

Purchase Order General Terms and Conditions

This purchase shall be governed by all applicable local, state (Commonwealth of Virginia), and federal laws and regulations, including but not limited to those of the Federal Transit Administration (FTA).

Shipping

1. All materials shall be suitably packed, marked, and shipped in accordance with this Purchase Order and requirements of common carriers.
2. Liability for damage or loss transfers from the seller to the Transportation District Commission of Hampton Roads ("Commission" or "Hampton Roads Transit" or "HRT") at the FOB point as designated herein

Terms and Conditions.

1. **Tax Exemption Status.** The Commission is exempt from the payment of any federal excise or any Virginia sales tax. The price must be net, exclusive of taxes. Tax exemption certificates will be furnished if requested.
2. **Changes and Termination.** The Commission may make changes to or terminate this Purchase Order. If changed, any difference in price or time for performance resulting from changes shall be equitably adjusted. If terminated, seller shall not incur new obligations after such notification and shall minimize further cost incurrence. Terminations shall be equitably adjusted.
3. **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 (i) defective Work not remedied; (ii) third party claims filed, or evidence reasonably indicating that a third party claim will be filed; (iii) failure of Contractor to make payments properly to Subcontractors, or for labor, materials, or equipment; (iv) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract price; (v) damage to the Commission or another Contractor; (vi) Contractor's failure to carry out the Work in accordance with the Contract; (vii) Contractor's failure to comply with any material provision or requirement of the Contract; (viii) Contractor's failure to pay the deductible portion of any insured claim filed by third parties against the Contractor; (ix) Contractor's failure to provide the required progress schedules and record drawings in accordance with the Contract; (x) any sums expended by the Commission in performing any of the Work under the Contract which the Contractor has failed to perform; or (xi) liquidated damages, if applicable.
4. **Governing Law and Choice of Venue.** This Contract will 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.
5. **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 will not be considered a precedent for future waivers.
6. **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 Contracting Officer 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 \$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 will be grounds for denial of such claim.
7. **Severance.** If any part of this 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.
8. **Insurance (applicable to services and construction).** The Contractor shall maintain, during the entire period of performance under this purchase order, a \$1,000,000 limit for liability coverage (Commercial Auto & Commercial General Liability), and (Virginia Statutory Limits) for Workers' Compensation, and carry any other specific insurance coverages applicable to the Work being performed, i.e., pollution cleanup and removal coverage if conducting environmentally hazardous operations, etc. Contractor agrees TDCHR will be listed as an additional insured, when specifically requested by the Contracting Officer.
9. **Onsite Safety and Security.** The Contractor shall be responsible for compliance with all Commission safety and security policies, safety rules, and regulations of the Federal Occupational Safety and Health Act of 1970 (OSHA), and all applicable laws, ordinances, and/or regulations of the Commonwealth of Virginia or locality where the Contract is being performed. Contractors or Subcontractors responsible for operating on track equipment, aerial lifts, or construction/electrical/welding equipment on Commission property shall provide a copy of their safety manual and a list of equipment that will be used onsite, including inspection and training records. A site-specific work plan and job hazard analysis will be provided for all Contractors working on Commission property that are responsible for conducting electrical tasks, construction activities, cutting and brazing, working at heights, or operating on track equipment. All requested documents, including a list of the Contractor's Project Manager and Safety representatives, shall be furnished to the Project Manager who will be responsible for submitting all documents to the Safety Department. Contractors and Subcontractors shall be required to

participate in an initial safety briefing with the Safety Department and the Project Manager prior to commencing any onsite work activity. The Safety/Security Departments and the Commission's Project Manager will conduct random inspection of the Work site to ensure adherence to all safety and security policies.

