



160 Benmont Avenue, Suite 11, Bennington, Vermont 05201 | (802)440-0501 | [www.vpta.net](http://www.vpta.net)

**Vermont Public Transportation Association**  
**REQUEST FOR PROPOSALS**  
**FOR PROFESSIONAL AUDIT SERVICES**  
**June 2020**

**I. INTRODUCTION**

**A. General Information**

Vermont Public Transportation Association, hereafter known as VPTA, is requesting proposals from qualified firms of certified public accountants to audit its annual financial statements for VPTA's fiscal year ending June 30, 2019, and June 30, 2020 with the option of auditing its financial statements for fiscal years June 30, 2021, 2022 and 2023.

There is no expressed or implied obligation for VPTA to reimburse responding firms for any expenses incurred in preparing proposals in response to this request.

To be considered, three (3) copies of a proposal must be received by:

Elaine Haytko, Executive Director  
Vermont Public Transportation Association  
160 Benmont Ave. Suite 11  
Bennington, VT 05201

Issued Date: June 12, 2020

Questions Due By: June 26, 2020

**The RFP proposal should be received by VPTA no later than 3:00p on July 15, 2020.**

VPTA reserves the right to reject any or all proposals submitted. Proposals submitted will be evaluated by a Selection Committee consisting of VPTA personnel and at least one member of the Board of Directors.

During the evaluation process, VPTA reserves the right to request additional information or clarification from proposers, or to allow corrections of errors or omissions. Firms may be requested to make oral/ visual presentations to the Selection Committee as part of the final evaluation process.

VPTA reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether the proposal is selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between VPTA and the firm selected.

It is anticipated the selection of a firm will be completed by **July 22, 2020**. Following the notification of the selected firm, it is expected a contract will be executed between both parties following the **July 2020** meeting of the Board of Directors.

## **B. Term of Engagement**

A base two-year contract with three 1-year options is contemplated, subject to the annual review and recommendation of the Selection Committee, the satisfactory negotiation of terms (including a price acceptable to both VPTA and the selected firm) and the concurrence of the Board of Directors of VPTA.

## **II. NATURE OF SERVICES REQUIRED**

### **A. Scope of Work to be Performed**

VPTA desires the auditor to express an opinion of the fair presentation of its basic (general purpose) financial statements in conformity with governmental accounting principles generally accepted in the United States of America.

VPTA also desires the auditor to provide an “in-relation-to” opinion on the supplementary information based on the auditing procedures applied during the audit of the basic financial statements. The auditor shall also be responsible for performing certain limited procedures involving the required supplementary information required by the Governmental Accounting Standards Board as mandated by generally accepted auditing standards. Also, the auditor is to provide an “in-relation-to” report on VPTA’s schedule of expenditures of federal awards based on the auditing procedures applied during the audit of the financial statements.

Pursuant to the Single Audit Act Amendments of 1996, VPTA is required to have an audit performed on the major federal programs of VPTA. The auditor will be required to test internal controls and compliance for major federal award programs administered by VPTA. It is anticipated that VPTA will require a Single Audit for each of the years covered by this request.

### **B. Auditing Standards to Be Followed**

To meet the requirements of this request for proposals, the audit shall be performed in accordance with auditing standards generally accepted in the United States of America, the standards for financial audits set forth in the General Accounting Office(s) (GAO) *Government Auditing Standards*, the provisions of the federal Single Audit Act Amendments and U.S. Office of Management and Budget, 2 CFR 200, Super Circular, *Audits of States, Local Governments, and Non-Profit Organizations*.

### **C. Reports to be Issued**

The auditor shall prepare the following reports at the completion of the audit:

- Independent auditor's reports on the basic financial statements.
- Independent auditor's report on internal controls over financial reporting based on an audit of financial statements performed in accordance with *Government Auditing Standards*.
- Independent auditor's report on compliance based on an Audit of financial statements performed in accordance with *Government Auditing Standards*.
- Independent auditor's report on internal control over Compliance for major federal programs in accordance with 2 CFR 200, Super Circular.
- Independent auditor's report (opinion) on compliance with requirement applicable to each major federal program in accordance with OMB Circular A-133.
- A summary of auditor's results and a schedule of findings and questioned costs, if any, required by 2 CFR 200, Super Circular.

