



Central Pennsylvania Transportation Authority

Service ■ Safety ■ Stewardship

## REQUEST FOR PROPOSALS

### GENERAL ENGINEERING SERVICES

The Central Pennsylvania Transportation Authority (dba rabbittransit) is soliciting proposals from qualified firms to provide general engineering services on a “task order” basis for the period of June 1, 2017 to May 31, 2019 with the option of three (3) 1-year successive renewals. The engineering firm selected will support the Authorities in conducting numerous small to medium design and construction projects during the contract period.

A complete Request for Proposals package is available by contacting Maria Elmiger at the Central Pennsylvania Transportation Authority at (717) 849-0709 or by email at [melmiger@rabbittransit.org](mailto:melmiger@rabbittransit.org). One unbound original and three (3) copies of the proposal are due at the offices of the Central Pennsylvania Transportation Authority no later than 4:00 pm on April 19, 2017.

Proposals will be evaluated, and a contract award made, based on the following criteria listed in their order of importance: (1) Firm Qualifications in areas relevant to the Authority; (2) Personnel Assigned to the Project; (3) Corporate philosophy and approach to projects.

Proposals and questions regarding this project should be directed to:

Dwight Huntington  
Planning and Procurement Manager  
Central Pennsylvania Transportation Authority  
415 N. Zarfoss Drive  
York, PA 17404  
Tel: (717)846-5562  
Fax: (717)848-4853  
Email: [dhuntington@rabbittransit.org](mailto:dhuntington@rabbittransit.org)

CPTA hereby notifies all proposers that in regard to any contract entered into pursuant to this RFP advertisement or solicitation, disadvantaged business enterprises (DBE's) will be afforded full opportunity to submit proposals in response and will not be subjected to discrimination on the basis of race, color, sex or national origin in consideration for an award. The Authorities reserves the right to postpone, accept or reject any and all proposals and to waive any informality in the RFP process as the Authorities deems in its own best interest. Proposals received after the specified closing time will be considered late proposals and will not be considered for award. Misdirected submittals will not be accepted.

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## **PART I – INSTRUCTIONS TO PROPOSERS**

## 1 SUBMISSION INSTRUCTIONS

### 1.1 Quantity

The proposer shall submit one (1) unbound original and three (3) copies of its proposal. Any attachments or backup material will only require a single copy. Proposers are strongly encouraged to submit an electronic copy of their proposal.

### 1.2 Due Date

In order to be considered, proposals must be received at the offices of the Central Pennsylvania Transportation Authority by 4:00 pm prevailing time on April 19, 2017. Failure of the U.S. Postal Service, or other delivery service to deliver proposal packages on time shall not be considered. Proposals should be clearly marked "**Engineering Services Proposal**" and delivered to:

Central Pennsylvania Transportation Authority  
Attention: Dwight Huntington,  
Planning and Procurement Manager  
415 N. Zarfoss Drive  
York, PA 17404  
Tel (717) 846-5562  
Fax (717) 846-1232  
Email: [dhuntington@rabbittransit.org](mailto:dhuntington@rabbittransit.org)

### 1.3 Proprietary Information

Any information contained in the proposal that the proposer considers proprietary must be clearly identified as such. The Central Pennsylvania Transportation Authority will respect requests for non-disclosure of proprietary information to the extent that information so restricted conforms to the Freedom of Information Acts, PA Right to Know Act, and Pennsylvania Sunshine Laws.

### 1.4 Forms

Contract Part IV of this solicitation contains certain forms that are mandatory in the proposal process. These forms must be executed and submitted in their exact format in order for the proposal to be considered responsive. Precise computer reproductions to expedite the proposal preparation process are acceptable.

## 2 QUESTIONS CONCERNING THE PROJECT

### 2.1 Questions and Clarifications

CPTA will not be holding a proposers conference. However, CPTA will answer all questions that are submitted in writing, including email, regarding the Request for Proposal. Written questions and clarifications regarding this RFP should be addressed to Central Pennsylvania Transportation Authority as per the contact information supplied in Sect. 1.2, above, and must be received, in writing, by Tuesday, March 28,

2017 at 2:00 PM. CPTA will respond in writing to all prospective bidders by Monday, April 3, 2017. Any questions or requests for clarifications received after the due date and time will NOT be responded to. Only written addenda will be binding. Oral answers will not be binding.

## **2.2 On-Site Interviews**

At this time, CPTA does not foresee the need for on-site interviews with prospective firms or finalists as part of the evaluation process. If, however, there is a change in this direction, representatives of interested firms should be prepared to meet with the evaluation committee during the week of May 1, 2017.

## **3 PROPOSAL FORMAT**

### **3.1 General**

The SCOPE OF SERVICES for this RFP has been left intentionally general in order to provide prospective proposers with the maximum flexibility to meet the requirements of the project. Proposers should feel free to submit any information they consider relevant to the evaluation of the project at hand, including samples of comparable work.

### **3.2 Minimum Requirements**

At a minimum, each proposal should contain the following elements:

- **Technical Proposal** - The general approach of the firm toward engagements of this nature. Information here should include such issues as cost containment, quality control and assurance, client communication, etc.
- **Prior Experience** - Proposers should outline the experience of their firm in conducting similar work in similar situations. Please restrict your descriptions to projects that were performed largely by individuals who will be assigned to this project. This element should provide a basic description of the client, how their situation is similar to the Authority, similarities in types of projects, regulatory structures, etc. Client reference contacts (name and phone number) must be included. A minimum of three representative references should be included.

Experience with projects financed with U.S. Department of Transportation and/or Pennsylvania Department of Transportation funds is a plus (particularly related to issues such as experience in the environmental assessment process, prevailing wage regulations for construction and the use of “multiple prime” contractors for construction). Areas of engineering expertise (ie: civil, mechanical, electrical, architectural, etc.) within the firm should also be outlined here. Experience of firms acting in essentially the same capacity for municipalities within our service area will also be viewed favorably.

- **Personnel** - Please include the names of professional, technical and management personnel who will be assigned to this contract. Briefly discuss their areas of

expertise and relevant background. Resumes may be included as an appendix to the proposal. **PLEASE DO NOT INCLUDE COST INFORMATION FOR EACH POSITION IN THIS SECTION.** This section should also include the individual who will be assigned as the primary contact between the firm and the Authority. The Authority expects that all professional staff assigned to its projects will have mandated licensure and will participate in ongoing professional development.

