECORDS	
	18. COMMUNICATIONS WITH THE COMMISSION	
	19. ELECTRONIC COMMUNICATIONS	
<b>Section III</b>	<b>Special Provisions</b>	Starts at 16
	1. TYPE OF CONTRACT	
	2. PERIOD OF PERFORMANCE	
	3. PAYMENT	
	4. TAX EXEMPTION STATUS	
	5. ENVIRONMENTAL COMPLIANCE	
	6. SUBCONTRACTORS	
	7. QUALITY CONTROL/QUALITY ASSURANCE	
	8. PUBLICITY, ADVERTISING AND PUBLIC RELATIONS	
	9. EMERGENCY WORK	
	10. COMMONWEALTH REGISTRATION	
	11. DISADVANTAGED BUSINESS REQUIREMENT	
	12. WAGE REQUIREMENTS	
	13. BOND FILING	
	14. SITE CLEAN-UP	

**Section IV    General Conditions**

Starts at 20

1. DEFINITIONS AND ACRONYMS
2. CHANGES
3. ORDER OF PRECEDENCE
4. ASSIGNMENT AND DELEGATION
5. AUTHORITY OF OWNER'S REPRESENTATIVE
6. FLOWDOWN
7. SUBCONTRACTING
8. INVOICES
9. PAYMENTS
10. AVAILABILITY OF FUNDS
11. WITHHOLDING OF PAYMENTS
12. CONDITIONS AFFECTING THE WORK
13. GOVERNING LAW AND CHOICE OF VENUE
14. WAIVER OF CONDITIONS
15. NOTICE OF INTENT TO FILE A CLAIM
16. SEVERANCE
17. GENERAL INSURANCE REQUIREMENTS
18. ONSITE SAFETY AND SECURITY
19. SENSITIVE SECURITY INFORMATION
20. HAZARDOUS CHEMICALS AND WASTES
21. ENVIRONMENTAL MANAGEMENT AND SUSTAINABILITY
22. WARRANTY
23. INSPECTION OF SERVICES
24. TITLE AND RISK OF LOSS
25. DELIVERY
26. MATERIALS AND WORKMANSHIP
27. SUSPENSION
28. DELAY OF WORK
29. STOP WORK ORDER
30. CONFLICT OF INTEREST
31. COVENANT AGAINST CONTINGENT FEES
32. GRATUITIES
33. COLLUSION
34. INDEMNIFICATION
35. COST OR PRICING DATA
36. DRUG-FREE WORKPLACE
37. PRIVACY ACT
38. OWNERSHIP OF WORKS AND INVENTIONS
39. NOTICES AND COMMUNICATIONS
40. BRAND NAME OR APPROVED EQUAL
41. FEDERAL FUNDING AND INCORPORATION OF FEDERAL TRANSIT  
ADMINISTRATION (FTA) TERMS
42. CHANGES TO FEDERAL REQUIREMENTS
43. ACCESS TO THIRD PARTY CONTRACT RECORDS
44. DISPUTES
45. TERMINATION FOR DEFAULT
46. TERMINATION FOR CONVENIENCE
47. FEDERAL ENERGY CONSERVATION REQUIREMENTS
48. CIVIL RIGHTS REQUIREMENTS
49. NONDISCRIMINATION UNDER FEDERAL GRANTS

50. NO GOVERNMENT OBLIGATION TO THIRD PARTIES
51. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS
52. SUSPENSION AND DEBARMENT
53. RECYCLED PRODUCTS
54. CLEAN AIR AND WATER
55. COMPLIANCE WITH FEDERAL LOBBYING POLICY
56. BUY AMERICA
57. SEISMIC SAFETY
58. ADA ACCESS
59. CARGO PREFERENCE
60. FLY AMERICA
61. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
62. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS
63. INTELLIGENT TRANSPORTATION SYSTEMS (ITS) REQUIREMENTS
64. PROMPT PAYMENT
65. CONSTRUCTION DEFINITIONS AND ACRONYMS
66. PERFORMANCE AND PAYMENT BOND
67. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS
68. QUALITY CONTROL / QUALITY ASSURANCE
69. DIFFERING SITE CONDITIONS
70. RETAINAGE
71. REDUCTION OF RETAINAGE
72. COOPERATION WITH OTHER CONTRACTORS
73. VARIATION IN ESTIMATED QUANTITY
74. PROSECUTION AND PROGRESS OF WORK
75. FINAL PAYMENT AND RELEASE OF LIENS/CLAIMS
76. VETERANS EMPLOYMENT
77. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

ATTACHMENT A – LIBERTY STREET TRANSFER STATION SITE PLANS

APPENDIX A – DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

APPENDIX B – REPRESENTATIONS AND CERTIFICATIONS

APPENDIX C – PAST PERFORMANCE REFERENCES

APPENDIX D – U.S. DEPARTMENT OF LABOR WAGE DETERMINATION

APPENDIX E – ENVIRONMENTAL COMPLIANCE

APPENDIX F – ENVIRONMENTAL COMPLIANCE BRIEFING PACKAGE

APPENDIX G – PRE-AWARD SURVEY (**NOT USED**)

**END OF SECTION**

**Section I**  
**EXECUTIVE SUMMARY**

Date Issued:	September 26, 2017
Description of Work:	Liberty Street Transfer Station-Site Construction Services
Contract Type:	Not-To-Exceed
Basis for Award:	Lowest Responsive and Responsible Bid
DBE Goal:	13%
Licenses Required:	Virginia Contractor's Class "A" License
Pre-Bid Conference/Site Visit:	October 6, 2017, 10:00 a.m. at the Intersection of Liberty Street and Seaboard Avenue in Chesapeake, Virginia
Last Date for Questions:	Close of business, Wednesday, October 11, 2017
Bid Opening:	<b>October 23, 2017, 2:00 p.m.</b> (local time), at HRT, 509 East 18 <sup>th</sup> Street, Building 4, Norfolk, VA. 23504, Conference Room 245 <b>Note: USPS does not deliver to this address.</b>
Anticipated Award Date:	November 2017
Funding Source:	Operating Funds
Point of Contact:	Jason Petruska, Contracts Specialist <hr/> Phone 757-222-6000 ext. 6061 <hr/> Email <a href="mailto:dpetruska@hrtransit.org">dpetruska@hrtransit.org</a> <hr/>

**Important Notice:**

**Effective immediately upon release of this Invitation for Bid (IFB), and until notice of contract award, all official communications from proposers regarding the requirements of this IFB shall be directed to the Contracting Officer identified below in accordance with the Instructions to Proposers, Section 18, Communications with the Commission:**

Jason Petruska, Contracts Specialist  
Hampton Roads Transit  
509 East 18<sup>th</sup> Street, Building 4  
Norfolk, VA 23504  
Attn: [dpetruska@hrtransit.org](mailto:dpetruska@hrtransit.org)  
(757) 222-6000 Ext. 6061

## SOLICITATION, OFFER AND AWARD

SOLICITATION NO. & TITLE  IFB No. 17-76503  <b>Liberty Street Transfer Station – Site Construction Services</b>	DATE ISSUED  September 26, 2017	ADDRESS OFFER TO  Hampton Roads Transit 509 East 18 <sup>th</sup> Street, Building 4 Norfolk, VA 23504 Attn: Jason Petruska (See Solicitation Instructions)
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### SOLICITATION INFORMATION

Bids responding to this solicitation will be received at the Commission until **2:00 pm EST, October 23, 2017.**

All offers are subject to the following:

1. Solicitation Instructions, Schedule, Special Provisions, and General Conditions, included herein.
2. Solicitation amendments.
3. Such other provisions, representations, certifications, specifications, and documents as are attached or incorporated herein by reference.

SCHEDULE (To be completed by Offeror)					
ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	BID AMOUNT
	THIS SECTION NOT USED				

OFFEROR (To be completed by Offeror)	
Name: _____ Address: _____ Phone: _____ Fax: _____	Name and Title of Person Authorized to Sign Offer   Signature _____ Offer Date _____

AWARD (To be completed by Contracting Officer)				
ACCEPTANCE AND AWARD ARE HEREBY MADE FOR THE FOLLOWING ITEM(S):				
ITEM NO.	QUANTITY	UNIT	UNIT PRICE	BID AMOUNT

The total amount of this award is \$ \_\_\_\_\_.

Name of Contracting Officer and Organization

Signature

Award Date

**ACKNOWLEDGMENT OF AMENDMENTS**Solicitation No: **17-76503**Title: **Liberty Street Transfer Station – Site Construction Services**

The undersigned as part of submission of an offer for the above solicitation hereby acknowledges receipt of the following amendments and certifies that the offer has been prepared in accordance with their provisions:

AMENDMENT NO.	DATE	TITLE/SUBJECT

**ACKNOWLEDGED BY:** \_\_\_\_\_  
(SIGNATURE)

**SIGNER'S NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**FIRM NAME:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

## **SCOPE OF WORK**

### **LIBERTY STREET TRANSFER STATION – SITE CONSTRUCTION SERVICES**

#### **1. Background Information**

Hampton Roads Transit is seeking a Contractor to provide demolition and construction services of the Liberty Street Transfer Station. The Transfer Station is located on Liberty Street, in the City of Chesapeake, between 20<sup>th</sup> Street and Seaboard Avenue.

#### **2. Scope of Services**

The successful Contractor shall be held fully responsible for proper performance of the Contract requirements.

The Contractor shall be responsible for all materials, labor, and equipment necessary for the demolition and construction of the Liberty Street Transfer Station as per Attachment A, Liberty Street Transfer Station Site Plans.

All work shall be completed prior to March 15, 2018.

#### **3. Experience Requirements and Qualifications**

The Contractor shall have a minimum of five (5) years of successful experience for comparable work required under this Contract. This experience must be completed prior to the date established for the receipt of bids.

The Contractor must be prepared to demonstrate that they have successfully completed these types of services, for clients, of the same size and magnitude for a minimum of five (5) years. Any Contractor unable to or failing to comply with this qualification will not be considered for award.

The Contractor shall be a fully licensed Class “A” Contractor by the Commonwealth of Virginia and the license shall remain valid throughout the term of the Contract.

**END OF SECTION**



**Bid Item – Price Schedule**

Description	Total Bid Price
Liberty Street Transfer Station - Site Construction Services	\$

**Total Bid Price:** \_\_\_\_\_ (in words)

**Note:**

1. Total Bid Price above shall be inclusive of all required permits, traffic control, direct costs, indirect costs, markups and profit, and represent the total amount payable by HRT for these services. No other fees or allowances shall be entertained.
2. As an attachment to the Price Schedule, please provide a detailed breakdown of the Bid Price, to include all labor categories, hours and rates.

The undersigned hereby submits the above bid as an irrevocable offer to supply all services, materials, supplies and equipment specified in **IFB No. 17-76503**, as amended, in accordance with the terms of said IFB, without exception or qualification.

**BIDDER** \_\_\_\_\_

**ADDRESS** \_\_\_\_\_

The undersigned certifies that he/she is an officer or responsible executive of the above firm and is fully authorized to submit this bid on said firm's behalf.

**Name** (Please Print) \_\_\_\_\_

**Authorized Signature** \_\_\_\_\_

\_\_\_\_\_  
Date

**END OF SECTION**

## SECTION II

### INSTRUCTIONS TO BIDDERS

#### 1. DEFINITIONS

- A. The term “solicitation” means Invitation for Bids (IFB).
- B. The term “offer” means bid, the term “offeror” means “bidder”.

#### 2. CAUTIONS TO OFFERORS

- A. Offerors are expected to examine the drawings, specifications, site conditions, schedule, and all instructions. Failure to do so will be at the offeror's risk. Notwithstanding the provision of statements of work, drawings, technical specifications, or other data by the Commission, the Contractor shall have the responsibility of supplying all services, materials, and details required to perform the work even though such details may not be specifically mentioned.
- B. Time, as stated herein, is calendar days, unless otherwise specified.
- C. Unit price for each unit offered shall be shown and such price shall include all labor, equipment, and material required to provide the identified item unless otherwise specified.
- D. Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation. Any request for an approved equal must be submitted in writing by the time specified herein. No approved equal will be accepted unless confirmed in writing by HRT prior to the bid opening.

#### 3. BID SECURITY REQUIREMENTS

For contracts exceeding \$100,000, the bid shall be accompanied by a bid bond from a surety selected by the bidder listed in the Department of the Treasury's List of Approved Sureties (OMB Circular 570) that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the Bidder, it will enter into the contract for the work in accordance with the specifications, terms and conditions of this solicitation. The penal amount of the bid bond shall be five percent (5%) of the amount bid. Forfeiture under the bid bond shall be the lesser of (i) the difference between the bid for which the bond was written and the next lowest bid, or (ii) the face amount of the bid bond. Industry standard bid bond form, AIA Document A310 – Bid Bond, is acceptable.

#### 4. DISADVANTAGED BUSINESS ENTERPRISE GOAL

A 13% DBE goal has been established for this solicitation. Please see Appendix A for information and guidance.

## 5. OBTAINING BID DOCUMENTS

Bid packages, including any amendments thereto, may be downloaded from the Procurement page at [www.GoHRT.com](http://www.GoHRT.com). HRT will not provide printed copies of the bid package; it will provide a CD of the package at a charge of \$25.00 per copy, certified check or money order only. Questions or requests for a CD should be addressed to Jason Petruska, Contracts Manager, at 757-222-6000, ext. 6061, or [dpetruska@hrtransit.org](mailto:dpetruska@hrtransit.org).