#### **D. Additional Services**

In addition to the audit services described above, VPTA is requesting the following additional assistance or services:

- Preparation of all required basic financial statements.
- Preparation of the notes to the financial statements.
- Preparation of the following additional statements and schedules.
- Preparation and filing of the IRS 990
- Combining and individual fund financial statements.
- General capital asset schedules.
- Schedule of taxable valuations.
- Individual balance sheet.
- Schedule of intergovernmental revenue.
- Schedule of expenditures of federal awards.
- Preparation of supporting schedules and trial balances for the financial statements. VPTA will decide the format and methodologies for these schedules and trial balances.
- Typing, copying, and binding of annual financial report. The firm will provide VPTA with two (2) bound copies and one electronic (PDF) version of the annual financial report. An electronic version of the compliance report, financial statement, supplemental and management letter should be emailed to VPTA.
- The firm will provide VPTA with two copies of their report(s) on the internal control and compliance in accordance with the audit guide and standards for compliance with the Single Audit Act, as may be required.
- Assistance with filing the annual financial report and any applicable reports with appropriate state agencies and departments.
- A letter to management containing appropriate suggestions for improvement of accounting procedures and internal controls for VPTA's consideration. This letter should contain comments and recommendations for controlling any internal weaknesses discovered and shall be discussed with appropriate personnel before finalizing.
- Assist with the preparation and submission of the reporting package, required by the Single Audit Act Amendments, to the federal Single Audit Clearing House. This package includes the annual financial report, the supplementary schedule of expenditures of federal awards, the required auditor's reports, including any current findings and questioned costs, a summary schedule of prior audit findings, and a corrective action plan.

#### **E. Working Paper Retention and Access to working Papers**

All working papers and reports must be retained, at the auditor's expense, for a minimum of ten (10) years after the report is issued, unless the firm is notified in writing by VPTA of the need to extend

the retention period. The auditor will be required to make working papers available, upon request, to VPTA.

The state auditor may require additional information, including all audit engagement work papers, from the private certified public accountant as the state auditor deems in the public interest.

In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

### **III. DESCRIPTION OF VPTA**

#### **A. Name and Telephone Number of Contact Person**

The audit firm's principal contact with VPTA will be Elaine Haytko, Executive Director, at (802) 440-0501 who will coordinate the assistance to be provided by VPTA to the auditor.

#### **B. Background Information**

VPTA serves as Vermont's Public Transportation Association and the statewide Medicaid broker. VPTA's fiscal year begins on July 1 and ends on June 30. VPTA is governed by a volunteer Board of Directors that represents each of the 8 statewide public transportation providers.

VPTA's major sources of funding are a grant from the Agency of Transportation and a contract from the Department of Vermont Health Access (DVHA). VPTA prepares its financial statements on the accrual basis of accounting in accordance with generally accepted accounting principles.

More detailed information on VPTA and its finances can be found in the previous annual financial reports.

### **IV. MAGNITUDE OF FINANCE OPERATIONS**

VPTA's Executive Director and offsite accounting personnel, Crossroads Accounting provides the accounting, information systems, accounts receivable, and accounts payable functions.

The day-to-day transactions of VPTA are conducted with QuickBooks.

Interested proposers who wish to review prior years' audit reports and management letters should contact Elaine Haytko at (802) 440-0501.

VPTA will use its best efforts to make prior audit reports and supporting working papers available to proposers to aid their response to this request for proposals.

### **V. TIME REQUIREMENTS**

Auditors will be expected to meet the following essential dates. Alternate dates for Year one may be proposed but may also impact selection:

Preliminary work completed by: 8/29/20XX

Fieldwork completed by: 9/30/20XX  
Draft reports completed by: 10/15/20XX  
Final printed and bound reports by 11/13/20XX

## **VI. ASSISTANCE PROVIDED TO THE AUDITOR AND REPORT PREPARATION**

During the audit a VPTA staff member and responsible management personnel will be available to assist the firm by providing information, documentation and explanations.

### **Report Preparation**

Report preparation, editing and printing shall be the responsibility of the auditor.