- Subcontractors - If the firm anticipates the use of subcontractors for any anticipated segment of this contract, please explain why. Identify the type of work to be subcontracted, and similar information for the subcontractor as is requested for the firm (prime experience, personnel, etc.). Contractual requirements for the firm are also required of the subcontractor. The firm should also indicate whether or not the subcontractor is a disadvantaged business enterprise and the source of their certification as such.
- Disadvantaged Business Enterprise - please identify any participation in the project by disadvantaged business enterprise.
- Price Proposal - should be submitted in the format contained in “Price Proposal Form” in Part IV. The information requested is required to support the reasonableness of the proposed price and distribution of expenses. Please note: The form attached is a basic tool to gather data. As this contract is general in nature, please enter the information that is typical for your firm in similar contracts. The Price Proposal information will not be used by the Committee as part of the evaluation.

**Price proposals must be enclosed in a separate, sealed envelope marked “Price Proposal”** within the submitted proposal.

The Price Proposal Form is meant to provide as thorough as set of positions/ disciplines as may be encountered in this type of solicitation. Proposers are asked to enter the information on the appropriate line for each discipline they have available. Not all descriptions will apply to all Proposers, and, some firms may include some tasks under a different, perhaps broader, description. In those cases we ask that Proposers select the most appropriate description line for their entry. Proposers may include comments on an accompanying document where they feel an explanation or further clarification is needed.

The Price Proposal should cover the first full year of the resulting contract. Please see Section 3.3 for a description of the manner in which unit prices will be adjusted in out-years of the contract.

### **3.3 Changes in Price**

- The prices and rates for personnel overhead and profit, as set forth in the Price Proposal Form, must be fixed for the first year of the contract, with the assumption that a contract will be awarded within sixty (60) days of proposal submission.

- The proposer must describe how they will calculate cost changes in the out years (years 2 - 5) of the contract. If a price index is to be used, the proposer must indicate which index is used, the source of that information and the baseline from which changes will be made. Under its funding agreements with Federal and State regulatory agencies, the Authority must be able to verify that prices charged are fair and reasonable. Please use the second page of the Price Proposal Form for this purpose or, supply additional information to provide your method in satisfying this requirement.

## **4 CONTRACT**

### **4.1 Award of Contract**

The Central Pennsylvania Transportation Authority anticipates award of a contract at its regularly scheduled Board of Directors meeting on May 18, 2017. A Notice to Proceed is anticipated within two (2) weeks of that award, following receipt of any necessary documentation from the firm.

### **4.2 Contract Type**

The contract for this project will be a cost-plus-fixed-fee task order type contract.

### **4.3 Task Order Contract**

The work of the successful firm will be based on discrete projects assigned by CPTA on a "task order" basis. Typically, CPTA staff and the prime contact for the Proposer will discuss the scope of work for a particular project. The Proposer will then be expected to submit specific cost estimates for their involvement in the agreed upon project, along with a proposed schedule of work. Authorization to work on specific projects will be based on written approval from the CPTA. Invoicing for services rendered must include detailed breakdowns of cost by specific project assigned.

## **5 EVALUATION METHODOLOGY**

### **5.1 Type of Procurement**

As dictated by Federal purchasing requirements, this solicitation shall follow provisions of the "Brooks Act" (40 U.S.C. 541) for the procurement of architectural and engineering services. The Brooks Act is a method of competitive negotiation that requires that:

- An offeror's qualifications be evaluated.
- Price be excluded as an evaluation factor.
- Negotiations be conducted with only the most qualified offeror; and
- Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the Authority.

### **5.2 Evaluation Criteria**

Proposals for this project shall be evaluated by a committee using the following rank-ordered criteria with their respective weights:

- Firm Qualifications - 45%
- Personnel Assigned to Project - 25%
- Corporate philosophy/Technique/ Approach to the Contract - 30%

### 5.3 Evaluation Committee

The Evaluation Committee for this solicitation will be made up of several staff members of the Authority. Each committee member will review all proposals individually and complete an evaluation form. Once all forms are completed and tabulated, the committee will convene to recommend a firm for the project to the CPTA Board of Directors. In the event this committee cannot reach a consensus selection, "finalist firms" may be invited to interview with the committee.

## 6 SUMMARY INFORMATION

### 6.1 Key Schedule Dates

March 13, 2017:	Request for proposals released
March 28, 2017:	All written questions due by 2:00 PM
April 3, 2017:	Response to questions issued
April 19, 2017:	Proposals due by 4:00 PM
Week of May 1, 2017	On-site Interviews (if applicable)
May 18, 2017:	Anticipated CPTA Board award

### 6.2 Proposer Checklist

In order to facilitate the submission of complete proposals, Proposers should consider the following items in preparation of their submissions (this checklist is not required to be submitted with the proposal):

- Request for proposals received and thoroughly read.
- Questions concerning the solicitation documents and project in general submitted to the CPTA by March 28, 2017 (optional).
- Proposal prepared including the following elements:
  - Description of the firm's understanding of the contract.
  - Technical proposal describing the firm's approach to the contract.
  - Experience statement including a description of at least three similar clients with reference contact information.
  - Description of personnel to be assigned to the project.
  - Description of subcontractors to be assigned to the project.
  - Description of involvement by disadvantaged business enterprise.

- Description of the corporate philosophy, technique, and approach to related work
- Price proposal submitted in a separate, sealed envelope within the overall proposal and marked as such.
- The following forms have been executed by an authorized official of the firm and included in the proposal:
  1. RECEIPT OF ADDENDA
  2. CERTIFICATION OF DEBARMENT & SUSPENSION
  3. CERTIFICATION OF DEBARMENT (LOWER TIER)
  4. CERTIFICATION REGARDING LOBBYING
  5. AFFIDAVIT OF NON-COLLUSION
  6. EQUAL EMPLOYMENT OPPORTUNITY
  7. DISADVANTAGED BUSINESS ENTERPRISE (DBE) CERTIFICATION
  8. PRICE PROPOSAL FORM – Separate, Sealed Envelope
- One unbound and three (3) copies of the technical proposal, along with single copies of any samples, submitted by 4:00PM, April 19, 2017.

## **PART II – SCOPE OF SERVICES**

## SCOPE OF SERVICES

### 7 PURPOSE

The purpose of this solicitation process is to select a firm to serve as the Engineer for the Central Pennsylvania Transportation Authority for a period of (2) two years with the option of three (3) 1-year extensions. Over the next 5 years, the CPTA foresees itself undertaking a number of smaller, discrete projects requiring engineering assistance in a variety of engineering disciplines. Some of these projects are described below.