All Contractors and Subcontractors assigned to work on the Tide Light Rail right-of-way shall be required to complete track access training Level I. Contractors and Subcontractors who will be assigned to perform flagging responsibilities within the Tide Light Rail operating right-of-way must complete track access training Level I and II. All Contractors and Subcontractors who are responsible for operating any on-track equipment, including hi-rail vehicles on the Tide Light Rail operating right-of-way must complete track access training Level I, II, and III. All track access training examinations will be administered in English only. Please refer to Appendix H, Track Access and Allocation Procedure for further details regarding the track access program and training requirements.

Upon request, the Contractor or Subcontractor shall provide the Commission with a list of names and residential addresses for all onsite representatives or individuals who may require a security badge and/or key. The Contractor or Subcontractor is required to coordinate access issuance needs with the Project Manager, who is responsible for requesting access according to Commission policy. All Contractors must comply with the Commission visitor and parking policy. The Contractor shall be responsible for safely storing and securing all equipment while onsite to minimize any operational impacts. It will be the responsibility of the Contractor's Project Manager and the Commission's Project Manager to consult with the applicable department manager when equipment will be stored in the vehicle yards or mainline.

Upon request, the Contractor or Subcontractor shall provide accurate and updated results of Criminal Background checks generated on persons expected to perform work or other services at Commission properties.

All Contractors, Subcontractors, and onsite representatives working near moving traffic, on the Commission's property, or public roads, including the right-of-way areas and vehicle yards, are required to wear, at a minimum, an American National Standards Institute (ANSI)/International Safety Equipment Association (ISEA) Type R Performance Class 2 vest with an "X" on the rear of the vest and safety boots with ankle protection that are electrical hazard rated and meet the American Society for Testing and Materials (ASTM) F2412 and ASTM F2413 standards. The vest shall be an outer garment and shall not be covered by anything (i.e., articles of clothing, a carrying bag, etc.). Any substitutions such as Class 2 reflective t-shirts or reflective jackets must be pre-approved by the Commission's Safety Department.

Upon entry into any Commission facility, all Contractors, Subcontractors, and onsite representatives must understand and comply with all OSHA regulations, the Commission's policies, and the original equipment manufacturer (OEM) recommendation for Personal Protective Equipment (PPE) such as safety glasses, hard hats or bump caps, safety boots, and protective gloves. All Commission policies related to onsite safety and security will be provided to Contractors by the Project Manager. The Contractor must consult the Project Manager if clarification is required for any safety or security policy/procedure.

The Contractor shall provide a list of all chemicals that will be used in any of the Commission's facilities to the Project Manager. The Project Manager will be responsible for furnishing the list of

chemicals and corresponding Safety Data Sheets to the Safety Department and Director of Facilities for review and approval to use on property. The Contractor shall be responsible for obtaining and posting the Safety Data Sheets to the full extent required by law within their work area.

The Contractor shall be responsible for accident prevention and work site safety, and initiating, maintaining, and supervising all safety precautions and programs in connection with the Work, including the Work of its Subcontractors. This responsibility cannot be delegated to the Commission, Subcontractors, suppliers, or other persons. The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to the following:

- A. The public;
- B. Employees on the work site;
- C. Other persons who may be affected by the Work;
- D. The work materials and equipment to be incorporated therein, whether in storage on or off the work site, under the care, custody, or control of the Contractor or any of its Subcontractors; and
- E. Other property at the work site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction (if applicable).

If an accident or incident occurs that results in injury or property damage when working in any of the Commissions facilities, the Contractor must cease all work activities and immediately notify the Project Manager. If medical treatment is required, the Contractor is responsible for notifying 911 to seek immediate medical treatment. The Project Manager will be responsible to immediately notify the Safety Department and the Radio Communications Center or the Operations Control Center of any accident or incident involving the Contractor or Contractor's equipment. The Contractor shall comply with the safety investigation by furnishing any requested documents and participating in interview(s) with the Safety Department for an investigation to be completed. The Contractor and Project Manager will be responsible for implementing corrective actions in coordination with the Commission's Safety Department to prevent unsafe conditions.

