

PROCUREMENT MANUAL

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STEWARDSHIP. SERVICE. COMMUNITY.

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Chapter 1 – Definitions

As used in this handbook, the following words shall have the meanings provided in this chapter unless otherwise noted.

Advertising: May comprise one of the following:

1. In a newspaper of general circulation.
2. In a trade publication.
3. By electronic publication accessible to the general public.
4. By issuance of invitations for bids and request for proposals to bidders or offerors on DRPA/PATCO's solicitation mailing list.
5. By notification to prequalified bidders or offerors.

Affiliates: Persons are affiliates of each other if, either directly or indirectly:

1. One controls or has the power or ability to control the other, whether or not exercised or
2. A third person controls or has the power or ability to control both, whether or not exercised.

Agency Head: The CEO/PATCO President and his/her designee, Deputy CEO, or other official, who is first in responsibility within an agency.

Amendment: A written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract.

Assignment: The transfer or taking over by another of a contract or any part of a contract or any contractual right or duty.

Bid: A firm and unconditional offer in response to an invitation for bids.

Bidder: A person that submits a bid in response to an invitation for bids.

Bid or Proposal Security: An acceptable form of security conditioned upon the successful bidder's or offeror's execution of a contract in accordance with the terms and conditions of the invitation for bids or request for proposals and receipt of acceptable performance security, if required. Such security is solely for the protection of the Authority.

Certified Minority Business Enterprise/Women Business Enterprise/Veteran Business Enterprise/Service Disabled Veteran Business Enterprise (MBE/WBE/VBE/SDVBE): A small business that has received certification as MBE/WBE/VBE/SDVBE.¹

Change Order: A printed or electronic order signed by the contracting officer directing the contractor to make changes that the changes clause of the contract authorizes the contracting officer to order. The change order may be either with the consent of the contractor or a unilateral order by the contracting officer.

Construction: The process of building, altering, repairing, improving, or demolishing any public structure or building or other public improvements of any kind to any public

¹07-20-2012: Added language regarding Veteran and Service Disabled Veteran Businesses.

real property. The term does not include the routine operation or maintenance of existing structures, buildings, or real property.

Contract: A type of written agreement, regardless of what it may be called, for the procurement of supplies, services, or construction and executed by all parties.

Contract Compliance: A program designed to ensure the DRPA/PATCO contracting is nondiscriminating in intent and effect. The program involves three aspects:

1. Nondiscrimination in the award of contracts.
2. Nondiscrimination by those who are awarded contracts in their solicitation and utilization of subcontractors, manufacturers, or suppliers.
3. Nondiscrimination by those who are awarded contracts in hiring and treatment of their employees.

Contractor: Any person that has entered into a contract with the DRPA and/or PATCO.

Contract Modification: A written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract. Sometimes called an amendment.

Contract Purchase Order: Written authorization from the Authority for a contractor to proceed to furnish a material, service, or construction item.

Contracting Officer: A person authorized to enter into, administer contracts and make written determinations with respect to contracts.

Cost Plus Percent of Cost (CPPC) Contract: A contract that provides for compensation to the supplier in the form of reimbursement of allowable costs plus an agreed percentage of the costs.

Debarment: Action taken to remove a person or entity from consideration for an award of any DRPA/PATCO contract or subcontract for a specified period of time.

Deficiency Item: Work performed under a construction contract but which the design professional, the contractor, or the inspector will not certify as being completed according to the contract.

Delivery Date: The date, as stated within the contract, when materials are required to be delivered or services are to be rendered.

Design/Build Contract: A construction contract in which the contractor is responsible for both the design and construction of any public structure or other public improvements of any kind to any public real property.

Design Professional Services: Those professional services within the scope of the practice of architecture, geology, engineering, landscape architecture or land surveying, including studies, investigations, surveying, mapping, tests, evaluation, consultations, specifications, value engineering, maintenance manuals and other related services associated with research, planning, development, design, construction, alteration or repair of real property.

Effective Date: A date fixed by the contracting officer which is on or after the date the contract has been fully executed by the contractor and by the purchasing agency and all approvals required by DRPA/PATCO contracting procedures have been obtained. The

contract shall not be a legal and binding contract until after the Effective Date is affixed and the contract is sent to the contractor.

Electronic: Any electrical, digital, magnetic, optical, electromagnetic or other form of technology that entails capabilities similar to these technologies. Electronic includes transmission via a telefacsimile device.

Electronic Signature: A signature in electronic form attached to or logically associated with an electronic record. It includes an electronic symbol (including a printed name) or a process attached to or logically associated with a bid, contract or purchase order, and executed, adopted or agreed upon by a person with the intent to sign the bid, contract or purchase order. An electronic signature qualifies as an original signature.

Emergency: Existence of a threat to public health, welfare, or safety or circumstances outside the control of an agency creating an urgency of need which does not permit the delay involved in using formal, competitive methods.

Employee: An individual drawing a salary or wages from DRPA/PATCO whether elected or not.

Established Catalog Price: The price included in a catalog, price list, schedule, or other form that:

1. Is regularly maintained by a manufacturer or contractor.
2. Is either published or otherwise available for inspection by customers.
3. States prices at which substantial quantities have been sold to the general public.

Expiration Date: The date on which a contract expires. The last date when work to be billed under the contract can be performed.

Extension of Contract: The continuation of an existing contract, with the same supplier or contractor, which is due to expire.

Firm, Fixed Price Contract: A contract where the total amount to be paid to the contractor is fixed and is not subject to adjustment by reason of the cost experience of the contractor. The term includes contracts where the unit price is set but the total price varies because actual quantities purchased deviate from the quantities estimated to be purchased. The term also includes contracts where the price may be adjusted in accordance with a contractually established price adjustment provision independent of the contractor's costs.

Grant: A furnishing of assistance by or to DRPA/PATCO or any person, financial or otherwise, to any person to support a program. The term does not include an award whose primary purpose is to procure construction for the grantor. A contract resulting from such an award is a procurement contract and not a grant.

GSA eLibrary: Provides GSA Contract award information for all GSA programs.

GSA Schedule: A collection of Federal contracts with suppliers for products and services within a defined category.

Invitation For Bids (IFB): All documents, including those either attached or incorporated by reference, used for soliciting bids.

Contracting Office: The sole point of contact for the offerors to contact with any questions regarding an ongoing procurement.

License: Permission or authority to use personal property for specific purposes without possessing title to, or any interest in, the property itself.

Life Cycle Cost: The total cost of the supply in terms of purchase cost, installation cost, maintenance cost, energy cost, supply cost, and other costs.

Line Item Specific Pricing: Contract pricing which has been established with each line item having a “specific” or defined item description and a set price.

Maintenance: Work that does not change the size, type, or extent of the facility. The facility includes the component parts of an existing building or structure.

Materials: Supplies, excluding insurance.

Multi-term Contract: A contract for materials, services, or construction whose term covers more than one DRPA/PATCO fiscal year.

Notice to Proceed: Written authorization from the contracting officer to the contractor to perform the services or construction specified in the contract. The notice to proceed cannot be issued until on or after the effective date of the contract.

Offeror: A person that submits a proposal in response to a request for proposals.

Office of Business Development and Equal Opportunity: An office within the CAO’s office with the responsibility to assure participation by, and the fair treatment of, small and diverse businesses in DRPA/PATCO contracting opportunities.

Option to Renew: A provision of the IFB or RFP and included as a provision within the contract which allows the continuance of a contract for an additional time period. Options can be based on a current or pre-determined future price, or, in some cases, may be unpriced.

Party: Any person, corporation, unincorporated association, partnership, state governmental agency political subdivision, authority, another state, or the government of the United States.

Performance or Proposal Bond: Security provided by a contractor solely for the protection of the purchasing agency or using agency receiving the materials, services, or construction, to ensure the faithful performance of the contract in accordance with plans, specifications, and conditions of the contract.

Procurement: Buying, purchasing, renting, leasing, licensing, or otherwise acquiring any supply, service, or construction. The term also includes all functions that pertain to the obtaining of any material, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement Description: The words used in a solicitation to describe the supply, service, or construction to be procured. The term includes specifications attached to or made a part of the solicitation.

Project Manager: The project manager is charged with the daily supervision of the delivery of a supply or the performance of the services or construction and who interacts with the contractor at the worksite or delivery location.

Proposal: An offer made in response to a request for proposal which may be subject to negotiation and award criteria set forth in the request for proposal.

Purchase Order: Written authorization for a contractor to proceed to furnish a supply, service or construction in accordance with the terms of the IFB and the awarded bidder's bid or a contract.

Reimbursement/Invoice Basis: Payment based on submission of a request for reimbursement or of an invoice after cash expenditures were made, after materials were delivered, or after construction or services were performed.

Request for Proposals (RFP): All documents, including those either attached or incorporated by reference, utilized for soliciting proposals.

Request for Qualification (RFQ): The term has a dual meaning. It is a commonly-used name for the invitation for bids or request for proposals that is used to solicit bids or proposals for the multiple award method of procurement. It is also sometimes used to identify the document that solicits applications or proposals for qualification of bidders/offerors. **Responsible Bidder:** A bidder that has submitted a responsive bid and that possesses the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance.

Responsible Offeror: An offeror that has submitted a responsive proposal and that possesses the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance.

Responsive Bid: A bid, which conforms in all material respects to the requirements and criteria in the invitation for bids.

Responsive Bidder or Offeror: A person who has submitted a bid or proposal which conforms in all material respects to the invitation for bids or request for proposals.

Responsive Proposal: A proposal which conforms in all material respects to the requirements and criteria in the request for proposals.

Sealed Bid: A bid whose contents are not disclosed until the bid opening time. Bids are typically submitted in sealed envelopes to meet this requirement, but electronic submission is not prohibited so long as the purchasing agency has the electronic capability to maintain the confidentiality of the bid until the bid opening time.

Sealed Proposal: A proposal whose contents are not disclosed until the proposal receipt date. Proposals are typically submitted in sealed envelopes to meet this requirement; however, electronic submission is not prohibited so long as the purchasing agency has the electronic capability to maintain the confidentiality of the proposal until the proposal receipt date.

Services: The furnishing of labor, time, or effort by a contractor not involving the delivery of a specific end product other than drawings, specifications, or reports which are merely incidental to the required performance. The term shall include the routine operation or maintenance of existing structures, buildings, or real property. The term does not include employment agreements or collective bargaining agreements. The term includes utility services and those services provided by public utilities such as electrical, telephone, water, and sewage service.

Signature: A distinctive mark or characteristic indicating identity. An electronic signature qualifies as an original signature.

Small Business: A business in the United States which is independently owned, is not dominant in its field of operation, employs no more than 100 full-time or full-time

equivalent employees, and earns less than \$20,000,000 in gross annual revenues (\$25,000,000 in gross annual revenues for those businesses in the information technology sales and service business).

Small Diverse Business: A minority-owned business, women-owned business, service-disabled veteran-business or veteran-owned business, or United States Business Administration-certified 8(a) small disadvantaged business concern, that qualifies as a small business. The Authority's Office of Business Development and Equal Opportunity verifies certification status to validate business designation.

Specifications: The description of the physical or functional characteristics or the nature of a material, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a material, service, or construction item for delivery.

Subcontractor: Any person, corporation, unincorporated association, partnership, state governmental agency political subdivision, authority, another state, or the government of the United States contracting to perform part, or all, of another entity's contract.

Subscription: Delivery of, or access to, information in any form of media, including not only paper (newspapers, magazines, for example), but also electronic databases from which a DRPA/PATCO agency may query, search, receive or otherwise obtain information and possibly generate reports.

Supplier: A bidder, offeror, or contractor offering to provide materials and/or services to DRPA/PATCO. May also be referred to as a vendor.

Supplies: General purpose consumable items which commonly have a shorter life span in use than equipment and machines, and which are stocked for recurring use.

Suspension: The temporary disqualification of a person or entity from consideration for an award of any DRPA/PATCO contract or subcontract for a period of up to three (3) months pending further investigation or the completion of legal proceedings if there is probable cause for debarment.

Work Statement: A detailed description of services to be performed by a contractor.

Written or Writing: Includes the electronic format.

Chapter 2 – Methods of Awarding Contracts

A. Summary of Methods of Awarding Contracts

What to Buy	When it is used	Procurement Method	Dollar Limit	Who Buys It/Contract Document
Uniforms	Uniformed personnel require new uniform components.	Uniform Card	Annual limit set by individual need. Maximum \$500.	Uniform Card holder/No purchase order.
Supplies & Equipment	Low value purchase. Vendor accepts card & uses standard terms of sale.	Purchasing Card	Transaction and monthly purchase limits set based on need. Transaction maximum is \$2,400	P-Card Holder/No purchase order
Supplies and Equipment. Operational and other Services, Construction & Maintenance.	Low value purchase and vendor accepts our standard terms. Also vendor doesn't accept card or value exceeds P-Card limit.	No-Bid	\$10,000 per transaction for construction contacts. \$5,000 for all other transactions.	Purchasing/Standard purchase order.
Engineered and Technical Services, Construction & Maintenance.				Contracts Admin/Standard Contract
Supplies and Equipment. Operational and other Services, Construction & Maintenance.	Low value purchase and vendor accepts our standard terms. Also vendor doesn't accept card or value exceeds P-Card limit.	Informal Bid	<\$25,000 per transaction	Purchasing/Standard purchase order.
Engineered and Technical Services, Construction & Maintenance.				Contracts Admin/Standard Contract
Supplies, Services, Equipment	Normal method of purchasing supplies, services and equipment. Specifications are well-defined. Purchase order can be used to define terms.	Competitive Sealed Bid	Unlimited. ≥\$25,000 needs CEO and Board approval. ≥\$100,000 also need committee approval.	Purchasing/Long form purchase order.
Construction & Maintenance	Specifications are well-defined. Purchase order not adequate to define legal arrangement.	Competitive Sealed Bid	Unlimited. ≥\$25,000 needs CEO and Board approval. ≥\$100,000 also need committee approval.	Contracts Admin/Contract through legal
Services, Equipment, Construction & Maintenance	Specifications are not well-defined.	Competitive Sealed Proposals	Unlimited. ≥\$25,000 needs CEO and Board approval. ≥\$100,000 also need committee approval.	Contracts Admin/Contract through legal
Services of individuals from consulting engineering firms	Special skills needed on a temporary basis.	Engineering Services	Unlimited. ≥\$25,000 needs CEO and Board approval. ≥\$100,000 also need committee approval.	Contracts Admin/Contract through legal.
Services of individuals with specific technical skills other than engineering	Staff needed to augment permanent work force.	Temporary Employees	Unlimited. ≥\$25,000 needs CEO and Board approval. ≥\$100,000 also need committee approval.	Contracts Admin/Contract through legal.
All	Only one supplier can satisfactorily meet authority needs in the time allowed. Also expert witnesses.	Sole Source	>No-Bid to Unlimited. >\$10,000 needs CFO, Deputy CEO or CEO approval and written justification. ≥\$25,000 needs CEO and Board approval. ≥\$100,000 also needs committee approval.	Depends on nature of service as indicated above.
All	Bona fide business requirements do not allow time for formal procurement process.	Emergency	>No-Bid to Unlimited. >\$10,000 needs CFO, Deputy CEO or CEO pre-approval plus written justification after purchase. >\$25,000 also needs Chair or Vice-Chair pre-approval if available and CEO and full Board approval after purchase.	Depends on nature of service as indicated above.

Competitive Sealed Bidding.

1. Conditions for Use.

- a** Contracts must be awarded through competitive sealed bidding method of award as dictated by threshold levels described in this Procurement Manual.
- b** Competitive sealed bidding is the traditional and usual method (as dictated by threshold levels described in this Procurement Manual) of contractor selection. It is normally used when the supply, service, or construction can be satisfactorily described and price is the only factor to be considered in the award, after bidder responsibility is determined.
- c** There is limited discretion in the award process. Discretion is limited to:
 - 1.** Discretion in determining bidder responsibility.
 - 2.** Discretion in determining whether the bid is responsive.
 - 3.** Discretion to reject all bids.

2. Invitations for Bids (IFBs).

- a** The document, either paper or electronic, which is issued for the solicitation of bid, is IFB.
- b** The IFB must include:
 - 1.** A procurement description.
 - 2.** Criteria to determine acceptability, including instructions and information for bidders.
 - 3.** Evaluation criteria of approved equals, where applicable.
 - 4.** All contractual terms (whenever practical) and conditions applicable to the procurement; i.e., delivery or performance schedules, warranty, bonding, and security requirements.
 - 5.** Signature page, unless the bid received via the electronic procurement system.
- c** The procurement description is the words used in the solicitation to describe the supplies, services, or construction to be procured. The term includes the specifications. The specifications must be attached to or made a part of the solicitation.
- d** The criteria to determine acceptability of approved equals may include: inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.
- e** There are obvious disadvantages if all the contract terms and conditions are *not* included in the IFB including:

1. Lengthier contract process.
2. No meeting of the minds.
3. Common standard is possibly changed.
4. Undisclosed criteria may be used to favor one bidder over another.

- f** The IFB establishes the common standard upon which all bidders must submit their bids.

3. Public Notice.

- a** Adequate public notice must be given within a reasonable time prior to the bid opening date.

1. “Adequacy” of public notice is within the policy-making power and discretion of the Authority.

- a.** The acceptable methods of public notice include any of the following:

- i.** Electronic publication which is accessible to the general public.
- ii.** Advertisement (relating to the use of trade publications).
- iii.** Issuance of IFBs to bidders on the solicitation mailing list of the Authority.
- iv.** Publication in a newspaper of general circulation.
- v.** Where prequalification is a requirement of submitting a bid, notification to all contractors who have been prequalified by the Authority.

- a)** As a minimum, all contracting opportunities for supplies, services, and construction over \$25,000 shall be published electronically at the DRPA/PATCO’s website.
- b)** Copies of IFBs must be made available to any interested person upon request to the Authority.
- c)** The Authority may establish procedures for the distribution of IFBs including the imposition of a reasonable fee to reimburse the Authority for the costs of photocopying and mailing.

2. Bidder must be given a reasonable time between the date of public notice and the bid opening to obtain a copy of the IFB to prepare their bids and to submit their bids. “Reasonable Time” is within the discretion of the Authority and will be published in the IFB.

4. Bid Opening.

- a.** Bids must be opened publicly in the presence of one or more witnesses at the time and place designated in the IFB.
- b.** The Authority must record and make available for public inspection, the following information:
 - 1.** The name of each bidder;
 - 2.** The amount of each bid; and
 - 3.** Any other relevant information as may be specified by regulation.
- c.** The prepared written record of the bidders and bid information must be posted to the web or available in hard copy as soon as reasonably possible.

5. Bid Acceptance and Evaluation.

- a.** Any bid received after the time and date set for bid opening is late and shall not be considered for award unless the bid would have been timely but for the action or inaction of Authority personnel directly serving the procurement activity.
- b.** Bids must be unconditionally accepted without alteration or modification except as authorized by law or in the IFB.
- c.** Bids must be evaluated based upon the requirements set forth in the IFB.
 - 1.** The Authority must determine whether a bid is acceptable based upon the terms and conditions of the IFB.
 - 2.** It is important to note that the acceptability evaluation is not documented for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the IFB.
 - 3.** The Authority must also evaluate the bids in accordance with the evaluation criteria which may affect bid prices and the order of award.
- d.** In order to be acceptable, a bid must be responsive, that is, it must conform in all material respects to the requirements in the IFB.
 - 1.** A slight or immaterial variance from the terms and conditions or the specifications contained in the IFB does not destroy the competitive character of the bid so as to require rejection. Those errors which superficially deviate from normal practice do not taint an otherwise acceptable award if the discrepancy does not transgress the actual terms of the bid instructions.

2. The IFB should reserve the right for the Authority to waive technical defects or immaterial items. Therefore, waiving a defect is not an automatic violation of competitive bidding. Instead, it must be determined whether the waiver of any defects will cause the competitive bidding process to be noncompetitive.
 3. If the variance in a bid gives the bidder an advantage or benefit not enjoyed by other bidders, competitive bidding is destroyed. Mandatory, competitive bidding requirements must be followed.
- e. A bidder cannot modify its bid by removing exceptions to the bid instructions or by supplying missing documentation required by the bid instructions. Once a bid is opened, it cannot be modified.
 - f. Once a bid is determined to be nonresponsive, it may not be made responsive after bid opening regardless of the reason for the failure to conform. Responsiveness of a bid is determined within ten (10) business days from the bid itself, not evidence outside of the bid documents.

6. Award.

- a. Award must be made within 120 days after bid opening unless extensions of the date for the award are made by mutual written consent of the contracting officer and the lowest responsible and responsive bidder.
- b. Award must be made to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids unless all bids are rejected or the lowest responsible and responsive bidder is allowed to withdraw his or her bid.
 1. A “responsible bidder or offeror” is a person who has submitted a responsive bid or proposal and possesses the capability to perform the contract requirements in all respects and the integrity and reliability to assure good faith performance.
 2. A “responsive bidder or offeror” is a person who has submitted a bid or proposal which conforms in all material respects to the IFB or RFP.
 3. “Lowest” is generally determined by price unless otherwise defined in the IFB.
- c. The contracting officer may solicit a voluntary discount from the “lowest” responsible bidder only in an effort to obtain a lower price. If the bidder refuses to give a voluntary discount, this does not provide the contracting officer with grounds to reject the bid or to contact any other bidders and seek a voluntary discount.
- d. Within 30 days of the bid opening, bid security, if required, must be returned to all but the lowest and next to lowest bidders then under consideration for contract award.

- e. Once contracting officer has determined the lowest responsible and responsive bidder, a purchase order or contract shall be prepared.

7. Special Circumstances.

- a. Where the Authority terminates a contract and the termination is within a reasonable time of the receipt of bids and the next lowest responsible bidder is willing to enter into a contract at the bid price the next lowest responsible bidder originally submitted, no rebidding is necessary. Prior to awarding the contract, the contracting officer should determine that the contractor and subcontractors required to be disclosed or approved by the Authority continue to be eligible bidders.

8. Resolving Tie Bids.

In the procurements where two or more responsive and responsible bidders have bid the exact same amount (as may be defined in the solicitation) for a line item (if award is being made by line item) or for the entire bid (if the award is being made for all line items), the contracting office must break the tie.

In the event of identical bids, the Authority may exercise a geographical preference for non-federally funded procurements, otherwise, will flip a coin as a fair and impartial method to determine the apparent low bidder. The contracting office will identify a time and date to flip the coin and invite the tie bidders to witness the process. If the Bidders choose not to attend, the contracting office will ensure that a neutral party acts as witness, and document the process and coin toss results to the contract file.

B. Competitive Sealed Proposals.

1. Conditions of Use.

- a. The Authority may use the competitive sealed proposal method; generally referred to as the Request For Proposals (RFP) process when the contracting officer determines that the use of competitive sealed bidding is either not practicable or advantageous to the Authority.
 - 1. “Practicable” denotes what may be accomplished or put into practical application. It is not practicable to use competitive sealed bidding when the Authority:
 - a. Is seeking a contractor’s solution to an Authority need;
 - b. Wants to give the offerors flexibility in the contents of their proposals in terms of the material, services, or construction offered;
or
 - c. Has difficulty preparing a detailed procurement description.
 - 2. “Advantageous” connotes a judgmental assessment of what is in the Authority’s best interest. Key elements in determining advantageousness are the desire to consider criteria other than price in the award process and, in particular, criteria that are subjective in nature.

- b. A justification for use of this procurement method should be attached to the request for proposal sent to contracts administrator.