### 8 BACKGROUND

The Central Pennsylvania Transportation Authority, operating under the marketing name "rabbittransit" operates fixed route, express, deviated fixed route and demand responsive services in York and Adams Counties, Pennsylvania. York County is located midway between Harrisburg, Pennsylvania and Baltimore, Maryland, straddling interstate 83, and Adams County is adjacent to the west of York County. Fixed route service may be characterized as small-urban, suburban and rural in their nature.

Additionally, CPTA also operates demand responsive services in the Pennsylvania Counties of: Cumberland, Columbia, Franklin, Montour, Northumberland, Perry, Snyder, and Union.

Operations are run from a central facility located at 415 N. Zarfoss Drive in West Manchester Township, approximately 1.5 miles from downtown York. This location is the primary maintenance facility for the rolling stock in York County. In addition to the York location, CPTA owns operating depots in: Gettysburg, Adams Co.; Chambersburg, Franklin Co.; Carlisle, Cumberland Co.; Newport, Perry Co.; Selinsgrove, Snyder Co.; Danville, Montour Co.; and, Elysburg, Northumberland Co. where vehicles are also maintained. In Hanover, York County we house six (6) vehicles in the Borough of Hanover in southwestern York County.

### 9 PROJECTS

Over the next five (5) years, the Authority is expecting to engage in several projects requiring engineering/professional design expertise which it would like to draw from the selected firm. These include, but are not limited to:

**9.1 Renovation to existing facilities** – Possible renovations to existing CPTA operating facilities in Counties outside York and Adams including building systems and improved functionality where the firm would provide technical support and bid/quotation support for modification and repairs to facility and/or facility systems. Estimated Construction Value: unknown.

**9.2 Shelter Work / Site Amenity** - Periodic design of small concrete pads to support bus passenger waiting shelters and other amenities. Estimated Construction Value: \$10,000 - \$20,000 each.

- 9.3 Building Systems** - Periodic work to upgrade building systems resulting from changed operations or obsolescence.
- 9.4 Survey Work** - On an occasional basis, as the Authority seeks to acquire real estate or to support design, the engineering firm will be called upon to conduct survey work.
- 9.5 General Support and Technical Assistance** – This task is on an as needed basis. Assistance could be related to land use, zoning, right-of-way/easements, review of building or related specifications. Estimated Cost: Variable.

All projects are dependent upon adequate funding. As community needs change, projects will be adjusted to support new or shifting priorities. Projects may be added or deleted from this list. Projects on this list are not guaranteed and is not intended to be all inclusive.

## 10 EXCLUSIONS

It is the general intent of the CPTA to work with its contracted engineering firm on all projects requiring such support. However, the following conditions may lead to the CPTA selecting alternative firms during the term of this contract:

- 10.1 Outside Area of Expertise** - If the CPTA concludes (in consultation with the Engineer) that a project to be undertaken lies outside the firm's area of expertise, it may elect to solicit project specific proposals for engineering services. Generally, we would ask the selected firm to assist us in developing solicitation documents and providing sources when this is the case, on a task order basis.
- 10.2 Regulatory Agency Requirement** - If a funding or regulatory agency requires that a competitive solicitation for engineering services is required, the CPTA will solicit proposals for a specific project. This may be required for significant (ie: \$1 Million + projects). However, the CPTA will work to gain agency approval of the incumbent engineer provided the work falls within their area of expertise.
- 10.3 Conflict of Interest** - If a planned project might place the selected firm in conflict with existing work, an alternate firm may be selected

## 11 GENERAL REQUIREMENTS OF THE FIRM

- 11.1 Authority Engineer** - The selected firm will act as the Authority's general engineer, advising the Board and staff on matters requiring the support of a professional, licensed engineer. This shall include the designation of one of the firm's engineering employees as "CPTA Engineer" to act as the primary point of contact between the Authority and the Firm.
- 11.2 Areas of Expertise** - The selected firm should have in-house expertise in the areas of Civil, Mechanical and Electrical Engineering, as well as supporting functions such as surveying, drafting, specification development and construction management. Expertise in such areas as Architecture, Landscape Design, Interior Design and

Environmental Design/Remediation may be required from time to time, but infrequently. As a result, these may be subcontracted if necessary

- 11.3 Conceptual Design** - When presented with an “engineering problem” by the Authority, the Engineer should be able to develop a broad approach to its solution. The Engineer should be able to describe their solutions in “layman’s” terms to Authority staff and Board members.
- 11.4 Scoping and Cost Estimation** - Following 5.3 above, the Engineer should be able to develop project scopes and budgets (including engineering and deployment budgets) sufficient for planning and budgeting
- 11.5 Design** - The Engineer should be able to develop sufficiently detailed design documents (drawings, specifications, etc.) to allow the Authority to solicit competitive bids from contractors for work specified
- 11.6 Procurement Support** - The Engineer shall be required to support the Authority in selecting contractors for work to be completed, requiring familiarity with standards of performance. For construction-type projects, the CPTA typically operates in a “low bid” environment, and is governed by State and Federal prevailing wage requirements, as well as the Commonwealth of Pennsylvania’s “multiple prime” requirement for public works projects
- 11.7 Regulatory Support** - Whenever a project requires regulatory approval (ie: zoning, environmental, planning, etc.), the Engineer will be expected to supply staff to assist the Authority in making presentations and submittals to regulatory agencies, such as municipalities
- 11.8 Implementation Support** - The Engineer should be able to support the Authority in determining that contract work meets the requirements originally solicited. This support can range from simple inspection of completed projects, to elaborate “construction management” services for larger scale jobs.
- 11.9 Presentation Support** - When a project warrants formal presentation to individuals or groups (ie: Board of Directors, general public, elected officials), the Engineer shall provide individual(s) and supporting materials (ie: audiovisuals) to support professional presentations.

## **12 REPORTING AND INVOICING**

On a monthly basis, whenever work is conducted in accordance with this contract, the Engineer will submit a status report with its invoice materials. Reporting and invoicing shall be sufficiently detailed to allow the Authority to assign costs to specific projects and to provide adequate project management reporting to its Board of Directors and regulators.

## PART III – GENERAL CONDITIONS

## Award of Contract

The award of contract will be made to the responsive and responsible proposer ranked highest in the evaluation process described in the Instructions to Bidders. The determination of the successful bidder will balance, responsiveness to the specifications, suitability of the services offered and experience of the proposer in providing the goods and services required with weightings in accordance with the Instructions to Bidders. For Architectural or Engineering Services, there will be no consideration of price in the review.

The CPTA reserves the right to accept or reject any or all bids. The bid may be awarded without any further discussion.

All contractors submitting bids or proposals will be notified in writing as to the outcome of all bids.