## **VII. PROPOSAL REQUIREMENTS**

### **A. General Requirements**

#### **1. Questions and Answer Period:**

Any vendor requiring clarification of any section of this RFP or wishing to comment on any requirement of the RFP must submit specific questions in writing no later than the deadline for questions on June 26, 2020 by 4:30 pm. Questions may be e-mailed to the point of contact on the front page of the RFP. Any questions or comments not raised in writing on or before the last day of the question period are thereafter waived. At the close of the question period a copy of all questions or comments and VPTA's responses will be posted on VPTA's website [www.vpta.net](http://www.vpta.net) under the resources tab by June 30<sup>th</sup>, 2020.

Inquiries concerning the request for proposals and the subject of the request for proposals must be made to:

Elaine Haytko, Executive Director.  
[ehaytko@vptaride.org](mailto:ehaytko@vptaride.org)

#### **2. Submission of Proposals**

The following material is required to be received by, July 15<sup>th</sup>, 2020 by 3pm for the proposing firm to be considered:

A master copy (so marked) of the Proposal and two (2) additional copies, to include the following:

- a. *Title Page*  
Title page showing the request for proposals subject: the firm's name; the name, address and telephone number of the contact person; and the date of the proposal.
- b. *Table of Contents*
- c. *Transmittal Letter*  
A signed letter of transmittal briefly stating the proposer(s) understanding of the work to be done, the commitment to perform the work within the time period, a statement why the firm believes itself to be best qualified to perform the engagement and a statement that the proposal is a firm and irrevocable offer for 90 days.

Proposers should send the completed Proposals to the following address:

Elaine Haytko, Executive Director  
Vermont Public Transportation Association  
160 Benmont Ave. Suite 11  
Bennington, VT 05201

## **B. Audit Proposal**

### **1. General Requirements**

The purpose of the proposal is to demonstrate the qualifications, competence and capacity of the firm(s) seeking to undertake an independent audit of VPTA in conformity with the requirements of this request for proposals. As such, the substance of proposals will carry more weight than their form or manner of presentation. The proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement. It should also specify an audit approach that will meet the request for proposals requirements.

### **2. Independence**

The firm should provide an affirmative statement that it is independent of VPTA as defined by the generally accepted auditing standards/ the U.S. General Accounting Office's *Government Auditing Standards*.

### **3. License to Practice in Vermont**

An affirmative statement should be included that the firm and all assigned key professional staff are properly licensed to practice in Vermont.

### **4. Firm Qualifications and Experience**

The proposal should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed and the number and nature of the professional staff to be employed in this engagement on a full-time basis and on a part-time basis.

The firm is also required to submit a copy of the report on its most recent external quality control review, including any letter of comments, with a statement whether that quality control review included a review of specific government engagements.

### **5. Partner, Supervisory and Staff Qualifications and Experience**

Identify the principal supervisory and management staff, including engagement partners, managers, other supervisors and specialist, who would be assigned to the engagement. Indicate whether each such person is registered or licensed to practice as a certified public accountant in Vermont. Provide information on the government auditing experience of each person, including information on relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of this audit.

Engagement partners, managers, other supervisory staff and specialists may be changed if those personnel leave the firm, are promoted or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of VPTA. Other audit personnel may be changed at the discretion of the firm provided that replacements have substantially the same or better qualifications or experience.

**6. Similar Engagements with Other Government Entities**

For the firm's office that will be assigned responsibility for the audit, list the most significant engagements performed in the last three years that are similar to the engagement, in particular non-profit transit operations, described in this request for proposal. Indicate the scope of work, date, engagement partners, total hours, and the name and telephone number of the principal client. Specifically identify those engagements at which the managers and other supervisors who will be assigned to this engagement have worked.

**7. Specific Audit Approach**

The proposal should set forth a work plan, including an explanation of the audit methodology to be followed. Firms will be required to provide the following information on their audit approach:

- Proposed timing of the engagement,
- Level of staff and number of hours to be assigned to each proposed segment of the engagement,
- Sample sizes and the extent to which statistical sampling is to be used in the engagement,
- Extent of use of computer software in the engagement,
- Type and extent of analytical procedures to be used in the engagement,
- Approach to be taken to gain and document an understanding of VPTA's internal controls,
- Approach to be taken in determining laws and regulations that will be subject to audit test work.

**8. Identification of Anticipated Potential Audit Problems**

The proposal should identify and describe any anticipated potential audit problems, the firm's approach to resolving these problems and any special assistance that will be requested from VPTA.