## 6. PRE-BID CONFERENCE

A Pre-Bid Conference will be held on **October 6, 2017 at 10:00 a.m.**, at the intersection of Liberty Street and Seaboard Avenue in Chesapeake, Virginia. The conference is to provide information regarding the project, the solicitation process, and the bid package. **While the conference is not mandatory, bidders are strongly urged to attend.**

Anyone wishing to attend must contact the Contracting Officer, Jason Petruska by e-mail at [dpetruska@hrtransit.org](mailto:dpetruska@hrtransit.org) or telephone at (757)222-6000 Ext. 6061 no later than noon of the working day before the day of the Pre-Bid Conference.

## 7. QUESTIONS AND CLARIFICATIONS

Any explanation desired by a prospective bidder regarding the meaning or interpretation of any portion of the bid package shall be requested in writing. Oral explanations or instructions given before the award of the Contract shall not be binding unless reduced to writing and distributed to known plan holders and/or posted on the HRT procurement webpage. Material information which alters a substantive portion of the IFB will be furnished promptly to all prospective bidders as a written amendment. Matters clarifying but not altering the IFB may be provided in writing to all prospective bidders, but shall not amend the solicitation. All questions must be submitted by the deadline stated in the Executive Summary. Questions submitted after that deadline may be answered if the Contract Administrator determines that they have a material effect on the ability of bidders to accurately and completely respond to the solicitation.

## 8. ORGANIZATIONAL CONFLICT OF INTEREST

Unless specifically exempted from the conditions of this provision by the Contracting Officer, any HRT Contractor, Subcontractor, subsidiary, or other entity which is legally related to an entity or party which develops or drafts specifications, requirements, statements of work, invitations for bids, or otherwise is in a position to influence the nature, scope or conditions of a subsequent Commission solicitation or Contract, shall be excluded from competing under such solicitation or receiving such Contract. If a bidder is uncertain whether or not a conflict exists, it should promptly contact the Contract Administrator for a determination. Such inquiries and responses will not be published to other potential bidders.

FTA Circular 4220.1F ¶VI.2a(4)(h) and §2.2-4373 of the Code of Virginia define prohibitions on personal and organizational conflicts of interest, which are further discussed in §2.4.2.2.2 and Appendix B.10 of FTA's Best Practices Procurement Manual. In general, a personal conflict of interest reflects an individual's ability to influence the award of a Contract and to profit from the result of that award. An organizational conflict exists when any of the following exist: (1) a firm has access to non-public information as the result of performing a government Contract and can use that information to advantage in competing for another government Contract; (2) a firm influences the ground rules (specification or contractual terms) for a government solicitation, potentially biasing those ground rules in its own favor; or (3) a firm's work under one government Contract requires it to evaluate itself or its work product under another Contract, impairing its objectivity.

Should an offeror be aware of a potential conflict of interest, it shall identify the potential conflict in its bid, together with measures it proposes to remove or mitigate the conflict. Should any person or entity planning to submit an offer hereunder be aware of any situation which may fall under the above prohibitions, it shall, no later than the time of submittal of its offer, identify in writing to the Contracting Officer (1) the nature of the potential conflict; (2) steps it may take to mitigate the conflict; and (3) request a waiver of the conflict. The decision of the Contracting Officer regarding such potential conflicts and possible mitigation measures shall be final. Failure to submit such a statement before or with an offer shall be deemed a certification by the offeror that, to the best of its knowledge and belief, no such conflict exists. In the event that an offeror fails to disclose such conflict as required herein, its offer may be rejected.

Should an offeror become aware of a potential conflict after the submittal of an offer, it shall promptly notify the Contracting Officer in writing, providing the information required above together with a statement of why the conflict could not have been identified prior to submittal of the offer.

## **9. ACKNOWLEDGMENT OF BID REQUIREMENTS**

Bidders are responsible for ensuring that they have received all amendments and incorporated any changes in their bids. Bidders are requested to acknowledge receipt of all amendments on the form contained herein. Failure to acknowledge an amendment will disqualify a bidder, unless, upon appeal by the bidder, the Contract Administrator determines that the failure does not affect the substance of the bid and that the bid price includes any alterations to the Work specified in such amendment.

The submission of the bid shall be bidder's warrant and acknowledgment that it has sufficiently informed itself in all matters affecting the performance of the Work, including, but not by way of limitation, the site of the Work and the area surrounding it, or furnishing of labor, supplies, material, or equipment called for in the Contract package. The bidder warrants that it has checked

its bid for errors and omissions; that the prices stated in its bid are correct, and as intended by it, and are a complete and correct statement of its prices for performing the work or the furnishing the labor, supplies, material, or equipment called for in the contract package. The bidder waives any claim for the return of its bond, if on account of errors or omissions claimed to have been made by it in its bid, or for any other reason, it should refuse or fail to execute or perform the Contract.

## **10. PROTEST PROCEDURES**

Commission policy and procedures for the administrative resolution of protests is set forth in Section B.3.9 of HRT's Procurement Procedures Manual (PPM). The PPM contains strict rules for filing a timely protest, for responding to a notice that a protest has been filed, and other procedural matters. The Contract Administrator can furnish a copy of Section B.3.9 upon request. The Commission has, in this section, defined matters which may be protested, the form of protest, and the time limits for submitting protests during different stages of the procurement process. Failure to comply with any of the requirements set forth may result in rejection of the protest.

FTA Circular 4220.1F addresses protests of solicitations utilizing Federal funds. FTA will only review protests regarding the alleged failure of the grantee to have a written protest procedure or failure to follow such procedure, or protests alleging a violation of Federal law or regulation. FTA will not consider a protest until the protestor has exhausted its local administrative remedies.

## **11. PREPARATION OF BIDS**

Bidders are to submit one (1) original and one (1) copy of their complete bid package, along with one electronic copy (CD or flash drive in .pdf format). The electronic copy must be submitted no later than one (1) business day after bid opening. Forms included in the bid documents must be used to submit a bid.

### **A. Bid Documents**

As a matter of responsiveness, the bid should include:

1. Completed and signed Solicitation, Offer and Award document;
2. Completed and signed Acknowledgment of Amendments, listing all Amendments published;
3. Completed and signed Bid Item – Price Schedule;
4. Completed and signed Appendix A, Disadvantaged Business Enterprise Goal;
5. Completed and signed Appendix B, Representations and Certifications;
6. Completed and signed Appendix C, Past Performance Representations;
7. Completed and signed Appendix E, Environmental Compliance;

8. Certificate of Insurance, with Transportation District Commission of Hampton Roads named as additional insured;
9. A copy of Virginia Contractor's Class "A" License;
10. Names and detailed qualification information regarding supervisory personnel to be assigned to this project;
11. Brief history of the firm and its experience in the areas outlined in the Scope of Work and all applicable optional services and capabilities;
12. Bid Bond at 5% of Bid Amount; and,
13. If subcontractors are to be utilized, information regarding the proposed subcontractors shall be included with the Bid. Information shall include the name of the company, address, contact information, and three (3) references for each subcontractor.

**B. Modified, Alternate and Multiple Bids**

Unauthorized conditions, limitations, or provisions attached to a bid will render the bid non-responsive and may cause its rejection. Unless otherwise stated in the solicitation documents or any amendment thereto, bidders may not submit alternate bids or more than one (1) bid hereunder.

**C. Prices – Discrepancies in Bid Prices**

In case of a conflict between unit prices and a total price, the unit prices shall govern; in the event of a conflict between a written price and an enumerated price, the written price shall govern.

**D. Bid Completion Instructions – Modifications/Corrections**

Should a bidder discover a mistake in its bid, it shall notify the Commission (electronically, followed by hard copy) within one (1) business day following the time for receipt of bids. The Commission shall only permit a bid to be withdrawn without penalty upon a satisfactory showing that the error occurred in the preparation of the bid document and was inadvertent and clerical in nature, and not the result of a misreading or misinterpretation of the plans and specifications, a miscalculation of quantities or prices, or otherwise due to a lack of proper care and diligence on the part of the bidder.

**12. OMISSIONS**

The drawings, specifications and other documents contained herein are considered to provide a reasonably complete description of the project requirements. In the event that a bidder identifies any error, omission or ambiguity in the bid documents, it shall request that the Contract Administrator provide a correction or clarification. By submitting a bid hereunder, the bidder

acknowledges that the bid documents are complete and accurate to the extent evident from a careful and professional reading of the bid documents, examination of the site, and other measures taken by a prudent bidder.

### 13. SUBMITTAL OF BIDS

In order to prevent misrouting or premature opening of bids, the sealed envelope in which the bid is submitted (along with any other documents required by the bid solicitation package to be submitted) must state on its face the **Contract Number, Title, Bid Opening Date, Company Name and Address**.

If the bid envelope is enclosed in a special courier pouch or Express Mail envelope, such pouch or envelope shall be denoted as a “BID” and labeled with all of same information. The envelope shall bear the name and return address of the bidder.

It is the bidder’s responsibility to get its bid to HRT’s Procurement Office in time for the Bid Opening. **Bids will be regarded as timely only if they reach the Procurement Official before the time specified, regardless of the method of delivery.**

Depending on the method of delivery selected by the bidder, the bidder must submit its bid to HRT by sending the bid package by one of the following methods to the addresses, as appropriate.

- A. Delivery in Person, by Messenger, or Private Express Courier: Bids delivered in this manner should be addressed and delivered to:

Hampton Roads Transit  
509 East 18<sup>th</sup> Street, Building 4  
Norfolk, Virginia 23504  
Attention: Bid Lock Box

Bids are to be deposited in the Bid Lock Box located in the Lobby Area at the address noted above, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., excluding HRT observed holidays. **Bids not in the Bid Lock Box at 2:00 p.m. on Bid Opening day will not be considered, and will be returned to the sender unopened, except for bids delivered via U.S. Postal Service, in accordance with B below.**

- B. Delivery by U.S. Postal Service (including Postal Service Express Mail) (“USPS”): If a bidder chooses to deliver its bid to HRT utilizing the USPS, bidders are strongly advised to mail bids to HRT’s Post Office Box provided below, with sufficient time to allow sorting at the USPS facility and pick up by HRT by 10:00 a.m. on Bid Opening Date. **Bids not in the P.O. Box at 10:00 a.m. on Bid Opening day will not be considered, and will be returned to sender unopened.**

Hampton Roads Transit

P.O. Box 2498  
Norfolk, Virginia 23501-2498  
Attention: Bid Lock Box

All bids will remain sealed and deposited into the Bid Lock Box until the date and time specified for public Bid Opening.

#### **14. WITHDRAWAL OF BIDS**

Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

Pursuant to §2.2.-4330 of the Code of Virginia, a bidder may withdraw its bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw its bid if the price bid would have been substantially lower than the other bids due solely to the clerical mistake as defined above.

A bidder seeking to withdraw its bid shall give notice in writing to the contracting officer within two (2) business days after the bid opening and shall submit original work papers with such notice. Such work papers may be considered as trade secrets or proprietary information subject to the conditions of §2.2-4342(F), Code of Virginia. Any mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

No bid shall be withdrawn under this section when the result would be the awarding of the Contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent (5%).

No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.



If a request for withdrawal of a bid hereunder is denied, the Contract Administrator shall notify the bidder in writing stating the reasons for the decision and award the Contract to such bidder at the bid price, provided the bid is otherwise responsive and the bidder deemed responsible.

## **15. BID OPENING**

Immediately after the date and time for receipt of bids, the Contract Administrator or designee will open, examine, and publicly read all bids received. Bidders, their representatives, and other interested parties are invited to be present at the opening of bids. All bids will then be evaluated to determine responsiveness and responsibility of the apparent low bidder. Upon completion of the bid evaluations, a staff recommendation for award will be submitted to the Commission for approval at a public meeting, usually within forty-five (45) days after receipt of bids. HRT reserves the right to postpone the bid opening for any reason.

## **16. EVALUATION AND AWARD**

### **A. Bid Acceptance Period**

Bids are to remain valid for a period of ninety (90) days from bid due date. If no award is made within that period, HRT may unilaterally extend the period and request all bidders to extend the validity period of their bids accordingly.

### **B. Basis of Award**

Award will be based on the lowest priced responsive bid from a responsible bidder.

### **C. Pre-Award Responsibility Review**

The Contract Administrator will conduct a pre-award survey to determine if the apparent low bidder is responsible. A responsible bidder is one who is fully capable of fully performing the Contract and who possesses the technical, financial, and personnel resources to do so. A responsibility evaluation will also consider the reputation and industry standing of the firm, including its performance on previous or current projects for the Commission or others.

### **D. Unbalanced Bids**

A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly more in relation to cost for other work, or it is so unbalanced as to be tantamount to allowing an advance payment. The Commission reserves the right to reject any bid that is materially unbalanced.

### **E. Award or Rejection of Bids**

Award will usually be made or bids will be rejected by HRT within the time specified in the Instructions to Bidders, or if not specified, within a reasonable time after bids have been opened. HRT may reject any and all bids, and may reject a bid of any party who has been

delinquent or unfaithful in any former Contract with HRT. HRT reserves the right to waive any minor irregularities or informalities in any bid or in the bidding procedure. If an award is made, it shall be made to the responsible bidder whose responsive bid is lowest in price. The Commission reserves the right to cancel this solicitation before or after receipt of bids when it is in the Commission's interest to do so, to reject any and all bids, and to award a Contract to a bid other than the lowest price received based upon the requirements of this solicitation.