## Bid Due Date

Sealed proposals must be delivered to the Central Pennsylvania Transportation Authority, 415 N. Zarfoss Drive, York, PA 17404 no later than the date and time stated in the solicitation advertisement. Bids or proposals received after this date and time shall be considered unresponsive and will not be considered.

## Bid Forms

Bids must be submitted on forms provided. Bidders may replicate the forms (ie: for the purpose of word processing the entire document) but replicated forms must exactly match the originals. Replicas that do not match the original form will result in the submission being found non-responsive and rejected.

## Changes

- A. The Central Pennsylvania Transportation Authority reserves the right to postpone bid opening for its own convenience and to reject any or all bids. Bid may be awarded without further discussion or notification of bidders.
- B. Changes to the specifications will be made by addendum.
- C. Prime contractors may make appointments to discuss these specifications. This, however, does not relieve them from reducing the request to writing and providing full written documentation for the request.
- D. Change orders once a contract is issued must be approved by the CPTA in writing.

## Changed Conditions of Performance (Including Litigation)

The bidder/proposer agrees to notify the CPTA immediately of any change in law, conditions, or any other event that may significantly affect the bidder/proposer's ability to perform the Project in accordance with the terms of the Contract. In addition, the bidder/proposer agrees to notify the CPTA immediately of any decision pertaining to the bidder/proposer's conduct of litigation that may affect the CPTA's interests in the Project. Before the bidder/proposer may name the CPTA as a party to litigation for any reason, in any forum, the bidder/proposer agrees to inform the CPTA.

Disputes under the Contract shall be resolved by mediation, arbitration, or administrative process. In the event of a legal dispute under this contract, CPTA and the Contractor agree that proper venue for purposes of litigation shall be the Court of Common Pleas in York County, Pennsylvania.

#### Conditional Bids

Conditional Bids, or those which take exceptions to the specifications, will be considered non-responsive and will be rejected.

#### Contract Documents

This RFP, including the General Conditions and Specifications, with notes or changes made thereon before the notice to proceed, are the documents forming the Contract. The Contractor shall only be authorized to begin incurring costs on the project upon receipt of a properly executed "Notice to Proceed" from the CPTA.

#### Contractual Obligation of the Bidder/Proposer

Each proposal shall be submitted with the understanding that the acceptance in writing by the CPTA of the offer to supply goods and services described therein shall constitute a contract between the bidder and the purchaser, which shall bind the bidder on his or her part to furnish and deliver at the bid price in accordance with the conditions of said accepted proposal and specifications.

#### Intent of Procurement Document

The intent of this procurement document is to require the bidder to deliver the products and/or services of the type described.

All goods purchased under this procurement shall be new. In no case will used, reconditioned or obsolete parts be accepted.

The technical specifications or scope of services included in this procurement indicate the minimum requirements unless otherwise indicated.

Only services provided by suppliers who have demonstrated experience in this field will be considered. The products offered shall be of high grade. The proposal shall include a complete description of each product or service to be furnished.

This document define the terms and conditions that must be met to satisfy all State and Federal requirements.

#### Errors and Omissions

The supplier will not be allowed to take advantage of any errors or omissions in the specification. Full instructions to correct errors or omissions will be given to the supplier, should errors or omissions be called to the attention of the CPTA.

#### False or Fraudulent Statements and Claims

The bidder/proposer recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. Sections 3801 et seq. and U.S. Department of

Transportation Regulations, "Program Fraud Civil Remedies," 49 CFR Part 31 apply to its actions pertaining to the Contract. Accordingly, by signing the Contract submissions, the bidder/proposer certifies or affirms the truthfulness and accuracy of any statement it has made, it make, or it may make pertaining to the project. In addition to other penalties that may be applicable, the bidder/proposer also acknowledges that if it makes 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, as amended, on the bidder/proposer to the extent the Federal Government deems appropriate.

#### Familiarity with Bidding Documents

Each bidder/proposer shall thoroughly examine and be familiar with all the contract documents, including but not limited to the legal and procedural documents, bid conditions, specifications and addenda, if any, as well as any related requirements of these bid conditions and specifications. The submission of a proposal shall constitute an acknowledgement that the bidder/proposer has thoroughly examined and is familiar with the contract documents and specifications in every detail.

#### Financial Assistance Grant

The products and/or services described in this Request for Proposals are to be purchased with the assistance of monies from the Pennsylvania Department of Transportation (PennDoT) and/or the Federal Transit Administration (FTA) of the U.S. Department of Transportation (USDOT). The successful proposer and all subcontractors will be required to comply with all terms and conditions prescribed for third party contracts in a grant contract between the Commonwealth of Pennsylvania, the Federal Transit Administration and the CPTA.

#### Indemnification

The bidder/proposer agrees to indemnify, defend and hold the CPTA harmless from any and all claims and lawsuits by third parties (including, but not limited to, employees and agents of the CPTA and the bidder/proposer), including the payment of all damages, expenses, penalties, fines, costs, royalties, charges and attorneys' fees incurred by the CPTA, whether these claims or lawsuits are based upon breach of warranty, strict liability in tort, any failure by the bidder/proposer to comply with laws pertaining to the Contract Documents, the use of patent appliances, products or processes or any breach by the bidder/proposer of any of its other duties, representations, covenants, or other agreements in the Contract Documents. The bidder/proposer will defend al suits brought upon all such claims and lawsuits and shall pay all costs and expenses incidental thereto, but the CPTA shall have the right, at its option, to participate at its own expense in the defense of any suit, without relieving the bidder/proposer of any of its obligations hereunder.

#### Insurance Requirements

The bidder/proposer shall obtain and thereafter maintain and pay the premiums for insurance of the types and the limits that it deems sufficient for its protection. The CPTA

will be endorsed as an Additional Insured by the bidder/proposer with respect to the Contract, including Employer's Liability. Copies of insurance are to be submitted to the CPTA prior to a notice to proceed being issued. In any event, the bidder/proposer shall maintain and pay the premiums for insurance of the types and limits of not less than the following:

- (1) Workers Compensation and Employers Liability Insurance endorsed with a Broad Form All States Coverage, which shall cover the bidder/proposer's employees engaged in the performance of the work.
- (2) Comprehensive General Liability Insurance Coverage with limits not less than required by Umbrella Insurance (4) below and covering at least:
  - (a) Operations - Premises Liability
  - (b) Independent Contractors Liability
  - (c) Broad Form Contractual Liability covering the Contractors obligations.
  - (d) Products Liability
  - (e) Completed Operations Liability
  - (f) Personal Injury Liability including claims arising from employees of the Contractor
  - (g) Broad Form Property Damage Liability
- (3) Comprehensive Automobile Liability Insurance covering all owned, hired and non-owned automobiles required by Umbrella Liability Insurance (4) below. (2) and (3) shall name the CPTA as additional insureds.
- (4) Excess and Umbrella Liability Insurance in excess of the above of not less than \$2,000,000.