The Contractor's Project Manager shall ensure compliance with all safety provisions of the Contract. Additional safety duties of the Contractor's Project Manager shall include the following:

- A. Stop any work site activity when, in their opinion, such stoppage is warranted for the protection of life and/or property;
- B. Review and direct immediate action to correct all substandard safety conditions brought to their attention;
- C. Actively participate in all supervisory safety meetings, including the discussion of observed unsafe work practices and corrective actions, and encouragement of safety suggestions from employees;
- D. Ensure that a "Safety Bulletin Board" is established and maintained to include all required postings and relevant safety posters/information; and
- E. Cooperate with the Commission's Project Manager and Safety representatives.

In accordance with the Contract, the Contractor shall indemnify HRT for fines, penalties, and corrective measures that result from acts of commission or omission of the Contractor, its

Subcontractors (if any), agents, employees, and assigns, and their failure to comply with such safety rules, laws, ordinances, and regulations.

In compliance with these safety and security provisions, the Contractor shall perform the following:

- A. Comply with the work stoppage orders, as directed by the Commission's Project Manager, the Contractor's Project Manager, the Commission's Chief Safety Officer and/or other Safety/Security representatives.
 - B. Plan and execute all work to comply with applicable federal, Commonwealth of Virginia, and local laws, regulations, industry standards, and Contract requirements with regard to safety, as well as the stated objectives and requirements contained in the Contractor's Safety Plan.
 - C. Conduct initial and annual orientation and training programs for employees which shall include, at a minimum, a review of hazards present at the work site, and the PPE and apparel the workers will be required to use or wear as specified under OSHA.
 - D. Ensure that all employees, Subcontractors, suppliers, vendors, and other visitors to the work site are properly informed of and comply with all applicable Contractor safety plans and programs, to include all PPE requirements.
 - E. Ensure that formal safety meetings are conducted on a weekly basis, maintaining documentation of topics discussed and attendees.
 - F. Ensure that any and all safety training is presented in English, as well as the predominant language of the majority of the applicable work force, if that is different from English.
 - G. Furnish and/or enforce the wearing and use of the following required PPE for all Contractor and Subcontractor personnel working on the work site:
 - i. Hard hats, meeting the requirements of ANSI/ISEA Z89.1-2014 (R2019), at all times;
 - ii. Work boots, meeting the requirements of ASTM F2412 and ASTM F2413, at all times;
 - iii. Eye protection with side shields, meeting the requirements of ANSI Z87, at all times;
 - iv. Warning vests made of high visibility material with reflectorized tape, meeting the minimum requirements of ANSI/ISEA-107, Type R Performance Class II, at all times; and
 - v. Ear protection, respirators, protective clothing and gloves, safety belts, safety harnesses, lifelines, and lanyards, and any and all other PPE, in accordance with OSHA's specific guidelines for work activities and conditions that necessitate such items for work safety.
- 10. 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, and 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 the following:

- A. All notices, orders, directives, administrative, or judicial proceedings, fines, penalties, fees, or charges imposed by any governmental agency with jurisdiction; and
- B. 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:

- A. Is not responsible for the hazardous materials under this Section; and
- B. 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 waste 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 waste. The Contractor shall determine whether any waste generated during the Work is hazardous waste and shall notify the Commission's Project Manager if the Contractor generates any hazardous wastes. The Commission reserves the right to a copy of the results of any tests conducted on the waste, 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 the Contractor.

- 11. 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. As such, 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, additional copies available upon request.

12. Warranty. Seller expressly warrants that all materials and Work conform to the specifications, drawings, samples, or other descriptions herein; shall be merchantable of good materials and workmanship; free from obvious and latent defect; and sufficient for purposes intended.

13. Inspection, Acceptance, and Payment. Acceptance of this Purchase Order by acknowledgement or by performance constitutes a binding Contract. The Contract will then be construed according to the laws of the Commonwealth of Virginia. All material and services are subject to inspection and acceptance. Payment will be made after acceptance and after receipt of a proper invoice; offered prompt payment discounts shall be calculated as of that date. Defective material or material not in conformance with specifications will be held for seller's instructions, at seller's risk, and will be returned at seller's expense.