**F. Contract Award and Notice to Proceed**

Award of a Contract hereunder will be made by the Board of Commissioners in public meeting. A binding Contract shall be formed by execution on the completed Solicitation, Offer and Award form contained herein by the President/CEO of HRT or his designee. A written Notice of Award will be furnished to the successful bidder.

**17. PUBLIC RECORDS**

The Virginia Public Records Act mandates public access to government records. Therefore, unless the information is exempt from disclosure by law, the content of any request for explanation, exception, substitution, or modification to these specifications, any protest, or any other written communication between HRT and any bidder shall be available to the public. All bids will be publicly opened and made available to the public thereafter.

If a bidder believes any communication or information provided to the Commission as part of its responsibility review or in support of a protest or request for withdrawal of a bid contains trade secrets or other proprietary information that the bidder believes would cause substantial injury to the bidder's competitive position if disclosed, the bidder shall request that HRT withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. No general claim of confidentiality for an entire document, or for portions of a document which are patently not confidential, shall render the entire document non-confidential.

HRT is under no obligation to grant any request by a bidder that HRT withhold from disclosure information identified as confidential, but will take into account the requester's justification for withholding information in making its determination as to disclosure of such information.

**18. COMMUNICATIONS WITH THE COMMISSION**

Except as otherwise specified herein or authorized by the Contract Administrator, all communication in regard to any aspect of this solicitation shall be with the Contract Administrator, not with any members of the Commission, or its officers, employees or consultants, in regard to any aspect of this solicitation. Violation of this requirement may lead to the rejection of the offender's bid or cancellation of the solicitation. If the offense is egregious and causes cancellation

of the procurement, the offending party will not be permitted to participate in any re-solicitation as either a Bidder or a subcontractor.

#### **19. ELECTRONIC COMMUNICATIONS**

To the extent permitted herein, communications to or from the Commission may be by electronic means. Any electronic communication sent to the Commission must be confirmed by hard copy received by the Commission not more than 48 hours after the initial electronic communication is sent.

**END OF SECTION**

## SECTION III

### SPECIAL PROVISIONS

#### 1. TYPE OF CONTRACT

This solicitation will result in a not-to-exceed Contract to provide demolition and construction services for the Liberty Street Transfer Station. Compensation to the Contractor shall be based upon the Price Schedule and services in accordance with the Scope of Work.

#### 2. PERIOD OF PERFORMANCE

The term of this Contract shall be for a period of four (4) months from the date specified in the Notice-to-Proceed.

#### 3. PAYMENT

- A. Payment will only be made after receipt of a proper invoice. A proper invoice includes the purchase order/contract number, date of invoice and a description of service delivered.
- B. Mail original and one copy of all invoices to Accounts Payable, 3400 Victoria Blvd., Hampton, VA 23661 or [acctpayable@hrtransit.org](mailto:acctpayable@hrtransit.org).

#### 4. TAX EXEMPTION STATUS

HRT is tax exempt for materials supplied by the Agency, but materials procured by the Contractor are not tax exempt for HRT projects. HRT shall consider that all pricing includes any applicable tax.

#### 5. ENVIRONMENTAL COMPLIANCE

HRT has instituted an Environmental Management System (EMS) that complies with ISO 14001:2004. In order to conform to this ISO Standard, HRT must ensure that all persons working for or on behalf of HRT – including Contractors, suppliers, and vendors – are aware of and understand HRT's Environmental Policy, and comply with all environmental requirements applicable to the activities, products, and/or services they provide.

#### 6. SUBCONTRACTORS

All subcontractors must be licensed and insured to perform work.

Should the General Contractor use the services of a Subcontractor, the General Contractor shall be responsible for familiarizing the Subcontractor with all requirements of the contracted work. The General Contractor is responsible for requesting and receiving approval for each Subcontractor from HRT.

## 7. QUALITY CONTROL/QUALITY ASSURANCE

Materials furnished and Work performed by the Contractor shall conform to requirements given in the Scope of Work.

The Contractor has primary responsibility for inspection and testing of all materials required in the performance of this Contract. HRT or its designee will independently perform check testing and periodic inspections to verify adequacy of Contractor's quality controls or for any other purpose and will bear the cost of such testing and inspection. HRT reserves the right to reject materials on the basis of HRT instituted inspection and testing.

Materials furnished or work performed which does not comply with Contract requirements will be considered non-conforming. Work considered non-conforming includes, but is not limited to:

- A. Work done or products incorporated beyond lines established by HRT;
- B. Work done or products incorporated contrary to HRT's instructions;
- C. Work changed or added without HRT's written authorization;
- D. Work which includes incorporation of unapproved substitutions;
- E. Work performed or Materials furnished without the required testing, inspection or other conformance documentation or without required warranties;
- F. Work or Materials not in conformance with the Contract requirements.

When non-conforming work is discovered, HRT may:

- G. Reject the Materials or workmanship or require its correction. Contractor shall satisfactorily correct rejected workmanship or satisfactorily replace rejected Materials at Contractor's own expense and promptly segregate and remove rejected Materials from the Work Site and properly dispose of them.

If Contractor fails to promptly replace rejected Materials or correct rejected workmanship, HRT may,

- 1. By Contract or otherwise, remove and replace such rejected Materials or workmanship, correct such Materials or workmanship, and dispose of all rejected Materials and workmanship so removed, charging the costs thereof to the Contractor, or
- 2. Terminate the Contractor's right to proceed in accordance with General Condition 45, Termination for Default and Contractor and its sureties shall be liable for any costs and damages incurred.

- H. Accept the Materials or workmanship as suitable for the intended purpose, document the basis of such acceptance, and deduct an equitable amount from the Contract price for uncorrected work.

## **8. PUBLICITY, ADVERTISING AND PUBLIC RELATIONS**

The Contractor shall comply with FTA requirements, City of Norfolk, and Commonwealth of Virginia ordinances. Any publicity or advertising shall be coordinated with HRT's Public Involvement staff. The Contractor shall not make any public announcement or statement regarding the award or performance of this Contract without the prior consent of HRT's Public Involvement staff.

## **9. EMERGENCY WORK**

In the event of an emergency which endangers life or property, Contractor shall take such immediate actions as may be reasonably necessary to safeguard life and property. Contractor shall notify HRT's Project Manager as soon as possible of the circumstances of the emergency and the actions taken. Contractor shall perform such additional work as may be directed by the PM either orally or in writing. Such oral orders will be confirmed in writing as soon as practicable by the Contract Administrator.

If the Contractor performs emergency work, the Contractor shall keep accurate records of actual costs in accordance with Section 35 of the General Conditions, Cost or Pricing Data until such time as agreement on compensation is reached. Such records shall be subject to verification and audit by HRT or its designated auditor. Keeping and verification of such records shall not be construed as an indication that all work performed was required or that this method of compensation is necessarily acceptable for such emergency work and shall not preclude the possibility of an agreement to pay for such emergency work on another basis.

When agreement is reached regarding compensation for the performance of emergency work, the Contract will be amended by issuance of a Change Order reflecting such agreement.

## **10. COMMONWEALTH REGISTRATION**

Pursuant to §2.2-4311.2 of the Code of Virginia, a contractor 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 law, and shall maintain that status for the duration of this contract. Failure to do so shall render this contract voidable at the discretion of HRT.

## **11. DISADVANTAGED BUSINESS REQUIREMENT**

A 13% DBE goal has been established for this solicitation. Please see Appendix A for information and guidance.

## **12. WAGE REQUIREMENTS**

Any Contract resulting from this solicitation will be subject to the Davis-Bacon Act (<http://www.dol.gov/whd/govcontracts/dbra.htm>). Certified payrolls must be submitted for work periods where work is performed. One or more U.S. Department of Labor Wage Determination Schedules are applicable to this procurement. Please see Appendix D.

## **13. BOND FILING**

The bidder to whom award is made shall furnish the performance and payment bonds as required under General Conditions, Section 66, Performance Bond and Payment Bond within ten (10) working days after Notice-to-Proceed is issued.

If the bidder to whom award is made fails to furnish the required bond(s), the award may be annulled; in such case the bidder shall forfeit its bid security. An award may, at the discretion of the Commission, be made to the responsible bidder whose responsive bid is next lowest in price or, at the option of the Commission, the solicitation may be cancelled.

## **14. SITE CLEAN-UP**

Prior to final acceptance, all areas occupied or disturbed by the Contractor in connection with the Work shall be cleaned of all rubbish, materials, products designated in the Contract as becoming or remaining the property of the Contractor, equipment and temporary structures. The ground shall be returned to original contours and restored to as near preconstruction condition as possible unless alternate restoration plans are approved in writing by HRT or required by the Contract.

Any private property occupied or disturbed by the Contractor in connection with the Work shall be restored to the satisfaction of the owner. Prior to final acceptance, the Contractor shall present HRT with a release, signed by the owner of the property, attesting to the acceptability of the restoration work and waiving any and all claims against HRT.

The restoration of all property, including sites used for disposal of material removed from the project or as a source of material incorporated in the Work, shall be such that the condition of the sites, including all materials and structures which remain following final completion of the Work present no hazard to the public and fully comply with all applicable laws and regulations including, but not limited to local zoning and land use requirements.

**END OF SECTION**

## SECTION IV

### GENERAL CONDITIONS

#### 1. DEFINITIONS AND ACRONYMS

**Agency or Commission or HRT or TDCHR or Board of Commissioners or Administration or Hampton Roads Transit** means the Transportation District Commission of Hampton Roads.

**Change Order or Modification** means a written document signed by the Commission, and issued to the Contractor, which alters the scope of the Work to be performed by the Contractor, changes the schedule for performance of the Work, increases or decreases the Contractor's compensation, or makes any other change to the Contract.

**Completion** means "final completion."

**Contract** includes the properly executed Solicitation, Offer and Award Form; the Contractor's offer, including executed bid/proposal forms and attachments; the Special Provisions, General Conditions, Appendices, Exhibits, Plans, and Specifications; properly executed Certificates of Insurance; Payment Bond; Performance Bond; List of Subcontractors; List of Changes in Subcontractors, due to Alternates; Notice(s) to Proceed; and all Amendments (Addenda) issued prior to and all Modifications (Change Orders) issued after execution of the Contract. **Contract Administrator** means the person granted authority to act on behalf of the Commission in all matters concerning this Contract, any successor thereto, and the authorized representative of the Contract Administrator acting within the limits of authority delegated by the Contract Administrator. The term **Contracting Officer** may also be used to delineate this responsibility.

**Contractor or Consultant** means the individual, firm, partnership, corporation, joint venture, or combination thereof who, as an independent Contractor, has entered into this Contract with the Commission for the performance of the Work required by the Contract.

**Days** except as otherwise provided herein, shall refer to calendar days, including without limitation weekends and holidays.

**Final Completion** means fulfillment of all the Contractor's obligations under the Contract.

**Materials** includes materials, equipment, products, articles and other physical items incorporated or to be incorporated into the Work.

**Owner** means Hampton Roads Transit.

**Product Data** includes written or printed descriptions, illustrations, standard schedules, performance charts, instructions, brochures, diagrams, drawings, or other information furnished by the Contractor to describe Materials to be used for some portion of the Work.



**Project** means the Commission's overall objective or endeavor of which this Contract forms a part.

**Project Manager** or **PM** means either the Commission's or the Contractor's designated and authorized representative and point of contact for managing the project. The PM is charged with the oversight and administration of the performance of the Work.

**Project Schedule** means the schedule prepared by the Contractor and accepted by the Commission setting forth the logical sequence of activities required for the Contractor's orderly performance and completion of the Work in accordance with this Contract, and specifically, to meet the specified milestone dates, including updates.

**RFP** means Request for Proposal.

**Samples** include physical examples of Materials to be supplied or workmanship, which shall, when approved by the Commission, establish standards by which the Work shall be judged.

**Shop Drawings** means drawings, diagrams, schedules, or other data prepared by the Contractor or any Subcontractor, manufacturer, supplier, or distributor to illustrate or detail some portion of the Work.

**Specifications** means that part of the Contract containing written directions and requirements for completing the Work. Standards, or portions thereof, cited in the Specifications by reference shall have the same effect as if physically included in the Contract in their entirety.

**Special Provisions** means Contractual terms which supplement or modify the General Conditions. Any such Special Provision shall take precedence over any General Condition modified by it.

**Specialty Items** means Materials which are of a special design or which require special fabrication specifically for this Project.

**Subcontract** means any agreement including purchase orders (other than one involving an employer/employee relationship) entered into between the Contractor and a Subcontractor calling for services, labor, equipment, and/or materials required for the Contract performance, including any modification thereto.

**Subcontractor** means any individual, firm, partnership, corporation, joint venture, or combination thereof, or other entity, other than employees of the Contractor, who contract with the Contractor or a Subcontractor of any tier to furnish services, labor, equipment and/or materials, or labor and materials, under this Contract. As used herein, the term Subcontractor is considered to include the term Supplier.

**Supplies, material and equipment**, as used herein shall include without limitation, all items, tangible or intangible, to be incorporated in the Work or otherwise delivered to the Commission hereunder.

**Work** means the furnishing of all of the supervision, labor, Materials, equipment, services, and incidentals necessary to complete any individual item and the entire Contract and the carrying out of any duties and obligations imposed on the Contractor by the Contract.

## **2. CHANGES**

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this Contract. Such change shall serve to modify this Contract to the extent necessary to execute the change as directed.

If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Contract, whether changed or not changed by the order, the Contracting Officer shall make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the Contract accordingly.