All such insurance as indicated above shall be provided by insurance companies having a Best's rating of not less than A+XII, as shown in the current issue of Best's Key Rating Guide - Property-Casualty.

Proof of insurance shall be submitted to the CPTA prior to issuance of a Notice to Proceed.

The bidder/proposer and all of its insurers shall waive all rights of recovery or subrogation against the CPTA and its insurance companies.

## Protest Procedures

### 1. PURPOSE

The policies and procedures governing the receipt and resolution of protests in connection with an Invitation for Bid (IFB) or Request for Proposal (RFP) are outlined below. This procedure is applicable to all IFBs or RFPs

### 2. DEFINITIONS

"Interested Party" means any bidders/proposers.

"days" means business days.

"Filed" means the date of receipt by The Office of the Executive Director or his/her designee.

"Federal/State Law or Regulation" means any valid requirement imposed by Federal, State, or other Statute or regulation.

"Presumptive Contractor" means the bidder/proposer that is in line for award of the contract in the event that the protest is denied.

"Protestant" is an Interested Party who is aggrieved in connection with the solicitation or award of a contract and who files a protest.

### 3. TYPES OF PROTESTS/ TIME LIMITS

Pre-Bid/Proposal Protest is based upon alleged restrictive specifications or alleged improprieties in CPTA's procurement process. A Protestant must file a pre-bid/proposal protest no later than five (5) days prior to bid opening date by 4:30 p.m. York, Pennsylvania prevailing time.

Pre-Award Protest is based upon alleged improprieties of a Bid/Proposal. A Protestant must file a pre-award protest no later than five (5) days after the Protestant knows or should have known of the facts giving rise thereto by 4:30 p.m. York, Pennsylvania prevailing time.

Post-Award Protest is based upon the award of a contract. A Protestant must file a post-award protest no later than five (5) days after the notification to the unsuccessful firms of CPTA's intent to award, or no later than five (5) days after an unsuccessful firm becomes aware of CPTA's intent to award a contract, whichever comes first, by 4:30 p.m. York, Pennsylvania prevailing time.

### 4. CONTENTS OF PROTEST

Protests must be in writing, and filed directly with the Office of the Executive Director at:

Executive Director  
Central Pennsylvania Transportation Authority  
415 N. Zarfoss Drive  
York, PA 17404

and must contain the following information:

- a. The name, address and telephone number of the Protestant; and
- b. Identity of the IFB or RFP (by number and description); and
- c. A detailed factual statement of the grounds for protest; and
- d. The desired relief, action or ruling.

## 5. ACTION BY CPTA

### Procurement Process Status

Upon timely receipt of a protest, CPTA will delay the opening of bids until after resolution of the protest for protests filed prior to the bid opening, or withhold award until after resolution of the protest for protests filed after bid opening. However, CPTA may open bids or award a contract whenever CPTA, at its sole discretion, determines that:

- a. The items or work to be procured are urgently required; or
- b. Delivery or performance will be unduly delayed by failure to make the award promptly; or
- c. Failure to make prompt award will otherwise cause undue harm to CPTA or a funding source.

If the protest is filed before the award of the contract, CPTA will advise the Presumptive Contractor of the pending protest.

If deemed appropriate, CPTA may conduct an informal conference on the merits of the protest with all Interested Parties invited to attend.

### Response to the Protest

CPTA's Executive Director will respond in detail to each substantive issue raised in the protest within a reasonable time after the protest is filed. CPTA's response shall address only the issues raised originally by the Protester. When, on its face a protest does not state a valid basis for protest or is untimely, the Executive Director may summarily dismiss the protest without requiring a detailed response.

### Rebuttal to CPTA Response

The Protester may submit a written rebuttal to CPTA's response, addressed to the Executive Director, but must do so within five (5) days after receipt of the original CPTA response. CPTA will not address new issues raised in the rebuttal. After receipt of the Protester's rebuttal, the Executive Director will review the protest and notify the Protester of his/her final decision.

### Request for Additional Information

Failure of the Protester to comply with a request for information as specified by CPTA may result in determination of the protest without consideration of the additional information if subsequently produced. If any Interested Party requests information from another Interested Party, the request shall be made to CPTA's Executive Director, and, if CPTA so directs, shall be complied with by the other party within five (5) days.

### Request for Reconsideration

If data becomes available that was not previously known, or there has been an error of law, a Protester may submit a request for reconsideration of the protest. CPTA's Executive Director will again review the protest considering all currently available information. The

Executive Directors determination will be made within a reasonable period of time, and his/her decision will be considered final.

#### Decision

Upon review and consideration of all relevant information the determination as issued by CPTA will be final.

#### 6. CONFIDENTIALITY OF PROTEST

Material submitted by a Protestant will not be withheld from any Interested Party, except to the extent that the withholding of information is permitted or required by law or regulation. If the Protestant considers that the protest contains proprietary material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest submission and the allegedly protected information must be so identified whenever it appears.

#### 7. FEDERAL TRANSIT ADMINISTRATION (FTA) INVOLVEMENT

Where procurements are funded by the FTA, CPTA will notify the Regional Office of any know or pending protests. CPTA will notify FTA again within five (5) business days from receipt of CPTA's final decision, the Protestant may file a protest with the FTA only where the protest alleges that CPTA failed to have or failed to adhere to its protest procedures or there was a violation of Federal Law or Regulation. Any protest to the FTA must be filed in accordance with FTA Circular 4220.1F.

#### Term of Payment

The Contractor shall submit an invoice for all contracted goods and services on a monthly basis. Payment by the Central Pennsylvania Transportation Authority will be made within thirty (30) days of receipt of an approved invoice.