14. 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 will be subject to review and approval by the Commission.

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

Nothing in this Section will 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.

15. 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 will be made to the extent:

A. That performance is, was, or would have been suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or

B. That an equitable adjustment is made or denied under another provision of this Contract.

16. 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) will 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 will be made also to the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment will 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 will 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.

17. 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/she 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 or Bid.

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. The 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.

18. 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 will 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.

19. **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 will be deemed an instance of default hereunder.

20. **Collusion.** If at any time it is 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.

21. **Indemnification**

A. **Indemnification for Claims of Intellectual Property Infringement.**

To the fullest extent possible, the Contractor shall 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: (i) 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, (ii) payment of any settlement agreed to by the Commission and approved by Contractor, and (iii) 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 shall not apply to the extent that the infringement or violation is caused by (i) functional or other specifications that were provided by or requested by the Commission; or (ii) 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 shall 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: (i) 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; (ii) payment of any settlement agreed to by the Commission and approved by Contractor, and (iii) 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. The Contractor shall 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.

22. **Cost or Pricing Data.** In accordance with 48 CFR Part 15, Subpart 15.4, and by submission of a bid or offer, the Contractor certifies that throughout performance of the resulting Contract and any modifications and extensions, all costs and pricing are in accordance with federal cost principles as shown in the Federal Acquisition Regulations (FAR) 15.403-4 and 15.403-5, and have been certified, or is required to be certified, in accordance with 15.406-2. This certificate states that, to the best of the Offeror's knowledge and belief, the cost or pricing data is accurate, complete, and current as of a date certain before Contract award. If applicable, exceptions to certified cost or pricing data are included in FAR 15.403-1(b).

23. **Drug-Free Workplace (applicable if over \$10,000).** In accordance with the Code of Virginia § 2.2-4312, currently in effect or as may be amended in the future, 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.

24. 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, currently in effect or as may be amended in the future.

25. Patents and Copyrights. Seller agrees to defend, protect, and save harmless Commission, its successors, assigns, customers, and users of these products against all suits at law or in equity, and from all damages, claims, and demands for actual or alleged infringements by reason of use of the products ordered hereby.

26. 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, the Contractor 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 shall be responsible for ensuring that the product performs equally with the specified brand-named product.

27. Registration and Use of Federal Employment Eligibility Verification Program (applicable if over \$50,000). For purposes of this Section, "E-Verify program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, § 403(a), as amended, operated by the U.S. Department of Homeland Security, or a successor work authorization program designated by the U.S. Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

In accordance with the Code of Virginia, § 2.2-4308.2, the Contractor shall agree as follows:

A. Any Contractor with more than an average of fifty (50) employees for the previous twelve (12) months entering into a Contract in excess of \$50,000 with the Commission to perform work or provide services pursuant to such Contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing Work pursuant to this Contract.

B. Any such Contractor who fails to comply with the provisions of subsection A shall be debarred from contracting with any agency of the Commonwealth for a period of up to one (1) year. Such debarment shall cease upon the Contractor's registration and participation in the E-Verify program.

28. Compliance with Federal, State, and Local Laws and Federal Immigration Law. Pursuant to § 2.2-4311.1 of the Code of Virginia, the Contractor does not, and shall not, during the performance of

this Contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

29. Compliance with State Law; Foreign and Domestic Businesses Authorized to Transact Business in the Commonwealth of Virginia. 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 Title 13.1 or Title 50 or otherwise 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 the Commission.

30. Incorporation of Federal Transit Administration Terms. The contractual provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200, currently in effect or as may be amended in the future), whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by the U.S. DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Commission requests which would cause the Commission to be in violation of the FTA terms and conditions.