The Contractor must assert its right to an adjustment under this article within three (3) working days from the date of receipt of the written order. Failure by Contractor to give timely notice of the change could constitute waiver of a claim for an equitable adjustment. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment of the Contract.

If the Contractor's proposal includes the cost of equipment or materials made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of such equipment or materials.

Failure to agree to any adjustment shall be a dispute under the Disputes article. However, nothing in this article shall excuse the Contractor from proceeding with the Contract as changed.

Granting or acceptance of extensions of time to complete the Work or furnish the labor, supplies, materials, or equipment required under the Contract will not release the Contractor or its surety from their obligations hereunder.

## **3. ORDER OF PRECEDENCE**

If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order of precedence: Contract Modifications (Change Orders), Contract Agreement, Contract Appendices, Special Provisions, General Conditions, Plans, Technical Specifications, Contractor's proposal including executed forms and attachments.

## **4. ASSIGNMENT AND DELEGATION**

The Contractor shall neither delegate any duties or obligations under this Contract nor assign, transfer, convey, sublet or otherwise dispose of the Contract or its right, title or interest in or to the same, or any part thereof, without previous consent in writing from the Contracting Officer.

## **5. AUTHORITY OF OWNER'S REPRESENTATIVE**

The Work of the Contract will be conducted under the general direction of the Commission's Project Manager (PM). The PM has authority to oversee the performance of the work, and may take the following actions:

- A. Act as the principal technical point of contact with the Contractor.
- B. Review and approve invoices and payment estimates. In those cases requiring release of final retained percentage of payment, the Project Manager will make his/her recommendations in writing to the Contracting Officer;
- C. Coordinate correspondence with the Contract Administrator if it significantly affects the Contractual terms, or the rights and obligations of the parties thereunder.
- D. Notify the Contract Administrator whenever the Project Manager has reason to believe that any estimated cost not-to-exceed amount for a Contract modification will be exceeded.
- E. Approve, in writing, the Contractor's progress schedule when required.
- F. Receive from the Contractor monthly DBE status reports, if applicable.
- G. Upon notice from the Contractor that the Work is Substantially Complete, conduct an inspection of the Work, establish a Punch List, and advise the Contract Administrator as to whether or not Substantial Completion has been attained.
- H. Provide the Contract Administrator with a written notification after all Work has been satisfactorily completed with stating that he/she is not aware of any open issues that would preclude close out of the Contract.

The Contractor shall adhere to the actions below only if received from or directed by the Contracting Officer or his designee.

- A. Contract modifications
- B. Issuance of written orders to stop and/or resume work.
- C. Negotiations with the Contractor for adjustment of Contract price and/or time.

The presence or absence of the Commission's Project Manager or inspectors at any time shall not relieve the Contractor from adherence to any requirement of the Contract.

## **6. FLOWDOWN**

The Contractor shall ensure appropriate flow-down of applicable Contract provisions to appropriate subcontracts of every tier. Contractor agrees that it will incorporate the provisions of this Contract, to the extent applicable, into all subcontracts and orders with Subcontractors and suppliers of all tiers. It is understood that these provisions apply to all types of Contracts and/or

Subcontracts specifically including lump sum (or fixed price Contracts), unit price Contracts, and/or cost type Contracts with or without a guaranteed maximum. It is further understood that change order provisions will apply to all methods of change order pricing specifically including lump sum change order proposals and cost type change order proposals.

## **7. SUBCONTRACTING**

The Commission reserves the right, without liability, to approve any Subcontractor of any tier employed by the Contractor hereunder. Nothing in the Contract shall create any contractual relationship between the Commission and any Subcontractor. The Contractor is fully responsible to the Commission for the acts and omissions of its Subcontractors, vendors, materialmen, and persons directly employed by any of them.

Contractor shall not, without the prior written consent of the Contracting Officer, substitute any Subcontractor in place of any previously approved Subcontractor. When a portion of the Work which has been subcontracted by the Contractor is not being performed in a manner satisfactory to the Commission, the Subcontractor shall be removed immediately upon the written request of the Commission, and shall not be employed for any future Work under the Contract. The Commission reserves the right to direct the removal from the Work site of any individual employed, directly or indirectly, by the Contractor or any Subcontractor. No substitution or replacement of a Subcontractor, however caused, shall relieve the Contractor of its obligation to attain the percentage of DBE activity specified herein.

Contractor shall, within ten (10) days of receiving payment from the Commission, pay all amounts properly due to its Subcontractors and materialmen, and shall cause its Subcontractors of every tier to pay their Subcontractors and materialmen within an equivalent period after their receipt of payment. Contractor shall promptly notify the Commission of any circumstance in which payment is not so made. Failure to comply with the requirements of this paragraph may be deemed a material breach of this Contract. Any retainage held at the completion of a Subcontractor's work shall be returned to the Subcontractor within thirty (30) days of the completion and acceptance of the Subcontractor's work.

For those Contracts for which a DBE goal has been established, the failure to perform in accordance with the DBE program detailed in Appendix A may result in partial or full suspension of payment and/or progress payments.

Should Contractor wish to withhold payment otherwise due a Subcontractor hereunder, it shall notify the Commission's representative of such intention in writing, providing the reasons for such withholding. Approval of such withholding by the Commission is required. Contractor shall furnish the Commission with a copy of the notice given to the Subcontractor or Supplier specifying:

- A. The amount to be withheld;

- B. The specific causes for the withholding under the terms of the Subcontract; and
- C. The remedial actions to be taken by the Subcontractor or Supplier in order to receive payment of the amounts withheld.

## **8. INVOICES**

Mail original and one (1) copy of all invoices to Transportation District Commission of Hampton Roads, ATTN: Accounts Payable, 3400 Victoria Blvd, Hampton, VA 23661. Electronic invoices may be submitted to [acctspayable@hrtransit.org](mailto:acctspayable@hrtransit.org).

The form and content of invoices are subject to review and approval by the Commission. Payment will be made only after receipt and approval of a proper invoice. A proper invoice includes the purchase order/Contract number, date of invoice, dates of delivery of item/service, a description of the item/service delivered, sizes and quantities if applicable, unit prices, and extended totals, and any additional information required by the Commission. Invoices shall be accompanied by any supporting documentation that may be required by the Commission.

Contractor shall also provide a “Form E – Contractor’s Monthly DBE Payment Report,” as applicable, with each application for payment. This form is provided in Appendix A.

## **9. PAYMENTS**

The Commission shall pay to Contractor, at the times and in the manner hereinafter provided, the amount set forth in the Price Schedule for the Work satisfactorily performed, contingent upon Contractor's satisfactory compliance with the terms and conditions of the Contract. Contractor agrees to accept that amount as full and final payment for all labor, materials, supplies, equipment, overhead, profit, taxes, duties, and charges of whatever nature incurred by Contractor in performing its obligations under the Contract.

Contractor shall not request payment from the Commission of any amount that the Contractor has withheld or retained from Subcontractors or Suppliers until such time that Contractor has determined and certified to the Commission that the Subcontractor is entitled to the payment of such amount. If Contractor has made application for payment to the Commission and subsequently withholds or retains payments from a Subcontractor, Contractor may be obligated to pay interest to the Commission on that amount, in addition to any other remedies the Commission may have hereunder.

No approval for payment, nor any payment, nor any partial or entire use or occupancy of any portion of the Work by the Commission, shall constitute an acceptance of any Work that is not in accordance with the Contract.

In the event Progress Payments are applicable, and unless otherwise specified in the Special Provisions or Specifications, within thirty (30) days after receipt of the Commission’s Notice to

Proceed, and prior to submission of Contractor's first invoice, Contractor shall submit to the Commission a supplementary Schedule of Values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Commission may require. When accepted by the Commission, that schedule shall be the basis for determining the amount of each progress payment.

Contractor shall submit monthly invoices setting forth the percentage of Work, or units of Work where applicable, completed during the month and the amount due for such Work based upon the Price Schedule and any supplementary schedule of values that may be required by the PM.

By submitting a Request for Payment, Contractor warrants that:

- A. Title to all Materials furnished by Contractor or incorporated into the Work by Contractor and covered by the progress payment shall pass to the Commission at the time Contractor receives the progress payment;
- B. All Materials are free and clear of all liens, claims, security interests, or encumbrances; and
- C. No Materials have been acquired by Contractor, or by any other person performing Work at the Work Site or furnishing Materials for the Work under this Contract, that are subject to an agreement under which an interest in, or encumbrance on, the Materials or equipment is retained by the seller or otherwise imposed.

The Commission may, upon request and at its discretion, furnish to any Subcontractor information regarding the percentages of completion or the amounts applied for by Contractor and the action taken on the application by the Commission on account of Work done by the Subcontractor.

## **10. AVAILABILITY OF FUNDS**

- A. Funds may not be presently available for performance under this Contract beyond the end of the Commission's current fiscal year (July 1 to June 30). The Commission's obligation for performance of this Contract beyond that date is contingent upon the availability of funds from which payment for Contract purposes can be made. No legal liability on the part of the Commission for any payment may arise for performance under this Contract until funds are made available to the Contracting Officer for performance and until the Consultant receives notice of availability, to be confirmed in writing, by the Contracting Officer. Any option exercised by the Commission which will be performed in whole or in part in a subsequent fiscal year is subject to availability of funds in the subsequent fiscal year and will be governed by the terms of this Article.
- B. This Contract may be funded in whole or in part by grants from the Federal Transit Administration, the Commonwealth of Virginia or the Commission's member communities. The performance of this Contract is expressly contingent upon receipt of such funds.

## **11. WITHHOLDING OF PAYMENTS**

The Commission may withhold all or part of a payment to the extent deemed necessary to protect the Commission from loss because of (1) defective Work not remedied; (2) third party claims filed, or evidence reasonably indicating that a third party claim will be filed; (3) failure of Contractor to make payments properly to Subcontractors, or for labor, materials, or equipment; (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract price; (5) damage to the Commission or another Contractor; (6) Contractor's failure to carry out the Work in accordance with the Contract; (7) Contractor's failure to comply with any material provision or requirement of the Contract; (8) Contractor's failure to pay the deductible portion of any insured claim filed by third parties against the Contractor; (9) Contractor's failure to provide the required progress schedules and record drawings in accordance with the Contract; (10) any sums expended by the Commission in performing any of the Work under the Contract which the Contractor has failed to perform; or (11) liquidated damages, if applicable.

## **12. CONDITIONS AFFECTING THE WORK**

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and extent of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so shall not relieve the Contractor from responsibility for successfully performing work without additional expense to the Commission. The Commission assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations are expressly stated in the Contract.

## **13. GOVERNING LAW AND CHOICE OF VENUE**

This Contract shall be governed by the laws of the Commonwealth of Virginia, notwithstanding any conflicts of law, provisions to the contrary. The parties agree that the sole and exclusive venue for any disputes arising out of or related to this Contract will be the Federal District Court or State Circuit Court sitting in the City of Norfolk, Virginia.

## **14. WAIVER OF CONDITIONS**

The waiver of any provision, term or condition in this Contract by the Commission on any particular occasion shall not constitute a general waiver of that or any other provision, term or condition, nor a release from the Contractor's obligation to otherwise perform or observe any other provision, term or condition of the Contract, and shall not be considered a precedent for future waivers.

## **15. NOTICE OF INTENT TO FILE A CLAIM**

Whenever the Contractor deems a potential claim has arisen, the Contractor shall, within three (3) days, notify the Contract Administrator in writing of its intent to file a claim, before proceeding



with any Work viewed by the Contractor as outside of the current Scope of Work. The claim shall be submitted within thirty (30) calendar days of initial notification.

Should the Contractor assert a claim against the Commission, under this or any other provision of this Contract, involving an amount in excess of fifty thousand dollars (\$50,000.00), it shall accompany such claim with a sworn affidavit and certification that, to the best of the Contractor's knowledge and belief, the facts and amounts stated in the claim are true and complete and that the claim is asserted in good faith. Failure to submit such affidavit and certification shall be grounds for denial of such claim.

## **16. SEVERANCE**

If any part of Contract is declared invalid by a court of law, such decision will not affect the validity of any remaining portion, which shall remain in full force and effect, to the greatest extent consistent with the determination of such court.

## **17. GENERAL INSURANCE REQUIREMENTS**

**IFB # 17-76503 must be listed in the Description/Remarks of the Certificate.**

The Contractor shall procure and maintain, at his own cost and expense, during the entire period of the performance under this Contract, the following types of insurance.

**IMPORTANT NOTE: Cancellation of insurance will automatically place the Contractor in default. Contractor shall keep proper insurance in full force and effect at all times during the life of the Contract.**

**PROFESSIONAL LIABILITY (Errors and Omissions):** Not less than \$1,000,000

A liability insurance policy to pay on behalf of the Contractor any and all costs the Contractor shall become legally obligated to pay as damages on account of any claim by a third party caused by any negligent act, error or omission of the Contractor is legally liable rising out of their performance under this Contract.

## **WORKERS' COMPENSATION:**

A policy complying with the requirements of the statutes of the jurisdiction in which the work will be performed, and if there is any exposure to any of the Contractor or Subcontractor personnel with the U. S. Longshoremen's and Harbor Workers' Act, Jones Act, Admiralty Laws or the Federal Employers' Liability Act, the Contractor will provide coverage for these requirements. Waiver of Subrogation to be included in favor of Transportation District Commission of Hampton Roads shall be clearly stated. A valid Certificate of Insurance evidencing the waiver and policy coverage limits must be provided prior to commencement of the Contract.