2. Issuing Department Responsibilities.

The Issuing Department (Requesting Department)

- a. Drafts the RFP.
- b. Establishes a checklist identifying mandatory requirements
- c. Fixes the qualitative evaluation criteria and weights for evaluating proposals, and prepares scoring sheets for the evaluation committee's use prior to the opening of proposals.
- d. Selects the members of the evaluation committee.
- e. Acts as the sole point of contact for questions about the RFP, in collaboration with Contract Administration.
- f. Conducts a pre-proposal conference coordinated by the procurement office, if desired. For Federally funded procurements, the pre-proposal meeting cannot be mandatory.
- g. Screens all proposals received to ensure that they meet mandatory requirements and are responsive.
- h. Ensures that all evaluation committee members have signed an Evaluation Committee Certification of Confidentiality and No Conflict of Interest form. Reviews of signed forms, conflicts interviews and other questions are handled by the Inspector General's Office, with consultation with General Counsel.
- i. After receipt of the signed Evaluation Committee Certification of Confidentiality and No Conflict of Interest forms, certified by the Inspector General, from each member of the evaluation committee, distributes copies of the technical submittals to the evaluation committee members. *Note: Legal counsel to the evaluation committee is not required to sign the form.*
- j. Reviews and scores the cost submittals received.
- k. Requests clarification of proposals from offerors as determined necessary to ensure responsiveness to the solicitation and thorough understanding of the proposals.
- l. Collects all Technical scores; calculates total scores (including cost scores) for each proposal, and ranks proposals accordingly.

- m. Decides whether to solicit Best and Final Offers and, if desired, requests Best and Final Offers from offerors, consistent with the terms of the RFP.
- n. Conducts pre-selection negotiations, if desired, consistent with the terms of the RFP.
- o. Prepares and submits the recommendation for contractor selection to the contracting officer.
- p. Upon selection, conducts contract negotiations.
- q. Schedules and conducts any requested debriefing conferences, if such conferences are held.

3. Evaluation Committee.

- a. The evaluation committee should be composed of a minimum of three Authority employees who possess technical and managerial expertise in the appropriate field. Once appointed to the committee, no committee member, whether voting or non-voting, may meet or discuss the RFP or related matters with offerors or other committee members except in formal, scheduled meetings of the committee or as the issuing office may direct and arrange.

b. Evaluation Committee Responsibilities.

The Evaluation Committee:

1. Evaluates the technical merit of responsive proposals using the scoring sheets provided by the issuing office.
2. If clarification of a proposal is needed, communicates the need for clarification to the issuing office and assists the issuing office in communicating with those offerors whose proposals need clarification.
3. Reports to the issuing office the results of the evaluation committee's technical evaluation.
4. Keeps the proposals confidential, disclosing or discussing the information with no one (including other Authority employees) except counsel or in meetings of the evaluation committee.

4. Solicitation Document.

- a. Competitive sealed proposals are solicited through a Request for Proposals (RFP). The RFP Template must be used to create the RFP. The RFP template can be found on the Authority web site, Procurement, Forms section.
- b. The RFP establishes the common standard that ensures fair and just competition among qualified offerors. RFPs should provide offerors with all

information needed to prepare proposals that meet the using Authority's needs. The Authority should not disclose the amount of money available for the contract unless the CFO has previously provided a written determination to allow the disclosure.

- c. The RFP consists of all documents, including those either attached or incorporated by reference, used to solicit proposals. An RFP, including all drafts, is confidential until public notice has been given.
- d. RFP format and content:

RFPs should be presented in the following five parts:

1. **Part I, General Information for the Offeror.** This part is used to inform offerors of the general conditions under which the RFP is issued. It should include a general description of the needed material, service or construction; the date of any preproposal conferences; the proposal response date; and information on the Authority's commitment to small diverse businesses.
2. **Part II, Information Required from Offerors.** This part provides instructions on the format and nature of the information that offerors must provide in the proposal, including requiring the information to be submitted in three separate submissions, the technical proposal, the political disclosure documents and certifications, and the cost information.
3. **Part III, Criteria for Selection.** This part states the factors, including technical, cost, and small diverse business participation, used to evaluate proposals. It establishes the relative importance of the election criteria. A fair competition requires that all offerors understand the basis upon which the Authority will make its selection. Only those factors or criteria stated in this Part shall be used to evaluate proposals. *Note: The weighting of the criteria must be fixed prior to opening the proposals.*
4. **Part IV, Work Statement.** This part is the most important portion of the RFP. Generally, the more precise and complete this part of the RFP is, the greater the probability of receiving proposals that meet the needs of the issuing office. Part IV should provide a detailed description of the needed materials, services, or construction. The Work Statement may include the objectives to be achieved; parameters of measurement; reporting requirements; and segmentation of the work into specific tasks.
5. **Part V, Contract Terms and Conditions.** The standard contract terms and conditions appropriate for the type of RFP being issued should be included in the RFP.

5. **Public Notice.** The Authority shall give public notice of RFPs in the same manner used for the competitive sealed bidding method. The Issuing Office must provide potential offerors with sufficient time to prepare their proposals. Normally, no fewer than 30 calendar days should be allowed for submission of proposals.
6. **Issuance.** The RFP will be available for download from the Authority web site in standard electronic format.
7. **Questions.** An offeror must submit questions regarding an RFP in accordance with the requirements of the applicable RFP document. Questions are due no later than the date indicated on the Calendar of Events and must be submitted in the appropriate format and using the proper method of submittal.
 - a. An offeror who submits a question after the deadline date for receipt of questions indicated on the Calendar of Events assumes the risk that its proposal will not be responsive or competitive because the Authority may not be able to respond before the proposal receipt date or in sufficient time for the Offeror to prepare a responsive or competitive proposal.
 - b. When submitted after the deadline date for receipt of questions on the Calendar of Events, the Issuing Officer may respond to questions of an administrative nature by directing the questioning Offeror to specific provisions within the RFP.
 - c. To the extent that the Issuing Officer decides to respond to a non-administrative question after the deadline date for receipt of questions indicated on the Calendar of Events, the answer must be provided to all offerors through an addendum to the RFP.
 - d. The issuing office must prepare and publish (by posting on the Authority website), no later than five business days prior to the proposal receipt date, written responses to all questions received before, during and after the preproposal conference. These answers constitute a formal amendment to the RFP.

8. Preproposal Conference.

- a. If the Authority desires a preproposal conference, the issuing office uses the opportunity to:
 1. Explain the background of the RFP to offerors who intend to submit a proposal;
 2. Emphasize portions of the RFP considered especially important;
 3. Answer any written questions previously submitted by the potential offerors; and

4. Provide potential offerors with an opportunity to ask additional questions, in writing, on forms provided during the preproposal conference.
 - a. The preproposal conference should be scheduled one to three weeks after the RFP has been issued. The potential offerors should be given a reasonable opportunity to review the RFP prior to the preproposal conference.
 - b. The issuing officer will normally arrange and conduct the conference. The introductory portion of the conference should be written and read, not improvised. Throughout the preproposal conference, special care should be exercised not to alter any of the RFP provisions or to give the potential offerors information which should remain confidential, including the amount of money available for the contract.

9. Receipt of Proposals.

- a. Offerors must submit their proposals to ensure receipt by the Authority prior to the proposal response date and time established in the RFP for receipt of the proposals.
- b. Proposals must be submitted in the format and in the manner specified in the RFP.
- c. The issuing office shall time and date stamp, and record the receipt of those proposals received in paper form as they are received.
- d. There is no public opening of proposals. The issuing office shall open the proposals so as to avoid disclosure of their contents to competing offerors or anyone else who has not signed a confidentiality statement and provide a copy of each proposal to the Inspector General, and if necessary General Counsel, who shall review the proposals initially to determine proposal compliance with respect to the Political Disclosure and Certification Forms.
- e. Upon completion of review for compliance, for all proposals that Inspector General and/or General Counsel has determined to be compliant, the issuing office shall:
 1. Give the technical submittals to the evaluation committee chairperson for distribution to evaluation committee members;
 2. Retain the cost submittals; and

10. Evaluation.

The proposal evaluation procedure consists of six major steps.

a Step 1 – Proposal Responsiveness

1. In this step the Inspector General and, if necessary General Counsel, determine whether the proposal is compliant with respect to Political Disclosure and Certification Forms. No value judgment is made at this step in the evaluation.
2. If a proposal does not meet one or more RFP requirements that has been designated as “mandatory” the proposal must be rejected. Generally, there are at least three “mandatory” requirements: the proposal must be timely submitted, the Political Disclosure form is submitted, and the proposal must be signed by the offeror. The Authority may add other mandatory requirements, but should consider the consequences (absolute rejection with no discretion to consider) before adding other mandatory requirements.
3. If a proposal does not meet an RFP term that is not labeled as “mandatory”, it should be evaluated under Step 2 of this procedure only if the issuing office determines, after consulting with General Counsel, that the deficiency is a technical, waivable defect.
4. The offeror should be informed immediately if the Authority determines that a proposal must be rejected. That Authority shall document all reasons for the rejection of a proposal so the issuing office, if requested, can debrief the offeror.

b Step 2 – Preliminary Evaluation

1. The evaluation committee scores and ranks the responsive technical submittals based on the criteria listed in the RFP. To reduce the subjective factor and ensure that each voting member of the evaluation committee applies reasonably consistent judgment to each proposal with respect to all other proposals and voting members of the evaluation score sheet prepared by the issuing office. The scoring sheets must be signed and retained for two (2) years.
2. The Inspector General shall review the Political Disclosure form for conflicts or potential conflicts of interest with the evaluation committee, Issuing Office, Executive Staff and Commissioners.

c. Step 3 – Discussions for Clarification

1. The evaluation committee may ask the issuing office to seek clarification from an offeror to assure full understanding of and responsiveness to the RFP. Requests for clarification generally occur during the evaluation committee's preliminary evaluation but may occur anytime prior to contract execution.
2. The offeror may not materially alter or add to its proposal after the opening; any changes must be in the nature of clarifications. The issuing officer, on behalf of the evaluation committee, shall make all contacts with the offeror, in writing. Each offeror contacted will be requested to respond in writing, making reference to specific paragraphs or sections of its proposal needing clarification.

d. Step 4 – Cost Evaluation

1. The issuing office reviews and ranks-in order of lowest to highest – the cost submittals that meet the RFP requirements.

e. Step 5 – Best and Final Offers. (not applicable to Brooks method)

1. **Usage.** To the extent provided in the RFP, the issuing office may conduct discussions and negotiations with offerors for the purpose of obtaining best and final offers.
 - a. Those offerors, which the issuing office has determined to be not responsible or whose proposals the issuing office has determined to be not responsive, shall not be invited to participate in the Best and Final Offers process.
 - b. In order for an offeror to participate in the Best and Final Offers process, the issuing office must determine that the submitted and gathered financial and other information of the offeror demonstrates that the offeror possesses the financial and technical capability, experience and qualifications to assure good faith performance of the contract.
 - c. In order for an offeror to participate in the Best and Final Offers process, the score for its technical submittal of the proposal must be in the competitive range as determined by the Evaluation Committee.
 - d. The issuing office may further limit participation in the Best and Final Offers process to those remaining responsible offerors which the issuing office has, within its discretion, determined to be reasonably capable of selection.

- e. It is imperative that offerors selected to submit a Best and Final Offer be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals.
2. **Procedure.** The issuing office will send a letter only to those offerors deemed eligible to participate using the criteria above. The letter will invite eligible offerors to improve their cost submittal. To obtain Best and Final Offers, the issuing office may do one or more of the following, in any combination and order: request written information that revises the original submittals; schedule oral presentations; conduct a reverse online auction; enter into pre-selection negotiations.
- a. If the issuing office conducts a reverse online auction to receive Best and Final cost proposals, the names of the offerors may not be disclosed during the auction.
 - b. If the agency wants to proceed with pre-selection negotiations, it must request and receive approval from the Chief Financial Officer and/or General Counsel. Pre-selection negotiations should be considered when:
 - 1. If after an initial BAFO two or more offerors remain sufficiently close in total points and the issuing officer wishes to determine the final parameters of a contract with each of the offerors prior to making a selection. This condition would require a re-scoring of the specific areas of the technical submittals that were modified based on the pre-selection negotiations.
 - 2. After identification of the highest scoring offeror, the issuing officer needs that offeror to agree to make a change in its proposal prior to making the selection. Changes may be to overall cost or technical requirement.
 - c. The issuing office, or the evaluation committee chairperson or designee, will conduct the pre-selection negotiations. Evaluation committee members should be available to assist the negotiators.
 - d. The contents of other proposals should not be disclosed during the negotiations or at any time during the Best and Final Offers phase.
 - e. Where appropriate, the offeror should be given an explanation of the Authority's reason for any requested change, especially when the offeror appears reluctant to accept the change.
 - f. After negotiations of each issue, the issuing office should state the agreement reached on that issue. The agreement needs not be precisely what either the Authority or the offeror are willing to accept should a contract ensue.

12. **Offeror Notification.** The issuing office will notify all offerors in writing of the offeror selected for contract negotiations.

13. Negotiations with selected offeror.

a Preparation for negotiations.

1. Negotiations are discussions between the Authority and the offeror for the purpose of arriving at a common understanding of contract essentials-such as technical requirements, schedules, diverse business participation, prices, and terms. Because of the interrelations of these and other factors, negotiation is a difficult “art” requiring the exercise of judgment to a large degree, demanding tact and common sense in an attempt to reach a point that will satisfy interests of both parties.
2. Contract negotiations take place after the selected offeror has received written notification that its proposal has been selected for contract negotiations.
3. The Authority will designate the contract negotiating team, to include individuals with technical, contracting, fiscal, and legal expertise.
 - a. The chief negotiator shall conduct a meeting of the Authority’s negotiating team prior to the first negotiating session to discuss the negotiating objectives and strategy and to establish a unified negotiating position. The Authority should provide the chief negotiator with a draft contract that will be used as a basis of discussion. At a minimum, the team should:
 - i. Ensure there is a clear mutual understanding of the work statement.
 - ii. Agree on the inclusion of all required contract provisions and required clauses.
 - iii. Determine a fair and reasonable price or cost estimate.
 - b. The team should prepare techniques, including logical presentation of facts, data, and arguments, to use in the negotiation. The negotiation strategy should not include force, threats, or coercion. This does not mean, however, that the agency should accept offeror positions that are detrimental to the Authority. The strategy should consider the long-range effect on the mutual relationship of the parties to be reflected in the contract.

b. Conducting Negotiations.

1. The chief negotiator shall contact the selected offeror to make the arrangements for the negotiations.
2. The chief negotiator is responsible for the overall conduct of the negotiations and should:

- a. Ensure the integrity of the negotiation process;
 - b. Rely heavily on the other team members; and
 - c. Ensure that a mutual understanding has been reached before conclusion of the negotiation session.
 3. Fair and reasonable compensation shall be determined through negotiation. The chief negotiator may tell the offeror that a nonselected offeror's prices or rates were lower than the selected offeror's prices or rates, or that there was a "substantial" or "significant" difference in price, in an attempt to negotiate price or rate reductions. However, the agency shall not reveal any specific dollar amounts, or any difference(s) between the selected offeror's price and the prices in other cost proposals.
 4. If the Authority cannot reach a final, mutual agreement with selected offeror, then the Authority should formally terminate negotiations with the original selected offeror and initiate negotiations with the next highest-ranked offeror if that offeror has agreed to hold its proposal open for negotiation. However, the Authority cannot move to the next highest-ranked offeror solely because of a failure to negotiate a lower price with the original selected offeror, as the cost weighting has already been factored into the overall ranking. In the event the Authority cannot enter into a contract at the final price offered by the original selected offeror, the Authority's options are limited to canceling the solicitation and re-issuing the RFP.
 5. Prior to conclusion of negotiations, the Authority negotiating team should assure itself that the selected offeror fully understands the details of the contract requirements, particularly the work statement. A negotiating team member should record all agreements reached and other pertinent portions of the negotiations.
- c. **Notification of Award.** When negotiations have been successfully completed and the issuing office has received the final negotiated contract signed by both parties, the issuing office will notify the other offerors in writing of the award and of the opportunity for debriefing.

14. Debriefing.

- a. Upon notification of award, offerors whose proposals were not selected will be given the opportunity to be debriefed if provided for in the RFP. The issuing office shall schedule and conduct the debriefing at a mutually agreeable time. *Note: An offeror's exercise of the opportunity to be debriefed does not constitute nor extend the time for filing a protest.*
- b. The purpose of the debriefing is for the offeror to learn why its proposal was unsuccessful. Information given during a debriefing conference must be factual and precise. The offeror is looking for justification for its lack of success. Therefore, an offeror should be informed where its proposal failed.

- c. The debriefing should be written beforehand and read to the offeror during the debriefing conference. The evaluation committee should participate in drafting the written debriefing notes that will be read to the offeror, though it is not required that members of the evaluation committee be present at the debriefing conference. The issuing office may provide a copy of the debriefing notes that are read to the offeror. It is in the Authority's best interest to record all questions asked and responses given during the conference.
- d. The debriefing should not compare the offeror to any other offeror. The offeror can, and should, be advised of the ranking of the offeror's proposal in relation to the proposals submitted by other offerors for each of the three major selection criteria (technical, cost, and small diverse business participation). At the discretion of the issuing office, the debriefing may point out key differences between the successful offeror being debriefed.
- e. The successful proposal and contract, with any non-public information redacted, or a link to where posted online, shall be provided upon request.

C. Small Procurements.

1. Conditions of Use.

- a. The dollar amount of the procurement must be less than the threshold amount of \$25,000.
- b. Small procurements do not require the approval of the Board of Commissioners prior to the award of the contract.

2. Small No-Bid Procurements.

- a. The Authority may grant permission for the procurement of a supply or service on a no-bid basis for procurements which do not exceed \$5,000.
- b. The Authority may grant permission for procurement on a no-bid basis of construction projects that do not exceed a total construction cost of \$10,000.
- c. The procuring officer will obtain a price for the procurement that is competitive.

3. Small Informal Bid Procurements.

- a. The Authority may grant permission to make procurements using informal bid procedures in amounts under \$25,000.
- b. Small, informal bid procurements are made using bid procedures deemed appropriate under the circumstances by the Purchasing Manager or the Manager, Contracts Administration.

- c. A minimum of three written (may be email or facsimile) bids from responsible vendors are required.
4. Procurement requirements cannot be artificially divided so as to constitute a small procurement.
5. Annual procurements of \$25,000 or more for similar items normally acquired from a single source are to use formal procurement procedures.
6. The Authority shall maintain a record listing of all small procurements for a minimum period of five years from the contract end date. The record shall contain:
 - a. Each contractor's name.
 - b. The amount and type of each contract.
 - c. A listing of the supplies, services, or construction procured under the contract.
7. The Authority strongly encourages the use of small diverse businesses for small procurements.
8. Small procurements should not reflect a pattern of repeated procurement from the same contractor and should reflect a cost which is equal to or less than the market price. An exception to this stipulation would be where there are a limited number of contractors and utilizing others would result in procurements above market price.

D. Sole Source Procurement.

1. Conditions of Use.

- a. Sole source procurement may be used when the contracting officer determines in writing, that one of the following conditions exists:
 1. Only a single contractor is capable of providing supplies, services, or construction in the time frame required and/or in a satisfactory manner.
 2. A federal statute or regulation exempts supplies, services or construction from a competitive procedure.
 3. The services are to be provided by expert witnesses.
 4. The services involve the repair, modification, maintenance, or calibration of equipment and are to be performed by the manufacturer of the equipment or by the manufacturer's authorized dealer and Authority CEO (or designee) determines bidding not to be appropriate under the circumstances.
- b. The written justification for sole source must be included in the contract file and must be signed by the approving person.

- c. The prospective contractor and subcontractors must be determined to be qualified and eligible to contract with the Authority.
- d. Small, no-bid procurements are not considered sole source procurements.

2. Approval.

- a. The use of a sole source procurement will be the rare exception, must always be justified in writing and must be approved by the CFO, CEO or Deputy CEO if the purchase cost exceeds \$10,000. The Purchasing Manager, Purchasing Agent and Manager Contracts Administration have delegated approval authority to approve written sole source justification requests at or below \$10,000. Approval for sole source procurements equal to or greater than \$25,000 must be obtained from the CFO, CEO, or Deputy CEO and the Board prior to forwarding a contract to the contractor for signature. Under no circumstances shall a contractor be advised a contract will be awarded on a sole source basis before the required sole source approvals are obtained as well as ratification by the Board and a fully executed contract.
- b. Sole source requests equal to or greater than \$100,000 must be approved on a separate SS&R by the Board of Commissioners of the Authority.
- c. Where outside counsel or a litigation consultant is selected by the Office of General Counsel, the Authority shall not be required to prepare written sole source justification so long as the firm being assigned is on the current Qualified Counsel List approved by the Board. A copy of the SS&R outlining the Qualified List shall be inserted in the contract file or appended to the contract for legal services.
- d. For financial advisors, money managers or underwriters selected by the Authority, the CFO shall not be required to prepare written sole source justification so long as the firm being assigned is on the current Qualified Financial Professionals list approved by the Board. A copy of the SS&R outlining the Qualified List shall be inserted in the contract file and appended to the contract for financial services.
- e. For expert witnesses selected by Authority attorneys, the using department shall not be required to seek sole source selection approval of the expert witnesses. A brief justification shall be inserted in the contract file or appended to the contract.

3. Justification.

- a. Justification should be kept to the minimum necessary to clearly and concisely support the sole source decision. Unsupported personal opinion, personal acquaintance with the contractor, or the contractor's prior association with the agency is not in itself acceptable justification for a sole source award. Terms and phrases such as "unique experience", "uniquely

qualified”, “only qualified contractor”, and similar unsupported and meaningless statements will not be acceptable justification.

- b. Sole source justification should include, but not be limited to, the following pertinent items:
 1. If timing is a factor supporting sole source procurement explain:
 - a. Who established the time frame and the logic used.
 - b. Possible specific consequences of altering the time frame.
 - c. How long the Authority has known that supplies, services, or construction was needed and why the contract process was not started earlier.
 2. Describe specific efforts taken to locate other contractors. Statements such as “contacted several contractors and no one is interested” are not acceptable. If individuals are contacted, show names and telephone numbers of persons contacted.
 3. If the sole source situation results from a lack of response to a former competitive effort, describe the follow-up efforts and the reasons for the non-response. Also, explain why further advertising is not possible.
 4. Identify previous contracts between the Authority and the contractor during the past three years. For each contract, show beginning and ending date, contact number, amount of the contract, and whether the contract was awarded competitively or on a sole source basis.
 5. If the procurement is exempt from competitive bidding by statute, attach a copy of the specific section of the published document or statute that exempts the service from competitive bidding.
4. The Corporate Secretary’s Office shall maintain a record listing of all sole source contracts for a minimum period of five years from the contract end date. The record shall contain:
 - a. Each contractor’s name.
 - b. The amount and type of each contract.
 - c. A listing of the supplies, services, or construction procured under the contract.
5. The Contracting Office issuing the purchase order or contract to the supplier shall send a Political Disclosure form and Certification requiring completion. Conflicts review shall be completed by the Inspector General prior to award of any sole source contracts are recommended to the Board. See review Political Disclosure and Pay to Play certifications policies for obligations of completion.

E. Emergency Procurement.

1. **Conditions of Use.** The CEO or Deputy CEO may make or authorize others to make an emergency procurement when:
 - a. A threat to public health, welfare, or safety exists.
 - b. Circumstances outside the control of agency create an urgency of need which does not permit the delay involved in using more formal, competitive methods.
2. **Selection Process.** Whenever practical, at least two bids shall be solicited.
3. **Preapproval.** All emergency procurements which exceed \$10,000 must be preapproved by the CFO, CEO or Deputy CEO. Emergency procurements greater than \$25,000 require CFO, CEO or Deputy CEO and Chair and Vice-Chair approval unless the Authority can establish that because of the nature or time of the emergency, the Chair and Vice-Chair were not available or that time would not permit prior contact with the department. Emergency purchases equal to or greater than \$25,000 must be ratified by the full Board, at the next Board meeting following the event.
4. **Justification.** A written justification of the basis for the emergency and for the selection of the particular contractor shall be reviewed and signed by the required approvers and included in the contract file.
5. **Record Listing.** The Corporate Secretary's Office shall maintain a record listing of all emergency contracts for a minimum period of four years from the contract end date. The record shall contain:
 - a. Each contractor's name.
 - b. The amount and type of each contract.
 - c. A listing of the supplies, services, or construction procured under the contract.