**C. Dollar Cost**

**1. Total All-Inclusive Maximum Price**

Attachment A must be completed and signed. Attachment A's price should specify all pricing information relative to performing the audit engagement as described in this request for proposal. The total all-inclusive maximum price is to include all direct and indirect costs including all out-of-pocket expenses.

VPTA will not be responsible for expenses incurred in preparing and submitting the proposal. Such costs should not be included in the proposal.

**2. Rates by Partner, Specialist, Supervisory and Staff Level Times Hours Anticipated for Each**

The cost schedule should include a schedule of professional fees and expenses broken into the above categories.

**3. Manner of Payment**

Progress payments will be made on the basis of hours of work completed during the course of the engagement in accordance with the firm's proposal. Interim billings shall cover a period of not less than one calendar month.

**VIII. EVALUATION PROCEDURES**

**A. Selection Committee**

Proposals submitted will be evaluated by a Selection Committee consisting of VPTA personnel and at least one member of the Board of Directors.

**B. Evaluation Criteria**

Proposals will be evaluated using three sets of criteria. Firms meeting the mandatory criteria will have their proposals evaluated and scored for both technical qualifications and price. The following represent the principal selection criteria, which will be considered during the evaluation process:

**1. Mandatory Elements**

The audit firm is independent and licensed to practice in Vermont.

The audit firm's professional personnel have received adequate continuing professional education within the preceding three years.

The firm has no conflict of interest with regard to any other performed by the firm for VPTA.

The firm adheres to the instructions in this request for proposal on preparing and submitting the proposal.

The firm submits a copy of its last external quality control review report, including any letter of comments and the firm has a record of quality audit work.

**2. Technical Qualifications**

**(See Addendum A for sample evaluation form & Addendum B for FTA Applicable Third-Party Contract Clauses)**

The firm exhibits expertise based on past experience and performance on comparable government engagements.

The quality of the firm's professional personnel to be assigned to the engagement and the quality of the firm's management support personnel to be available for technical consultation.

**3. Price Consideration**



Cost will not be the primary factor in the selection of an audit firm.

**C. Oral Presentations**

During the evaluation process, the Selection Committee, at its discretion, may request up to three firms to make oral presentations. Such presentations will provide firms with an opportunity to answer any questions the Selection Committee may have on a firm's proposal. Not all firms may be asked to make such oral presentations.

**D. Final Selection**

The VPTA Board will select a firm based upon the recommendation of the Selection Committee.

It is anticipated that a firm will be selected by July 22, 2020. Following notification of the firm selected, it is expected a contract will be executed between both parties following the **July 2020** Board Meeting.

**ATTACHMENT A**

**Vermont Public Transportation Association  
AUDITING SERVICES**

**FEE STRUCTURE FOR FISCAL YEAR ENDING**

<b><u>2020</u></b>	<b><u>2021</u></b>	<b><u>2022</u></b>	<b><u>2023</u></b>	<b><u>2024</u></b>
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

**FIRM SUBMITTING PROPOSAL:** \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of Authorized Representative

\_\_\_\_\_  
Date

## Evaluation Worksheet / Auditing Services

Evaluation	Points:	Score:
Responsiveness of the proposal clearly stating an understanding of the work to be performed	0-15	_____
Comprehensiveness of the work plan	0-10	_____
Realistic time estimates for each major segment of the work plan and the estimated number of hours for each staff level	0-10	_____
Technical experience of the firm	0-15	_____
Previous experience auditing public transportation	0-5	_____
Qualifications of staff to be assigned to the audit. Education including continuing education courses taken during the past three years, position in the firm and type of experience	0-15	_____
Qualifications of the supervisory personnel and of the audit team doing field work	0-15	_____
General direction and supervision to be exercised over the audit team by the firm's management personnel	0-10	_____
Size and structure of the firm	0-5	_____
_____		_____
Auditing Firm		Score
_____		_____
Prepared by		Date

**FEDERALLY REQUIRED THIRD PARTY CONTRACT CLAUSES**

Following are required standard clauses are applicable to **ALL** purchases & contracts over \$3000.

**No Obligation by the Federal Government**

(1) VPTA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to VPTA, 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.