Worker's Compensation:

STATUTORY



Employer's Liability - Each Accident	\$500,000
Disease Policy Limits	\$500,000
Disease - Each Employee	\$500,000

**COMMERCIAL GENERAL LIABILITY:**

The Contractor and any Subcontractor shall provide a valid Certificate of Insurance listing the insurance coverage maintained. The Commercial General Liability insurance shall include, at a minimum, the following coverage:

\$1,000,000	Each Occurrence
\$2,000,000	General Aggregate

If the insurance Contract has a Limit of Liability Aggregate, the minimum Aggregate level shall be \$3,000,000 per policy year.

The Contractor and any Subcontractor shall name the following as an Additional Insured and include Waiver of Subrogation:

Transportation District Commission of Hampton Roads shall be included as an additional insured under the coverage for Commercial General Liability insurance with respect to all activities under this Contract and shall provide a copy to the Contracting Officer.

**AUTOMOBILE INSURANCE:**

The Contractor and any Subcontractor shall provide a valid Certificate of Insurance listing the insurance coverage maintained. The Automobile Insurance maintained by the Contractor and any Subcontractor shall include, at a minimum, the following coverage:

- ☒ Owned and Hired Automobiles
- ☒ Non-Owned Automobiles

The minimum Limit of Liability shall be:

\$2,000,000 Combined Single Limit Per Occurrence

The Contractor and any Subcontractor shall name the following as an Additional Insured and include Waiver of Subrogation:

Transportation District Commission of Hampton Roads shall be included as an additional insured under the coverage for Automobile Liability insurance with respect to all activities under this Contract and shall provide a copy to the Contracting Officer.

**UMBRELLA/EXCESS LIABILITY**

Will accept Umbrella/Excess liability if limits above cannot be met under the primary contracts.

The Contractor and any Subcontractor shall name the following as an Additional Insured and include Waiver of Subrogation:

Transportation District Commission of Hampton Roads shall be included as an additional insured under the coverage for Umbrella/Excess Liability insurance with respect to all activities under this Contract and shall provide a copy to the Contracting Officer.

**BUILDERS RISK:** Building Value

This insurance shall include *the interests of the Owner, the Contractors, Subcontractors and Sub-subcontractors* in the subject Project provide a policy to cover equipment, related property, and materials from the start of demolition and construction through the final delivery to HRT. Should be written to insure against physical loss or damage to the property and structures and indemnity exposure during demolition and reconstruction.

**SPECIAL PROVISIONS OF INSURANCE FURNISHED BY CONTRACTOR OR ANY SUBCONTRACTOR**

- A. The Contractor shall forward to the Contracting Officer for approval a certificate, or certificates, issued by the insurer(s), of the insurance required under the foregoing provisions, including special endorsements. Such certificate(s) shall be in a form satisfactory to the Commission and shall list the various coverage's and limits. Insurance companies providing the coverage must be acceptable to Commission; rated by A.M. Best and carry at least an "A" rating. In addition to any provisions herein before required, a provision of such insurance policies shall be that the policies shall not be changed or canceled, and they will be automatically renewed upon expiration and continued in full force and effect until final acceptance by the Commission of all work covered by the Contract, unless the Commission is given thirty (30) days written notice before any change or cancellation is made effective. The Contractor shall promptly furnish the Contracting Officer with a certified copy of each insurance policy upon request.
- B. All insurance shall be procured from insurance or indemnity companies acceptable to the Commission/Jurisdiction and licensed and authorized to do business in Commonwealth of Virginia. Commission/Jurisdiction approval or failure to disapprove insurance furnished by the Contractor shall not release the Contractor of full responsibility for liability for damage and accidents.
- C. If at any time the above required insurance policies should be canceled, terminated or modified so that the insurance is not in full-force and effect as required herein, the Contracting Officer may terminate this Contract for Default or obtain insurance coverage equal to that required herein, the full cost of which shall be charged to the Contractor and deducted from any payments due the Contractor.

## **18. ONSITE SAFETY AND SECURITY**

Contractor shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 (OSHA), and all applicable Commonwealth of Virginia and local laws, ordinances and regulations during the performance of this Contract.

Upon request, Contractor or Subcontractor shall provide the Commission with a list of names and residential addresses for all on-site representatives or individuals provided with a security badge and/or key.

All Contractors, Subcontractors, and on-site representatives working near moving traffic, on the Commission's property or public roads, including right of way areas and vehicle yards, are required to wear a Type 2 vest. The vest shall be an outer garment and shall not be covered by anything, i.e. articles of clothing or a carrying bag, etc. Any substitutions such as Class 2 reflective Tee Shirts or reflective jackets must be pre-approved by the Commission's Department of Safety Security and Risk Management.

Upon entry into any Commission facility, all Contractors, Subcontractors, and onsite representatives must comply with all OSHA Regulations and the Commission's policies for Personal Protective Equipment (PPE) such as safety glasses, work boots, and protective gloves. All Commission policies related to onsite safety and security will be provided upon request.

The Contractor shall be responsible for obtaining and posting Material Safety Data Sheets to the full extent required by law.

## **19. SENSITIVE SECURITY INFORMATION**

Contractor shall take all appropriate measures to protect "sensitive security information" made available during the course of its performance hereunder, in accordance with the provisions of 49 U.S.C. Section 40119(b); the implementing U.S. Department of Transportation regulations at 49 CFR Part 15; 49 U.S.C. Section 114(s); and the implementing U.S. Department of Homeland Security regulations at 49 CFR Part 1520. Contractor shall ensure, and require its Subcontractors to ensure, that the requirements of this section be included in subcontracts at all tiers.

## **20. HAZARDOUS CHEMICALS AND WASTES**

The Contractor shall bear full and exclusive responsibility for any release of hazardous or non-hazardous chemicals or substances by it or its employees, agents, representatives, or by its Subcontractors or suppliers of any tier, or the employees, agents or representatives of any of them during the course of its performance of the Work. The Contractor shall immediately report any such release to the Commission's Project Manager. The Contractor shall be solely responsible for compliance with all applicable Federal, State and local laws and regulations regarding reporting of such releases of hazardous chemicals or substances to appropriate government agencies. The Contractor shall be solely responsible for all claims and expenses associated with the response to,

removal and remediation of such releases, including without limitation the payment of any fines or penalties levied against the Commission as a result of such release, and shall hold harmless, indemnify, and defend the Commission from any claims arising from such release. For purposes of this section only, “claims” include (1) all notices, orders, directives, administrative, or judicial proceedings, fines, penalties, fees, or charges imposed by any governmental agency with jurisdiction; and (2) any claim, cause of action, or administrative or judicial proceeding brought against the Commission, its Commissioners, officers, employees or agents, or for any loss, cost (including reasonable attorney’s fees) damage, or liability, sustained or suffered by any person or entity including the Commission.

In the event that the Contractor discovers hazardous materials in the course of its work, it shall immediately cease work in the affected area, remove its personnel, and notify a field representative of the Commission or the Commission’s Project Manager, and shall not resume work until directed by the Commission. Any delay or other costs incurred by the Contractor as a result of such work stoppage shall be compensable hereunder, provided that the Contractor (1) is not responsible for the hazardous materials under this Section; and (2) complies with the requirements of this paragraph regarding the stoppage of work, notification, and removal of personnel.

If in the performance of the Work, the Contractor uses hazardous chemicals or substances or creates any hazardous wastes, as defined in federal and State law, all such resulting hazardous wastes shall be properly handled, stored and disposed of according to federal, State, and local laws, including the use of protective equipment and clothing by workers exposed to such hazardous materials, substances, or wastes, at the expense of the Contractor. The Contractor shall dispose of any and all such hazardous wastes under its own EPA Identification Number via a licensed hazardous waste transporter, at an appropriately permitted disposal facility selected by the Contractor. In no event shall the Commission be identified as the generator of any such wastes. The Contractor shall determine whether any wastes generated during the Work is hazardous waste, and shall notify the Commission’s Project Manager if Contractor generates any hazardous wastes. The Commission reserves the right to a copy of the results of any tests conducted on the wastes, and at the Commission’s cost, to perform additional tests or examine those wastes prior to disposition. The Contractor shall hold harmless, indemnify, and defend the Commission from any claims arising from the disposal of such hazardous wastes regardless of the absence of negligence or other malfeasance by Contractor.

## **21. ENVIRONMENTAL MANAGEMENT AND SUSTAINABILITY**

The Commission recognizes that environmental compliance involves everyone (both internal and external to the Commission), and expects its Contractors, suppliers, and vendors to provide services in an environmentally-responsible manner. This includes, among other things, maximizing the use of recycled and recyclable materials and supplies, utilizing energy-efficient and non-polluting vehicles and equipment, and encouraging employee awareness of

environmentally-sensitive activities in order to mitigate potential adverse impacts on the environment. The Commission has instituted an Environmental Management System (EMS) that complies with the ISO 14001:2004 Standard. As such, it is the Commission's responsibility to make sure all of its Contractors, suppliers and vendors are informed of its Environmental Management Policy and EMS Procedures. Acceptance of this Contract constitutes acknowledgement of the information presented herein and included in the Commission's Environmental Compliance Contractor Briefing Package and Preconstruction Mitigation Disclosure Form.

## **22. WARRANTY**

Definitions. "Acceptance" as used in this clause, means the act of an authorized representative of the Commission by which the Commission assumes for itself or an agent of another, ownership of the Work or any identified separable part thereof, or otherwise approves specific materials, supplies, equipment or services, as partial or complete performance of the Contract. "Correction" as used in this clause, means the elimination of a defect.

Warranty of the Work shall be a minimum of one (1) year from final acceptance. Items corrected during the warranty period will have an additional warranty period, from acceptance of the correction.

Contractor shall obtain for the benefit of the Commission, each of its suppliers' standard commercial warranty for items purchased by the Contractor and incorporated in the Work hereunder. All such warranties, as well as manuals or other documents related to the use or operation of such items, shall be provided to the Commission prior to Final Acceptance of the Work. However, notwithstanding any warranty or inspection and acceptance by the Commission or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed and materials, supplies or equipment furnished under this Contract will, at time of acceptance, be free from defects in workmanship and conform to the requirements of this Contract. The Contracting Officer shall give written notice to the Contractor of any defect or nonconformance identified by the Commission. This notice shall state either (1) that the Contractor shall correct or reperform any defective or nonconforming services, or (2) that the Commission does not require corrective action or reperformance.

If the Contractor is required to correct or reperform, it shall be at no cost to the Commission, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by Contract or otherwise, correct or replace with similar service and charge to the Contractor the cost occasioned to the Commission thereby, or make an equitable adjustment in the Contract price. The Contractor shall not be entitled to any extension of the Contract schedule as a result of any required correction or reperformance, or failure to do so.

If the Commission does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contract price.

In addition to the Contractor's warranty defined herein, warranties provided by a manufacturer shall be passed on to the Commission at no additional cost.

### **23. INSPECTION OF SERVICES**

Definition: "Services," as used in this clause, includes services performed, workmanship, and materials, supplies, equipment whether tangible or intangible furnished or utilized in the performance of services.

The Contractor shall provide and maintain an inspection system acceptable to the Commission covering its services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Commission during Contract performance and for as long afterwards as the Contract requires.

The Commission has the right to inspect all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. The Commission shall perform inspections and tests in a manner that will not unduly delay the work. Contractor shall not cover over any portion of the work until such work is (1) inspected by the Commission or its representative and the Contractor is authorized to close the work; or (2) the Commission's representative authorizes closure of the work without inspection. Should Contractor fail to afford the Commission a reasonable opportunity to inspect the work before closure, it shall be liable for all costs and any delay to the project for it or for other Contractors occasioned thereby.

If any of the services do not conform to Contract requirements, the Commission may require the Contractor to reperform the services in conformity with Contract requirements, at no cost or delay to the Commission, including costs of reinspection.

When defects in services cannot be corrected by reperformance, the Commission may –

- A. Require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and
- B. Reduce the Contract price to reflect the reduced value of the services performed.
- C. If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Contract requirements, the Commission may –
- D. By Contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Commission that is directly related to the performance of such service; or
- E. Terminate the Contract or the portion affected by the non-performance for default.

## **24. TITLE AND RISK OF LOSS**

Unless this Contract specifically provides for earlier passage of title, title to the Work, and any supplies, material or equipment covered by this Contract shall pass to the Commission upon formal acceptance, regardless of when or where the Commission takes physical possession.

Unless this Contract specifically provides otherwise, risk of loss of or damage to the Work, or supplies, materials and equipment covered by this Contract shall remain with the Contractor until, and shall pass to the Commission upon:

- A. Substantial Completion or Final Completion, as specified, of the Work or any identified separable part thereof.
- B. Acceptance by the Commission or delivery of possession of the supplies to the Commission at the destination specified in this Contract, whichever is later.
- C. Notwithstanding (B) above, the risk of loss of or damage to supplies which so fail to conform to the Contract as to give a right of rejection shall remain with the Contractor until cure or acceptance, at which time (B) above shall apply.

## **25. DELIVERY**

The Contractor shall prepare all equipment and materials for shipment in such a manner as to protect them from damage in transit, and shall be responsible for and repair all damaged parts or replace all losses incurred in the course of delivery of the equipment and materials to the Work Site.

## **26. MATERIALS AND WORKMANSHIP**

All materials, parts and equipment furnished by the Contractor shall be new, high grade and free from defects. Workmanship shall be in accordance with generally accepted industry standards. The Contractor shall establish and maintain quality assurance policies and procedures to ensure compliance with these specifications. Such policies and procedures shall be subject to review and approval by the Commission.