F. Competitive Selection Procedures for Technical Services (Other than Engineering).

1. **Conditions of Use.**
 - a. This is the procedure for procuring the services of accountants, temporary workforce or services, and other professional services except engineering and architectural professional services.
 - b. The Authority is not required to use this method if procurement is otherwise authorized as a small procurement sole source procurement or emergency procurement.
2. **Statement of Qualifications.**
 - a. Persons engaged in providing professional services may submit statements of qualifications and expressions of interest in providing these services.

- b. When professional services are needed on a recurring basis, the contracting officer can also actively solicit persons engaged in providing such services to submit annual statements of qualifications in a prescribed, uniform format.
- c. Persons may amend the statements at any time by filing a new statement.

3. Request for Proposals.

- a. This method requires the issuance of a RFP which provides adequate notice of the need for the services.
- b. The RFPs must:
 - 1. Describe the required services.
 - 2. List the type of information required of each offeror.
 - 3. State the relative importance of the particular information.
 - 4. State the evaluation factors.

4. Discussions.

- a. The contracting officer may conduct discussions with any responsible offeror.
- b. The discussions cannot disclose any information derived from proposals submitted by other offerors.

5. Award and Negotiation of Contract.

- a. Award is made to the responsible offeror determined, in writing, by the contracting officer to be the best qualified based on the evaluation factors set forth in the RFPs.
- b. Fair and reasonable compensation shall be determined through negotiation.
- c. If compensation cannot be agreed upon with the best qualified responsible offeror, then negotiations will be formally terminated with the offeror and negotiations may be initiated with the offeror who is the next best qualified.

G. Procurement of Design Professional Services.

1. Conditions for Use.

- a. These are the methods for procurement of engineering and architectural professional services.
- b. In addition, design professional services can be procured as small procurements, sole source procurements, and emergency procurements, where applicable.
- c. Right-of-way acquisition assistance services to be provided in conjunction with the planning, development, design, construction, alteration, or repair of bridges and highways shall also be procured in accordance with this method of procurement.

2. Policy.

- a. It is the Authority's policy to publicly announce requirements for design professional services in accordance with the Authority's formal advertisement threshold of \$25,000 and to award contracts for design professional services on the basis of demonstrated competence and qualification for the types of services required.
- b. Evaluation Committees shall be established to review the qualifications, experience, and work of design professionals seeking contracts with purchasing agencies.

3. Evaluation Committees Procedures.

- a. The committees shall give notice of projects requiring design services.
- b. If desired, the committees may conduct discussions with three or more professionals regarding anticipated design concepts and proposed methods of approach to the assignment.
- c. The committees shall evaluate the design professionals based upon the following factors:
 1. A distribution of contracts to design professionals that avoids a concentration of contracts among a few firms.
 2. Particular capability to perform the design or construction services for the contract being considered.
 3. Geographic proximity of the design professional to the proposed facility.
 4. Available to the personnel necessary to perform the services required by the project.

5. Any other relevant circumstances peculiar to the proposed contract.
- d. The committees shall select, based upon the criteria established by the Operations and Maintenance Committee and the five evaluation factors stated above, design professionals deemed to be the most highly qualified to provide the services required.

4. Selection of Design Professional.

- a. Selection method for the Authority Engineering department shall include:
 1. The Chief Engineer or his/her designee shall recommend to the Operations and Maintenance Committee design professionals determined to be the most highly qualified. The Operations and Maintenance Committee shall recommend for final Board approval firms recommended by the Evaluation Committee.
 2. The Chief Engineer shall negotiate with the firm determined to be the most qualified for design professional services at a fee which is determined to be fair and reasonable to the Authority.
 - a. In determining the fee, the Chief shall take into account the estimated value, scope, complexity, and professional nature of the services to be rendered.
 - b. If the Authority is unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a fee which the Chief determines to be fair and reasonable, negotiations with that firm shall be formally terminated and the Chief shall then undertake negotiations with the firm determined to be the second most qualified firm.
 - c. If the Authority is unable to negotiate a satisfactory contract with the second most qualified firm, the Chief shall formally terminate negotiations and undertake negotiations with the third most qualified firm.
 - d. If the Authority is unable to negotiate a satisfactory contract with any of the selected firms, the selections committee shall select additional qualified firms and the Authority shall conduct negotiations in the order established by the Chief Engineer in order of the most qualified firms.

H. Record Retention

Documents supporting bid evaluations shall be retained by the Procurement/Contracting Office in accordance with the Authority's Record Retention Policies.

Chapter 3 – Thresholds and Delegations

A. Thresholds

- 1. General.** The following not to exceed thresholds apply for procurements by the appropriate Authority Contracting Departments (Purchasing and Contract Administration) and individual departments for purchasing cards and uniform cards.
- 2. Contract Value**
 - a.** The estimated dollar value of the original contract term is the dollar amount that will be considered when determining whether or not a purchase falls within a procurement threshold. Renewal option years and amounts are not included in the contract value when making this determination.
 - b.** An original contract period must not be set at a shorter time frame with the intention of keeping the contract within a dollar threshold.

B. Thresholds for Specific Procurements. The following not to exceed thresholds apply:

- 1.** Purchasing Card \$2,400
- 2.** Small, No Bid Procurements
 - a.** Supplies and services \$5,000
 - b.** Construction contracts \$10,000
- 3.** Small, Informal Bid Procurements < \$25,000
- 4.** Formal Procurements
 - a.** ≥\$25,000 requires Board approval.
- 5.** Sole Source Procurement
 - a.** >\$10,000 requires CFO, CEO or Deputy CEO approval.
 - b.** ≥\$25,000 also requires Board approval.
- 6.** Emergency procurement
 - a.** > \$10,000 requires CFO, CEO or Deputy CEO approval.
 - b.** ≥ \$25,000 requires the additional approval of the Board Chairman or Vice Chairman and the emergency purchase must be ratified by the full Board at the first Board meeting after the emergency event.

PROCUREMENT METHOD	DOLLAR THRESHOLD	APPROVALS REQUIRED	COMMENTS
Purchasing Card	≤ \$2,400	Cardholder's Director or Director's designate.	Limits vary up to the maximum based on department need.
No Bid, No Documents for Supplies, Services & Equipment	≤ \$5,000	Purchasing Manager, Purchasing Agent or Contracts Administration Manager	
No Bid, No Documents for Construction & Maintenance Contracts	≤ \$10,000	Purchasing Manager, Purchasing Agent or Contracts Administration Manager	
Informal Bids	< \$25,000	Purchasing Manager, Purchasing Agent or Contracts Administration Manager	Minimum of 3 written quotes from responsible bidders.
Formal, Advertised Bids	> \$25,000, < \$100,000	CEO and Board	Part of a group SS&R
Formal, Advertised Bids	> \$100,000	CEO and Board	Separate SS&R.
Sole Source Supplies, Services & Equipment	> \$5,000, < \$10,000	Purchasing Manager, Purchasing Agent or Contracts Administration Manager	Written justification.
Sole Source	> \$10,000, < \$25,000	CFO, Deputy CEO or CEO	Written justification.
Sole Source	> \$25,000, < \$100,000	CEO and Board	Part of a group SS&R and written justification
Sole Source	> \$100,000 –	CEO and Board	Separate SS&R and written justification
Emergency Procurement Supplies & Services	> \$5,000, < \$10,000	Purchasing Manager, Purchasing Agent, Contracts Administration Manager or Director before purchase	Written justification after purchase
Emergency Procurement	> \$10,000, ≤ \$25,000	CFO, CEO or Deputy CEO before purchase	Written justification after purchase
Emergency Procurement	> \$25,000, < \$100,000	CFO, CEO or Deputy CEO before purchase. Board after purchase	Part of a group SS&R and written justification after purchase
Emergency Procurement	≥ \$100,000	CFO, CEO or Deputy CEO before purchase. Board after purchase	Separate SS&R and written justification after purchase.

NOTE: Pursuant to Article XII(D)(3), the CEO has delegated his authority to execute Purchase Orders on behalf of the DRPA and PATCO in any amount below \$25,000 to the Chief Financial Officer and certain members of the Purchasing Department. Delegated signatory authority for each Purchase Order in an amount over \$25,000 must be approved by the Chief Executive Officer.

Chapter 4 – Selecting Type of Contract

A. General.

1. The selection of an appropriate type of contract and contract costs are related and should be considered together. The objective is to negotiate a contract type and price that includes reasonable contractor risk and provides the contractor with the greatest incentive for efficient and economical performance. When there is a need for using other than a firm fixed-price contract, it must be determined, before award of the contract, whether the contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated and is adequate to allocate costs in accordance with Federal Cost Accounting Standards. This may be particularly critical where a cost reimbursement type of contract is being considered and all current or past experience with the contractor has been on a fixed-price basis.
2. A contract may be one of the following types or a combination of the types identified below. **COST-PLUS-A-PERCENTAGE-OF-COST CONTRACTS ARE PROHIBITED.**

B. Firm, Fixed-Price Contracts. Firm, fixed-price contracts are of several types designed to facilitate proper pricing under varying circumstances.

1. **Established-Price Types.** The established-price type of contract provides for a firm price or, under appropriate circumstances, may provide for an adjustable price for the supplies, services, or construction which are being procured. In providing for an adjustable price, the contract may fix a maximum or minimum price. Unless otherwise provided in the contract, any such maximum or minimum price is subject to adjustment only if required by the operation of any contract clause which provided for equitable adjustment, escalation, or other revision of the contract price upon the occurrence of an event or contingency. Established-price contract types are generally created through line item specific bid pricing or established catalog bid pricing.
 - a. **Basic Established-Price Contract.** The basic established-price contract provides for a price which is not subject to an adjustment by reason of the cost experience of the contractor in the performance of the contract. This type of contract places maximum risk upon the contractor. Because the contractor assumes full responsibility, in the form of profits or losses, for all costs under or over the firm fixed-price, he or she has a maximum profit incentive for effective cost control and contract performance. Use of the basic established-price contract is suitable for use in procurements when reasonably definite work statements, specifications, and performance requirements are

available and whenever fair and reasonable costs can be established at the outset.

- b. **Established-Price Contract With Escalation.** The established-price contract with escalation provides for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies which are specifically defined in the contract. The risks in a basic established-price contract are reduced by the inclusion of escalation provisions in which the parties agree to revise the stated price upon the happening of a prescribed contingency. Where escalation is agreed upon, upward adjustments shall be limited to the establishment of a reasonable ceiling, and provisions will be included for downward adjustments in those instances where the prices or rates shall fall below the base levels provided in the contract. The escalation generally covers the increase in labor costs due to an increase in the minimum wage or union contract negotiations, or other costs such as fuel, which are beyond the direct control of the contractor.
- c. **Established-Price Plus Incentive Contract.** The established-price plus incentive contract is a firm, fixed-price type of contract with provisions for adjustment of profit and establishment of the final contract price by a formula based on the relationship which final negotiated total cost bears to total target costs. Established-price plus incentive contracts are appropriate when the supplies, services, or construction being procured are of such a nature that assumption of a degree of cost responsibility by the contractor is likely to provide him with a positive profit incentive for effective cost control and contract performance.
- d. **Prospective Price Redetermination at a Stated Time or Times During Performance Contract.** This type of contract provides for an established-price for an initial period of contract performance and for prospective price redetermination either upward or downward at a stated time or times during the performance of the contract. This type of contract is appropriate in the procurement of supplies, services, or construction where it is possible to negotiate fair and reasonable established prices for an initial period but not for subsequent periods of contract performance.

This type of contract should not be used unless:

1. It has been established through negotiations that a basic established-price contract does not fulfill the requirements established by the conditions surrounding the procurement.
2. The contractor's accounting system is adequate for price redetermination purposes.
3. The prospective pricing period can be made to conform with the operations of the contractor's accounting system.

4. Reasonable assurance exists that price redetermination action will be taken promptly at the time or times specified.
2. **Time and Materials Contract.** The time and materials contract provides for the procurement of supplies, services, or construction on the basis of:
 - a. Direct labor hours at specified fixed hourly rates (which rates include direct and indirect labor, overhead and profit).
 - b. Material at cost which could include handling and administrative expenses. This type of contract does not afford the contractor any positive profit incentive to control the cost of the materials or to manage his labor force effectively. The time and materials contract is used only where it is not possible at the time of placing the contract to estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. This type of contract is usually used for procurement of repairs, maintenance or overhaul work, and work to be performed in emergency situations. If this type of contract is used, the contract should show a ceiling price which the contractor exceeds at his own risk.
 3. **Labor-Hour Contract.** The labor-hour type of contract is a variant of the time and materials type of contract differing only in that materials are not supplied by the contractor.
 4. **Unit Price Contract.** The unit prices for the supplies, services, or construction to be provided are established in the contract with an estimated total amount. The contractor is paid in accordance with the unit price.
 5. **No-Fee Contract.** A contract where supplies, services, or construction are provided at no cost to the Authority.
- C. **Cost-Reimbursement Contract.** The cost-reimbursement type of contract provides for payment to the contractor of allowable costs incurred in the performance of the contract to the extent prescribed in the contract. This type of contract establishes an estimate of total cost for the purpose of obligation of funds and a ceiling which the contractor may not exceed (except at his own risk) without prior approval and subsequent amendment of the contract. The cost-reimbursement contract is suitable for use only when the uncertainties involved in contract performance are of such magnitude that cost of performance cannot be estimated with sufficient reasonableness to permit use of any type of fixed-price contract. In addition, it is essential that the contractor's cost accounting system is adequate for the determination of costs applicable to the contract and appropriate surveillance by Authority

personnel during performance will give reasonable assurance that inefficient or wasteful methods are not being used.

1. **Cost-Sharing Contract.** A cost-sharing contract is a cost-reimbursement type contract under which the contractor receives no fee but is reimbursed only for an agreed portion of its allowable costs. A cost-sharing contract is suitable for those procurements which cover research projects which are jointly sponsored by the Authority and the contractor with benefit to the contractor in lieu of full monetary reimbursement of costs. In consideration of this benefit, the contractor agrees to absorb a portion of the costs of performance. This type of contract is used for jointly sponsored research and development work with nonprofit educational institutions or other nonprofit organizations or other research and development work where the results of the contract may have commercial benefit to the contractor.
 2. **Cost-Plus-Incentive-Fee Contract.** The cost-plus-incentive-fee contract is a cost-reimbursement type contract with provisions for a fee which is adjusted by formula in accordance with the relationship which total allowable costs bear to target costs. Under this type of contract, there is negotiated initially a target cost, a target fee, a minimum and maximum fee, and a fee adjustment formula. After performance of the contract, the fee payable to the contractor is determined in accordance with the formula. The provision for increase or decrease of fee is designed to provide an incentive for maximum effort on the part of the contractor to manage the contract effectively.
 3. **Cost-Plus-A-Fixed-Fee Contract.** The cost-plus-a-fixed-fee contract is a cost reimbursement type of contract which provides for the payment of a fixed fee to the contractor. The fixed fee, once negotiated, does not vary with actual cost, but may be adjusted as a result of any subsequent changes in the work or services to be performed under the contract. Because the fixed fee does not vary in relation to the contractor's ability to control costs, the cost-plus-a-fixed-fee contract provides the contractor with only a minimum incentive for effective management control of costs. This type of contract is usually used for the performance of research or preliminary exploration or study where the level of effort required is unknown. The fixed fee shall not exceed 10 percent of the estimated cost of the contract, exclusive of the fee, as determined at the time of entering into such contract. Payment schedules for reimbursing contractors will be designed to provide the Authority with a measure of assurance that contractor performs the work or services satisfactorily before complete payment is made.
- D. **Performance Based Contract.** The performance based contract is one which incorporates an incentive to the contractor to surpass stated performance targets by providing for increases in fee or profit to the extent such targets are surpassed and for decreases to the extent such targets are not met. The incentive feature (providing for increases or decreases, as appropriate) is applied to performance targets rather than performance requirements. The

incentive should relate to specific performance areas or milestones which have been very carefully established and specified in the contract. Performance incentives present complex problems in contract administration and should be approached with caution.

Chapter 5 – Contract Formats

Manual will be amended to include Contract Formats when format standards are finalized

Chapter 6 – Contractor Responsibility

A. Requirements. The Authority resolutions require that contracts for the procurement of supplies, services and construction be awarded to responsible bidders and offerors.

B. Responsible.

1. In order to be considered a “responsible bidder” or a “responsible offeror”, the bidder/offeror must possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance.
2. “Responsible” implies the ability to perform the contract and goes to the capacity of the bidder, offeror, or contractor rather than its willingness to perform on the Authority’s terms.
3. A bidder’s/offeror’s capacity to perform involves not only its ability to meet quality, quantity and time requirements, but its business integrity to assure honest, good faith performance.

C. Responsibility Determination.

1. Since the Board resolution requires award to a “responsible” bidder or offeror, contracting is explicitly required to make an affirmative determination of a bidder or offeror’s responsibility prior to award. Further, contracting is required to make a responsibility determination prior to requesting a best and final offer when the competitive sealed proposal (RFP) method of procurement is utilized.

Determining responsibility is an affirmative duty, and the contracting office may not presume that all bidders or offerors are responsible. However, because this duty is ongoing, a determination of responsibility earlier in the procurement process shall not preclude contracting from finding a bidder or offeror not responsible later in the process and until a contract is fully executed.

2. The determination of “responsible” requires the exercise of sound judgment and will necessarily involve much subjectivity. If the Authority’s investigation discloses a substantial reason for a finding of “not responsible”, it may award the contract to a higher bidder. In the absence of evidence tending to show bad faith or corrupt motives by the Authority, the award of a contract to a higher bidder, after an investigation, will not be stricken.
3. If the contracting office or its designee, determines that a bidder/offeror is not responsible, the bidder/offeror shall be declared ineligible to receive the contract in question. The contracting office must document its reasons for its finding of not responsible and include the documentation with the contract file.
4. A hearing is not required to determine a bidder or offeror’s “responsibility”. Due process rights are not violated by the absence of a hearing on whether a company is a responsible bidder/offeror. However, a bidder or offeror does

have the right to protest the rejection of its bid/proposal because of a finding of “not responsible”. In the event of a protest, the Authority has the sole discretion as to whether to conduct a hearing. The Authority’s decision not to hold a hearing can only be reversed if they exercised their discretion with bad faith, fraud, capricious action or abuse of power. Where the record contains sufficient unchallenged facts necessary to make the required determination, no hearing is required. If there are no disputed material facts necessary to make the responsibility determination, then the Authority has not abused its discretion by refusing to hold a hearing.

D. Contractor Integrity Provisions.

1. Authority contracts contain provisions to ensure that contractors doing business with the Authority maintain high standards of integrity.
2. It is essential that those who seek to contract with the Authority observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Authority procurement process.

E. Qualification Requirements in Solicitation Document.

1. Invitations for Bids may require bidders to furnish information with their bids to evidence their responsibility.
 - a. The purpose of such a requirement is to assist the Authority in its investigation and determination of the bidder’s responsibility.
 - b. A bidder’s failure to provide required information with its bid can result in rejection of the bid as not responsive.
 - c. The submitted information should not be compared with the information of other bidders as one bidder cannot be determined to be “more responsible” than another bidder. If the submitted information from the lowest responsive bidder results in a finding of “responsible”, the agency cannot elect to award the contract to the next highest bidder, because it is more responsible (e.g. more qualified, more experience, better customer satisfaction).
2. Requests for Proposals may require offerors to furnish information with their proposals in regard to the offeror’s qualifications, experience, key personnel qualifications, education, resources, facilities and equipment.
 - a. The submitted information can be used by the Authority to determine the offeror’s responsibility.
 - b. Provided that the RFP included evaluation criteria related to qualifications, experience, key personnel qualifications, education, resources, facilities and equipment, etc., the evaluation committee can evaluate and score the offeror’s submission.
3. Reference Checks. Invitations for Bids and Requests for Proposals may also require bidder/offerors to submit names and telephone numbers of contact persons for clients for whom they have furnished materials or provided service. The Authority is not limited to contacting only the references provided by the bidder/offeror.

F. Post-submission Responsibility Investigation.

1. The Authority is not limited in its investigation to reviewing information provided by the bidder/offeror with its bid/proposal. Prior to award of the contract, the Authority can request a bidder or offeror to supply financial, educational, and experience information as well as references in order to make a responsibility determination.
2. The Authority can use other resources such as Dun & Bradstreet reporting services, public corporation filings, news and internet searches, published consumer rating programs, and certification programs as tools to determine responsibility. The Authority should not base a determination of nonresponsibility on a single bad item or report unless the behavior or financial condition highlighted in that report is of a sufficiently serious nature as to call into question the ability or integrity of the bidder or offeror to perform the contract.
3. Upon receipt of the proposals, and until a contract is fully executed, the Authority should take any steps it determines are necessary to ensure that a bidder or offeror is responsible, which may include requesting further clarification from the bidder/offeror as appropriate. If a bidder or offeror is determined not to be responsible, the bidder's bid or offeror's proposal shall be rejected and notice should be sent to the bidder/offeror immediately.

G. Clear Performance Standards. To ensure mutual understanding of the Authority's expectations, the contract should contain clear performance standards, which are comprehensive, measurable and enforceable. Clear performance standards will make enforcement of the contract much easier.

H. Liquidated Damages. It is sometimes appropriate to use a liquidated damages clause to ensure timely performance by a contractor. A liquidated damages clause fixes damages at a certain amount in the event that the contractor does not perform as required by the contract. If performance is not made by the date specified, the amount to be paid by the Authority will be reduced by the agreed upon amount for each hour/day of delay in performance.

1. A "Liquidated Damages" clause is valid if:
 - a. The amount stated as damages bears a reasonable relationship to either the amount of actual damages incurred or an amount which could have been anticipated by the parties when they entered into the contract.
 - b. The monetary damages that would be caused by the breach are incapable or very difficult to determine.
2. **Burden of Unanticipated Event.** Unless otherwise indicated in the contract or purchase order, the contractor is presumed to undertake the burden of an unanticipated event unless the event rises to the level of an act of God or the event was caused or created by the Authority.
3. **Additional Cost.** Since a liquidated damages clause represents a form of guarantee of timely performance and since it requires the contractor to assume certain risks, the amount paid by the Authority for the supply, service or construction will generally be higher than a similar procurement without such a clause.