## **PART IV – REQUIRED FORMS AND CERTIFICATIONS**

1. RECEIPT OF ADDENDA
2. CERTIFICATION OF DEBARMENT & SUSPENSION
3. CERTIFICATION OF DEBARMENT (LOWER TIER)
4. CERTIFICATION REGARDING LOBBYING
5. AFFIDAVIT OF NON-COLLUSION
6. EQUAL EMPLOYMENT OPPORTUNITY
7. DISADVANTAGED BUSINESS ENTERPRISE (DBE) CERTIFICATION
8. PRICE PROPOSAL FORM

**ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA**

**REQUEST FOR PROPOSALS – GENERAL ENGINEERING SERVICES**

The undersigned hereby acknowledges receipt of the following addenda to the above referenced RFP:

Addendum Number: \_\_\_\_\_, dated: \_\_\_\_\_

\_\_\_\_\_  
Name of Individual, Partnership or Corporation:

\_\_\_\_\_  
Address:

\_\_\_\_\_  
Name of Authorized Person:

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Title of Authorized Person:

\_\_\_\_\_  
Date:

*Failure to submit this form in a properly executed manner will result in the bid/proposal being found non-responsive and rejected.*

**CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

The proposer hereby certifies to the best of its knowledge and belief, that its principals, and the principals of its subcontractors:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by the Commonwealth, the Federal Government or other states.
- (2) Have not within the preceding three-year period been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection which obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
- (4) Have not within the preceding three-year period had one or more public transactions (Federal, State or local) terminated by cause or default.

THE PROPOSER CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Firm: \_\_\_\_\_

*Failure to submit this form in a properly executed manner will result in the bid/proposal being found non-responsive and rejected.*

**CERTIFICATION OF LOWER TIER PARTICIPANTS REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBLE AND VOLUNTARY EXCLUSION**

The Lower Tier Participant (potential third party Bidder, or potential subcontractor under a major third party contract), \_\_\_\_\_, certifies, by submission of this proposal, that neither it nor its principals are presently debarred suspended, proposed for Debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(If the Lower Tier Participant is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

The lower tier participant, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understand that the provisions of 31 U.S.C. sections 3801 et seq. Are applicable thereto.

\_\_\_\_\_  
Signature and Title of Authorized Official

The undersigned chief legal counsel for the \_\_\_\_\_ hereby certifies that the \_\_\_\_\_ has authority under state and local law to comply with the subject assurances and the certification above has been legally made.

\_\_\_\_\_  
Signature of Applicant's Attorney

\_\_\_\_\_  
Date

*Failure to submit this form in a properly executed manner will result in the bid/proposal being found non-responsive and rejected.*

**CERTIFICATION REGARDING LOBBYING**

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. [Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

*Failure to submit this form in a properly executed manner will result in the bid/proposal being found non-responsive and rejected.*



**AFFIDAVIT OF NON-COLLUSION**

I hereby swear (or affirm) under the penalty of perjury:

- (1) That I am the bidder (if the bidder is an individual), a partner in the bidder (if the bidder is a partnership), or an officer or employee of the bidder having corporation authority to sign on its behalf (if the bidder is a corporation);
- (2) That the attached bid or bids have been arrived at by the bidder independently and have been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the invitation to bid designed to limit independent bidding or competition;
- (3) That the contents of the bid or bids have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid or bids, and will not be communicated to any such person prior to the official opening of the bid or bids, and;
- (4) That I am not on the Comptroller General's List of Ineligible Contractors.
- (5) That I have fully informed myself regarding the accuracy of the statements made in the affidavit.

Signed: \_\_\_\_\_

Firm: \_\_\_\_\_

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_ 20\_\_\_\_

Bidders Employer Identification Nbr. \_\_\_\_\_  
(As used on employer's quarterly Federal Tax Return)

*Failure to submit this form in a properly executed manner will result in the bid/proposal being found non-responsive and rejected.*

## **EQUAL EMPLOYMENT OPPORTUNITY – COMMONWEALTH REQUIREMENTS**

1. Contractor shall not discriminate against any employee, applicant for employment, independent contractor or any other person because of race, color, religious creed, ancestry, national origin, age, sex, handicap, or disability.
2. Contractor shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, sex, handicap, or disability. Such affirmative action shall include, but is not 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.
3. Contractor shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, a notice to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.
4. Contractor shall in advertisements or requests for employment placed by it or on its behalf state all qualified applicants will receive consideration for employment without regard to race, color religious creed, ancestry, national origin, age, sex, handicap, or disability.
5. Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this non-discrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.
6. It shall be no defense to a finding of noncompliance with the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause that Contractor has delegated some of its employment practices to any union, training program or other source of recruitment, which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.
7. Where the practices of a union or of any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under the Contractor Compliance Regulations issued by Pennsylvania Human Relations Commission, or this non-discrimination clause. Contractor shall then employ and fill vacancies through other non-discriminatory employment procedures.
8. Contractor shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, 16 PA Code Chapter 49 and with all laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's non-compliance with the non-discrimination clause of this contract or with any such laws, this contract may, after hearing and adjudication, be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further Commonwealth contracts, and such other sanctions may be imposed and remedies invoked as provided by the Contract Compliance Regulations.

**EQUAL EMPLOYMENT OPPORTUNITY - COMMONWEALTH REQUIREMENTS  
(Continued)**

- 9. Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, the contracting agency and the Human Relations Commission, for purposes of investigation to ascertain compliance with the provisions of the Contract Compliance Regulations, pursuant to PA Code Chapter 49.35 of these Regulations. If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Commission.
- 10. Contractor shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employees.
- 11. Contractor shall include the provisions of this non-discrimination clause in every subcontract, so that such provisions will be binding upon each subcontractor.
- 12. The terms used in this non-discrimination clause shall have the same meaning as in the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, 16 PA Code Chapter 49.
- 13. Contractor obligations under this clause are limited to the Contractor's facilities within Pennsylvania or where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

Wherever herein above the word Contractor is used it shall also include the word Engineer, Consultant, Researcher, or other Contracting Party as may be appropriate.

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

BY

SIGNATURE AND TITLE: \_\_\_\_\_

*Failure to submit this form in a properly executed manner will result in the bid/proposal being found non-responsive and rejected.*

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) CERTIFICATION**

Policy: It is the policy of the U.S. Department of Transportation and the Pennsylvania Department of Transportation that DBE's as defined in 49 CFR Part 26 as amended, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal and/or Commonwealth funds under the agreement which results from the Purchaser's acceptance of the proposer's offer. Consequently, the DBE requirements of 49 CFR Part 26, as amended, apply to that agreement.