31. Notice to Third Party Participants. Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and

Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

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

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

33. Access to Third Party Contract Records

A. **Record Retention.** The Contractor shall retain, and shall require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to this Contract, including, but not limited to data, documents, reports, statistics, sub-agreements, leases, Subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.

B. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 CFR § 200.334. The Contractor shall maintain all books, records,

accounts, and reports required under this Contractor for a period of not less than three (3) years after date of termination or expiration or final payment of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto.

- C. **Access to Records.** The Contractor agrees to provide sufficient access to the FTA and its Contractors, the Contracting Officer, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their duly authorized representatives, to inspect and audit records and information, including such records and information the Commission or its Third-Party Participants may regard as confidential or proprietary, related to the performance of this Contract, as reasonably may be required, in accordance with 2 CFR § 200.337.
- D. **Access to the Sites of Performance.** The Contractor also agrees to permit the same access to sites of performance under this Contract, as reasonably may be required, in accordance with 2 CFR § 200.337.
- E. **Commonwealth of Virginia.** 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.

34. 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 will 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 will 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 will 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.

35. 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 will 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 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 will 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 will 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 will 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 shall protect and preserve such completed or partially completed Work and deliver the same to the Commission on reasonable demand.

- 36. 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 will deliver a 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 will 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 will 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 the General Conditions. In any event, the total sum to be paid to the Contractor will 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 2 CFR Part 200 in effect on the date of this Contract.

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.

- 37. Energy Conservation.** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan for the Commonwealth of Virginia, which is issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

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

- 38. Civil Rights Laws and Regulations.** Upon entering into a Contract with the Commission, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

A. Federal Equal Employment Opportunity (EEO) Requirements

These include, but are not limited to, the following:

- i. Nondiscrimination in Federal Public Transportation Programs. In accordance with 49 U.S.C. § 5332, currently in effect or as may be amended in the future, covering projects, programs, and activities financed under 49 U.S.C Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), age, or disability, and prohibits discrimination in employment or business opportunity.
- ii. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

B. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25 prohibit discrimination on the basis of sex. In addition, the Contractor agrees to comply with any implementing requirements the FTA may issue.

C. Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 CFR Part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment

Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 CFR Part 1625, also prohibit employment discrimination against individuals aged 40 and over on the basis of age. In addition, the Contractor agrees to comply with any implementing requirements the FTA may issue.

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

The Commission is an Equal Opportunity Employer. As such, it agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Commission agrees to comply with the requirements of 49 U.S.C. § 5323(h)(3), currently in effect or as may be amended in the future, by not using any Federal assistance awarded by the FTA to support procurements using exclusionary or discriminatory specifications.

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

B. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 CFR Part 1625, the Age Discrimination Act of 1975, as amended, 42

U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 CFR Part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

In accordance with the Code of Virginia §§ 2.2-4310 – 4311, the Contractor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a disabled service veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the 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.

39. Equal Employment Opportunity. During the performance of this Contract, the Contractor agrees as follows:

A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

B. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for

employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- C. The Contractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- D. The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Commission's Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records, and accounts by the Commission and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Contractor's non-compliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Contractor shall include the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to

enter into such litigation to protect the interests of the United States.

- 40. Nondiscrimination Under Federal Grants.** No otherwise qualified handicapped individual in the United States, as defined herein, 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.
- 41. No Federal Government Commitment or Liability to Third Parties.** The Commission and the Contractor acknowledge and agree that, 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 the FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.
- 42. 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 CFR Part 31, apply to its actions pertaining to this Contract. Upon execution of the Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FTA assisted project for which this Contract Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by the FTA under the authority of 49 U.S.C. Chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.
- The Contractor agrees to include this provision in each subcontract financed in whole or in part with Federal assistance provided by the FTA, 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.
- 43. Suspension and Debarment (applicable if over \$25,000).** The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the U.S. OMB "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180. These provisions apply to each Contract at any tier of \$25,000 or more, and to each Contract at any tier for a federally required audit (irrespective of the Contract amount), and to each Contract at any tier that must

be approved by an FTA official irrespective of the Contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded Contract and are not presently declared by any Federal department or agency to be:

- A. Debarred from participation in any federally assisted Award;
- B. Suspended from participation in any federally assisted Award;
- C. Proposed for debarment from participation in any federally assisted Award;
- D. Declared ineligible to participate in any federally assisted Award;
- E. Voluntarily excluded from participation in any federally assisted Award; or
- F. Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Commission. If it is later determined by the Commission that the Bidder or Proposer knowingly rendered an erroneous certification, in addition to remedies available to the Commission, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder or Proposer agrees to comply with the requirements of 2 CFR Part 180, subpart C, as supplemented by 2 CFR Part 1200, while this offer is valid and throughout the period of any Contract that may arise from this offer. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

44. Notice to FTA and U.S. Inspector General of Fraud, Waste, and Abuse or Other Legal Matters (applicable if over \$25,000). If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the Commission, which will promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Commission is located. The Contractor must include an equivalent provision in its sub-agreements at every tier, for any agreement that is a "covered transaction" according to 2 CFR §§ 180.220 and 1200.220.

- A. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- B. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement between the FTA and the Commission, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- C. The Contractor must promptly notify the Commission, which will promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Commission is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This

responsibility occurs whether the Project is subject to this Agreement or another agreement with the Commission involving a principal, officer, employee, agent, or Third Party Participant of the Contractor. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.

45. Solid Wastes (EPA-selected items \$10,000 or more). The Commission is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

46. Clean Air Act and Federal Water Pollution Control Act (applicable if over \$150,000). The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 – 7671q), as amended and the Federal Water Pollution Control Act (33 U.S.C. § 1251 – 1387), as amended. Violations must be reported to the FTA and the Regional Office of the Environmental Protection Agency (EPA).

A. Clean Air Act

- i. 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.
- ii. The Contractor agrees to report each violation to the Commission and understands and agrees that the Commission will, in turn, report each violation a required to assure notification to the Commission, Federal Emergency Management Agency (FEMA), and the appropriate EPA Regional Office.
- iii. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the FTA.

B. Federal Water Pollution Control Act

- i. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
- ii. 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 the Commission, FEMA, and the appropriate EPA Regional Office.

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

47. Restrictions on Lobbying (applicable if over \$100,000)

A. Conditions on Use of Funds

- i. No appropriated funds may be expended by the Commission on a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ii. Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (i) of this section.
- iii. Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (i) of this section if paid for with appropriated funds.
- iv. Each person who requests or receives from an agency a commitment provided for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.
- v. Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

B. Certification and Disclosure

- i. Each person shall file a certification, such as a disclosure form, if required, with each submission that initiates agency consideration of such person for:
 - a. Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or

- b. An award of a federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

- ii. Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

- a. A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- b. A Federal loan or a commitment providing the United States to insure or guarantee a loan exceeding \$150,000,

Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (i) of this section.

- iii. Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (i) or (ii) of this section. An event that materially affects the accuracy of the information reported includes:

- a. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- b. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
- c. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

- iv. Any person who requests or receives from a person referred to in paragraphs (i) or (ii) of this section:

- a. A subcontract exceeding \$100,000 at any tier under a Federal contract;
- b. A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
- c. A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
- d. A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,

Shall file a certification, and a disclosure form, if required, to the next tier above.

- v. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (i) or (ii) of this section. That person shall forward all disclosure forms to the agency.

- vi. Any certification or disclosure form filed under paragraph (v) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails

to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

- vii. For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989, effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within thirty (30) days.
- viii. No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

48. Buy America and Build America, Buy America Act Requirements.

To the extent applicable to the performance of this Contract, the Contractor must agree to comply with 49 U.S.C. § 5323(j) and 49 CFR Part 661 and 2 CFR § 200.322 (Domestic preferences for procurements), which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by the FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7.