The Commission shall have the right to correct nonconforming materials and supplies, which is not remedied by Contractor, with other forces at the Contractor's expense.

Nothing in this section shall limit or restrict the provisions of any warranty of fitness as set forth in the Special Provisions, these General Conditions, and other portions of the Contract Documents.

## **27. SUSPENSION**

The Commission may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Commission may determine. An adjustment may be made for increases in the schedule or cost of performance of the Contract



excluding profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent: (1) that performance is, was or would have been suspended, delayed or interrupted by another cause for which the Contractor is responsible; or (2) that an equitable adjustment is made or denied under another provision of this Contract.

## **28. DELAY OF WORK**

If the performance of all or any part of the work is delayed or interrupted by an act of the Contracting Officer in the administration of this Contract, which act is not expressly or impliedly authorized by this Contract, or by his/her failure to act within the time specified, an adjustment (excluding profit) shall be made for any increase in the schedule or cost of performance of this Contract caused by such delay or interruption and the Contract modified in writing accordingly. Adjustment shall be made also in the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment shall be made under this Article for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or for which an adjustment is provided or excluded under any other provision of this Contract.

No claim under this clause shall be allowed for any costs incurred more than twenty (20) working days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and unless the claim, in an amount stated, is asserted in writing as soon as practicable after the end of such delay or interruption, but not later than the date of final payment under the Contract.

## **29. STOP WORK ORDER**

The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part of the work called for by this Contract for a period not to exceed ninety (90) calendar days after the order is delivered to the Contractor or any other date cited in the order, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this article. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to protect and preserve the work, minimize the incurrence of costs allocable to the Work covered by the order during the period of Work stoppage. Within a period of ninety (90) calendar days after a Stop Work Order is delivered to the Contractor, or within any extension of that period, the Contracting Officer shall either cancel the Stop Work Order, or terminate the Work covered by such order as provided in 46, Termination for Convenience, of these General Conditions.

If a Stop Work Order issued under this Article is cancelled or the period of the order or any extension thereof expires, the Contractor shall resume Work. An equitable adjustment shall be made in the delivery schedule or Contract price, or both, and the Contract modified in writing accordingly, if:



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

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

### **30. CONFLICT OF INTEREST**

- A. Contractor covenants no appointed or elected official, member or other officer or employee of the Commonwealth of Virginia, or of the Transportation District Commission of Hampton Roads (TDCHR), or their affiliates and subsidiaries: i) is interested directly or indirectly, in any manner whatsoever in or in the performance of the Contract or in the supplies, work or business to which it relates or in any portion of the profits thereof; ii) has been or will be offered or given any tangible consideration in connection with this Contract; and/or iii) has used confidential information that he/her acquired by reason of his/her public position, and which is not available to the public, in conjunction with the Contract.
- B. Contractor covenants that it has not, nor anyone on its behalf, directly or indirectly offered, promised, nor actually given any money, honorarium, loan, gift, favor, service, or business or professional opportunity to any appointed or elected official, member or other officer or employee of the Commonwealth of Virginia, or of the TDCHR, or their affiliates and subsidiaries, in conjunction with the preparation of the Proposal
- C. Contractor covenants that no person associated in any way with the Contract participated in the underlying preparation of the Invitation for Bid or Request for Proposal by TDCHR.
- D. Contractor covenants that it does not employ any current TDCHR employees or former TDCHR employees (who have been separated from TDCHR for less than one calendar year) that have or had any responsibility for procurement transactions at TDCHR.
- E. Contractor covenants that neither Contractor nor, to the best of the Contractor's knowledge after diligent inquiry, any director, officer, owner or employee of the Contractor has any interest nor shall they acquire any interest, directly or indirectly, which would conflict in any manner or degree with the faithful performance of the Contract hereunder.
- F. In the event the Contractor has no prior knowledge of a conflict of interest as set forth in "A" and "E" above and hereafter acquires information which indicates that there may be an actual or apparent violation of any of the above, the Contractor shall promptly bring

such information to the attention of the Commission's Director of Procurement. Contractor shall thereafter cooperate with the Commission's review and investigation of such information, and comply with any instruction it receives from the Director of Procurement in regard to remedying the situation.

### **31. COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Commission shall have the right to annul this Contract without liability or in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

### **32. GRATUITIES**

In connection with performance of work required under this Contract, or any changes or modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts or otherwise) by the Contractor, or any agent, representative or other person deemed to be acting on behalf of the Contractor, or any supplier or Subcontractor furnishing material to or performing work under this Contractor, or any agent, representative or other person deemed to be acting on behalf of such supplier or Subcontractor, to any Commissioner, officer, or employee of the Commission; or to any director, officer, employee or agent of any of the Commission's agents, consultants, representatives or other persons deemed to be acting for or on behalf of the Commission with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending, managing, or the making of any determinations with respect to the performing of such Contract is expressly prohibited. Violation of this provision shall be deemed an instance of default hereunder.

### **33. COLLUSION**

If at any time it shall be found that the person, firm, or corporation to whom a Contract has been awarded has, in preparing or presenting any bid or bids, including but not limited to proposals for Contract modifications, colluded with any other party or parties with the intent of preventing full and open competition or the obtaining by the Commission of a fair and reasonable price for the Work hereunder, then the Commission may terminate this Contract for default, or exercise such other remedies as it deems appropriate, and the Contractor and its sureties shall be liable to the Commission for all loss or damage which the Commission may suffer thereby.

### 34. INDEMNIFICATION

- A. Indemnification for Claims of Intellectual Property Infringement. To the fullest extent possible, the Contractor will indemnify and hold harmless the Commission and its officers, agents, successors and employees against any and all intellectual property infringement or misappropriation claims brought by a third party or parties, enforceable in the United States, and related to the Work performed by the Contractor pursuant to this Contract.

Contractor's indemnity obligations hereunder include: (1) all costs and attorney's fees incurred by the Commission and/or its outside legal counsel, as selected by the Commission in its sole discretion, in the event Contractor fails to assume the defense of the claim, (2) payment of any settlement agreed to by the Commission and approved by Contractor, and (3) any award of damages against the Commission and in favor of the third party regardless of whether such claims are unfounded or substantiated.

Contractor's obligations under this section will not apply to the extent that the infringement or violation is caused by (1) functional or other specifications that were provide by or requested by the Commission; or (2) the Commission's continued use of infringing Materials, equipment, or services after Contractor provides reasonable notice to the Commission of the infringement or any third party claim that Contractor receives.

To minimize the potential for claim, Contractor may, at its option, either: (i) procure the right for the Commission to continue using the Materials, equipment, or services at Contractor's sole expense or (ii) replace or modify, at Contractor's sole expense, the Materials, equipment, or services with comparable Materials, equipment, or services that is acceptable to the Commission.

Failure by Contractor to provide either the right to continue using the Materials, equipment, or services as specified in (i) above, or replacement Materials, equipment, or services as specified in (ii) above, will constitute a material breach of this Agreement by Contractor.

- B. Indemnification for Personal Injury or Property Damage Claims. To the fullest extent possible, Contractor will indemnify and hold harmless the Commission, its officers, employees, agents, successors, assigns, affiliates and subsidiaries against all third party claims for damages, losses, liabilities, or expenses, related to personal injury to or death of any person or persons, and for any loss or damage to any from the acts, omissions, or willful misconduct of Contractor, its agents, employees, subcontractors, suppliers, assigns, subsidiaries and/or affiliates.

Contractor's indemnity obligations hereunder include: (1) all costs and attorney's fees incurred by the Commission and/or its outside legal counsel, as selected by the Commission in its sole discretion, in the event Contractor fails to assume the defense of the claim; (2) payment of any settlement agreed to by the Commission and approved by

Contractor, and (3) any award of damages against the Commission and in favor of the third party regardless of whether such claims are unfounded or substantiated.

- C. Civil or Criminal Penalties. Contractor shall indemnify the Commission, its officers, employees, agents and/or their successors, assigns and/or heirs against any liability, including but not limited to any civil or criminal penalties assessed against any of them resulting from the failure of the Contractor or any Subcontractor to conform to any law or regulation pertaining to professional services performed under this Contract.
- D. To be indemnified, the Commission must (i) give Contractor prompt written notice of the claim and tender its defense within forty-five (45) days of the Commission receiving written notice of the claim; (ii) give Contractor full and complete authority, information and assistance for the claim's defense and settlement; and (iii) not intentionally prejudice Contractor's ability to satisfactorily defend or settle the claim. Contractor will retain the right, at its option to settle or defend the claim, at its own expense and with its own counsel.
- E. The provisions of this "Indemnification" Section states the entire liability and obligations of Contractor and any of its Affiliates or licensors, and the exclusive remedy of the Commission, with respect to any claims subject to indemnification.

### **35. COST OR PRICING DATA**

The Contractor shall submit to the Contracting Officer upon request cost or pricing data for any modification or proposed modification of this Contract, under the conditions described in this Paragraph and certify that, to the best of its knowledge and belief, the cost or pricing data submitted is current, accurate, and complete. The Contractor shall also certify that costs proposed hereunder are allocable, allowable, and reasonable in accordance with cost principles and practices under Part 31 of the Code of Federal Regulations and OMB Circular A-87 (2 C.F.R. Part 225).

The submittal of certified cost or pricing data shall not be required if the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The Contractor agrees that the terms "adequate price competition" and "established catalog or market prices of commercial items sold in substantial quantities to the general public" shall be determined by the Contracting Officer.

Cost or pricing data consists of all facts existing up to the time of agreement on price which prudent buyers and sellers would reasonably expect to have a significant effect on the price negotiations for the modification. The term "cost" specifically includes the elements of labor, material, overhead and profit incorporated in the Contractor's price. The definition of cost or pricing data embraces more than historical accounting data; it also includes, where applicable, such factors as Subcontractor, supplier and vendor quotations, nonrecurring costs, changes in construction methods, unit cost trends such as those associated with labor efficiency and any management decisions which could reasonably be expected to have a significant bearing on costs. Cost or

pricing data consists of all facts which can reasonably be expected to contribute to sound estimates of future costs as well as to the validity of costs already incurred. Cost or pricing data, being factual, is that type of information which can be verified. Because the certificate pertains to cost or pricing data, it does not make representations as to the accuracy of the Contractor's judgment on the estimated portion of future cost or projections. The certificate does, however, apply to the data upon which the Contractor's judgment is based.

If the Contractor or Subcontractor submits defective cost or pricing data, a reduction in Contract price shall be made by that amount deemed defective.

### **36. DRUG-FREE WORKPLACE**

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

### **37. PRIVACY ACT**

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements with the Privacy Act of 1974, 5 U.S.C. 552a.

### **38. OWNERSHIP OF WORKS AND INVENTIONS**

All documents, reports, recommendations, supporting documentation, works of authorship, inventions, improvements, data, processes, computer software programs and discoveries (hereafter called intellectual property or IP) conceived, created or furnished under this Agreement and paid for by the Commission shall be the sole property of the Commission, with no rights of ownership in Contractor or any Subconsultants/Subcontractors. This Agreement shall operate as an irrevocable assignment by Contractor and Subconsultants/Subcontractors to the Commission of the copyright in any IP created, published or furnished to the Commission under this Agreement including all rights thereunder in perpetuity. Contractor and Subconsultants/Subcontractors shall not patent any IP conceived, created or furnished under this Agreement. Contractor and Subconsultants/Subcontractors agree to execute and deliver all necessary documents requested by the Commission to affect the assignment of the IP to the Commission or registration or confirmation of the Commission's rights in or to IP under the terms of this Agreement. Contractor agrees to include the provision in all its subcontracts under this Agreement.

### **39. NOTICES AND COMMUNICATIONS**

All notices and other communications concerning this Contract shall be written in English, sequentially numbered, reference the Contract number assigned by the Commission, and be in Microsoft Office format, i.e. Word, Excel, or PDF. Notices and other communications may be delivered personally, by facsimile, or by regular, certified, or registered mail. Formal notices and communications are effective when received. Email notices and communications are not considered formal and shall not be considered official unless confirmed in writing by the designated Commission representative and delivered as noted above.

All formal communications shall be between the Commission's Project Manager and the Contractor's Project Manager.

### **40. BRAND NAME OR APPROVED EQUAL**

If a brand name, make or model number, or descriptive material is included in the specification without the phrase "or approved equal," it is implied. To be accepted as an approved equal, a vendor must provide specific supporting documentation that the product offering proposed as "or equal" meets or exceeds the salient physical and functional characteristics of the product specified in the solicitation. Approval as an "approved equal" must be in writing from the Contracting Officer. The Contractor will be responsible that the product performs equally with the specified brand-named product.

### **41. FEDERAL FUNDING AND INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The following provisions are required by the U.S. Department of Transportation (DOT), FTA or other public entities providing funding for this Contract, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, effective November 1, 2008, including amendments, modifications, or clarifications thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Commission requests which would cause the Commission to be in violation of the FTA terms and conditions.

### **42. CHANGES TO FEDERAL REQUIREMENTS**

Contractor shall at all times comply with all applicable regulations, policies, procedures and directives of the FTA, including without limitation those listed directly or by reference in the Master Agreement issued annually by FTA as entered into by the Commission 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.



**43. ACCESS TO THIRD PARTY CONTRACT RECORDS**

The Contractor shall maintain records, and the Contracting Officer, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor, involving transactions related to this Contract, for the purpose of making audit, examination, excerpts and transcriptions. The Commonwealth of Virginia and any other public entity providing funding for this Contract shall have the same rights as provided to the parties named herein.