- I. **Incentives for Good Performance.** When the Authority wants to encourage a contractor to complete performance as quickly as possible and in advance of the completion date, it may want to consider including an incentive clause in the contract which would monetarily reward the contractor for early delivery or completion of a project.
- J. **Immediate Action for Poor Performance:** If a contractor fails to meet a term or condition, immediate action must be taken, but should be progressive as suggested below:
1. Initially that action may involve contacting the contractor and asking them the reason behind the failure. If the contractor provides a satisfactory response, the issue and the response should be documented.
 2. If the contractor either fails to respond, provides an inadequate response, or continues to have performance problems, continue to document the performance issue and issue a cure letter requesting a formal response as to root cause, and proposed corrective actions, including timing. This letter should be issued by the respective Contracting Officer.
- K. **Qualified Persons to Determine Qualified Bidder/Offeror.** The Authority should ensure that it has assigned qualified individuals to evaluate the bids and proposals. For complex RFPs, the Authority may want to consider retaining some experts in the industry to assist in preparing the RFPs and in the evaluation of the proposals.
- L. **Performance to Payment.** A contractual tool for ensuring satisfactory performance is to provide for payment only upon satisfactory completion of identified tasks.
- M. **Good Project Oversight/Management is Essential.** The Authority should ensure that it has assigned the “right people” to oversee/administer/manage the contract/project. The project manager should: be knowledgeable about the particular product or service; have a thorough working knowledge and understanding of the requirements of the contract; frequently visit the project site; schedule and attend job meetings; provide immediate notice of problems to the contractor; prepare and maintain records/reports on contractor progress/issues; inspect work; authorize payment for satisfactorily-completed work; and contact Authority’s legal counsel when problems arise. For complex contracts, the Authority may want to consider retaining an expert in the industry to assist in reviewing and in inspecting the product or work. Monitoring is needed to ensure that the contractor is meeting the terms and conditions of the procurement documents. Monitoring will include, but not limited to, items such as on-time delivery, responsiveness, completion of all requirements, and quality of supply or service provided.
- N. **Scoring of Technical Proposals – RFPs.**
1. **Criteria for Selection.** RFPs must state the factors that will be used to evaluate proposals. Those factors generally include technical, cost, and small diverse business participation. The weighting of the criteria must be fixed prior to opening the proposals.
 2. **Scoring.** When Technical criterion is given the greatest weight, it should have the greatest impact on the selection decision. Therefore, the evaluation committee must score Technical submittals fairly, carefully and seriously so

that, for example, if there is a big difference between the experience and qualifications of two offerors, the Technical scores reflect that big difference. Similarly, if an offeror's response is deficient regarding a key requirement set forth in the RFP, then the offeror's final technical score should be significantly lower than offerors whose response met the requirement.

3. Ineligibility of Unsatisfactory Technical Submittals. RFP's now provide that in order for a proposal to be considered for selection for best and final offers or selection for contract negotiations, the score for its technical submittal of the proposal must be within the competitive range as defined by the Evaluation Committee.. This will eliminate from consideration those proposals for which the committee has found the Technical Submittals to be unsatisfactory and which may be otherwise selected because of a great Cost and Small Diverse Business participation score.

O. Prequalification.

1. The Authority may determine in advance who are responsible bidders and refuse bids from those who, after treating all alike, they determine are not in that class.

Noncollusion and Bid-Rigging.

- A. Definition of Bid-Rigging.** The concerted activity of two or more persons to determine in advance the winning bidder of a contract let or to be let by the Authority.
- B. Prohibited Activities.** It is unlawful for any person to conspire, collude, or combine with another in order to commit or attempt to commit bid-rigging. Unlawful bid-rigging includes:
 1. Agreeing to sell items or services at the same price.
 2. Agreeing to submit identical bids.
 3. Agreeing to rotate bids.
 4. Agreeing to share profits with a contractor who does not submit the low bid.
 5. Submitting prearranged bids, agreed-upon higher or lower bids or other complementary bids.
 6. Agreeing to set up territories to restrict competition.
 7. Agreeing not to submit bids.
- C. Simultaneous Bids.** It is not unlawful for the same person to simultaneously submit bids for the same work or a portion thereof, as a proposed prime contractor and subcontractor.
- D. Noncollusion Affidavits.** All IFBs and RFPs should include the requirement for bidders and offerors to provide a noncollusion affidavit with their bids/proposals. A form of a noncollusion affidavit is found in the Appendix of Forms. The noncollusion affidavit must state whether or not the person has been convicted or found liable for any act prohibited by federal or state law in any jurisdiction involving conspiracy or collusion with respect to bidding on any public contract within the last three years. The noncollusion affidavit must provide that the

person's statement on the affidavit that he has been convicted or found liable for any act prohibited by federal or state law in any jurisdiction involving conspiracy or collusion with respect to bidding on any public contract within the last three years does not prohibit the Authority from accepting a bid from or awarding a contract to that person but may be grounds for:

1. Rejection of the bid/proposal on the basis of lack of responsibility; and/or
2. Suspension or debarment.

E. Investigation. Whenever the Authority suspects that a bidder may have engaged in bid-rigging or collusion activity, the matter must be referred to the Office of General Counsel for review and, if necessary, further action.

Chapter 7 – Debarment and Suspension

A. Debarment

1. **Authority.** The Authority may, after reasonable notice to the contractor involved and reasonable opportunity for the contractor to be heard, debar a contractor from consideration for the award of Authority contracts.
2. **Substantial Evidence.** The decision to debar shall be based upon substantial evidence that a cause for debarment has occurred.
3. **Causes for Debarment.**
 - a. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 - b. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of, or acquiescence in such activities by a contractor or any affiliate, officer, employee, or other individual or entity associated with:
 1. Obtaining.
 2. Attempting to obtain.
 3. Performing a public contract or subcontract.

The contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval, or acquiescence.

- c. Violation of federal or state antitrust statutes.
- d. Violation of any federal or state law regulating campaign contributions.
- e. Violation of any federal or state environmental law.
- f. Violation of any federal or state law regulating hours of labor, minimum wage standards, or prevailing wage standards, discrimination in wages, or child labor violations.
- g. Violation of the Workers' Compensation Acts in PA and/or NJ.
- h. Violation of any federal or state law prohibiting discrimination in employment.
- i. Debarment by any agency or department of the federal government or any other state.
- j. Three or more occurrences where a contractor has been declared ineligible for a contract.
- k. Unsatisfactory performance, including, but not limited to,

any of the following:

1. Failure to comply with terms of an Authority contractor subcontract, including, but not limited to: willful failure to perform in accordance with the terms of one or more contracts, a history of failure to perform, or unsatisfactory performance of one or more contracts.
 2. Offering unbalanced bids.
 3. Failure to complete the work in the time frame specified in the contract.
 4. Being declared in default on prior work or project.
 5. Failure to submit documents, information, or forms required by the contract.
 6. Making false statements or failing to provide information or otherwise to cooperate with the appropriate Contracting Office, Office of Inspector General, or Office of General Counsel.
 7. Discrimination in violation of laws or regulations in the conduct of business as a contractor.
1. Any other act or omission indicating a lack of skill, ability, capacity, quality control, business integrity, or business honesty that seriously and directly affect the present responsibility of a person as determined by the Authority.
4. **Mitigating Factors and Seriousness of Violation.** The Authority shall take into consideration the seriousness of any violation and any mitigating factors.
 5. **Period of Debarment.** A debarment may be for a period of not more than three years.
 6. **Decision.**
 - a. After the person has been given notice of the potential debarment and the opportunity to be heard, the Authority shall issue a written decision.
 - b. The decision shall:
 1. State the reasons for the action taken.
 2. Inform the person involved of the right to review.
 - c. A copy of the written decision shall be sent to the person, any other intervening party or any interested party that has provided written notice to the Authority of that party's interest in the decision.
 7. **Finality of Decision and Appeal.** The written decision shall be deemed final and conclusive unless the person, within 30 days after receipt of the decision, files a protest or request for review.

8. **Effect of Debarment.** Debarment of a person shall automatically prohibit all departments in the Authority from awarding any contract to such person or renewing or extending any contract with such person, unless the contracting officer determines that there are compelling reasons for such award, renewal, or extension and the Board of Commissioners approves the determination.

B. Suspension.

1. **Authority.** The Authority may suspend a person if there is probable cause for debarment.
2. **Probable Cause.** The decision to suspend shall be based upon the determination that probable cause for debarment exists.
3. **Causes for Suspension.** The causes for suspension are the same as the causes for debarment.
4. **Period of Suspension.** A suspension may be for a term no greater than three months.

At the end of that time period, a debarment proceeding must be commenced or the person's suspension must be lifted.

- C. **Effect of Suspension.** Suspension of a person shall automatically prohibit all Authority departments from awarding any contract to such person or renewing or extending any contract with such person unless the contracting officer determines that there are compelling reasons for such award, renewal, or extension and the CEO approves the determination.

Chapter 8 – Nondiscrimination

A. Nondiscrimination as a Contract Requirement.

- 1. The Nondiscrimination/Sexual Harassment Clause.** Every DRPA/PATCO contract shall contain the Nondiscrimination/Sexual Harassment Clause (Nondiscrimination & Sexual Harassment Clause) which bars discrimination in employment because of race, color, ancestry, religion, sex, national origin (including those for whom English or a second language or those who may have legal status as immigrants), marital status, sexual preference, physical handicaps, medical condition or age.
- 2. Contract Compliance.** The Nondiscrimination/Sexual Harassment clause requires contractors to complete and submit to the DRPA/PATCO the Contract Compliance Data Form. This provides the Authority with the capability to determine if contractors are complying with the assurances provided in the Nondiscrimination/Sexual Harassment Clause.

B. Nondiscrimination as a Responsibility Factor.

- 1. The Competitive Sealed Bidding Method of Awarding Contracts for Construction.** When using the Competitive Sealed Bidding method of awarding contracts for construction, contracts should include a determination of contractor responsibility in regard to nondiscrimination with respect to the contractor's proposed use of MBEs and WBEs in the performance of the contract.

C. Exemptions. The Nondiscrimination requirements do not apply to the following:

- 1.** Contracts awarded to agencies for persons with disabilities;
- 2.** Grants and licenses;
- 3.** Where application would jeopardize the receipt of federal funds.

Chapter 9 – Bid or Proposal Security

- A. Requirement to Provide Bid or Proposal Security.** In the case of an IFB, an RFQ against an ITQ, or an RFP (the “solicitation”), bidders or offerors may be required to provide a bid or proposal security.
- B. Acceptable Forms of Security.** The acceptable forms of bid or proposal security are:
1. Certified Check.
 2. Bank Check.
 3. Bond provided by a surety company authorized to do business in the Commonwealth of Pennsylvania, State of New Jersey, Delaware or New York.
 4. Irrevocable letter of credit.
 5. Certificate of Deposit.
 6. Certificate of Insurance.
 7. Another form of security as specified in the IFB, ITQ, or RFP.
- C. Amount of Security.** At minimum, the security shall be a percentage identified in the bid or the minimum value specified in the solicitation.
- D. Noncompliance.** When the solicitation requires security, noncompliance with the solicitation’s instructions by the bidder or offeror requires that the bid or proposal be rejected.
- E. Return of Bid Security.** When the solicitation requires security, the Agency shall, within 30 calendar days of bid opening, return the bid security to all but the lowest and 2nd lowest bidders under consideration for contract award.
- F. Bid Withdrawal.** If a bidder or offeror is permitted to withdraw its bid or proposal prior to award, no action shall be taken against the bidder or offeror or their security. The security must be returned to the supplier when a withdrawal is permitted.

Chapter 10 – Bid Modification and Withdraw

- A. Prior to Bid Opening.** Bids may be modified or withdrawn by written notice, or in person, by a bidder or the bidder's representative if the requestor's identity is made known and a receipt for the bid is signed.
- B. After Bid Opening.** A bidder is entitled to withdraw an erroneous bid after bid opening provided:
1. The bidder requests relief.
 2. The bidder presents credible evidence with the request that the reason for the lower bid price was a clerical mistake as opposed to a judgment mistake and was actually due to an unintentional arithmetical error or an unintentional omission of a substantial quantity of work, labor, material, or services made directly in the compilation of the bid.
 3. The request for relief and supporting evidence must be received by the contracting officer within three business days after bid opening, but before award of the contract.
 4. The contracting officer shall not permit a bid withdrawal if the bid withdrawal would result in the award of the contract on another bid of the same bidder, its partner, or a corporation or business venture owned by or in which the bidder has a substantial interest.
 5. If a bidder is permitted to withdraw its bid, the bidder cannot supply any material or labor or perform any subcontract or other work agreement for the awarded contractor, without the written approval of the contracting officer.
 6. If a request for withdrawal is denied by the DRPA/PATCO, and the bidder refuses to enter into a contract or to perform under the contract, the bidder or its surety shall be liable to the DRPA/PATCO for damages.

Chapter 11 – Contract Provisions

- A. Termination Provisions.** Contracts shall contain provisions allowing DRPA/PATCO to terminate the contract for unacceptable contractor performance, lack of an appropriation of funds and, where appropriate, for the Authority's convenience.
- B. Order of Precedence.** For an order of precedence in the event of a conflict in the language in the contract, attachments, and items incorporated by reference, the contract should specify an order of precedence. The preferred order of precedence for contract interpretation is the contract, the contractor's proposal, and then the RFP.
- C. Required Clauses. (Clauses to be provided by Legal Department)**
- 1. All contracts shall include the following clauses:**
 - a. A Nondiscrimination/Sexual Harassment Clause.
 - b. Contractor integrity provisions.
 - c. Offset provision (unless waived by the Office of General Counsel).
 - d. Contractor responsibility provisions (unless waived by the Office of General Counsel).
 - e. *Americans With Disabilities Act* provisions with Executive Order 2002-5, Disability-Related Policy, which establishes the Commonwealth's basic policy for implementing the ADA.
 - f. When federal funds are involved, the IFB and contracts shall include any required federal aid conditions.
 - 2. Office of Business Development and Equal Opportunity Requirements.**
 - a. All contracts containing small diverse business participation must also include a provision requiring the contractor to meet and maintain those commitments made to small diverse businesses at the time of submittal or contract negotiation, unless a change in the commitment is approved by the Authority upon recommendation by the OBD&EO. All contracts containing small diverse business participation must include a provision requiring small diverse businesses to perform at least 50 percent of the subcontracted work.
 - b. All contracts must require that small diverse business utilization be reported to the Authority on a quarterly basis.
 - c. Commitments to small diverse businesses made at the time of bidding must be maintained throughout the term of the contract and, to the extent so provided in the commitment, through any renewal or extension of the contract. Any proposed change must be submitted to OBD&EO which will make a recommendation as to a course of action to the contracting officer.

- d. If a contract is assigned to another contractor, the new contractor must maintain the commitments to small diverse businesses of the original contract.

3. Standard Clauses for Construction Contracts.

- a. All IFBs, RFPs, and contracts involving construction shall include, but not be limited to, clauses to cover the following:
 - 1. Prevailing Wage Act, provisions.
 - 2. Minority and Women Owned Business Opportunities policies.
 - 3. Small Business Procurement Initiative.
 - 4. Contract provisions prohibiting discrimination.
 - 5. Security.
 - 6. Fifty percent performance security for contracts between \$25,000-\$100,000.
 - 7. One hundred percent payment and performance bonds for contracts over \$100,000.

Chapter 12 - Project Manager (end-user/requisitioner) Responsibilities

- A. Contract Management.** Contract management begins after a contract has been executed and does not end until the supply has been delivered and accepted or until final acceptance of the work effort has been accomplished and the contract closed with final payment to the contractor. The obligations accepted by the contractor are stated in the contract, however, that does not guarantee the contractor will perform to the DRPA/PATCO expectations. Monitoring and control are essential to ensure the contractor uses and manages its resources in a manner that will provide the Authority exactly what it has contracted for in terms of quality, timeliness, and economy of cost.
- B. Review of Reports.** Reports required by the contract will assist the Authority monitoring the effort but cannot be relied upon to accurately measure contractor progress. The contact person designated in the contract performs the key role in managing the contract and monitoring the contractor's performance.
- C. Duties and Responsibilities.** The duties and responsibilities of the Project Manager include, but are not limited to the following:
1. Ensure the contractor is performing work as required by the contract.
 2. Ensure the contractor's personnel charged to the contract are actually working on the contract.
 3. Accept and evaluate the quality of deliverables.
 4. Compare moneys expended with percentage of completion.
 5. Perform administrative details concerned with the approval of subcontractors, etc.
 6. Alert appropriate Authority personnel, including the contracting officer to any problems that may have a negative effect on the project.
 7. Immediately alert and obtain guidance from the contracting officer and counsel if contractor is not performing satisfactorily or if terms of the contract are being violated.
 8. Conduct on-site visits to observe work in progress.
 9. Coordinate any appropriate contract amendments with the appropriate Contracting Officer.
 10. Before final payment, measure the work performed against the work statement. If performance does not meet contract requirements, it is incumbent upon the contact person to identify deficiencies and to advise the contracting officer so remedial action can be taken before final payment is made.
 11. Prepare a final evaluation of the contractor's performance and forward it for inclusion with Authority's record copy of the contract.

Chapter 13 - Contractor Performance and Legal Remedies (Materials and Services)

A. Contractor Performance. When a contract or purchase order is issued, the contractor can respond in one of four ways:

- 1. Performance.** The contractor may satisfactorily perform its obligations under the contract or purchase order.
- 2. Nonperforming Breach.** The contractor may fail or refuse to perform or make delivery.
- 3. Partial Performance Breach.** The contractor may commence delivery or performance, but fail or refuse to complete delivery or performance.
- 4. Nonconforming Breach.** The contractor may perform or make delivery, but still breach the contract, because:
 - a. The delivery is improper (i.e., at the wrong place); or
 - b. The material fails to conform to the specifications or is defective; or
 - c. The work fails to conform to the specifications or is defective.

B. Delivery (Materials Only). Delivery is the transfer of possession of the material from the supplier to the Authority in accordance with the terms of the contract or purchase order. It is a primary obligation of a supplier.

- 1.** In order to determine whether a nonconforming breach has occurred, three questions are fundamental:
 - a. Where is delivery to be made?
 - b. When is it to be accomplished?
 - c. How is the delivery to be made?
- 2. Where.** The contract and/or purchase order should clearly set forth the delivery location. If the supplier delivers the materials to a place other than the location specified, the supplier has made a nonconforming delivery. If a delivery location is not specified in the contract or purchase order, the place of delivery is the business address for the Authority unit issuing the purchase order or entering into the contract.
- 3. When.**
 - a. **Time Stated.** Where there is a time for delivery stated within the contract and/or purchase order, it is presumed to be reasonable and delivery must occur on or before that date. If the delivery is late, the delivery is nonconforming and the supplier has breached.
 - 1.** The delivery time can be stated as a specific date with delivery to be made on that date and no other date.
 - 2.** The delivery time can be stated as “no later than” a specific date.

3. The delivery time can be stated as within a specified number of days after the contract execution date or purchase order or executed contract or after another condition precedent to delivery (e.g. after acceptance of proofs).

4. **How.**

- a. **General Rule.** The contractor must put and hold the materials at the disposition of the Authority and give the Authority any notification reasonably necessary to enable the Authority to take delivery.
- b. **Delivery by Lots.** Where the contract does not provide whether the materials are to be delivered in one or a number of shipments, they are to be delivered in a single delivery, unless the circumstances give either party the right to make or demand delivery in lots.
- c. **Method of Transportation.** Unless otherwise specified, the means of transportation (truck, train, delivery service, etc.) is within the discretion of the supplier.
- d. **Offloading.** Unless the contract or purchase order otherwise specifies, delivery is generally made when the carrier makes the materials available for offloading at the loading dock. The Authority must furnish the facilities reasonably suited for receipt of the materials.

5. **Free On Board (“FOB”) Destination.**

- a. The supplier must bear the expense of delivery if the delivery is F.O.B. Destination.
- b. The supplier is required to put and hold the materials at the Authority’s disposition at the destination point and give the Authority’s notice that they are ready for receipt. The delivery must be at a reasonable hour and the materials must be kept available for a period reasonably necessary for the Authority to receive them.
- c. The supplier also bears the risk of loss or damage to the materials in transit.
- d. The Authority has the obligation of furnishing any facilities needed to receive the materials and for unloading the materials. Any storage charges incurred after arrival at the delivery location are also the Authority’s responsibility.

6. **Free On Board (“FOB”) Shipment.**

- a. If delivery is FOB Shipment, the supplier is only obligated to put the materials into the possession of the carrier.
- b. The supplier does not bear the cost of loading the materials on the carrier, the cost of transportation to the Authority or the risk of loss or damage to the materials in transit.

C. Time to Perform (Services).

1. **Completion Date.** The contract or purchase order should include a completion date. The completion date should be specific calendar date or fixed terms of the number of days after execution date, effective date, commencement date, receipt of order or completion date of a previous task.
2. **Milestone Dates.** For those contracts for which contractor performance will extend over a lengthy time period, the contract should contain milestone dates which require the contractor to complete identified tasks on or before those dates. Progress payment can be tied to those dates.
3. **Repetitive Periodic Performance.** For those contracts for which the contractor will perform repetitive tasks (cleaning or preventative maintenance, for example) the contract should define the time requirements for the periodic performance (e.g. monthly, quarterly, annual).
4. **No Performance Period Stated.** Where there is no completion date in the contract or purchase order, performance must be completed within a reasonable time after the execution of the contract or reasonable time periods throughout the contract term. The reasonableness of the time depends upon the circumstances surrounding performance of the contract as well as industry standards.

D. Monitoring Supplier Performance. To effectively monitor supplier performance is to ensure all procurement documents must be established with clear specifications that are comprehensive, measurable and enforceable. Both the receiver/project manager and the purchaser have roles in monitoring supplier performance and communicating/escalating issues to their internal management team. Monitoring is needed to ensure that the supplier is meeting the terms and conditions of the procurement documents. Monitoring will include, but not limited to, items such as on-time delivery, responsiveness, completion of all requirements, and quality of supply or service provided.

E. No Delivery or Performance. When no delivery or performance is made by the date and time stated or, if not time is stated, within a reasonable time, the Authority should immediately contact the contractor in an effort to discover why there was not timely delivery or performance.

1. **Excusable Delay.** The agency may discover that the delay in the delivery or performance must be excused because the delay was caused by an event outside the control of the contractor such as weather conditions, strike, natural disaster, etc. The contractor should provide justification and a new projected date of delivery or performance. The Authority must decide whether to cancel the contract or purchase order or give the contractor reasonable time to deliver or perform. In this case, it is unlikely that the Authority can collect damages for breach.
2. **Inability to Deliver or Perform.** The Authority may discover that the contractor will not be able to deliver or perform at all because of an unforeseeable event that makes it impossible to perform such as fire or natural disaster or death of key personnel or insolvency of the contractor. In these cases, the contract or purchase order should be immediately cancelled. *Note: Bankruptcy under Chapter 11 (Reorganization) is not grounds, in and of itself, for cancellation of the contract or purchase order.*

3. **More Time Needed.** The Authority may discover that the contractor would like additional time to deliver or perform. The Authority may decide not to cancel the purchase order or contract, but rather to give the contractor additional time to deliver or perform. The Authority can still seek to collect monetary damages (or liquidated damages) that is incurred for the untimely delivery or performance. Any Authority-granted extension should be established in writing.
 4. **Mistake.** The Authority may discover that the contractor has no intention of delivering or performing because it made a mistake. The Authority should discuss with General Counsel whether the contractor has grounds to rescind the contract due to mistake.
- F. Remedies for Failure to make Delivery or Failure to Perform.** When the contractor fails or refuses to perform or make any delivery at all, The Authority basically has the following remedies:
1. **Cancellation.** The Authority may cancel the contract and/or purchase order. If this is done, the Authority retains the right to recover damages. Cancellation means that the Authority no longer has a duty to accept delivery or performance or the duty to make payment. The Authority can also recover any payments made to the contractor.
 - a. A formal cancellation letter must be drafted by the Contracting Officer and reviewed by General Counsel as appropriated prior to issuance.
 - b. The approved cancellation letter may be emailed (with a receipt confirmation requested) or faxed to the supplier. The letter must also be mailed, delivery receipt required. Copies of the confirmation documents must be retained as part of the purchasing record.
 - c. If several instances with this same supplier have occurred or if any one event is significant enough by itself, the Contracting officer should give consideration to suspension or debarment of the supplier.
 2. **Cover Damages.** The Authority generally shall obtain the materials or service from another contractor and seeks monetary damages from the defaulting contractor for cover. "Cover" is the difference between what the Authority pays and the new contract price. That becomes the measure of damages. This is more popularly known as a "surcharge".
 - a. The repurchase must be made in good faith and without unreasonable delay or upon reasonable terms.
 - b. The Authority should re-award the contract and/or purchase order to the next lowest responsible bidder under a rebid.
 3. **Market Damages.** If the Authority does not obtain the materials or service from another contractor, the Authority is still entitled to seek damages for loss of the benefit of the bargain. Damages are measured as the difference between the market price and the contract price.
 4. **Delay Damages.** If the Authority suffered monetary damages as a result of the delinquent delivery of delinquent performance of the contractor (whether it is the contractor or another contractor that ultimately delivers/performs), the Authority may seek restitution in damages that were caused by the delay.