DBE Obligation. The bidder/contractor agrees to ensure that DBE's as defined in 49 CFR Part 26, as amended, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under the agreement which results from the Purchaser's acceptance of the proposer's offer. In this regard, all bidders/contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, as amended, to ensure that DBE's have the maximum opportunity to compete for and perform contracts. Bidders/contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of Department of Transportation assisted contracts.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

Firm: \_\_\_\_\_

*Failure to submit this form in a properly executed manner will result in the bid/proposal being found non-responsive and rejected.*

**PRICE PROPOSAL FORM**

Description:	Cost / Rate/Hour	Other Direct Costs	Burden Rate
Administration			
Administrative Assistant			
Architectural Aide			
CADD			
CADD Op			
Draftsperson			
Civil Designer			
Civil Engineer			
Cost Estimator			
Designer			
Surveyor			
Designer/Survey Chief			
Survey Crew chief			
Survey Party			
Land Surveyor			
Engineer			
Landscape Architect			
Planner			
Principal			
Project Engineer			
Project Manager			
Assistant Project Manager			
Project Professional			
Senior Architect			
Senior Engineer			
Senior Professional			
Structural Designer			
Structural Engineer			
Supervisor			
Support			
Inspector			
Technician			
Technician II			
Transportation /Travel			

**PRICE PROPOSAL FORM** – Subsequent Year Price Escalation Methodology

Proposers must describe how they will calculate cost changes in the subsequent years (years 2 - 5) of the contract. If a price index is to be used, the proposer must indicate which index is used, the source of that information and the baseline from which changes will be made. Under its funding agreements with Federal and State regulatory agencies, the Authority must be able to verify that prices charged are fair and reasonable. Please use the second page of the Price Proposal Form for this purpose.

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## **PART V – FEDERALLY REQUIRED CLAUSES**

## **FEDERALLY REQUIRED CLAUSES**

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

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

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

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

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

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

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

### **AUDITS AND ACCESS TO RECORDS AND REPORTS**

- a. Audit and Inspection. The Contractor shall permit the authorized representatives of CPTA, U.S. Department of Transportation, the Pennsylvania Department of Transportation and the Comptroller General of the United States to inspect and audit all data and records of the Contract or relating to its performance and its subcontracts

under this Contract from the date of the Contract and for three (3) years after completion or termination of the Contract.

- b. Record Retention. The Contractor further agrees to include in all their subcontracts hereunder a provision to the effect that the subcontractor agrees that CPTA, the U.S. Department of Transportation, the Pennsylvania Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of each Subcontractor, involving transactions related to the Subcontractor. The term "Subcontractor" as used in this clause excludes: (1) Purchase Orders not exceeding \$10,000; and (2) subcontracts or Purchase Orders for public utility services at rates established for uniform applicability to the general public.

### **FEDERAL CHANGES**

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed herein or by reference in the Agreement (Form FTA MA (21) dated October 1, 2014), as they may be amended or promulgated from time to time during the term of this contract, unless the Federal Government determines otherwise. The Contractor's failure to so comply shall constitute a material breach of this contract. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any CPTA requests which would cause CPTA to be in violation of the FTA terms and conditions. Contractor's failure to so comply shall constitute a breach of this Contract.

### **CIVIL RIGHTS REQUIREMENTS**

- A. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964: During the performance of this contract, the Contractor and its subcontractors shall comply with all requirements prohibiting discrimination against any employee or applicant for employment on the basis of race, color, creed, sex, age, disability or national origin in accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681-1683, 1685-88, with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25; Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102; Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 623 and Federal transit law at 49 U.S.C. 5332; Section 202 of the American With Disabilities Act of 1990, 42 U.S.C. 12132; Federal transit law at 49 U.S.C. 5332; and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act," 49, C.F.R. Part 21, and any implementing requirements FTA may issue.

- B. **EQUAL EMPLOYMENT OPPORTUNITY:** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e, and Federal transit laws at 49 U.S.C. 5332, the Contractor and its subcontractor agree to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq. and any implementing requirements the FTA may issue. The Contractor and its subcontractors agree that it shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age or national origin. The Contractor and its subcontractors shall take affirmative action to insure that applicants are employed, and the employees are treated during employment, without regard to their race, color, creed, sex, disability, age or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off 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. **NONDISCRIMINATION ON THE BASIS OF DISABILITY:** The Contractor agrees to comply with all applicable requirements of the following federal laws and federal regulations pertaining to discrimination against seniors or individuals with disabilities. The federal laws include: American with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and the Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151et seq.

The federal regulations include:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulation, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. Part 39.
- (4) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (5) U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (6) DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 26;

- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the American with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194; and
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

D. COMMONWEALTH OF PENNSYLVANIA NON-DISCRIMINATION/SEXUAL HARASSMENT CLAUSE: Each bidder/proposer is requested to certify its compliance with the Commonwealth of Pennsylvania's Non-Discrimination/Sexual Harassment Clause.

### **INCORPORATION OF FTA TERMS**

All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, or its successor, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement.

### **ENERGY CONSERVATION**

Contractor agrees to recognize and comply with the mandatory standards and policies relating to energy efficiency that are contained in the Pennsylvania State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6321 et seq.

### **TERMINATION**

The contract may be terminated for reasons of CPTA's convenience or Contractor's breach or insolvency. Notice of termination shall be accomplished by registered, certified or express mail.

- A. **Termination for Convenience.** CPTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to CPTA to be paid. If the Contractor has any property in its possession belonging to CPTA, the Contractor will account for the same, and dispose of it in the manner CPTA directs.
- B. **Termination for Default or Cause.** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor

fails to comply with any other provisions of the contract, CPTA may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by CPTA that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, CPTA, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

- C. **Opportunity to Cure.** CPTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

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

- D. **Waiver of Remedies for any Breach.** In the event that CPTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by CPTA shall not limit CPTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

## **DEBARMENT AND SUSPENSION**

The Proposer agrees to comply, and assures the compliance of its subcontractors or a participant at any tier of the Project, with 2 CFR. Part 180, Subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200. The Proposer, and its applicable subcontractors, shall not be debarred or suspended except as authorized by U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200; U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180, including any amendments thereto; and Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.D. 6101 note; or other applicable Federal laws, regulations or guidance regarding participation with debarred or suspended third party firms. The Proposer agrees to, and assures that its subcontractors for any lower tier participant will, search the entity records on the System for Award Management ([www.sam.gov](http://www.sam.gov)) before entering into any contractual arrangement in connection with this Project. For any contract and subcontract exceeding \$25,000, the contractor and

subcontractor shall submit a debarment and suspension certificate or an explanation as to why the signed certification cannot be provided.

By signing and submitting its Proposal, the Proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by CPTA when the transaction was entered into. If it is later determined that the Bidder or Proposer knowingly rendered an erroneous certification, in addition to other remedies available to CPTA, the federal government may pursue available remedies, including suspension and/or debarment. The Bidder or Proposer shall provide immediate written notice to CPTA if at any time the contractor or subcontractors learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The Bidder or Proposer further agrees to include a provision requiring such compliance by its subcontractors for any lower tier covered transactions.