The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the Subcontractor agrees that the Contracting Officer, the U.S. Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of such Subcontractor, involving transactions related to the subcontract, for the purpose of making audit, examination, excerpts and transcriptions. The Commonwealth of Virginia and any other public entity providing funding for this Contract shall have the same rights as provided to the parties named herein.

**44. DISPUTES** (applicable if over \$100,000)

Except as otherwise provided in this Contract, any dispute arising under or related to this Contract which is not disposed of by agreement shall be decided by the Director of Procurement. The Contractor must submit in writing its Request for Relief from any such dispute to the Director of Procurement within fifteen (15) days of when the Contractor knew or should have known of such dispute. The Request for Relief must contain all facts and supporting documents, if any, in support of the Contractor's position. The Contractor agrees that any facts or documents not referenced by it in the Request for Relief may not be subsequently raised or relied on by the Contractor in any way in any subsequent legal or administrative proceeding. The Director of Procurement shall reduce his/her decision to writing and deliver a copy to the Contractor within thirty (30) calendar days from the date of receipt of the Request for Relief. The decision of the Director of Procurement shall be final and binding unless determined by a court of competent jurisdiction to have been either fraudulent or arbitrary and capricious. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Director of Procurement's decision. Satisfaction of the dispute resolution process in accordance with this section shall be a condition precedent to the Contractor filing a subsequent legal or administrative action against the Commission.

**45. TERMINATION FOR DEFAULT** (applicable if over \$10,000)

The Commission may, subject to the provisions herein, by written notice of default to the Contractor, terminate the whole or any part of this Contract in any one of the following circumstances:

- A. The Contractor is in material breach of any provision of this Contract;
- B. The Contractor makes a general assignment of this Contract for the benefit of creditors;
- C. The Contractor repeatedly fails to make prompt payment to Subcontractors or for Material or labor; or
- D. The Contractor disregards laws, regulations, ordinances, the orders of a legal authority, or the instructions of the Commission; and the Contractor has not remedied the breach within ten (10) days after receiving written notice from the Commission.

In addition to its right to terminate the Contract for the reasons set forth above, if the Contractor fails to perform any of the other provisions of this Contract, or refuses or fails to perform the Work or any separable part, with the diligence that will ensure its completion in accordance with its terms or within the time specified in this Contract including any extension, and does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in writing), the Commission may, by written notice to the Contractor and with copy to surety, terminate the right to proceed with the Work (or the separable part of the Work) that has been delayed. In this event, the Contractor and its sureties shall be liable for any damage to the Commission resulting from the Contractor's refusal or failure to complete the Work within the specified time or for liquidated damages for delay, if liquidated damages are allowable by this Contract. This liability includes any increased costs to cover incurred by the Commission in completing the Work.

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 Commission's convenience pursuant to Section 46 of these General Conditions.

The rights and remedies of the Commission in this Article are in addition to any other rights and remedies provided by law or under this Contract.

In the event the Commission terminates this Contract in whole or in part, the Commission may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Commission for any excess costs for such similar supplies or services incurred by the Commission, including but not by way of limitation the costs of re-procurement; provided, that the Contractor



shall continue the performance of this Contract to the extent not terminated under the provisions of this article.

Except with respect to defaults of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the reasonable anticipation and control, and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in its sovereign capacity or the Commission in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; but in every case the failure to perform must be beyond the reasonable anticipation and control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the reasonable anticipation and control of both the Contractor and Subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to fulfill its contractual obligations.

If this Contract is terminated, title and possession of any completed or partially completed Work that has been paid for by the Commission, including any supplies, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and Contract rights that the Contractor has specifically produced or specifically acquired for the performance of this Contract, will pass to the Commission. The Contractor will protect and preserve such completed or partially completed Work and deliver the same to the Commission on reasonable demand.

**46. TERMINATION FOR CONVENIENCE** (applicable if over \$10,000)

The Commission may terminate this Contract in whole or in part at any time and in its sole discretion. The Commission shall deliver written Notice of Termination to the Contractor specifying the extent to which performance of the Work under the Contract is terminated, and the date upon which such termination becomes effective.

After receipt of a Notice of Termination, the Contractor shall promptly proceed with the following:

- A. Stop the Work on the date and to the extent specified in the Notice of Termination;
- B. Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work which is not terminated;
- C. Terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated;
- D. Assign to the Commission, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the rights, title and interests of the Contractor under the orders and subcontracts so terminated, in which case the Commission shall have the right, in its

discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

- E. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he/she may require; the approval or ratification shall be final for purposes of this article;
- F. Transfer title and possession of any completed or partially completed Work that has been paid for by the Commission, including any supplies, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and Contract rights that the Contractor has specifically produced or specifically acquired for the performance of this Contract;
- G. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Commission has or may acquire an interest; and
- H. Complete performance of such part of the Work not terminated by the Notice of Termination.

After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form and with certification prescribed by the Contracting Officer. Such claims shall be submitted promptly but in no event later than one (1) year from the effective date of termination. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may determine on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

In the event of the failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid the Contractor, the Contractor may submit a Request for Relief in accordance with Section 44. In any event, the total sum to be paid to the Contractor shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of Work not terminated. Costs claimed, agreed to, or determined shall be in accordance with the applicable Contract cost principles and procedures in OMB Circular A-87 (2 C.F.R. Part 225) in effect on the date of this Contract.

- I. Unless otherwise provided in this Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the Commission, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer,

photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

#### **47. FEDERAL ENERGY CONSERVATION REQUIREMENTS**

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.

#### **48. CIVIL RIGHTS REQUIREMENTS**

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2002d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Contract:
  - i. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. §2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- ii. Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §623 and Federal transit law at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- iii. Disabilities - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

In accordance with the Code of Virginia, the Contractor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purposes of meeting the requirements of this section.

#### **49. NONDISCRIMINATION UNDER FEDERAL GRANTS**

No otherwise qualified handicapped individual in the United States, as defined in Section 48(B.iii), shall solely by reason of his/her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

#### **50. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES**

Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this 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 Commission, the Contractor, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract.

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

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

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

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification under a Contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include this provision in each subcontract, and to require Subcontractors to do likewise. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

#### **52. SUSPENSION AND DEBARMENT** (applicable if over \$25,000)

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

#### **53. RECYCLED PRODUCTS** (EPA-selected items \$10,000 or more)

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**54. CLEAN AIR AND WATER** (applicable if over \$100,000)

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., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Commission and understands and agrees that the Commission will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**55. COMPLIANCE WITH FEDERAL LOBBYING POLICY** (applicable if over \$100,000)

In accordance with the certification submitted as part of its offer as accepted by the Commission, Contractor 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. Contractor shall obtain such certifications from its Subcontractors and maintain a record thereof.

**56. BUY AMERICA** (applicable if over \$150,000)

The Contractor agrees to comply with 49 U.S.C. 5323(j)/FAST Section 3011, and its implementing regulations at 49 C.F.R. Part 661, any amendments thereto, and any implementing guidance issued by FTA, in accordance with the certifications submitted with its offer as accepted by the Commission, or any approved modification thereto.

**57. SEISMIC SAFETY**

The Seismic Safety requirements apply only to Contracts for the construction of new buildings or additions to existing buildings. The Contractor agrees that any new building or addition to an existing building will be constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

**58. ADA ACCESS**

Plans for facility construction and/or facility alterations that are described in the Scope of Work detailed under this Contract have been designed with the intent of ensuring, to the maximum extent feasible, that the facility, or alterations thereof, shall be accessible to persons with disabilities including individuals who use mobility aids. The Contractor agrees to make each modification detailed in the project plans in a manner that assures that the area constructed or alterations to any



area within the facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Full compliance with the provisions of 49 CFR Part 37 is the intent of the facility owner and every aspect of this project, pursuant to this Contract, shall be construed as being consistent with this intent and compliant with Subpart C - Transportation Facilities with particular reference to Subsection 37.43 of FTA's regulations pursuant to the Americans with Disabilities Act of 1990 (ADA). If any aspect of the plans or specifications for this project appear to be inconsistent with Subsection 37.9 Standards for accessible transportation facilities or any guidance issued by the Access Board, it is essential that the Contractor notify the Project Manager designated by the Commission about any such concern as soon as practicable.

**59. CARGO PREFERENCE** (applicable for property transported by ocean vessel)

The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Commission (through the Contractor in the case of a Subcontractor's bill-of-lading.); and (c) to include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**60. FLY AMERICA** (applicable for foreign air transport or travel)

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their Contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**61. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT** (applicable if over \$100,000, including ferry vessels)

- A. **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 (40) 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.
- B. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (A) 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 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 (A) 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 (40) hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.
- C. **Withholding for unpaid wages and liquidated damages** - The Commission 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 (B) of this section.
- D. **Subcontracts** - The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (A) through (D) 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 (A) through (D) of this section.

**62. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS**

This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs:

[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)



Virginia's Small, Women and Minority Owned Business Certifications (SWaM/MBE/WBE) ARE NOT an acceptable substitution for FTA's required DBE certification.

Throughout the term of this Contract, Contractor shall have a continuing obligation to attain the DBE goal it committed to in its offer, as may be adjusted to reflect modifications to the Scope of Work from time to time. Failure to do so may result in the imposition of sanctions up to and including termination for default.

The Contractor shall submit the required Appendix A, Form E, Schedule of DBE Participation, on a monthly basis directly to the Commission's DBE Project Manager. As part of the flow down requirements, Contractor shall require that all DBE Subcontractors submit the required Appendix A Form E-2, DBE Subcontractor Monthly Report, directly to the Commission's DBE Project Manager on a monthly basis.

### **63. INTELLIGENT TRANSPORTATION SYSTEMS (ITS) REQUIREMENTS**

In accordance with the FTA National Architecture Policy on Transit Projects [Federal Register: January 8, 2001 (Vol. 66, No. 5, pp. 1455-1459)], which can be accessed at [http://ops.fhwa.dot.gov/its\\_arch\\_imp/policy\\_2.htm](http://ops.fhwa.dot.gov/its_arch_imp/policy_2.htm), (Policy), ITS projects funded by the Highway Trust Fund and the Mass Transit Fund must conform to a regional ITS architecture. An ITS project is defined as "any project that in whole or in part funds the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS User Services as defined in the National ITS Architecture." If the project includes ITS components that implement any of the defined User Services it is considered an "ITS Project."

The Commission has participated in the development of a regional ITS architecture, which is available at <http://local.iteris.com/viriniaitsarchitecture/index.html>.

If the solicitation documents identify this Contract as subject to the Policy, or if the Contractor has reason to believe that the Policy applies to its services hereunder, the Contractor shall be responsible, in consultation with the Commission, for determining what, if any work performed, or products supplied, under this Contract are subject to and conforming to all requirements of that Policy as applicable.

### **64. PROMPT PAYMENT**

1. The Contractor agrees to pay each Subcontractor under this prime Contract for satisfactory performance of its Contract no later than ten (10) days from the receipt of each payment the Contractor receives from the Commission. The Contractor agrees further to return retainer payments to each Subcontractor within thirty (30) days after the Subcontractor's work is satisfactorily completed and corresponding retainage is released by the Commission. Any delay or postponement of payment from the above referenced time

frame may occur only for good cause following written approval of the Commission. This clause applies to DBE and non-DBE Subcontractors.

2. If the Contractor fails or refuses to comply with the terms of this Program, as it is set forth in such Contractor's Contract, the Commission will issue an order stopping all or part of payment and/or work until satisfactory action has been taken. If the Contractor still fails to comply, the Commission may issue a termination for default proceeding.

### CONSTRUCTION CONTRACT TERMS

The following additional General Conditions apply to construction contracts.

#### 65. CONSTRUCTION DEFINITIONS AND ACRONYMS

**Change Notice** means a document issued by the Commission's Project Manager to the Contractor requesting a price proposal for specified changed work.

**Change Request** means a document issued by the Contractor to the Commission's Project Manager requesting that a Change Order be issued.

**Construction Manager** means the Commission's authorized representative who is charged with the overall administration of the Project.

**Construction Safety Officer** means the Commission's designated safety representative, responsible for overall safety compliance on the Project.

**Contractor's Safety Supervisor (CSS)**, means the Contractor's Work site safety officer. The "Alternate Safety Supervisor" is the person identified by the Contractor as the only individual who can act on behalf of the CSS, if the CSS is going to be absent from the Work site.

**Final Acceptance** means written notice by the Commission acknowledging that Contractor has fulfilled all of its obligations under the Contract and that the Commission has accepted the Work as of the date stated in the written notice. Final Acceptance is a condition precedent to Final Payment and defines commencement of the warranty period.

**Plans** includes the drawings, standard drawings, profiles, typical cross-sections, general cross-sections, elevations, diagrams, schedules, and details which show the locations, character, dimensions, and details of the Work, and include any documents referenced therein.

**Project Closeout** means the process by which the Contractor documents fulfillment of all obligations under the Contract. This process follows Substantial Completion and precedes Final Acceptance. "Punch List" means a list or lists of items to be furnished and or work to be performed by the Contractor to finally complete the Work

**Substantial Completion** means completion of the Work, or a designated portion thereof, to a point where the Commission certifies that the Work or the designated portions can be used for the purpose for which it was intended, whether or not minor portions of the work, or corrections to any portions of the Work, remain to be completed. Substantial Completion does not relieve the Contractor of its obligation to finally complete the Work in timely fashion. Items remaining to be completed after Substantial Completion shall be documented in a Punch List.