5. **Liquidated Damages.** Contract clauses can fix damages at a certain amount.
- a. A “Liquidated Damages” clause is valid if:
 1. The amount stated as damages bears a reasonable relationship to either the amount of actual damages incurred or an amount which could have been anticipated by the parties when they entered into the contract.
 2. The monetary damages that would be caused by the breach are incapable or very difficult to determine.
 - b. **Use.** A liquidated damages clause can be used to ensure timely delivery or performance. If delivery is not made by the date specified, the amount to be paid by the Authority will be reduced by the agreed upon amount for each day of delay in delivery or performance.
 - c. **Burden of Unanticipated Event.** Unless otherwise indicated in the contract or purchase order, the contractor is presumed to undertake the burden of an unanticipated event unless the event rises to the level of an act of God or the event was caused or created by the Authority or is excused by law.
6. **Specific Performance.** The Authority can attempt to force the contractor to perform by seeking a decree of specific performance. The situations in which this remedy may be obtained are extremely limited.
- a. The form of the remedy would be an injunction prohibiting the breach.
 - b. Specific performance may be decreed only where the materials or work performance are unique or in other proper circumstances.
 - c. A decree for specific performance may also give complete relief by including whatever terms and conditions regarding payment of the price, damages, or otherwise as the court may deem just.
7. **Replevin.** The Authority can recover materials from the contractor in cases in which the contractor becomes insolvent 10 days after the first installment payment.

8. **Incidental and Consequential Damages.**

G. **Inspection.**

1. **Right to Inspect: Duty to Accept or Reject.** Where the contractor has delivered or performed, the Authority has certain duties, rights, and responsibilities upon delivery, upon completion of the work, and/or upon completion of identified segments of the work.
 - a. The Authority always has the right of inspection before it accepts.
 - b. The Authority’s duty to accept or reject materials or the work is influenced by its right to inspect the materials or work.
2. **Time for Inspection.** In the absence of a contrary provision in the contract, the Authority may inspect the materials or work at any reasonable time and place in any reasonable manner.

- a. Inspection of materials will generally be made when materials are delivered or shortly thereafter. It may, however, be made before shipment, or it may be postponed until a reasonable time after the materials have been received. The reasonableness of the time will be determined by trade usage, past practices between the parties, and the circumstances of each case.
 - b. To the extent that work is done at an Authority-owned or leased location, inspection of the work should be ongoing.
 - c. To the extent that work is completed offsite, inspection should be made upon delivery of the product.
3. **Cost of Inspection.** The Authority must pay the costs of inspection but those costs may be recovered from the contractor if the materials are rightfully rejected for nonconformity.
 4. **Testing.** The Authority may test the materials prior to acceptance even though the tests involve the destruction of a small portion of them.
 5. **Proofs.** The Authority may require the contractor to deliver proofs for inspection prior to delivery of the materials or product.
 6. **Waiver of Right of Inspection.** The Authority may waive the right to inspect or reject nonconforming materials by failing to inspect within a reasonable time period.

H. Rights of Authority Upon Improper Delivery. If the delivery or the materials or service fail in any respect to conform to the contractual requirements, the agency may:

1. Reject the whole shipment or the complete work.
2. Accept the whole shipment of the complete work.
3. Accept any commercial unit(s) or portions of the work and reject the rest.

I. Rejection. In order for rejection to be effective, the Authority must:

1. Notify the contractor in writing that the delivery, materials or work have been rejected. Rejection is ineffective unless the Authority reasonably notifies the contractor. Therefore, where a delivery of materials is made by the contractor or substantial completion of the work has been completed, positive action is required by the Authority in order to avoid acceptance.
2. Be timely in its notification of rejection. Timely rejection of materials or work must be within a reasonable time after their delivery or tender. This reasonable period for rejection overlaps the reasonable opportunity for inspection. Thus, if the inspection discloses a defect, there remains the obligation to reject within a reasonable time.
3. Not exercise any ownership with respect to the rejected material or work.
4. Hold the materials or work with reasonable care at the disposition of the contractor for a time sufficient to permit the contractor to remove them. If the contractor gives no instructions within a reasonable time after notification of

rejections, the agency may store the rejected materials or work for the account of the contractor with reimbursement for reasonable expenses for caring and selling the materials or work plus a commission not to exceed 10% of the gross proceeds. Rejected items left longer than 30 days will be regarded as abandoned and the Authority shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale which represents the Authority's costs and expenses in regard to the storage and sale of the items.

- J. Revocation.** Revocation of acceptance is similar to rejection except that it occurs after acceptance. Since revocation of acceptance always occurs after acceptance and may occur long after the contractor regarded the transaction as closed, the Authority which might have rejected with ease must meet several additional conditions in order to revoke acceptance.
1. First, in order to revoke acceptance, the nonconformity must substantially impair the value of the lot or commercial unit or project.
 2. Second, the Authority must have accepted either:
 - a. With the discovery of the defect, on the reasonable assumption that the nonconformity would be cured.
 - b. Without discovery and acceptance was reasonably induced by the difficulty of the discovery before acceptance or by the contractor's assurances.
 3. Third, revocation must occur within a reasonable time after the nonconformity was discovered or should have been discovered.
 4. Finally, revocation must occur before a substantial change takes place in the condition of the materials not caused by its own defects.
 5. **Reasonable Time for Revocation.** What is a reasonable time for taking any action depends upon the nature, purpose, and circumstances of such action. There are four circumstances which will always have relevance to the determination of whether a reasonable time has passed before the Authority took action to reject or revoke:
 - a. **Difficulty of Discovery of the Defect.** That is, if the defect was difficult to discover, the reasonable time would not commence to run until a later time that would have commenced with a defect that was easy to find.
 - b. **Contract Itself.** If the contract provides that the Authority must inspect and report all complaints within a specified period of time, the Authority must comply with the time, provided the time set is not unreasonable.
 - c. **Course of Performance Between the Parties After the Sale but Before Formal Rejection.** If the principal policy of the rejection notice requirements is to give the contractor an opportunity to cure and to permit it to assist in minimizing the Authority's losses, that policy is met if there has been a continuing series of complaints, negotiations, and attempted repairs prior to formal rejection.

K. Acceptance.

1. Acceptance may occur in three ways:
 - a. If the Authority after a reasonable opportunity to inspect, signifies either that the materials or work are conforming or that it will retain them in spite of their nonconformity. In some instances, “acceptance” is easy to identify. Certainly when the Authority inspects materials which it has received and then states orally or in writing to the contractor that it will take them, there is an acceptance.
 - b. If the Authority fails to make an effective rejection.
 - c. The Authority does not act inconsistently with the contractor’s ownership of the materials.
 1. **Example.** Assume, for example, that the Authority purchases two sections of 10 feet of cast iron pipe. On the day after the purchase, it discovers that the sections of pipe are 10 ½ feet in length. Rather than reject, however, the Authority attempts to use the 10 ½ foot lengths by cutting them down to size. If the pipe is mistakenly cut too short, the Authority cannot thereafter reject the pipe. The attempts to use the pipe at the time when the Authority was aware of the alleged defect in the materials should be regarded as an act inconsistent with the contractor’s ownership and will constitute acceptance.
 2. Acts done in ignorance of the defects which an Authority could not have discovered should not be considered acceptance. If the Authority purchases a dump truck, no one would regard the use of that truck on the day after purchase as an acceptance, despite the fact that a defect was later discovered and the use is theoretically inconsistent with the contractor’s ownership.
 3. Payment is another circumstance tending to signify acceptance but it is not conclusive.
2. **The legal consequences of acceptance are:**
 - a. The Authority must pay the contract price for the materials or services accepted, with consideration for contributing factors and responsibilities.
 - b. The Authority loses its right to reject the materials or services.
 - c. Time starts to run within which the Authority must complain of a breach or be barred from any remedy.
 - d. The burden shifts to the Authority to establish a breach.
3. **Acceptance and Breach of Warranty.** Acceptance does not foreclose action for breach of warranty.

L. Remedies Following Delivery or Completion of Performance.

- 1. Damages and Cover.** Upon rejection or revocation, the Authority still has the same remedies as though no delivery or performance was made at all. It may seek damages equal to the market price minus the contract price, or it may cover and recover damages (surcharge action) or in some instances, it may seek specific performance or replevin. However, the contractor has to be given the right to cure the defect before the Authority proceeds to seek to cover and/or recover damages.
- 2. Breach of Warranty.** Where the materials are nonconforming, this amounts to a breach of warranty by the contractor. The Authority may accept delivery of the nonconforming materials or services and recover damages. The measure of damages in such cases is the difference between the value the materials or services would have had if they had been as warranted and their actual value with the defect.
- 3. Breach of Tender Obligations.** Where the materials or services are nonconforming results from late delivery or untimely performance, the Authority may recover all damages that results from the breach. The Authority can still recover liquidated damages, if included in the contract, as a result of late delivery.
- 4. Recovery of Payments Made.** If the Authority has revoked its acceptance but has already made payment towards the purchase of the materials, it can recover those payments. If rejected materials or work remain on the Authority premises, it can look to the materials and their proceeds for satisfaction of its expenses and damages.

Chapter 14 – Bid Protests

A. Who May File the Protest

A Proposer or prospective Proposer who has a grievance in connection with the solicitation or award of a contract may file a protest. Protests relating to cancellation of all bids or Proposals are not permitted.

B. Time for Filing

1.) A protest by a prospective Proposer must be filed before the time set for Proposal Opening and/or the Proposal Due Date.

2.) If a protest is filed by a Proposer, the protest must be filed within **SEVEN (7) CALENDAR DAYS** after the protesting Proposer knew or should have known of the facts giving rise to the protest. **IN NO EVENT, HOWEVER, MAY A PROTEST BE FILED LATER THAN SEVEN (7) DAYS AFTER THE DATE THE CONTRACT IS AWARDED.** The contract award date is defined as the expiration of the New Jersey's and Pennsylvania's Governors' veto period after award of the contract by the DRPA's Board of Commissioners.

3.) Untimely protests shall not be accepted and shall be disregarded.

C. Form of Protest

1.) A protest must be in writing and filed with the DRPA's Director of Procurement.

2.) A protest must state all grounds upon which the protesting party asserts that the solicitation or award is improper, as well as the remedy sought by the protesting party. Issues not raised by the protesting party within the deadline for filing are deemed waived by the protesting party.

3.) The protesting party shall submit with the protest any documents or information deemed relevant by the protesting party, as well as any requests for DRPA documents the protesting party deems relevant to the protest.

D. Investigation

Upon receipt of the protest, the DRPA's Director of Procurement will appoint a Protest Officer who will be a Manager or other employee in the Procurement Department with the requisite procurement knowledge, as designated by the Director of Procurement.

The Protest Officer shall review the protest and supporting documents and issue a written report and decision to the Director of Procurement within five (5) business days of the appointment, where feasible. The Protest Officer may take any action or make any requests he or she deems necessary in order to investigate the protest, including extending the time to issue a decision in order to obtain all evidence and other pertinent information.

DRPA may in its sole discretion, conduct a hearing in person or by telephone where it concludes that the protest cannot be resolved on the basis of the written record

alone. The hearing shall be conducted by the Director of Procurement or his/her designee, the Chief Engineer or his/her designee, and/or the Deputy-CEO or his/her designee.

In cases where DRPA decides to hold a hearing, it will generally conduct a pre-hearing conference in order to review the scope of the hearing, identify the appropriate witnesses and their availability, if allowed, establish the date and location of the hearing, and discuss other logistical and procedural matters. In cases where DRPA determines that only some of the protest issues require a hearing, it will generally limit the hearing to those issues.

E. Response

Following a review of the Protest Officer's report, the results of a hearing, if conducted, and any other pertinent information, the Director of Procurement or his/her designee shall advise the protesting party of the DRPA's decision. The response shall be in writing and state the reasons for the decision.

F. Appeal

1.) The DRPA's decision will be final unless, within three (3) business days of receipt of the written decision, the protesting party files with the General Counsel a written appeal, setting forth the reasons for disagreement with the Authority's response and, if desired, requesting a personal appearance before the appropriate Committee. The General Counsel or his/her designee may take any action or make any requests he or she deems necessary in order to review the appeal, including extending the time to issue a decision on the appeal.

2.) If a personal appearance is requested, the protesting party shall appear at the next advertised, appropriate public Committee meeting, unless otherwise directed by the Authority. These meetings are open to the public and provide for public comment.

G. Review and Decision

1.) Within sixty (60) days after receipt of the appeal, the appropriate Committee, after consideration of the allegations, facts, any materials provided by the protesting party and Authority staff at prior stages of the protest shall make a determination to rebid the Contract or take such other action as may, in the opinion of the Committee, be appropriate, including recommending to the Board the award of the Contract.

2.) The General Counsel shall advise the protesting party in writing of the Committee's recommendation and the date on which the Contract award will be considered by the Board of Commissioners.

3.) The non-vetoed determination regarding the Contract by the Board of Commissioners, shall constitute an exhaustion of the remedies available to a Proposer at the Authority level.

Chapter 15 – Contract Controversies

- A. Who May File a Claim.** A supplier may file a claim arising from a contract entered into by the Authority.
- B. Time and Place for Filing the Claim.**
1. Supplier claims must be filed, in writing, with the contracting officer within six months after the claim accrues. Failure of a contractor to file a claim within this six-month time period shall be deemed a waiver by the contractor of its rights to file a claim in any forum.
 2. For the supplier, a claim accrues when the contractor is able to determine that he or she is entitled to additional compensation, has made a request for the compensation, and has received a denial from the project manager (not the contracting officer).
 3. Untimely filed claims must be disregarded by the contracting officer.
- C. Evaluating the Claim.** The contracting officer shall review the claim.
1. If the contracting officer determines that the supplier did not file his or her claim in a timely manner, the contracting officer shall notify the supplier that the claim was untimely and will not be considered.
 2. The contracting officer may decide the merits of the claim based on the claim received from the supplier or direct the supplier or the Authority to submit additional documents in regard to the claim.
 3. The contracting officer may schedule a meeting with the supplier, counsel and the Authority for the purpose of discussing the claim.
 4. If the contracting officer or General Counsel determines that the claim of the supplier should be granted, the supplier shall be paid in accordance with the determination through the contract or an amendment, contract modification, change order, or settlement agreement upon approval by the Board.
 5. If the contracting officer settles or resolves the claim, a written settlement agreement, contract amendment, or contract modification will generally be required.
- D. Determination.** If the controversy is not resolved, the contracting officer must issue a final determination, in writing, to the supplier and the Authority. The determination shall:
1. State the reasons for the action taken.
 2. In the event of a complete or partial denial of the claim, inform the supplier of its right to file a statement of claim with General Counsel's Office.
- E. Time of Determination.** The contracting officer should render a written determination no later than 120 days after the written claim is filed with the contracting officer. This time period may be extended if agreed upon by the parties. Failure on the part of the contracting officer to render a decision within 120 days shall be deemed a denial of the claim.

Chapter 16 – Procurement Card

- A. PURPOSE:** To provide policy and procedures governing the operation of the DRPA purchasing card program.
- B. SCOPE:** Applies to all cardholders participating in the DRPA purchasing card program.
- C. OBJECTIVE:** To provide a more efficient method to make small purchases for official DRPA business purposes in accordance with this document. This purchasing practice is expected to reduce paperwork, administrative costs and expedite payment to vendors.
- D. DEFINITION: Purchasing Card.** A credit card issued in the name of the DRPA and used by authority personnel to purchase goods and services in accordance with DRPA procurement policy.
- E. POLICY:**
1. The DRPA shall administer a program whereby designated employees can use a credit card, issued in the name of the DRPA to pay for goods and services acquired in accordance with DRPA procurement policy. This program is called the DRPA purchasing card program.
 2. Departmental personnel may participate in the program upon approval by the appropriate Department Director and the P-Card Administrator. The P-Card Administrator may consult with the Chief Financial Officer and the Office of the Inspector General to render final approval determination.
 3. A significant feature of the P-Card is the ability to customize controls for spending limits and merchant types. Certain merchant codes are blocked for all DRPA P-Cards on a blanket basis by the P-Card Administrator. Individual cards may have additional merchant codes blocked or activated to meet operational needs.
 4. The DRPA Procurement Card can be used for the purchase of most small dollar equipment, supplies and services in accordance with the single transaction limits specified in **Appendix B**. A transaction **MAY NOT** be split into multiple transactions to stay within the single transaction limits. Split transaction purchases will be reported to DRPA via Exception Reporting and the Cardholder's card privileges may be suspended or revoked. If a purchase exceeds the Cardholder's limit, the purchase should be referred to the Cardholder in the purchaser's chain of command with a higher limit or to the purchasing department with a requisition.
 5. The DRPA is exempt from sales tax throughout the U.S. All purchases within Pennsylvania or New Jersey, or shipped from outside of the state to DRPA are sales tax exempt. The Cardholder is responsible for informing the vendor that the purchase is not to be taxed. DRPA's Federal Tax I.D. is printed on the face of the P-Card and a sales tax exempt form may be provided to the vendor upon request to the purchasing department.

6. The P-Card is not intended for repetitive type purchases for which a DRPA contract exists (office supplies, office paper, bottled water, etc.) or for supplies that are available from the Central Storeroom. **Appendix A** contains a sample list of goods and services that are unallowable by DRPA policies and procedures and will be blocked at point of sale. This list may change from time to time as policy and business needs change. All DRPA policies and procedures must be followed at all times, regardless of whether a transaction is automatically blocked at the point of sale. Although the card controls are designed to automatically limit unacceptable usage, it is the Cardholder's responsibility to be aware of DRPA's policies and procedures and ensure that all purchases conform to these policies.

F. RESPONSIBILITIES:

1. Cardholder

- a. The Cardholder is personally responsible for **ALL CHARGES** made on the P-Card. The card cannot be used for personal purchases and doing so will result in revocation of the card and disciplinary action up to and including suspension or termination. In addition, a cardholder who makes unauthorized purchases may be liable for the total dollar amount of such unauthorized purchases, plus any administrative fees charged by the Bank in connection with the misuse.
- b. It is the Cardholder's responsibility to safeguard the P-Card and account number to the same degree that a Cardholder safeguards his/her personal credit information. P-Cards must be kept in a secure area at all times. The Cardholder must not allow anyone to use his/her account number.
- c. If the card is lost or stolen the Cardholder must immediately notify PNC Bank Customer Service and DRPA's P-Card Administrator. PNC Bank's Customer Service Representatives are available 24 hours a day, 7 days a week. The telephone numbers will be provided to you when you receive your P-Card and when the numbers change.
- d. A new card shall be promptly issued to the Cardholder after the reported loss or theft. A card that is subsequently found by the Cardholder after being reported lost or stolen shall be cut in half and returned to the P-Card Administrator.
- e. Orders may be placed by phone, internet or in person. Internet purchases must be made on a secure web site which a gold lock appears at bottom left of the screen. If you are unsure about the web site contact the P-Card Administrator before placing the order. Under **NO** circumstances should a card number be written on a fax order. If you need to fax an order, request that the vendor phone you to receive your credit card number.
- f. Any time a purchase is made using the P-Card, whether it is done over the counter or by telephone/internet, a document must be retained as proof of

purchase. These documents will later be used to verify the purchases shown on the cardholder monthly statement.

- g. When a purchase is made over the counter, the Cardholder shall obtain the customer copy of the charge slip. If the charge slip does not show the quantities and descriptions of the items purchased, a detailed invoice or cash register receipt indicating quantity and description of items purchased will also be required. The charge slip, or charge slip plus register receipt/invoice, will become the accountable document(s). (Make sure that all charge slip carbons are destroyed.)
- h. When making purchases by phone, the Cardholder shall document the transaction by referencing the order number, product description, quantity, and dollar amount and attach appropriate order receipt to the P-Card Transaction Log. Internet orders must be documented by printed order confirmation, and must be attached to the P-Card Transactions Log as form of receipt.
- i. The unique Procurement Card that the Cardholder receives has his/her name embossed on it. No other person is authorized to use the card. The card was specially designed showing the logo of the DRPA and the words "Delaware River Port Authority" imprinted on it to avoid being mistaken for a personal credit card. Each Cardholder will be responsible for verifying all charges associated with his specific account number. When an employee receives a P-Card, he will also receive a P-Card Transaction Log (**Appendix F**). The P-Card Transaction Logs must be maintained so that the Card Company bills can be verified. It is mandatory that each Cardholder use this log to ensure consistency with the documentation associated with the use of the P-Card. This documentation is used to: (1) verify all purchases; (2) audit a specific card; (3) reconcile a reported billing discrepancy; and (4) identify credits obtained.
- j. If, for some reason, the Cardholder does not have documentation of the transaction to send with the statement, he/she must attach an explanation that includes a description of the item, date of purchase, merchant's name, quantity and price, and why there is no supporting documentation.
- k. Cardholder is responsible for resolving disputes directly with the Vendor. If you are unable to resolve with the Vendor, complete the dispute form on the back of your statement and forward to PNC Bank and the P-Card Administrator. If you are unable to resolve your dispute after contacting the Vendor and/or the bank, contact the P-Card Administrator for further assistance.
- l. The Cardholder is responsible for ensuring that returns and their associated credits have been properly reflected on the monthly statement. Cardholder may not request that an anticipated credit be deducted from a monthly statement. The charge transaction will be processed in the month that it occurred and the credit processed the following month or when it is received. The only exception to this will be at fiscal year-end, at which

time, an anticipated offsetting credit may be applied against a charge transaction. At no time may Cardholder request a refund check from the Bank.

- m. If purchased items or credits do not appear on the monthly statement within 60 days after the date of the transaction, the Cardholder shall notify the P-Card Administrator.

2. **Departments:**

- a. Prior to separation from either the department or the DRPA, the Cardholder shall surrender the DRPA P-Card and the current month's supporting documentation to his/her director. The director is to immediately notify the P-Card Administrator to cancel the card. Upon receipt of the final memo statement, the director will review, approve, and forward the monthly statement to the P-Card Administrator. The director must indicate in the memo that (1) the Cardholder has separated from the department and (2) cut the card in half and return it to the P-Card Administrator.
- b. Human Resource Services (HRS) will have a record of every cardholder and their signed Employee Acknowledgement Form (Attachment 1). The P-Card Administrator will notify HRS when he/she receives destroyed cards from department directors to note on employees exit interview.
- c. Should the Cardholder be unable to approve his/her monthly statement due to being unavailable for an extended period of time, it is the responsibility of the Cardholder's director to complete the monthly record keeping. The director shall indicate that he is approving the statement in the Cardholder's absence.

3. **Approving Official**

- A. The Approving Official is the Cardholder's Director or designee and is responsible for reviewing and authorizing the Cardholder's monthly statement of account to ensure that purchases are made in accordance with DRPA policies and procedures. To assist in this process, each Approving Official will receive a Statement of Account provided from the P-Card Administrator monthly. This statement details the activity of all Cardholders within that Director's department. After Cardholders review and reconcile their statements against their logs, the statements, logs and receipts are forwarded to the Approving Official for review and approval. The Approving Official records approval electronically in the PNC Bank/Visa P-Card system and signs and dates the statement.
- B. Receipts must be attached to the P-Card Transaction Log and secured in a manner that will prevent loss. The Transaction Log and receipts shall remain at the facility/department for a period of two (2) years. After the two year period, Transaction Logs and receipts and receipts shall be stored off site for a period of five (5) years.