Except as the Federal Government determines otherwise in writing, the Contractor agrees to comply with FTA's U.S. domestic preference requirements and follow federal guidance, including:

- A. **Buy America.** The domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, "Buy America Requirements," 49 CFR Part 661, to the extent consistent with 49 U.S.C. § 5323(j).
- B. **Build America, Buy America Act.** Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget's "Buy America Preferences for Infrastructure Projects," 2 CFR Part 184. The Commission acknowledges that this Contract is neither a waiver of § 70914(a) nor a finding under § 70914(b). In accordance with 2 CFR § 184.2(a), the Contractor shall apply the standards of 49 CFR Part 661 to iron, steel, and manufactured products.

Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u), and 49 CFR § 661.11.

The Contractor must submit the appropriate Buy America certification to reflect that it will comply with such applicable law, regulations, guidance, and contractual obligation. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. More information may be found at the FTA's Buy America webpage at <https://www.transit.dot.gov/buyamerica>.

- 49. Access Requirements for Individuals with Disabilities.** The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which states the Federal policy that the elderly and persons with disabilities have the same rights as other persons to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also

agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Contractor agrees to comply with all applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

- A. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- B. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance," 49 CFR Part 27;
- C. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38;
- D. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 38;
- E. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- F. U.S. General Services Administration (GSA) regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
- G. U.S. Equal Employment Opportunity (EEO) Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- H. U.S. Federal Communications Commission (FCC) regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F;
- I. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194;
- J. FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 CFR Part 609; and
- K. Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

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

If applicable, 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. If any aspect of the plans or specifications for this project appear to be inconsistent with the above regulations 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.

50. Cargo Preference – Use of United States-Flag Vessels (applicable for Contracts involving equipment, materials, or commodities which may be transported by ocean vessel). The Contractor agrees as follows:

- A. To use privately owned United States-Flag commercial vessels to ship at least fifty percent (50%) of any equipment, materials, or commodities procured, contracted for, or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this Contract, and which may be transported by ocean vessels, shall be transported on privately owned United States-flag commercial vessels, if available pursuant to 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” and 46 CFR Part 381003B
- 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 46 CFR § 381.7(a)(1) shall be furnished to both the Commission (through the prime Contractor in the case of Subcontractor bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; 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.

51. Contract Work Hours and Safety Standards Act (applicable if over \$100,000). The Contractor shall comply with all federal laws, regulations, and requirements providing wages and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOT regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-Construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR Part 5.

52. Disadvantaged Business Enterprise Requirements

- A. This Contract is subject to the requirements of 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.” It is the policy of the Commission to practice nondiscrimination based on race, color, sex, or national origin in the award and administration of all DOT-assisted Contracts. The Commission’s DBE Program, as required by 49 CFR Part 26 and as approved by the DOT, is incorporated by reference in this agreement.
- B. The Contractor, Subrecipient or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure by the

Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Commission deems appropriate, which may include, but is not limited to the following:

- i. Withholding monthly progress payments;
- ii. Assessing sanctions;
- iii. Liquidated damages; and/or
- iv. Disqualifying the Contractor from future bidding as non-responsible under 49 CFR § 26.13(b).

C. The Contractor agrees to pay its Subcontractors performing Work related to this Contract for satisfactory performance of that Work within ten (10) days after Contractor’s receipt of payment for that Work 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 timeframe may occur only for good cause following written approval of the Commission. This clause applies to both DBE and non-DBE Subcontractors.

D. 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.

E. 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.

Virginia’s Small, Women and Minority Owned Business Certifications (SWaM/MBE/WBE) ARE NOT an acceptable substitution for the DBE requirement.

The Contractor shall submit the required Appendix A, Form E, Contractor Monthly Report of DBE Participation, on a monthly basis directly to the Commission’s DBE Program Manager. As part of the flow down requirements, the 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 Program Manager on a monthly basis.