## **BREACH AND DISPUTE RESOLUTION**

### A. Severability

If any part of the Contract between CPTA and the Successful Contractor is held invalid or unenforceable, it shall be revised so as to make it valid and enforceable, consistent with the intent of the parties expressed in that provision. The other provisions of the Contract will remain in full force and effect.

B. Disputes - Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the Project Manager for CPTA. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

C. Performance During Dispute - Unless otherwise directed by CPTA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

D. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or any of his employees, agents or others for those acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

E. Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between CPTA and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the Commonwealth of Pennsylvania.

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

## **LOBBYING**

Section 1352 of Title 31, U.S. Code provides in part that no appropriated funds may be expended by the recipient of 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, an employee of a Member of Congress or a member or employee of a State legislature 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. The Contractor and its subcontractors shall certify that no federal appropriated funds have been expended for the lobbying activities described in Section 1352 of Title 31, U.S. Code. The Contractor and its subcontractors shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to the covered Federal actions as described by 31 U.S.C. 1352. **For any contract and subcontract exceeding \$100,000, the Contractor and subcontractor(s) will submit a Lobbying Certificate. Contractors and subcontractors who engage in lobbying activities are required to submit Standard Form—LLL (SF-LLL), “Disclosure of Lobbying Activities” in accordance with Section 1352 of Title 31, U.S. Code. SF-LLL to CPTA.** CPTA is responsible for keeping the certification of the Contractor, who is in turn responsible for keeping the certification forms of subcontractors. Contractor shall ensure that all of its Subcontractors under this Contract shall certify the same.

## **BONDING REQUIREMENTS**

### Applicability to Contracts

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
  - (1) 50% of the contract price if the contract price is not more than \$1 million;
  - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (3) \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

#### Bid Bond Requirements (Construction)

##### (a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to CPTA and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

##### (b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by CPTA to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of CPTA.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of CPTA, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by CPTA as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate

to fully recompense CPTA for the damages occasioned by default, then the undersigned bidder agrees to indemnify CPTA and pay over to CPTA the difference between the bid security and (Recipient's) total damages, so as to make CPTA whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

#### Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

##### (a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the CPTA determines that a lesser amount would be adequate for the protection of the CPTA.
2. The CPTA may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The CPTA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

##### (b) Payment bonds

1. The penal amount of the payment bonds shall equal:
  - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
  - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the CPTA may require additional protection as required by subparagraph 1 if the contract price is increased.

#### Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

##### (a) The following situations may warrant a performance bond:

1. CPTA property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the CPTA, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.
- (b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
  1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the CPTA determines that a lesser amount would be adequate for the protection of the CPTA.
  2. The CPTA may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The CPTA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- (c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.
- (d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
  1. The penal amount of payment bonds shall equal:
    - (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
    - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
    - (iii) Two and one half million if the contract price is increased.

#### Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The CPTA shall determine the amount of the advance payment bond necessary to protect the CPTA.

#### Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The CPTA shall determine the amount of the patent indemnity to protect the CPTA.

#### Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to CPTA, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by CPTA, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by CPTA and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to CPTA. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to CPTA written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

### **CLEAN AIR REQUIREMENTS**

For all contracts and subcontracts in excess of \$100,000, the Contractor and its subcontractors agree 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. The Contractor and its subcontractors agree to report the use of facilities placed or likely to be placed on EPA's "List of Violating Facilities", refrain from using violating facilities and report each violation to CPTA and CPTA will, in turn, report each violation as required resulting from any project implementation activity of a contractor or itself to FTA and appropriate U.S. EPA Regional Office as provided in Section 114 of the Clean Air Act, as amended, 42 U.S.C. 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

### **CLEAN WATER REQUIREMENTS**

For all contracts and subcontracts in excess of \$100,000, the Contractor and its subcontractors agree 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. The Contractor and its subcontractors agree to report the use of facilities placed or likely to be placed on EPA's "List of Violating Facilities", refrain from using violating facilities and report each violation to CPTA and CPTA will, in turn, report each violation as required resulting from any project implementation activity of a contractor or itself to FTA and appropriate U.S. EPA Regional Office as provided for in Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

### **FLY AMERICA REQUIREMENTS**

The Contractor understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S. flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118 (the

“Fly America” Act), and with U.S. GSA regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. 301-10.131 through 301-10.143.

## **SEISMIC SAFETY**

Seismic Safety - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

## **PATENT AND RIGHTS IN DATA**

A. Rights in Data - This following requirements apply to each contract involving experimental, developmental or research work:

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

The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

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

Any subject data developed under that contract, whether or not a copyright has been obtained; and

Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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

- B. Patent Rights - This following requirements apply to each contract involving experimental, developmental, or research work:

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

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

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

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

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of

Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 4.9%. A separate contract goal **has not** been established for this procurement.

The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as CPTA deems appropriate. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

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

**Prompt Payment:** The CPTA will include the following clause in each DOT-assisted prime contract: The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from CPTA. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the CPTA. This clause applies to both DBE and non-DBE subcontracts.

**Retainage:** The prime contractor agrees to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the CPTA. This clause applies to both DBE and non-DBE subcontracts.

**Monitoring and Enforcement:** The CPTA has established, to monitor and enforce that prompt payment and return of retainage is occurring, a monthly DBE statement to be completed by the contractor. This statement is submitted to CPTA for the purpose of recording of prompt payment and successful completion of work duties assigned to DBEs. Furthermore, depending on the size and scope of the work performed, construction management consultants may be used. The Contractor shall notify CPTA in writing of any delay or postponement of payment beyond thirty (30) days and such written notification shall set forth, with appropriate documentation, the full details of the reasons upon which the Contractor is basing its actions. CPTA shall not be obligated to make a progress payment or a final payment to a Contractor who has failed to make payments promptly to its subcontractors for work performed, and for which CPTA has made payment, without good cause. The remedies CPTA has available to enforce the DBE requirements contained in its contracts include, but are not limited to, the following:

1. Breach of contract action pursuant to the terms of the contract. The intent of proceeding will be to initiate corrective action on the part of the contractor. If the corrective action is not implemented, the contractor will be terminated in accordance with the terms of the contract.
2. Inform the Pennsylvania Department of Transportation of any false, fraudulent, or dishonest conduct regard the DBE Program. Beyond the power of CPTA within the contract terms, the Federal government has available the following mechanisms that apply to firms participating in the DBE program:
  - a) Suspension or debarment proceedings pursuant to 49 CFR Part 26.
  - b) Enforcement action pursuant to 49 CFR Part 31.

### **RECYCLED PRODUCTS**

To the extent practical and economically feasible, the Contractor agrees to provide a competitive preference for product and services that conserve natural resources and protect the environment and are energy efficient as provided for in Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 40.