G. REPORTS:

1. **Bank Reports:** PNC Bank will distribute monthly documents within five (5) working days after the end of the 30-day billing cycle.
2. **Cardholder Statement of Account:** A report for the Cardholder, which provides a detailed listing of all purchases, credits and other transaction data that the Cardholder has made in the 30-day billing cycle.
3. **Approving Official Account Summary:** A summary listing of all Cardholder activity for which the Official has approving authority and a summary sheet for the current cycle.
4. Each card will have the Cardholder's primary cost center number assigned to it. The department's sixteen digit general ledger account number will automatically be assigned to each transaction. This information will be transmitted from the Bank directly to Accounts Payable each month. The charges will be processed for payment, using the cost center and account number assigned based on the purchase. Should the Cardholders want to charge a specific purchase to another cost center, they need to contact DRPA Finance with the reallocation information or utilize the PNC Bank/Visa P-Card System.

H. CONTROLS AND FEATURES:

1. Monthly reports and summaries, listing all transactions, are issued by the Bank to the P-Card Administrator. These listings will allow the P-Card Administrator to track all Cardholder activity.
2. More than two (2) reminders to a Cardholder that an approved monthly statement is delinquent will be grounds for suspending or canceling the P-Card from that user.
3. Customized summary listings and usage reports are available to appropriate departmental personnel. These can be used to track multiple cards for one or more Cardholders and serve as a management tool for reviewing transactions and usage. Contact the P-Card Administrator to review sample Management Reports and discuss your reporting needs.
4. **Controls** embedded into the card are default controls that have been put in place by the P-Card Administrator based on DRPA policies and procedures. These controls cover transactions that will be declined if the Cardholder attempts to complete a transaction which is (1) over the single transaction limit; (2) for unallowable goods and services (listed in **Appendix A**); or (3) for any type of cash advance or ATM transaction.
 - a. Transactions may be further restricted or blocked based on several parameters, including:

- i. dollar limit per transaction (see Appendix B)
 - ii. dollar limit per billing cycle
 - iii. dollar limit per commodity
 - iv. number of transactions per day
 - v. number of transactions per cycle
 - vi. merchant category code
- b. Limits may also be set for spending for groups of Cardholders, or for spending within certain merchant categories. Transactions that are attempted and fall outside of the control parameters will be declined at the point of sale. Details of these transactions are available on the report.
- c. These controls are available at the Cardholder level, based on that individual's purchasing needs. Similar controls by department, unit, or subgroup may also be established.
- d. Cardholder status changes, including all of the above controls, are considered "routine Cardholder maintenance" and may be updated by the P-Card Administrator effective either the same day or next day. In addition, on-line access is available for viewing transactions and reports.
- e. The P-Card program is subject to continuous internal and external monitoring and audit.

I. PROCEDURES:

1. Departments participating in the DRPA purchasing card program are required to follow Authority policies and procedures for the program.
2. **Complete** DRPA/PNC Purchasing Card Cardholder Request Form (**Appendix C**).
3. **Complete** DRPA Procurement Card Participating Employee Acknowledgement of Responsibilities Agreement (**Appendix D**).
4. **Complete** PNC Bank Purchasing Card Agreement (**Appendix E**).
5. Forward completed forms (**Appendix C-E**) to your Approving Official for review and approval. Upon approval, send completed forms to DRPA P- Card Administrator for processing.
6. The P-Card Administrator will contact the Cardholder when their card is available. All Cardholders are required to attend a brief orientation prior to activation of their card. The card will be activated immediately following orientation.

**DELAWARE RIVER PORT AUTHORITY
PROCUREMENT CARD PROGRAM**

APPENDIX A

**DELAWARE RIVER PORT AUTHORITY
PROCUREMENT CARD PROGRAM**

**Unallowable Purchases
Blocked Goods and Services***

- Alcoholic Beverages
- Prescription Drugs
- Gift Certificates
- Cellular Phones
- Gasoline
- Hazardous Material
- Contract Maintenance
- Entertainment
- Services provided through existing contracts and the Print Shop
- Jewelry
- Temporary Help
- Travel
- Personal Gifts
- Financial Services
- Restaurants/Meals
- Clothing
- Florist

* Each of the above categories will be blocked in their entirety. However, within each category above, there are many subgroups. If you have an authorized need to purchase a specific commodity within one of these categories, contact the P-Card Administrator.

** In addition to the categories listed above, an extensive list of additional categories and subgroups within each category is available from Purchasing. Cards can be issued or blocked for any combination of categories or subgroups. Contact the P-Card Administrator to discuss ways in which the DRPA can improve the procurement process for your department.

**DELAWARE RIVER PORT AUTHORITY
PROCUREMENT CARD PROGRAM**

APPENDIX B

**Transaction Limits
(as of November 15, 2012)**

\$250.00 – Public Safety, Information Services, Customer Service & Community Relations, General Counsel, Engineering, Homeland Security, Corporate Communications

\$750.00 – Maintenance Technicians, Bridge Operations

\$1,000.00 – Foremen

\$1,500.00 – C&M Managers, Toll Supervisors and Printing Services

\$2,400.00 – Bridge Directors

DELAWARE RIVER PORT AUTHORITY
PROCUREMENT CARD PROGRAM

APPENDIX C

DRPA/PNC Purchasing Card Cardholder Request Form

(CONFIDENTIAL INFORMATION)

Please **PRINT** clearly, **COMPLETE** all required information and **SIGN** where indicated:

1. Employee Full Name: _____
2. Employee Bridge Facility: _____
3. Employee Department/Title: _____
4. Last 4 digits of SS #: _____
5. Birth Date (mm/dd/year): _____

Employee Signature: _____

Form must be submitted to Susan Squillace, DRPA P-Card Manager, Purchasing, along with:

1. "Participating Employee Acknowledgement of Responsibilities" SIGNED by Employee and Authorizing Director
2. "PNC Bank Purchasing Card ~ Cardholder Implementation Form/Employee Usage Agreement" SIGNED by Employee

Note: By submitting this Form and all other required Forms to process requested PNC P-Card, Employee hereby acknowledges that they received, reviewed and accepted DRPA's Purchasing Card Program policies and procedures.

**DELAWARE RIVER PORT AUTHORITY
PROCUREMENT CARD PROGRAM**

APPENDIX D

Participating Employee Acknowledgement of Responsibilities

By participating in the Delaware River Port Authority Procurement Card program as a Cardholder, you assume responsibilities pertaining to the operation of the Procurement Card Program. Please see the Procurement Card Program Guidelines for a complete list of responsibilities, which include but are not limited to the following:

- The Delaware River Port Authority Procurement Card is to be used for authorized business expenditures only. The Procurement Card may only be used within the policies and procedures outlined for the Procurement Card Program.
- The Procurement Card will be issued in the name of the employee. The Cardholder is personally responsible for **ALL CHARGES** made on the P-Card. The card cannot be used for personal purchases and doing so will result in revocation of the card and disciplinary action up to and including suspension or termination. In addition, a cardholder who makes unauthorized purchases may be liable for the total dollar amount of such unauthorized purchases, plus any administrative fees charged by the Bank in connection with the misuse and will be accountable for all charges made with the card. The card is not transferable and may not be used by anyone other than the Cardholder.
- The Procurement Card must be maintained with the highest level of security. If the card is lost or stolen, or if the Cardholder suspects the card or account number has been compromised, the Cardholder agrees to immediately notify PNC Bank and the DRPA Procurement Card Administrator. Oral notification is to be followed up by written confirmation.
- On a monthly basis, the Cardholder will receive a statement listing all activity associated with the card. This activity will include purchases and credits made during the reporting period. While the Cardholder will not be responsible for making payments, the Cardholder will be responsible for the verification and reconciliation of all account activity.
- Cardholder's accounts will be subject to periodic reviews and audits. By accepting the card, the Cardholder agrees to comply with these reviews and audits. The Cardholder will be asked to produce their card to validate its existence and produce statements and receipts to verify appropriate use.
- Policies and Procedures related to the Procurement Card may be updated or changed at any time. The DRPA will promptly notify all cardholders of these changes. The Cardholder agrees to, and will be responsible for, the execution of any program changes.
- The Cardholder agrees to surrender and cease use of the card upon termination of employment, whether from retirement, voluntary separation, resignation or dismissal. In addition, the Cardholder must surrender and cease use of the card in the event of transfer or relocation. The Cardholder may also be asked

to and agrees to surrender the card at any time deemed necessary by management.

- No subsequent invoice should be received from the vendor related to any Procurement Card purchases.
- Misuse, including but not limited to, personal use or unauthorized use and/or fraudulent use of the card will result in disciplinary action, up to and including termination, reimbursement and/or civil or criminal penalties.
- Purchases may not be split by the Cardholder to keep under the card's transaction limit.
- Purchases should not be made by the Cardholder for supplies and services that are on DRPA Annual Contracts such as office supplies, office paper, bottled water, etc. or for items that are available through the DRPA Storeroom.
- Any supplies, equipment or services that are purchased by multiple Cardholders on a repetitive basis should be reviewed with the Procurement Card Administrator to place on an Annual Contract.

By signing below, I acknowledge that I have read and agree to the terms and conditions of this document. I certify that as a participating Cardholder of the Delaware River Port Authority Procurement Card Program, I understand and assume the responsibilities listed above.

Employee Signature

Title

Name (Print)

Date

Authorizing Director

Title

Name (Print)

Date

APPENDIX E

PNC BANK PURCHASING CARD



Cardholder Implementation Form Employee Usage Agreement

Your participation in the Visa Purchasing Program is a convenience that carries responsibilities. Although the card is issued in your name, it should be considered company property and should be used with good judgement. Your signature below verifies that you understand the Visa Purchasing Program guidelines outlined below and agree to comply with them.

- 1 The Visa Purchasing Card is provided to employees based on their need to purchase business-related goods and services. A card may be revoked at any time based on change of assignment or location. The card is not an entitlement nor reflective of title or position.
- 2 The card is for business-related purchases only; personal charges are not to be made to the card.
- 3 You are the only person entitled to use the card and are responsible for all charges made against the card.
- 4 Improper use of the card can be considered misappropriation of company funds which may result in disciplinary action, up to and including termination.
- 5 All charges are billed directly to and paid directly by the company. Any personal charges on the card could be considered misappropriation of company funds since the cardholder can not pay the bank directly.
- 6 Cardholders are expected to comply with internal control procedures in order to protect company assets. This includes keeping receipts, reconciling Visa Purchasing monthly memo statements and following proper card security measures.
- 7 Cardholders are responsible for reconciling their Visa Purchasing monthly memo statement and resolving any discrepancies by contacting the supplier first and then the bank.
- 8 Each account is assigned a cost accounting code by management and purchases may be automatically charged to that code. The code can only be changed by management approval. If changed, a new accounting code does not affect past charges, only future charges.
- 9 A lost or stolen card should be reported immediately by telephone to PNC Bank Customer Service at 1(800) 685-4039.
- 10 A cardholder must surrender the card upon termination of employment (i.e. retirement or voluntary/involuntary termination). At this point, no further use of the account is authorized.

Cardholder Signature

Program Administrator Signature

Cardholder printed or typed name

Program Administrator printed or typed name

Date

Date

APPENDIX F

DRPA Procurement Card Transaction Log

Cardholder Name:	Department	Account No:	Log for the month of:

Order Date:	Vendor:	Amount:	Description:	Received:	

Cardholders Signature: _____ Date: _____

Approving Officials Signature: _____ Date: _____

Chapter 17 – Uniform Procurement Card

- A. PURPOSE:** To provide policy and procedures governing the operation of the DRPA uniform purchasing card program.
- B. SCOPE:** Applies to all cardholders participating in the DRPA uniform purchasing card program.
- C. OBJECTIVE:** To provide a more efficient method to make small purchases for official pre-authorized uniforms “required” versus a pre-defined “quantitative” uniform policy. Employees are mandated to purchase uniforms in accordance with the DRPA’s Annual Uniform Policy and Guidelines with regard to style, specification and color for uniformity purposes. Employees will also be mandated to purchase safety shoes in accordance with DRPA Safety Shoe Listing with regard to styles and specifications. This purchasing practice is expected to reduce paperwork, administrative costs and expedite payment to vendors.
- D. DEFINITION: Uniform Purchasing Card.** A credit card issued in the name of the DRPA, with an annual spending limit, for DRPA personnel to purchase uniforms and safety shoes in accordance with the DRPA’s Uniform Policy and Guidelines.
- E. POLICY:**
1. The DRPA shall administer a program whereby designated employees can use a uniform credit card with an annual spending limit, issued in the name of the DRPA, to pay for uniforms and safety shoes in accordance with DRPA’s Uniform Policy and Guidelines. This program is called the DRPA uniform purchasing card program.
 2. Departmental personnel may participate in the program upon approval by the appropriate Department Director and P-Card Administrator. The P-Card Administrator may consult with Chief Financial Officer and the Office of the Inspector General to render final approval determination.
 3. A significant feature of the Uniform Procurement Card is the ability to customize controls for spending limits and merchant types. Merchant codes will be blocked for all categories **EXCEPT** uniforms for the purpose of the uniform card program. The spending limit for each card will be established in accordance with Authority policy.
 4. The DRPA Uniform Procurement Card will be used strictly for the purpose of purchasing uniforms and safety shoes authorized by the DRPA. Each Cardholder will be provided a DRPA Uniform Policy and Guidelines, and DRPA Safety Shoe List, listing all authorized uniforms and safety shoes approved for purchase.
 5. The DRPA is exempt from sales tax throughout the U.S. All purchases within Pennsylvania or New Jersey, or shipped from outside of the state to DRPA are sales tax exempt. The Cardholder is responsible for informing the vendor that

the purchase is not to be taxed. DRPA's Federal Tax I.D. is printed on the face of the Uniform P-Card and a sales tax exempt form may be provided to the vendor upon request.

6. The Uniform P-Card is not intended for clothing or shoe purchases that are not included in the DRPA's Uniform and Safety Shoe Policy. Each Cardholder will be provided a copy of the DRPA Uniform Policy prior to card activation. The DRPA Safety Shoe Listing will be provided annually.

F. RESPONSIBILITIES:

1. Cardholder

- a. The Cardholder is personally responsible for **ALL CHARGES** made on the Uniform P-Card. The card cannot be used for personal purchases and doing so will result in revocation of the card and disciplinary action up to and including suspension or termination. In addition, a cardholder who makes unauthorized purchases may be liable for the total dollar amount of such unauthorized purchases, plus any administrative fees charged by the Bank in connection with the misuse.
- b. It is the Cardholder's responsibility to safeguard the Uniform P-Card and account number to the same degree that a Cardholder safeguards his/her personal credit information. Uniform P-Cards must be kept in a secure area at all times. The Cardholder must not allow anyone to use his/her account number.
- c. If the card is lost or stolen the Cardholder must immediately notify PNC Bank Customer Service at **800-685-4039** and DRPA's P-Card Administrator at 856-968-2163. PNC Bank's Customer Service Representatives are available 24 hours a day, 7 days a week.
- d. A new card (**with authorized spending limit based on previous unused balance**) shall be promptly issued to the Cardholder after the reported loss or theft. A card that is subsequently found by the Cardholder after being reported lost or stolen shall be cut in half and returned to the P-Card Administrator.
- e. Orders may be placed by phone, internet or in person. Internet purchases must be made on a secure web site which a gold lock appears at bottom left of the screen. If you are unsure about the web site, contact the P-Card Administrator before placing the order. Under **NO** circumstances should a card number be written on a fax order. If you need to fax an order, request that the vendor phone you to receive your credit card number.
- f. Any time a purchase is made using the Uniform P-Card, whether it is done over the counter or by telephone/internet, a document must be retained as proof of purchase. These documents will later be used to verify the purchases shown on the cardholder monthly statement.
- g. When a purchase is made over the counter, the Cardholder shall obtain the customer copy of the charge slip. If the charge slip does not show the

quantities and descriptions of the items purchased, a detailed invoice or cash register receipt indicating quantity and description of items purchased will also be required. The charge slip, or charge slip plus register receipt/invoice, will become the accountable document(s). (Make sure that all charge slip carbons are destroyed.)

- h. When making purchases by phone, the Cardholder shall document the transaction by referencing the order number, product description, quantities and dollar amount and attach appropriate order receipt to the Uniform Card Transaction Log. Internet orders must be documented by printed order confirmation that must be attached to the Uniform Card Transaction Log as form of receipt.
- i. The unique Uniform Procurement Card that the Cardholder receives has his/her name embossed on it. No other person is authorized to use the card. The card was specially designed showing the logo of the DRPA and the words "Delaware River Port Authority" imprinted on it to avoid being mistaken for a personal credit card. Each Cardholder will be responsible for verifying all charges associated with his specific account number. When an employee receives a Uniform P-Card, he will also receive a Uniform P-Card Transaction Log (**Appendix E**). The Uniform P-Card Transaction Log must be maintained so that the Card Company bills can be verified. It is mandatory that each Cardholder use this log to ensure consistency with the documentation associated with the use of the Uniform P-Card. This documentation is used to: (1) verify all purchases; (2) audit a specific card; (3) reconcile a reported billing discrepancy; (4) identify credits obtained and (5) assure uniforms and safety shoes purchased are in compliance to the DRPA's Uniform Policy and authorized Safety Shoe Listing.
- j. If, for some reason, the Cardholder does not have documentation of the transaction to send with the statement, he/she must attach an explanation that includes a description of the item, date of purchase, merchant's name, quantity and price, and why there is no supporting documentation.
- k. Cardholder is responsible for resolving disputes directly with the Vendor. If you are unable to resolve with the Vendor, complete the dispute form on the back of your statement and forward to PNC Bank and the P-Card Administrator. If you are unable to resolve your dispute after contacting the Vendor and/or the bank, contact the P-Card Administrator for further assistance.
- l. The Cardholder is responsible for ensuring that returns and their associated credits have been properly reflected on the monthly statement. Cardholder may not request that an anticipated credit be deducted from a monthly statement. The charge transaction will be processed in the month that it occurred and the credit processed the following month or when it is received. The only exception to this will be at fiscal year end, at which time an anticipated offsetting credit may be applied against a charge transaction. At no time may Cardholder request a refund check from the Bank.

- m. If purchased items or credits do not appear on the monthly statement within 60 days after the date of the transaction, the Cardholder shall notify the P-Card Administrator.

2. Departments

- a. Prior to separation from either the department or the DRPA, the Cardholder shall surrender the DRPA Uniform P-Card and the current month's supporting documentation to his/her director. The director is to immediately notify the P-Card Administrator to cancel the card. Upon receipt of the final memo statement, the director will review, approve, and forward the monthly statement to the P-Card Administrator. The director must indicate in the memo that (1) the Cardholder has separated from the department and (2) cut the card in half and return it to the P-Card Administrator.
- b. Human Resource Services (HRS) will have a record of every cardholder and their signed Employee Acknowledgement Form (Attachment 1). The P-Card Administrator will notify HRS when he/she receives destroyed cards from department directors to note on employees exit interview.
- c. Should the Cardholder be unable to approve his/her monthly statement due to being unavailable for an extended period of time, it is the responsibility of the Cardholder's director to complete the monthly record keeping. The director should review and approve the monthly statement and forward it to the P-Card Administrator on or before the 15th of the month. The director shall indicate that he is approving the statement in the Cardholder's absence. These are the only instances when the statements will be accepted by Accounts Payable without the original signature of the Cardholder.

3. Approving Official

- a. An Approving Official is the Cardholder's Director or designee and is responsible for reviewing and authorizing the Cardholder's monthly statement of account to ensure that purchases are made in accordance with DRPA Uniform and Safety Shoe policies and procedures. To assist in this process, each Approving Official will receive a Statement of Account provided by the P-Card Administrator on a monthly basis which details the activity of all Cardholders within that Director's department. After Cardholders review and reconcile their statements against their logs, they are forwarded to the Approving Official for review and approval. The Approving Official records approval electronically in the PNC Bank/Visa P-Card system and signs and dates the statement.
- b. Receipts must be attached with the Uniform P-Card Transaction Log in a manner that will prevent loss. The Transaction Log shall remain at the facility/department for a period of two (2) years. After the two year period, Transaction Logs and receipts shall be stored off site for a period of five (5) years.

G. REPORTS:

1. **Bank Reports:** PNC Bank will distribute monthly documents within five (5) working days after the end of the 30-day billing cycle.
2. **Cardholder Statement of Account:** A report for the Cardholder, which provides a detailed listing of all purchases, credits and other transaction data that the Cardholder has made in the 30-day billing cycle.
3. **Approving Official Account Summary:** A summary listing of all Cardholder activity for which the Official has approving authority and a summary sheet for the current cycle.
4. Each card will have the Cardholder's primary cost center number assigned to it. The department's sixteen digit general ledger account number will automatically be assigned to each transaction. This information will be transmitted from the Bank directly to Accounts Payable each month. The charges will be processed for payment, using the cost center and account number assigned based on the purchase. Should the Cardholders want to charge a specific charge to another cost center, they need to contact DRPA Finance with the reallocation information or utilize the PNC Bank/Visa P-Card System.
5. The Uniform Card program is subject to continuous internal and external monitoring and audit.

H. CONTROLS AND FEATURES:

1. Monthly reports and summaries, listing all transactions, will be issued by the Bank to the P-Card Administrator. These listings will allow the P-Card Administrator to track all Cardholder activities.
2. More than two (2) reminders to a Cardholder that an approved monthly statement is delinquent will be grounds for suspending or canceling the Uniform P-Card from that user.
3. Customized summary listings and usage reports are available to appropriate departmental personnel. These can be used to track multiple cards for one or more Cardholders and serve as a management tool for reviewing transactions and usage. Contact the P-Card Administrator to review sample Management Reports and discuss your reporting needs.
4. **Controls** embedded into the card are default controls that have been put in place by the P-Card Administrator based on DRPA Uniform and Safety Shoe policies and procedures. These controls cover transactions that will be declined if the Cardholder attempts to complete a transaction which is (1) over the uniform and safety shoe purchase pre-approved monetary spending limit; (2) for unallowable goods and services (listed in **Appendix A**); or (3) for any type of cash advance or ATM transaction.

I. PROCEDURES:

1. Departments participating in the DRPA uniform purchasing card program are required to follow Authority policies and procedures for the program.
2. **Complete** DRPA/PNC Uniform Purchasing Card Cardholder Request Form (**Appendix B**).
3. **Complete** DRPA Uniform Procurement Card Participating Employee Acknowledgement of Responsibilities Agreement (**Appendix C**).
4. **Complete** PNC Bank Purchasing Card Agreement (**Appendix D**).
5. Forward completed forms (**Appendix B-D**) to your Approving Official for review and approval. Upon approval, send completed forms to DRPA P- Card Administrator for processing.
6. The P-Card Administrator will contact the Cardholder when their card is available. All Cardholders are required to attend a brief orientation prior to activation of their card. The card will be activated immediately following orientation.

**DELAWARE RIVER PORT AUTHORITY
UNIFORM PROCUREMENT CARD PROGRAM**

APPENDIX A

**DELAWARE RIVER PORT AUTHORITY
UNIFORM PROCUREMENT CARD PROGRAM
Unallowable Purchases
Blocked Goods and Services***

- Alcoholic Beverages
- Prescription Drugs
- Gift Certificates
- Cellular Phones
- Gasoline
- Hazardous Material
- Contract Maintenance
- Entertainment
- Services provided through existing contracts and the Print Shop
- Jewelry
- Temporary Help
- Travel
- Personal Gifts
- Financial Services
- Restaurants/Meals
- Florist

* Each of the above categories will be blocked in their entirety. However, within each category above, there are many subgroups.