**Supplier** means any person, firm, partnership, corporation or other entity that provides Materials, including those fabricated to a special design, but usually provides no labor at the Work Site other than delivery.

**Work Site** means the area enclosed by the Limit of Work indicated on the Plans and the boundaries of local streets and public easements in which the Contractor is to perform under the Contract.

**Working Drawings** means the drawings prepared by the Contractor which depict the sequence, methods, Materials, details of construction or procedures for accomplishing a portion of the Work, including, but not necessarily limited to, falsework, shoring, concrete formwork and excavation plans.

## **66. PERFORMANCE BOND AND PAYMENT BOND**

Unless otherwise stated in the Special Provisions, the Contractor shall upon execution of the Contract, furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder, as required, in a form and with a surety listed in the Comptroller General's List of Approved Sureties (OMB Circular 570) that is authorized to do business in Virginia. Unless otherwise specified in the Contract Documents, the Performance Bond required hereunder shall be in the amount of 100% of the Contract value, including any adjustments thereto. The Payment Bond shall be in the amount of:

- A. Fifty percent (50%) of the Contract price if the Contract price is not more than \$1 million;
- B. Forty percent (40%) of the Contract price if the Contract price is more than \$1 million but not more than \$5 million; or
- C. The amount of \$2.5 million dollars if the Contract price is more than \$5 million.

The above bonds shall remain in full force and effect for the entire term of the Contract, including option terms or extensions if any. The Commission must give its prior written consent to any substitution of surety and maintains the right to reject a proposed substitution.

## **67. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS (applicable if over \$2,000)**

### **A. Minimum wages**

- i. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in

the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (A)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one (1) classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (A)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

ii.

- a. The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
  1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

2. The classification is utilized in the area by the construction industry; and
  3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  4. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.
  - c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.
  - d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a) (b) or (c) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- iii. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

- iv. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account, assets for the meeting of obligations under the plan or program.
- v.
  - a. The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
    - 1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
    - 2. The classification is utilized in the area by the construction industry; and
    - 3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
  - b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.
  - c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with

thirty (30) days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.

- d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a) (b) or (c) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

**B. Withholding** – The Commission 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 the Contractor under this Contract or any other Federal Contract with the same prime Contractor, or any other federally-assisted Contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Commission may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**C. Payrolls and basic records**

- i. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is



enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

ii.

- a. The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Commission for transmission to the FTA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors.
- b. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
  1. That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
  2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
  3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.



- c. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (C)(ii)(b) of this section.
- d. The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under Section 1001 of title 18 and Section 231 of title 31 of the United States Code.
- iii. The Contractor or Subcontractor shall make the records required under paragraph (C)(i) of this section available for inspection, copying, or transcription by authorized representatives of the FTA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**D. Apprentices and trainees**

- i. *Apprentices* - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is

performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- ii. *Trainees* - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of

the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- iii. *Equal employment opportunity* - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- E. **Compliance with Copeland Act requirements** - The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.
- F. **Subcontracts** - The Contractor or Subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the Contract clauses in 29 CFR 5.5.
- G. **Contract termination: debarment** - A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a Subcontractor as provided in 29 CFR 5.12.
- H. **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- I. **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- J. **Certification of eligibility**
  - i. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or

firm ineligible to be awarded Government Contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- ii. No part of this Contract shall be Subcontracted to any person or firm ineligible for award of a Government Contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## **68. QUALITY CONTROL/QUALITY ASSURANCE**

Materials furnished and Work performed by the Contractor shall conform to details shown on the Plans, and requirements given in the Technical Specifications.

The Contractor has primary responsibility for inspection and testing of all Materials required in the performance of this Contract. The Commission or its designee will independently perform check testing and periodic inspections to verify adequacy of Contractor's quality controls or for any other purpose and will bear the cost of such testing and inspection. The Commission reserves the right to reject Materials on the basis of the Commission's instituted inspection and testing.

Materials furnished or work performed which does not comply with Contract requirements will be considered non-conforming. Work considered non-conforming includes, but is not limited to:

- A. Work done or products incorporated beyond lines shown on the Plans or established by the Commission;
- B. Work done or products incorporated contrary to the Commission's instructions;
- C. Work changed or added without the Commission's written authorization;
- D. Work which includes incorporation of unapproved substitutions;
- E. Work performed or Materials furnished without the required testing, inspection or other conformance documentation or without required warranties;
- F. Work or Materials not in conformance with the Contract requirements.

When non-conforming work is discovered, the Commission may:

- i. Reject the Materials or workmanship or require its correction. Contractor shall satisfactorily correct rejected workmanship or satisfactorily replace rejected Materials at Contractor's own expense and promptly segregate and remove rejected Materials from the Work Site and properly dispose of them.
- ii. If Contractor fails to promptly replace rejected Materials or correct rejected workmanship, the Commission may,

- a. By Contract or otherwise, remove and replace such rejected Materials or workmanship, correct such Materials or workmanship, and dispose of all rejected Materials and workmanship so removed, charging the costs thereof to the Contractor, or
- b. Terminate the Contractor's right to proceed in accordance with General Condition 45, Termination for Default and Contractor and its sureties shall be liable for any costs and damages incurred.
- c. Accept the Materials or workmanship as suitable for the intended purpose, document the basis of such acceptance, and deduct an equitable amount from the Contract price for uncorrected work.

## **69. DIFFERING SITE CONDITIONS**

The Contractor shall immediately notify the Commission of any site conditions not reasonably discoverable in site inspections, i.e. hazardous materials; subsurface or latent physical conditions at the site differing materially from those indicated in the Contract, or unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

## **70. RETAINAGE**

The Commission shall pay the approved invoice, less five percent (5%) for retainage, except as provided under Section 70 of the General Conditions, Reduction of Retainage, within thirty (30) days after its receipt by the Commission. All retainage shall be held by the Commission until the time for final payment and the Commission has received consent of surety.

## **71. REDUCTION OF RETAINAGE**

The Commission shall withhold five percent (5%) retainage until the Contractor successfully achieves Substantial Completion on the Contract. Following Substantial Completion, the Commission may, at its sole discretion, elect to withhold retainage in an amount equal to twice the amount of the estimated value of all uncompleted Work including Warranty and pay the Contractor the balance of withheld retainage. The remainder of withheld retainage shall be paid after Final Completion. In the event that the Commission and the Contractor agree to have Punch List or other Work performed by parties' other than the Contractor, the cost of such work shall be subtracted from the amount of retainage due the Contractor.

## **72. COOPERATION WITH OTHER CONTRACTORS**

The Contractor shall confer with and coordinate through the Commission's Project Manager, this Contract's work with that of any other Commission Contractors as well any other entities or Contractors working in close proximity to or on the Work Site. At the Commission's Project

Manager's request, Contractor shall plan and execute its construction operations in a manner that will afford other Contractors access to the work site. The Contractor shall cooperate with others while on adjoining or overlapping work as requested. Such cooperation may include participating in a Beneficial Occupancy/Substantial Completion inspection before allowing the other Contractor access within the Contract limits.

### **73. VARIATION IN ESTIMATED QUANTITY**

If the quantity of a unit-priced item in this Contract is an estimated quantity and the actual quantity of the unit priced item varies by more than twenty-five percent (25%) above or below the estimated quantity, an equitable adjustment in the Contract price shall be made upon request of either party in accordance with General Condition 2, Changes. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity.

For an actual quantity exceeding 125% of the estimated quantity, the unit price shall be adjusted only for the quantity in excess of 125% of the estimated quantity. For an actual quantity, less than 75% of the estimated quantity, the unit price shall be adjusted for the total actual quantity of work performed. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time.

### **74. PROSECUTION AND PROGRESS OF WORK**

#### **A. License, Permits, Fees and Construction Notices**

Contractor shall be fully responsible for identifying, securing, and paying for all necessary licenses, fees, inspections, waivers, utility connection fees, building and other permits, and similar authorizations from governmental and utility authorities, required to fulfill the Contract requirements and Contractor's obligations.

#### **B. Standard Work Week**

Contractor shall comply with all applicable statutes, regulations, rules, ordinances, or other such measures which limit, restrict, or regulate the times of day and/or days of the week when any activities required by this Contract can be performed.

C. Contractor is responsible for applying for and obtaining any waivers or variances necessary for the Work at its own expense except for those specifically identified in this Contract as provided by the Commission.

D. Contractor's compliance with such restrictions shall not be the basis of any claim for extensions of time or additional compensation unless the Commission has expressly stated in this Contract that waivers, variances, or other authorizations shall apply to Contractor's activities, or specific portions thereof, and such waivers, variances, or other authorizations

are unavailable at the specified date or are subsequently withdrawn and such unavailability or withdrawal did not result from some act or omission by Contractor.

**E. Maintenance of Traffic**

Contractor shall be responsible for mitigating impact to traffic.

**F. Noise and Vibration Control**

Contractor shall comply with all applicable City (Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, or Virginia Beach, as appropriate), Commonwealth of Virginia, and federal laws, ordinances and regulations regarding control of noise and vibration. Contractor is responsible for applying for and obtaining any noise variances necessary for the Work at its own expense.

**75. FINAL PAYMENT AND RELEASE OF LIENS / CLAIMS**

Whenever the Contractor deems its obligations under the Contract have been fulfilled, the Contractor shall notify the PM in writing. Upon receipt of Contractor's notice of Final Completion, PM or his/her designee shall inspect the Work and within fifteen (15) days after receiving Contractor's notice of Final Completion either finally accept the Work or notify the Contractor in writing of Work yet to be performed on the Contract. Upon receipt of the Commission's written Final Acceptance of the Work, Contractor shall invoice the Commission for any amounts due under the Contract including retainage. The Commission shall pay Contractor within thirty (30) days after receipt of the approved final invoice.

Neither the final payment nor any remaining retainage shall become due until Contractor submits to the Commission (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied, (2) consent of surety to final payment, and (3) if required by the Commission, other data establishing payment or satisfaction of all obligations, such as receipts, releases, and waivers of liens arising out of the Contract, to the extent and in the form designated by the Commission.

If, after Substantial Completion of the entire Contract, Final Completion is materially delayed through no fault of Contractor or by the issuance of Change Orders affecting final completion, the Commission, without terminating the Contract, shall pay the balance due for that portion of the Work that is eligible for Final Completion. If the remaining balance of Work is less than the retainage stipulated in the Contract, and if bonds have been furnished as provided in the Contract, the written consent of the surety to the payment of the balance due for that portion of the Work eligible for Final Completion shall be submitted by Contractor prior to payment. Payment under this Article shall be made under the terms and conditions governing Final Payment, except that it shall not constitute a waiver of claims regarding any Work not eligible for Final Completion.



The making of final payment by the Commission shall constitute a waiver of claims by the Commission except those arising from: (1) liens, claims, security interests, or encumbrances arising out of the Contract and unsettled; (2) latent defects in the Work or failure of the Work to comply with the requirements of the Contract; (3) any misrepresentations or falsifications by the Contractor; or (4) terms of all warranties required by the Contract.

Acceptance of final payment by the Contractor, a Subcontractor, or a Supplier shall constitute a waiver of claims by the payee except those previously made in writing and identified by the payee as unsettled at the time of application for final payment. Such waivers shall be in addition to the waiver provided in this Section.

Notwithstanding the provisions herein, the risk of loss of all Materials incorporated in the Work shall remain with Contractor until Final Completion and Final Acceptance by the Commission, to the extent loss or damage was not caused by the Commission or its representatives.

Whenever the Contractor deems its obligations under the Contract have been fulfilled, the Contractor shall notify the PM in writing. Upon receipt of Contractor's notice of Final Completion, PM or his/her designee shall inspect the Work and within fifteen (15) days after receiving Contractor's notice of Final Completion either finally accept the Work or notify the Contractor in writing of Work yet to be performed on the Contract and any deliverables not yet accepted by the Commission. Upon receipt of the Commission's written Final Acceptance of the Work, Contractor shall invoice the Commission for any amounts due under the Contract including retainage. The Commission shall pay Contractor within thirty (30) days after receipt of the approved final invoice.

## **76. VETERANS EMPLOYMENT**

The Contractor shall give hiring preference, to the extent practicable, to veterans (as defined in Section 2108 of the Title 5 CFR) who have the requisite skills and abilities to perform the construction work required under the Contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee

## **77. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (applicable if over \$10,000)**

A. As used in these specifications:

- i. "Covered area" means the geographical area described in the solicitation from which this Contract resulted;



- ii. “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - iii. “Employer identification number” means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - iv. “Minority” includes:
    - a. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - b. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - c. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - d. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- B. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- C. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

- D. The Contractor shall implement the specific affirmative action standards provided in paragraphs G i through xvi of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal Procurement Contracting Officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- E. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- F. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- G. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
- i. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two (2) or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

- ii. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- iii. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- iv. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- v. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under Gii above.
- vi. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- vii. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work

at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- viii. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- ix. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one (1) month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- x. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- xi. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.
- xii. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- xiii. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- xiv. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- xv. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and suppliers, including circulation

of solicitations to minority and female Contractor associations and other business associations.

- xvi. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- H. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (Gi through xvi). The efforts of a Contractor association, joint Contractor-union, Contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Gi through xvi of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- I. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- J. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.
- K. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- L. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and

penalties shall be in violation of these specifications and Executive Order 11246, as amended.

- M. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph G of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- N. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- O. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**END OF GENERAL CONDITIONS**