53. Federally Imposed Tariffs. In the event that the President of the United States, the United States Congress Customs and Border Protection, or any other federal entity authorized by law, imposes an import duty or tariff (a “tariff”), on an imported good that results in an increase in Contractor’s costs to a level that renders performance under the Contract impracticable, the Commission may agree to an increase to the purchase priced for the affected good. No increase in purchase price may exceed twenty-five percent (25%) of the additional tariff imposed on the goods imported or purchased by the Contractor that are provided to the Commission under this Contract.

Prior to the Commission agreeing to a price increase pursuant to this Section, the Contractor must provide to the Commission, the following documentation, all of which must be satisfactory to the Commission:

- A. Evidence demonstrating: (i) the unit price paid by Contractor as of the date of award for the good or raw material used to furnish the goods to the Commission under this Contract, (ii) the applicability of the tariff to the specific good or raw material, and (iii) Contractor's payment of the increased import duty or tariff (either directly or through an increase to the cost paid for the good or raw material). The evidence submitted shall be sufficient in detail and content to allow the Commission to verify that the tariff is the cause of the price change.
- B. A certification signed by Contractor that it has made all reasonable efforts to obtain the good or the raw materials comprising the good procured by the Commission at a lower cost from a different source located outside of the country against which the tariff has been imposed.
- C. A certification signed by Contractor that the documentation, statements, and any other evidence it submits in support of its request for a price increase under this Section are true and correct, and that the Contractor would otherwise be unable to perform under this Contract without such price increase.
- D. As requested by the Commission, written instructions authorizing the Commission to request additional documentation from individuals or entities that provide the goods or the raw materials to verify the information submitted by the Contractor.

If the Commission agrees to a price increase pursuant to this Section, the parties further agree to add the following terms to this Contract:

- A. During the Term and for five (5) years after the termination of this Contract, Contractor shall retain, and the Commission and its authorized representatives shall have the right to audit, examine, and make copies of, all of Contractor's books, accounts, and other records related to this Contract and Contractor's costs for providing goods to the Commission, including, but not limited to those kept by the Contractor's agents, assigns, successors, and Subcontractors.
- B. Notwithstanding anything to the contrary in this Contract, the Commission shall have the right to terminate this Contract for the Commission's convenience upon fifteen (15) days' written notice to the Contractor.
- C. In the event the import duty or tariff is repealed or reduced prior to termination of this Contract, the increase in the Commission's Contract price shall be reduced by the same amount and adjusted accordingly.
- D. Any material misrepresentation of fact by Contractor relating in any way to the Commission's payment of additional sums due to tariffs shall be fraud against the taxpayers of the Commonwealth of Virginia and subject Contractor to treble damages pursuant to the Virginia Fraud Against Taxpayers Act.

54. Prohibition on Certain Telecommunications and Video Surveillance Services and Equipment. The Commission is prohibited from obligating or expending loan or grant funds to:

- A. Procure or obtain;
- B. Extend or renew a Contract to procure or obtain; or
- C. Enter into a Contract (or extend or renew a Contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, Section 889, covered telecommunications

equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
- iii. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The Contractor of Subcontractor shall not provide equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system in the performance of this Contract.

In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. See Public Law 115-232, section 889 for additional information. See also § 200.471.

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

- A. **Seat Belt Use.** The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-leased vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or the Commission.
- B. **Distracted Driving.** The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle the

Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Work performed under this Contract.

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

73. Trafficking in Persons. The Contractor agrees that it and its employees that participate in this Contract, may not:

- A. Engage in severe forms of trafficking in persons during the period of time that the Contract is in effect;
- B. Procure a commercial sex act during the period of time that the Contract is in effect; or
- C. Use forced labor in the performance of the Contract or subcontracts thereunder.

74. Federal Tax Liability and Recent Felony Convictions.

- A. The Contractor certifies that it:
 - i. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an

agreement with the authority responsible for collecting the tax liability; and

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

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

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

75. Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of "funding agreement" under 37 CFR § 401.2(a) and the Commission wishes to enter into a Contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Commission must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.