**DELAWARE RIVER PORT AUTHORITY
UNIFORM PROCUREMENT CARD PROGRAM**

APPENDIX B

**DRPA/PNC UNIFORM PROCUREMENT CARD
CARDHOLDER REQUEST FORM**

(CONFIDENTIAL INFORMATION)

Please PRINT clearly, COMPLETE all required information and SIGN where indicated:

1. Employee Full Name: _____
2. Employee Bridge Facility: _____
3. Employee Department/Title: _____
4. Last 4 digits of SS #: _____
5. Birth Date (mm/dd/year): _____

Employee Signature: _____

Form must be submitted to Susan Squillace, DRPA P-Card Manager, Purchasing, along with the following required Forms to process PNC Bank Card request:

1. "Participating Employee Acknowledgement of Responsibilities" SIGNED by Employee and Authorizing Director
2. "PNC Bank Purchasing Card ~ Cardholder Implementation Form/Employee Usage Agreement" SIGNED by Employee

Note: By submitting this Form and all other required Forms to process requested PNC Uniform Card, Employee hereby acknowledges that they received, reviewed and accepted DRPA's PNC Uniform Card Policies and Procedures.

**DELAWARE RIVER PORT AUTHORITY
UNIFORM PROCUREMENT CARD PROGRAM**

APPENDIX C

Participating Employee Acknowledgement of Responsibilities

By participating in the Delaware River Port Authority Uniform Card program as a Cardholder, you personally assume responsibilities pertaining to the operation of the Procurement Card Program. Please see the Uniform Card Program Guidelines for a complete list of responsibilities, which include but are not limited to the following:

- The Delaware River Port Authority Uniform Card is to be used for authorized business expenditures only. The Uniform Card may only be used within the policies and procedures outlined for the Uniform Card Program.
- The Uniform Card will be issued in the name of the employee. By accepting the card, the employee assumes responsibility for the card and will be personally responsible for all charges made with the card. The card is not transferable and may not be used by anyone other than the Cardholder.
- The Uniform Card must be maintained within the highest level of security. If the card is lost or stolen, or if the Cardholder suspects the card or account number has been compromised, the Cardholder agrees to immediately notify PNC Bank and the DRPA Procurement Card Administrator. Oral notification is to be followed up by written confirmation.
- On a monthly basis, the Cardholder will receive a statement listing all activity associated with the card. This activity will include purchases and credits made during the reporting period. While the Cardholder will not be responsible for making payments, the Cardholder will be responsible for the verification and reconciliation of all account activity.
- Cardholder's accounts will be subject to periodic reviews and audits. By accepting the card, the Cardholder agrees to comply with these reviews and audits. The Cardholder will be asked to produce their card to validate its existence and produce statements and receipts to verify appropriate use.
- Policies and Procedures related to the Uniform Card may be updated or changed at any time. The DRPA will promptly notify all cardholders of these changes. The Cardholder agrees to, and will be responsible for, the execution of any program changes.
- The Cardholder agrees to surrender and cease use of the card upon termination of employment, whether from retirement, voluntary separation, resignation or dismissal. In addition, the Cardholder must surrender and cease use of the card in the event of transfer or relocation. The Cardholder may also be asked

to and agrees to surrender the card at any time deemed necessary by management.

- No subsequent invoice should be received from the vendor related to any Procurement Card purchases.
- Misuse, including but not limited to, personal use or unauthorized use and/or fraudulent use of the card will result in disciplinary action, up to and including termination, reimbursement and/or civil or criminal penalties.
- Purchases may not be split by the Cardholder to keep under the card's transaction limit.

By signing below, I acknowledge that I have read and agree to the terms and conditions of this document. I certify that as a participating Cardholder of the Delaware River Port Authority Procurement Card Program, I understand and assume the responsibilities listed above.

Employee Signature

Title

Name (Print)

Date

Authorizing Director

Title

Name (Print)

Date

DELAWARE RIVER PORT AUTHORITY UNIFORM PROCUREMENT CARD PROGRAM

APPENDIX D

PNC BANK PURCHASING CARD



Cardholder Implementation Form Employee Usage Agreement

Your participation in the Visa Purchasing Program is a convenience that carries responsibilities. Although the card is issued in your name, it should be considered company property and should be used with good judgement. Your signature below verifies that you understand the Visa Purchasing Program guidelines outlined below and agree to comply with them.

- 1 The Visa Purchasing Card is provided to employees based on their need to purchase business-related goods and services. A card may be revoked at any time based on change of assignment or location. The card is not an entitlement nor reflective of title or position.
- 2 The card is for business-related purchases only; personal charges are not to be made to the card.
- 3 You are the only person entitled to use the card and are responsible for all charges made against the card.
- 4 Improper use of the card can be considered misappropriation of company funds which may result in disciplinary action, up to and including termination.
- 5 All charges are billed directly to and paid directly by the company. Any personal charges on the card could be considered misappropriation of company funds since the cardholder can not pay the bank directly.
- 6 Cardholders are expected to comply with internal control procedures in order to protect company assets. This includes keeping receipts, reconciling Visa Purchasing monthly memo statements and following proper card security measures.
- 7 Cardholders are responsible for reconciling their Visa Purchasing monthly memo statement and resolving any discrepancies by contacting the supplier first and then the bank.
- 8 Each account is assigned a cost accounting code by management and purchases may be automatically charged to that code. The code can only be changed by management approval. If changed, a new accounting code does not affect past charges, only future charges.
- 9 A lost or stolen card should be reported immediately by telephone to PNC Bank Customer Service at 1(800) 685-4039.
- 10 A cardholder must surrender the card upon termination of employment (i.e. retirement or voluntary/involuntary termination). At this point, no further use of the account is authorized.

Cardholder Signature

Program Administrator Signature

Cardholder printed or typed name

Program Administrator printed or typed name

Date

Date

CHAPTER 18 – FTA CLAUSES

These clauses will be updated on an annual basis. Contact Manager, Contract Administration with upcoming procurements to ensure that the requirements are met.

APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Beacon requirements apply to contracts exceeding \$2,000)
Includes provisions from 2 CFR 200, Master Agreement 31 (May 2, 2024) and Circular 4220.1F

PROVISION	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claim Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Civil Rights (Title VI, ADA, EEO Except Special DOL EEO clause for construction projects)	All	All	All>\$10,000	All	All
Special DOL EEO clause for construction projects – new language				>\$10,000	
Veteran’s Employment Preference				All	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Prompt Payment to Subcontractors (if not part of DBE clause)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$150,000 49 USC 5323(j)(13)	>\$150,000 49 USC 5323(j)(13)	>\$150,000 49 USC 5323(j)(13)
Resolutions of Disputes, Breaches, or Other Litigation – Notification of Contractor and/or Subcontractor to Agency and Agency notification to FTA	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Clean Water	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.

PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Fly America	Foreign air transp. /travel	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.
Davis-Bacon Act				>\$2,000 (also ferries).	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services expected).	>\$100,000	>\$100,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2				All >\$2,000 (also ferries).	
Bonding				>\$250,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & Additions.	
Transit Employee Protective Arrangements		Transit operations.			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations.			
Alcohol Misue and Testing		Transit operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Rights to Inventions Made Under a Contract or Agreement	R & D with Small Business Or Non-Profit				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected Items \$10,000 or more annually.		EPA-selected Items \$10,000 or more annually.	EPA-selected Items \$10,000 or more annually.
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.
Safe Operation of Motor Vehicles 1. Seat Belt Use 2. Distracted Driving	All	All	All	All	All
Prohibition on certain telecommunications and video surveillance services or equipment	All	All	All	All	All
Federal tax Liabilities and Recent Felony Convictions – Requires Certification – ALL tiers	All	All	All	All	All

CONTRACTORS - FTA REQUIREMENTS

The Work under this Contract will be subject to a financial assistance Contract between the Delaware River Port Authority (“DRPA” or “Authority”) and the Federal Transit Administration (“FTA”) of the United States Department of Transportation (“USDOT”). As a result, such work will be performed pursuant to all applicable Federal laws, regulations, policies and administrative practices which are currently in effect and which may be established during the performance of the Work under this Contract. By submitting a bid, the Contractor certifies that they have read, understood and agrees to comply with the Federal requirements which follow.

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the following contract provisions. Please note that FTA Circular 4220.1F has not been updated to incorporate the provisions of the Uniform Administrative Requirements, 2 CFR § 200. Until that update is issued, when there is a conflict between guidance contained in Circular 4220.1F and the Uniform Administrative Requirements, the Uniform Administrative Requirements supersede Circular 4220.1F. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform an act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, as they may be amended or promulgated from time to time during the term of the contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

The following provisions supplement and amend other sections of the Contract documents. In case of conflicting requirements, the following requirements shall govern:

A. BUY AMERICA REQUIREMENTS

The Contractor agrees to comply with 49 U.S.C. 5323(j), 49 CFR Part 661 and 663, 2 CFR § 184 and 2 CFR § 200.322 which provide that Federal funds may not be obligated unless steel, iron, construction materials and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. The bidder must submit to the DRPA the appropriate Buy America certification with all bids on FTA-funded contracts valued at more than \$250,000.00, except those subject to a general waiver. Bids that are not accompanied by a completed Buy America certification will be rejected as non-responsive. The Contractor is responsible for ensuring that subcontractors are in compliance with the Buy America requirements.

B. RESTRICTIONS ON LOBBYING

For contracts whose value exceeds \$100,000.00, the Contractor must agree to comply with the provisions of the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 and DOT implementing regulation “New Restrictions on Lobbying” at 49 CFR 20.110(d), which mandate certification that the Contractor and all subcontractors will not and have not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any

Federal contract, grant, or any other such award. Contractors and subcontractors must also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on their behalf with non-Federal funds.

C. DRPA’s DISADVANTAGED BUSINESS ENTERPRISE PROGRAM, INCLUDING SMALL BUSINESS PARTICIPATION ELEMENT - AMENDMENT

1. Statement of Purpose

The DRPA opposes unlawful discrimination of any kind. The DRPA is an Equal Employment Opportunity Employer/Contractor and is firmly committed to providing equal employment and business opportunities for all persons.

The DRPA receives federal financial assistance from the United States Department of Transportation (USDOT), through the Federal Transit Administration (FTA). As a condition of receiving this assistance, the DRPA has signed an assurance that it will comply with 49 CFR Part 26 (as amended at 89 FR 24966, Apr. 9, 2024). Accordingly, the DRPA has established a Disadvantaged Business Enterprise (“DBE”) Program in accordance with regulations of the USDOT, 49 CFR Part 26. Our program is narrowly tailored in accordance with applicable law.

On January 28, 2011, 49 CFR Part 26.39, “Participation by Disadvantaged Business Enterprises in Department of Transportation Programs,” was published, requiring recipients of federal funding to add a Small Business Enterprise (“SBE”) program element to their approved DBE Programs. On February 28, 2012, pursuant to the Final Rule set forth in the Federal Register [76 FR 5083 – Disadvantaged Business Enterprise: Program Improvement], DRPA submitted an amendment to its DBE Program, entitled SBE Participation Element to the FTA for review and approval. The FTA approved the DRPA’s proposed SBE Participation Element was approved on September 17, 2012. In approving same, the FTA stated that the Authority’s SBE Participation Element meets the requirements set forth in the USDOTs DBE regulations.

It is the responsibility of the Contractor to abide by Federal Regulations regarding the Disadvantaged Business Enterprise Program, as detailed in 49 CFR Part 26.

2. Establishing DBE and SBE Participation Goals

The DRPA establishes its DBE goal by carefully reviewing each project individually. On a project-by-project basis, staff reviews the scope of the project, the overall dollar value of the project, and the work typically subcontracted by a prime contractor/consultant on similar projects. This review will determine the subcontracting and supplier opportunities the project may likely yield. **The DBE goal for this project is Insert Goal**

In addition to establishing a DBE participation goal, where appropriate, the DRPA will also establish an SBE participation goal. The DRPA’s SBE Participation Element has been established to provide contracting opportunities for firms that are independently owned and operated, organized for profit, and not dominant in their field. The SBE Participation Element gives small businesses, with annual gross receipts up to \$30.72 million, the opportunity to participate in DRPA’s federally-assisted contracting and procurement opportunities.

The SBE Participation Element applies only to DRPA projects funded in whole or in part with federal financial assistance. NO SBE goals have been set for this project.

3. DBE Definition

Per 49 CFR 26.5, Disadvantaged Business Enterprise (DBE) means a for-profit small business concern-

- a. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged; and
- b. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

4. DBE Participation for Suppliers

49 CFR 26.55(e) (*as amended at 89 FR 24966, Apr. 9, 2024*), states that count expenditures with DBEs for materials or supplies toward DBE goals shall be as follows:

- a. If the materials or supplies are obtained from a DBE **manufacturer**, count **100 percent** of the cost of the materials or supplies.
 - 1.) A **manufacturer** is a firm that owns (or leases) and operates a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a manufacturer. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.
- b. If the materials or supplies are purchased from a DBE **regular dealer**, count **60 percent** of the cost of the materials or supplies (including transportation costs).
 - 1.) A **regular dealer** is a firm that owns (or leases) and operates, a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in sufficient quantities, and regularly sold or leased to the public in the usual course of business.
- c. If the materials or supplies are purchased from a DBE **distributor** that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question, count **40 percent** of the cost of materials or supplies (including transportation costs).
 - 1.) A DBE **distributor** is an established business that engages in the regular sale or lease of the items specified by the contract. A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (*e.g.*, a manufacturer's facility), making it liable for any loss or damage not covered by the carrier's insurance. A DBE distributor performs a CUF (commercially useful function) when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third party, indicating Free on Board (FOB) at the point of

origin or similar terms that transfer responsibility of the items in question to the DBE distributor.

- 2.) If these conditions are met, DBE distributors may receive **40 percent** for drop-shipped items. Terms that transfer liability to the distributor at the delivery destination (*e.g.*, FOB destination), or deliveries made or arranged by the manufacturer or another seller do not satisfy this requirement.

5. DBE and SBE Certifications

DRPA does not certify firms as DBEs or SBEs. However, the Authority will recognize the SBE certifications performed by certifying entities, provided the firms meet the following criteria:

- a. **Business Size Determination**: The business (including its affiliates) must be a small business as defined by SBA standards **and** DBE Program Size standards. It must not have average annual gross receipts over the DBE Statutory Cap as set by the DOT (\$30.72 million as of March 1, 2024) in the previous three fiscal years and must not have average annual gross receipts over the set limit per the NAICS code appropriate to the type(s) of work the firm seeks to perform in the DOT-assisted contracts (see 13 CFR 121.201) over the last five fiscal years.
- b. **Personal Net Worth**: Only persons having a personal net worth (PNW) of less than the set limit as defined by the DOT (\$2.047 million as of May 9, 2024) can be considered as a potential qualified SBE. Items that may be excluded from a person's net worth calculation can be found under 49 CFR 26.68 (*as amended at 89 FR 24966, Apr. 9, 2024*).
- c. **Independence**: The business must not be tied to another firm in such a way as to compromise its independence and control.
- d. **Control**: An owner seeking certification must possess the power to direct or cause the direction of the management and policies of the firm. The owner must also have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged.
- e. **Burden of Proof Allocation**: Applicants carry the initial burden of proof regarding their eligibility and must demonstrate that they meet all requirements concerning group membership or individual disadvantage, business size, ownership, and personal net worth.
- f. **Certified DBEs**: In accordance with 49 CFR §26.39 (*as amended at 89 FR 24966, Apr. 9, 2024*), certified DBEs that meet the size criteria established under the program are eligible to participate in the SBE Participation Program Element.

The USDOT only requires the DRPA to count the DBE participation when reporting progress toward meeting DBE goals. SBE participation will not be counted. However, DRPA will track and monitor the participation of certified DBEs and SBEs on all projects where DBE and SBE participation goals have been established.

6. DBE and SBE Verification Procedures

DRPA is a non-certifying member of the New Jersey Unified Certification Program (“NJUCP”) and the Pennsylvania Unified Certification Program (“PAUCP”) as such we do not perform DBE certifications. Consistent with the revisions to 49 CFR §26.39 (*as amended at 89 FR 24966, Apr. 9, 2024*), DRPA recognizes interstate certification reciprocity.

The Contractor has the sole responsibility of obtaining verified DBE and/or SBE firms for use on any federally-assisted project on which DBE and/or SBE goals have been established. Each DBE and/or SBE the Contractor intends to use as subcontractor(s) or supplier(s) must have a current DBE and/or SBE certification issued by a certifying entity. Only a firm whose certification status as a DBE and/or SBE is current, at the time of Contract execution, shall be recognized as a certified firm.

7. DBE and SBE Directory

As a non-certifying member of the NJ UCP and PA UCP, the DRPA has included links to the DBE directories created and maintained by both regional UCPs. Those directories can be found at njucp.dbesystem.com and paucep.dbesystem.com.

When a single national directory, with a federal certification database becomes available, DRPA will include a link to the centralized database in its program document.

8. Monitoring Requirements for Race Conscious and Race Neutral Participation

- a. DRPA will only count DBE participation when reporting progress towards meeting DBE goals. Until advised otherwise by the US DOT, SBE participation will be tracked internally by the DRPA, but not reported to the FTA.
- b. Attainment of any DBE/SBE goal that may be established shall not be a measure of responsiveness but will be considered in measuring whether a firm is responsible contractor or consultant.
- c. In the event DBE and/or SBE goal(s) are established on a federally-funded project, at the time the bid is submitted, the Contractor shall be required to submit proof of its DBE/SBE solicitation efforts and commitments to the DRPA’s Office of Business Development & Equal Opportunity. The DBE/SBE solicitation and commitment information shall be recorded on the appropriate forms included in the bid documents. The completed Solicitation, Commitment, and Quote Confirmation Forms shall become part of the Agreement and will thereby be incorporated herein by reference. Contractors who do not meet the established goals will be required, to submit evidence of their good faith efforts to solicit and commit to DBE/SBE firms.
- d. DRPA will monitor race-neutral participation by DBEs and participation on contracts that have DBE goals, verify the DBE is performing work on the contract and performing a commercially useful function (CUF) on all contracts involving a DBE.
- e. DRPA will maintain a “running tally” of its overall DBE attainment and for each payment the prime Contractor made to DBEs it is using to meet its goal.

- f. To closely monitor the DBE program's established goals and prompt payment to DBE(s), each month the Contractor shall submit the original "Monthly Payment Status Report" to the DRPA Chief Engineer along with the partial payment estimate. **The Monthly Payment Status Report must be submitted each month even when no DBE/SBE subcontractors/suppliers worked on the project.**
- g. Regarding Race Conscious and Race Neutral participation, the DRPA may at any time require such other information or inspections as it deems necessary to determine the compliance of any Contractor with the terms and spirit of these nondiscrimination provisions. The Contractor shall fully cooperate with a compliance review. Unreasonable delays or failures to provide requested information or otherwise to cooperate with the DRPA may result in the withholding of contract payments and may be deemed a breach of this Contract.

NOTE: Subcontractor Quote Confirmation Form(s) MUST be signed by each DBE Subcontractor and submitted at the time of bid. Failure to submit required forms may result in a finding of "not responsible" and/or rejection of bid.

9. Performance Plans on Design-Build Contracts

- a. DRPA shall accept a DBE Open Ended Performance Plan (OEPP) in design/build contracts to manage DBE participation in a type of contract in which award of the contract occurs before the design is complete and the details of the work, quantities, and scheduling are not yet known.
- b. DRPA shall accept and approve the use of a DBE Open Ended Performance Plan (OEPP) for contract procurement and delivery methods that lack the details needed to make subcontracting commitments prior to contract award.
- c. Provided all parties agree, work types identified up front may be altered to account for actual work needed in real time only if there are subcontracting opportunities.
- d. The DRPA shall enforce the prime contractor's requirement to make ongoing good faith efforts to meet the goal.
- e. In circumstances where DBE subcontractors can be selected for the design phase of a project, in which case the OEPP shall include commitments to DBE firms while listing the work types it plans to solicit DBEs to perform in the remainder of the plan.

10. Recordkeeping Requirements

Pursuant to 49 CFR §26.11 (*as amended at 89 FR 24966, Apr. 9, 2024*), DRPA shall meet the following reporting requirements:

- a. Submit a report on DBE participation to the appropriate USDOT Operating Administration containing all the information described in the Uniform Report. The information shall be submitted at the required intervals and format.
- b. DRPA recognizes it must provide data about its DBE program as directed by US DOT Operating

Administration. We will provide the following bidders' lists information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts:

- Firm name;
 - Firm address including ZIP code;
 - Firm's status as a DBE or non-DBE;
 - Race and gender information for the firm's majority owner;
 - NAICS code applicable to each scope of work the firm sought to perform in its bid;
 - Age of the firm; and
 - The annual gross receipts of the firm.
- c. DRPA will enter this data into the appropriate USDOT Operating Administration's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded.
- d. DRPA will retain records documenting a firm's compliance with the requirements of this part for no less than three (3) years unless otherwise provided by applicable record retention requirements for DRPA's financial assistance agreement, whichever is longer. We will maintain a complete application package for each certified firm and all Declarations of Eligibility, change notices, and on-site visit reports.
10. DBE Participation after Decertification
- a. The DRPA will act in accordance with 49 CFR 26.87(j) (as amended at 89 FR 24966, Apr. 9, 2024) regarding consequences for decertification of a firm as a DBE, and the effects it has on contract and overall goals and DBE participation.
11. Counting DBE Participation after Decertification
- a. The DRPA will act in accordance with 49 CFR 26.87(j) (as amended at 89 FR 24966, Apr. 9, 2024) for counting DBE participation after decertification as followings:
- 1) A prime contractor will only be permitted to add work or extend a completed contract with a previously certified firm with the prior written consent of the DRPA.
 - 2) If a DBE loses its eligibility during contract performance but after execution of the subcontract and continues to perform a commercially useful function, its participation shall continue to count towards the contract goal credit. However, if a DBE loses its certification eligibility after execution of the subcontract because it merges with or is acquired by a non-DBE their participation will not be counted towards the contract goal. Should this occur, DRPA will direct the prime contractor to make a good faith effort to seek additional DBE participation from other certified DBEs, if necessary, to meet the DBE participation to make up the ineligible DBE firm's contribution to the goal.
 - 3) DRPA shall reach out to a prime contractor when it becomes apparent that the prime is repeatedly extending the work of a DBE firm after the DBE firm becomes ineligible to determine if the extensions are made for the purpose of avoiding soliciting other DBEs.
 - 4) The DRPA shall withhold consent to add further work to an ineligible DBE to allow room for certified DBEs to participate.

12. Use and Termination of DBE Subcontractor

- a. The Contractor shall utilize, and shall not terminate, the specific DBE subcontractor(s) listed to perform the work and supply the materials for which each is listed on the DBE Commitment Sheet unless the contractor obtains the Authority's prior written consent as provided in this section. Absent such consent, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. Termination includes the removal of a DBE Subcontractor as well as any reduction or underrun in work listed for a DBE not caused by a material change in the prime contract.
- b. The Authority may provide such written consent only if the Contractor has good cause to terminate the DBE firm. For purposes of this section, good cause includes, but may not be limited to, the following circumstances:
 - 1) The listed DBE subcontractor fails or refuses to execute a written Contract.
 - 2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor.
 - 3) The listed DBE subcontractor fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.
 - 4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
 - 5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law.
 - 6) The Authority determines that the listed DBE subcontractor is not a responsible contractor.
 - 7) The listed DBE subcontractor voluntarily withdraws from the project and provides the Contractor and/or Authority with written notice of its withdrawal.
 - 8) The listed DBE is ineligible to receive DBE credit for the type of work required.
 - 9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract.
 - 10) Other documented good cause that the Authority determines compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the Contractor seeks to

terminate a DBE it relied upon to obtain the contract so that the Contractor can self-perform the work for which the DBE contractor was engaged or so that the Contractor can substitute another DBE or non-DBE contractor after contract award.

- c. Before transmitting to the Authority its request to terminate and/or substitute a DBE subcontractor, the Contractor must give notice in writing to the DBE subcontractor, with a copy to the Authority, of its intent to request to terminate and/or substitute, and the reason for the request.
- d. The Contractor shall give the DBE five (5) days to respond to the notice and advise of the reasons why it objects to the proposed termination, if any, and why the Authority should not approve the Contractor's action.
- e. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the Authority in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with the Determination of Non-Compliance section, below.

14. Prompt Payments, Return of Retainage, and Enforcement

- a. When a Contractor who has contracted with the DRPA has received a payment or payments from the DRPA for work performed, the Contractor must deliver within ten (10) calendar days from the receipt of payment from the DRPA, the proportionate share of the payment for the work performed to subcontractors specified in the contract.
- b. Failure to make a prompt payment and/or return retainage as required by the contract, the DRPA may impose the following contractual remedies:
 - Terminating contract
 - Withholding progress payments
 - Imposing liquidated damages
 - Disqualifying the contractor from bidding on future contracts, or
 - Other sanctions or remedies that DRPA may deem appropriate

15. Insurance and Bonding Requirements

- a. Other than as required by the work to be performed for the DRPA, the Contractor shall not impose upon DBE/SBE subcontractors and suppliers more restrictive insurance and bonding requirements than are placed upon other subcontractors and suppliers on the project.

16. Determination of Non-Compliance

In the event DBE and/or SBE goals are established on a project, the following shall constitute compliance concerns:

- a. Documentation or information furnished by the Contractor which fails to demonstrate

that verified DBE and/or SBE's are performing the work as indicated by the Contractor on the forms included in the Contractor's bid.

- b. Unreasonable failure, refusal or delay by the Contractor to furnish forms and other information requested by the DRPA's Office of Business Development & Equal Opportunity ("OBD&EO") in support of its monitoring efforts.
- c. Discovery of information that is contrary to information previously submitted by the Contractor.
- d. Failure of the Contractor to deliver to its subcontractors and suppliers within ten (10) calendar days, their proportionate share of the payment for the work performed or retention owed.
- e. Such other reasons that reasonably indicate that the Contractor is not in compliance with the DRPA's Disadvantaged Business Enterprise Program, including Small Business Participation Element Amendment to the DBE Program.

In the event the Authority determines it has reasonable cause to believe that a Contractor is not in compliance with the provisions of the DRPA's DBE Program and/or Small Business Participation Element Amendment to the DBE Program, the DRPA's OBD&EO shall promptly cause written notice to be sent by mail to the Contractor. The notice shall clearly state the areas of non-compliance and require the Contractor to show cause within five (5) calendar days why it should not be found in breach of contract.

Based upon information supplied by the Contractor, if any, the DRPA shall make a final recommendation as to whether the Contractor is complying with contract requirements. If a recommendation of non-compliance is rendered, the OBD&EO shall notify the DRPA's General Counsel and make recommendations regarding appropriate remedies. The DRPA's General Counsel, in consultation with its Chief Executive Officer, the DRPA's Chief Administrative Officer/Disadvantaged Business Enterprise Liaison Officer, that Manager, EEO, shall make a final determination regarding non-compliance and take such steps as are appropriate under the circumstances.

D. "CONTRACT ASSURANCE" CLAUSE

This project is funded with substantial assistance from the USDOT and the FTA. As a condition of receiving this assistance, the DRPA has signed an assurance not to discriminate on the basis of race, color, religion, sexual orientation, gender identity, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program. To that end, the DRPA requires that the following clause is placed verbatim in every DOT-assisted contract and subcontract:

NOTE: The Contractor or subcontractor shall not discriminate on the basis of race, color, religion, sexual orientation, gender identity, national origin or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Authority deems appropriate which may include, but is not limited to:

(1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the Contractor from future bidding as non-responsible.

Contractor agrees to include the foregoing language of this section in all of its subcontracts. Contractor shall make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBE's to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with these provisions.

E. INELIGIBLE CONTRACTORS

1. For contracts whose value exceeds \$25,000.00, the Contractor must certify that neither it nor its principals, as defined at 49 CFR 29.105(p), is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or state department or agency. The Contractor shall not engage in any conduct, including but not limited to the commission of a fraud or any criminal offense as an incident to obtaining, seeking to obtain, or performing government business or a public contract, which conduct shall result in a suspension, debarment, or voluntary exclusion by the USDOT pursuant to its regulations. The Contractor must submit as part of the bid package the certification entitled "Eligibility Affidavit".
2. For subcontracts whose value exceeds \$25,000.00, the Contractor shall, in addition, require each of its subcontractors to sign and submit certifications stating that neither the firm nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or state department or agency.
3. Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Lower Tier Covered Transactions. Instructions for this Certification are stated below.
4. By signing and submitting this bid, the prospective Contractor/subcontractor is providing the signed certification set out below.
5. Pursuant to Executive Order 12549 as implemented by 49 CFR Part 29. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective contractor or subcontractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the Authority may pursue available remedies, including suspension and/or debarment.
6. The prospective contractor/subcontractor shall provide immediate written notice to the Authority if at any time, the prospective contractor/subcontractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
7. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "persons," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549, or 49 CFR Part 29.

8. The prospective contractor/subcontractor agrees by submitting this bid that, should the proposed covered transaction be entered into, it shall not knowingly enter into any covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Authority.
9. The prospective contractor/subcontractor further agrees by submitting this bid that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction”, without modification, in all covered transactions and in all solicitations for covered transactions.
10. A participant in a covered transaction may rely upon a certification of a prospective participant in a covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by the U. S. General Services Administration.
11. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
12. Except for transactions authorized above, if a participant in a covered transaction knowingly enters into a covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal government, the Authority may pursue available remedies including suspension and/or debarment.
14. “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction”
 - a. The prospective lower tier participant certifies, by submission of this bid, that neither it nor its “principals” as defined at 49 CFR§29.105(p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - b. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this bid.

F. NO OBLIGATION BY THE FEDERAL GOVERNMENT

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

2. 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.

G. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC§3801 et seq. and USDOT regulations, “Program Fraud Civil Remedies,” 49 CFR 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 that the Federal government deems appropriate.
2. 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 under the authority of 49 USC§5307, the Government reserves the right to impose the penalties of 18 USC§1001 and 49 USC§5307(n)(1) on the Contractor, to the extent that the Federal government deems appropriate.
3. 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.

H. ACCESS TO RECORDS, REPORTS, AND SITES

1. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
2. Retention Period. The Contractor agrees, and will require its subcontractors of all tiers to agree, to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. Access to Records. The Contractor agrees, and will require its subcontractors of all tiers to agree, to provide sufficient access to the Authority and the FTA, and their duly authorized representatives and/or contractors, to inspect and audit records and information related to performance of this contract in accordance with 2 CFR § 200.337.

4. Access to the Sites of Performance. The Contractor agrees, and will require its subcontractors of all tiers to agree, to permit FTA and its contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

I. CARGO PREFERENCE

1. The Contractor agrees to utilize privately owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this section, to the extent that such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
2. The Contractor agrees to furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated "on board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the DRPA, marked with appropriate identification of the project.
3. The Contractor further agrees to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

J. FLY AMERICA

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

K. 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 USDOT 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 any subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

L. CIVIL RIGHTS AND EQUAL OPPORTUNITY

The DRPA is an Equal Opportunity Employer. As such, the Authority agrees to comply with all applicable Federal Civil Rights Laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Authority agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. Nondiscrimination

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

2. Race, Color, Religion, National Origin, Sex

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

3. Age

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

4. Disabilities

In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794,

the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability.

5. Promoting Free Speech and Religious Liberty

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

M. DAVIS-BACON ACT

1. Minimum wages

- a. All laborers and mechanics employed or working upon the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deduction as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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

- b. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay

another bona fide fringe benefit or an hourly cash equivalent thereof.

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

2. Withholding

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

3. Payrolls and basic records

- a. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deduction made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- b. The Contractor shall submit weekly for each week in which any contract Work is performed a copy of all payrolls to the DRPA for transmission to the FTA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR pat 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is

responsible for the submission of copies of payrolls by all subcontractors.

- c. Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - 1.) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;
 - 2.) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR part 3:
 - 3.) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- d. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required in paragraph (3)(ii)(B) of this section.
- e. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- f. The Contractor or subcontractor shall make the records required under above available for inspection, copying, or transcription by authorized representatives of FTA or the USDOL, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

- a. Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the USDOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has

been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the USDOL determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event that the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

Any employee listed on the payroll at a trainee rate who is not registered and participating in a training program approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the

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

- c. Equal Employment Opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

5. Compliance with Copeland Act requirements

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: Debarment

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the USDOL set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the USDOL, or the employees or their representatives.

10. Certification of eligibility

- a. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-

Bacon Act or 29 CFR 5.12(a)(1).

- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

N. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

1. Section 107 OSHA

- a. The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 USC section 333, and applicable USDOL regulations, “Safety and Health Regulations for Construction” 29 CFR Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.
- b. Subcontracts - The Contractor also agrees to include the requirements of this section in each subcontract. The term “subcontract” under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a “subcontractor” under this section if the work in question involves the performance of construction work and is to be performed: (1) directly at or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus the supplier of materials which will become an integral part of the construction is a “subcontractor” if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a “subcontractor”. The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

2. Pursuant to Section 102_

- a. Overtime requirements

No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- b. Violation; liability for unpaid wages; liquidated damages

In the event of any violation of the clause set forth in paragraph 2(i), the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 2(i) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 2(i) of this section.

c. Withholding for unpaid wages and liquidated damages

The DRPA shall upon its own action or upon written request of an authorized representative of the USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2(ii) of this section.

d. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

O. CLEAN AIR ACT

The Contractor agrees:

1. It will not use any violating facilities
2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities"
3. It will report violations of use of prohibited facilities to FTA
4. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q).

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000.00 financed whole or in part with Federal assistance proved by FTA.

P. FEDERAL WATER POLLUTION CONTROL ACT

The Contractor agrees:

1. It will not use any violating facilities
2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities”
3. It will report violations of use of prohibited facilities to FTA
4. It will comply with the inspection and other requirements of the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387)

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000.00 financed whole or in part with Federal assistance provided by FTA.

Q. ENERGY CONSERVATION

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6321 et seq.).

R. PRIVACY ACT

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal government before the Contractor or its employees operate a system of records on behalf of the Federal government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal government financed in whole or in part with Federal assistance provided by FTA.

S. RECYCLED PRODUCTS

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (USEPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.

T. PROHIBITED INTEREST

No member, officer or employee of the Public Body or of a local public body during his tenure or one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

U. PROJECT SIGNS

The Contractor shall furnish, erect and maintain two (2) signs identifying the project and indicating Federal participation. Upon completion of the project, the signs shall be removed.

The Contractor shall erect and maintain project signs in good condition until the completion of the project. The signs shall be cut from standard 4' by 8' waterproof plywood sheets or other approved material and shall meet the design standards shown in these specifications. No information shall be included on the project signs except that stipulated on the diagram shown on the contract drawings.

The signs shall be installed within twenty (20) days after the Notice to Proceed is given to the Contractor, unless directed otherwise in writing by the Chief Engineer. The cost of project signs as described herein will not be paid for under any specific item but the cost thereof shall be included in the prices bid for the various items included in the bid documents.

V. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 USC §§ 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any and all regulations and amendments applicable to the performance of this contract.

W. ENVIRONMENTAL PROTECTION

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321 et seq. In accordance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb 16, 1994; FTA statutory requirements on environmental matters at 49 USC § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 CFR Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622.

X. MITIGATION OF ADVERSE ENVIRONMENTAL EFFECTS

The Contractor agrees that if the project should cause adverse environmental effects, the Contractor will take all reasonable steps to minimize those effects in accordance with 49 USC § 5324(b), and all other applicable Federal laws and regulations, specifically, the procedures of 23 CFR Part 771 and 49 CFR Part 622. The Contractor agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents and with any conditions the Federal Government has imposed in its finding of no significant impact or a record of decision.

Y. PROMPT PAYMENT AND RELEASE OF RETAINAGE CLAUSE

The Contractor agrees to pay each subcontractor/supplier (DBE and non-DBE alike) under this contract for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each payment related to the said subcontractor the Contractor receives from the Authority.

The Contractor agrees further to return retainage payments to each subcontractor/supplier within thirty (30) calendar days of the date the DRPA approves the subcontractor/suppliers' work as satisfactorily completed, even if the prime contract has not yet been completed.

Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the Authority. The Authority may withhold payments to the Contractors for work performed by Contractor unless and until the Contractor ensures that the subcontractors are promptly paid for work they have performed. The DRPA may also employ other mechanisms consistent with 49 CFR Part 26 and applicable state and local law, to ensure that DBE's and other contractors are fully and promptly paid.

NOTE: The prime Contractor agrees to include the language of this section, or language substantially similar thereto, in all of its subcontracts.

Z. DRUG AND ALCOHOL REQUIREMENTS

1. DRPA/PATCO Contractor Compliance Guidelines - All contractors or subcontractors who perform safety-sensitive functions, as defined by FTA rules, for DRPA/PATCO must maintain a drug- and alcohol-free workplace, and must comply with the FTA's drug and alcohol testing regulations (49 CFR Part 655) and the USDOT Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40). **Contractor or subcontractor non-compliance shall result in suspension or termination of the contract and /or non-payment of outstanding invoices, at the discretion of DRPA/PATCO, until such time as the contractor achieves and certifies compliance. Individual non-compliance, i.e. testing positive for drug or alcohol use, will result in immediate removal from the project.**
2. Definitions/Terms - For purposes of this compliance program, **safety sensitive employees** are defined as follows:

NOTE: Those employees whose job functions are, or whose job descriptions include the performance of functions related to the safe operation of mass transportation service.

- a. The following are categories of safety-sensitive functions:
 - 1.) Operating a revenue service vehicle, including when not in revenue service
 - 2.) Operating a non-revenue service vehicle when required to be operated by a holder of a Commercial Driver's License (CDL)
 - 3.) Controlling dispatch or movement of a revenue service vehicle or equipment used in revenue service
 - 4.) Maintaining (including repairs, overhaul, and rebuilding) revenue service vehicles or equipment used in revenue service

5.) Carrying a firearm for security purposes

Any supervisor who performs or whose job description includes the performances of any function listed above is also considered a safety-sensitive employee. Any construction inspector who performs, or oversees others in the performance of, any function listed above is also considered a safety-sensitive employee.

3. Implementation Guidelines & Certification

PATCO/DRPA Engineering, Contract Administration, and/or Purchasing departments, as the case may be, shall ensure that all Requests for Bids, Requests for Proposals (“RFP”), or Purchase Orders for services that include the performance of safety-sensitive functions as defined above shall include a provision requiring the successful bidder’s compliance with mandated DOT/FTA drug and alcohol testing regulations. DRPA/ PATCO reserves the right to audit the bidder’s drug and alcohol testing program prior to awarding the contract.

Prior to acceptance of the bid, the successful bidder must submit to DRPA/PATCO its plan for compliance with 49 CFR Parts 655 and 40, and must certify that it is in compliance with the DOT/FTA regulations. (Compliance can be achieved through an in-house program or through a consortium.) The certification shall remain in effect for the term of the contract. The Contractor shall execute the attached Drug and Alcohol Certification.

4. Reporting

Using the format prescribed by the FTA for the annual report, each covered contractor shall send a quarterly drug and alcohol testing report to the DRPA Project Manager, with a copy to the appropriate safety staff in PATCO’s Safety Department. The quarterly report must be submitted no later than the 15th of the month following the close of each calendar quarter. Continued payment of contractor invoices by DRPA/PATCO is contingent upon contractor submission of the required reports on a timely basis and continued compliance with FTA-mandated rules.

On an annual basis, and no later than February 15 of each year, each covered contractor shall submit to the DRPA Project Manager and the PATCO Safety Department documentation of its annual drug and alcohol testing using the appropriate FTA prescribed forms. The report shall cover testing conducted during the previous calendar year.

5. On-going Monitoring

The PATCO Safety Department and DRPA Manager of Contract Administration shall be responsible for filing the contractor’s annual reports with the FTA, along with PATCO’s own testing data. The reports shall be submitted to the FTA no later than March 15 of each year.

The DRPA/PATCO Project Manager for each covered contract shall be responsible for the on-going monitoring of contractor compliance with DOT/FTA regulations, including ensuring that the quarterly and annual reports as described above are submitted on time. The Contractor shall at all times cooperate with the DRPA/PATCO Project Manager in his/her efforts to monitor

contractor compliance with the drug and alcohol program.

On an annual basis, designated staff from the PATCO Safety Department or DRPA shall audit contractor compliance, which may include site visits, and report their findings to the PATCO General Manager, the DRPA Project Manager responsible for the contract, and his/her Department Head.

6. Subcontracts

The Contractor or any of its subcontractors shall insert in any subcontract provisions that require the subcontractors to comply with FTA's drug and alcohol testing regulations (49 CFR Part 655) and the USDOT Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40). The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with the requirements of this section G.26.

7. Non-Compliance & DRPA/PATCO Remedies

The DRPA/PATCO Project Manager is responsible for coordinating contractor responses to the audit findings and ensuring that corrective actions are taken on a timely basis. **For any period during which the contractor is non-compliant, DRPA/PATCO, at its/ their discretion, will suspend or terminate the contract and/or suspend payment of outstanding invoices, until such time as the contractor again achieves and certifies compliance.**

AA. SPECIAL DOL EEO CLAUSE

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

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an

investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- (4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Authority further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the so participating is a State or local government, the above equal opportunity clause is not applicable to any Authority, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering Authority and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering Authority and the Secretary of Labor such information as they may require for the

supervision of such compliance, and that it will otherwise assist the administering Authority in the discharge of the Authority's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering Authority or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering Authority may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

BB. FRAUD, WASTE, ABUSE OR OTHER LEGAL MATTERS NOTIFICATION TO FTA AND U.S. DOT INSPECTOR GENERAL:

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the FTA Chief Counsel and the FTA Region III Counsel. The Contractor must include a similar notification requirement in its subcontract agreements at every tier for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- (a) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (b) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- (c) Additional Notice to U.S. DOT Inspector General. The Contractor must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or the FTA Region Counsel, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between Delaware River Port Authority and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Contractor of Delaware River Port Authority. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, “promptly” means to refer information without delay and

without change. This notification provision applies to all divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.

CC. SEAT BELT USE

Pursuant to Executive Order No. 13043, April 16, 1997, 23 U.S.C. ¶ 402 (62 Fed. Reg. 19217), the Contractor and its subcontractors shall adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally-operated vehicles.

DD. TEXT MESSAGING WHILE DRIVING.

In accordance with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C.A. § 402 note (74 Fed. Reg. 51225); DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and U.S. DOT Special Provision pertaining to Distracted Driving, the Contractor is encouraged to comply with the terms of the following Special Provision.

a. Definitions. As used in this Special Provision:

(1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

(2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

b. Safety. The Contractor is encouraged to:

(1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving-

(a) Contractor-owned or Contractor-rented vehicles or Government-owned, leased or rented vehicles; or

(b) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or

(c) Any vehicle, on or off duty, and using an employer supplied electronic device.

(2) Conduct workplace safety initiatives in a manner commensurate with the Contractor's size, such as:

(a) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(3) Include this Special Provision in its sub-agreements with its subcontractors and also encourage its subcontractors to comply with the terms of this Special Provision, and include this Special Provision in any sub-agreement they entered into for the Project

EE. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

In accordance with Public Law 115-232, the Contractor shall not supply telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) shall also not be supplied.

FF. SOLID WASTE DISPOSAL ACT

Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

B.6.1 ELIGIBILITY AFFIDAVIT

This Contract is subject to a financial assistance contract between the sponsors and the U. S. Department of Transportation.

Any name appearing on the U. S. Department of Transportation Unified List of persons suspended, debarred or voluntarily excluded under 49 CFR Subtitle A Part 29, or appearing on the Comptroller General's List of Ineligible Contractors for federally financed and assisted construction, is not an eligible bidder.

The _____(name of third-party contractor) hereby certifies that it is not included on the U. S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts Incorporating Labor Standards Provisions.

The _____(name of third-party contractor) hereby certifies that it is not included on the U. S. Department of Transportation's Unified List of Persons Suspended, Debarred or Voluntarily Excluded pursuant to 49 CFR Subtitle A Part 29.

Name of Bidder

By: _____ (Seal)

Date: _____

B.6.2 "BUY AMERICA" CERTIFICATION

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

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

The bidder or offer or hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

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

The bidder or offer or hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

B.6.3. CERTIFICATION OF RESTRICTIONS ON LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

I, _____, hereby certify on behalf of _____ that:
(name and title of contractor official) (name of contractor)

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 any 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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all 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 is placed when this transaction was made or entered into Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$150,000 for each such failure.

Executed this _____ day of _____, 20____.

By: _____
(signature of authorized contractor official)

(title of authorized contractor official)

NOTE: Failure to certify requires submission of Form LLL
(Disclosure of Lobbying Activities)

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

<p>1. Type of Federal Action: a. contract _____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance</p>	<p>2. Status of Federal Action: a. bid/offer/application _____ b. initial award c. post-award</p>	<p>3. Report Type: a. initial filing _____ b. material change For material change only: Year _____ quarter _____ Date of last report _____</p>
<p>4. Name and Address of Reporting Entity: _____ Prime _____ Subawardee Tier _____, if Known: Congressional District, if known:</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description: CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known: \$ _____</p>	
<p>10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i></p>	<p>b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i></p>	
<p>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>	<p>Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____</p>	
<p>Federal Use Only</p>	<p>Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)</p>	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

**Disclosure of Lobbying Activities
Continuation Sheet**

Reporting Entity: _____ **Page** ____ **of** ____



**B.6.4 CERTIFICATION
OF COMPLIANCE WITH
DRUG AND ALCOHOL POLICY**

I, _____, hereby certify on behalf of _____
(Name and Title of Official) (Name of Consultant)

that the Consultant complies and will continue to comply with the Federal Transit Administration's drug and alcohol testing regulations (49 CFR Part 655) and the U.S. Department of Transportation ("DOT") Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40).

Executed this ____ day of _____, 20__.

By: _____
Authorized Official, Title

**B.6.5 DISADVANTAGED BUSINESS ENTERPRISE PROGRAM,
INCLUDING SMALL BUSINESS PARTICIPATION ELEMENT FORMS**

DELAWARE RIVER PORT AUTHORITY

DBE/SBE COMPLIANCE CERTIFICATE

The undersigned hereby certifies that it will comply with the goals and procedures set forth in the Delaware River Port Authority's Disadvantaged Business Enterprise Program, including Small Business Participation Element (DBE/SBE) which is set forth in its entirety in Section G of the Contract Documents. The undersigned hereby agrees that, at bid time, it shall submit the names of all DBE/SBE subcontractors and suppliers the Contractor will use should it be the successful bidder, along with a description of the work each DBE/SBE firm will perform, and the estimated dollar value of each proposed DBE/SBE subcontract or purchase order.

(SEAL)

(Bidder's Name)

By:

Title

ATTEST:

Signature

Secretary

DBE/SBE COMPLIANCE CERTIFICATE

The undersigned hereby certifies that it will comply with the goals and procedures set forth in the Delaware River Port Authority's Disadvantaged Business Enterprise Program, including Small Business Participation Element (DBE/SBE) which is set forth in its entirety in Section G of the Contract Documents. The undersigned hereby agrees that, at bid time, it shall submit the names of all DBE/SBE subcontractors and suppliers the Contractor will use should it be the successful bidder, along with a description of the work each DBE/SBE firm will perform, and the estimated dollar value of each proposed DBE/SBE subcontract or purchase order.

(SEAL)

(Bidder's Name)

By:

Title

ATTEST:

Signature

Secretary

**FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS
CERTIFICATION**

The undersigned certifies that it :

- A. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- B. Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the prospective Contractor cannot so certify, the DRPA agrees to refer the matter to FTA and not to enter into any contract with the Contractor without FTA's written approval.

All Contractors are required to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

(SEAL)

(Bidder's Name)

By: _____

Title

ATTEST:

Signature

Secretary