**Federal Changes**

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

**Civil Rights**

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

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

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

### **Incorporation of Federal Transit Administration (FTA) Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

### **Access to Records**

The following access to records requirements apply to this Contract:

1. Where VPTA is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide VPTA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives' access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where VPTA is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide VPTA, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where VPTA enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other nonprofit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide VPTA, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any VPTA which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)(1)) through other than competitive bidding, the Contractor shall make available records related to the contract to VPTA, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 Contractor agrees to maintain same until VPTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

#### **Program Fraud and False or Fraudulent Statements or Related Acts**

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (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 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (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.

#### **Termination for Convenience (General Provision)**

- a. VPTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to VPTA to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner VPTA directs.
- b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, VPTA may terminate this

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

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

c. Opportunity to Cure (General Provision) VPTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from VPTA setting forth the nature of said breach or default, VPTA shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude VPTA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that VPTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by VPTA shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) VPTA by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, VPTA shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, VPTA may terminate this contract for default. VPTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

g. Termination for Default (Transportation Services) if the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, VPTA may terminate this contract for default. VPTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

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

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

had been issued for the convenience of the (Recipient).

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, VPTA may terminate this contract for default. VPTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, VPTA may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to VPTA resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by VPTA in completing the work. The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of VPTA, acts of another Contractor in the performance of a contract with VPTA, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The contractor, within [10] days from the beginning of any delay, notifies VPTA in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of VPTA shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of VPTA.

i. Termination for Convenience or Default (Architect and Engineering) VPTA may terminate this contract in whole or in part, for VPTA's convenience or because of the failure of the Contractor to fulfill the contract obligations. VPTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of VPTA, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, VPTA may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by VPTA.

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

j. Termination for Convenience or Default (Cost-Type Contracts) VPTA may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of VPTA or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, VPTA may fix the



fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to VPTA and the parties shall negotiate the termination settlement to be paid the Contractor.

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

If, after serving a notice of termination for default, VPTA determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

### **Suspension and Debarment**

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

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

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

The certification in this clause is a material representation of fact relied upon by **VPTA**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **VPTA**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **Disadvantaged Business Enterprises (DBEs)**

#### **A. Policy**

It is the policy of VPTA that Disadvantaged Business Enterprises (DBEs), are provided the opportunity to participate in the performance of this Contract. Each Contractor shall take all necessary and reasonable steps to ensure that DBEs participate and perform work on this Contract.

#### **B. Definitions**

1. "Disadvantaged Business Enterprise" or "DBE" is a for-profit small business concern, (a) that is at least fifty one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which at least fifty one percent (51%) of the stock of which is owned by one or more individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

2. "Socially and economically disadvantaged individual" means an individual who is a citizen (or lawfully permanent resident) of the United States and who is:

a. Any individual the VPTA finds to be a socially and economically disadvantaged individual on a case-by-case basis.

b. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) "Women"
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

3. "Certification" means the process by which a business demonstrates to the VPTA that it meets the requirements to be a DBE under the regulations of the U.S. DOT, 49 CFR Part 26 and the VPTA's DBE Program.

#### C. The DBE Program

1. Any business seeking to participate as a DBE in this Contract must apply for certification with VPTA's Director of Procurement. Any such business must complete an VPTA DBE Disclosure Affidavit, which may be obtained from the VPTA's Director of Procurement. Certification of a business as a DBE by the VPTA means only that the business meets the DBE requirements set forth in CFR Part 26 and VPTA's DBE Program, and does not constitute a representation or warranty by the VPTA that the business is qualified to perform the portion of the work required by its contractual arrangement with the Proposer/Contractor. Prior to Contract award, after and during the performance of the Contract, VPTA reserves the right to re-evaluate the DBE status of previously VPTA-certified businesses.

2. In event the VPTA determines that a firm identified by the Proposer/Contractor as a DBE subcontractor on the DBE Commitment Form is not a bona fide DBE, the Proposer or Contractor shall be informed in writing and will be provided with an opportunity to substitute bona fide DBEs for the VPTA's consideration. Failure of a Proposer or Contractor to effect substitutions in a timely and complete manner may, at the VPTA's sole discretion, constitute cause for the VPTA declining to consider the Proposer or Contractor as having fulfilled the requirement to make good faith efforts to fulfill its responsibility under this article.

#### D. DBE Obligation

1. The Proposer/Contractor agrees to take all necessary and reasonable steps to ensure that DBEs have the opportunity to compete for and perform work under this Contract. If the total Contract price is increased as a result of change orders (modifications), the Proposer/Contractor shall make a good faith effort to achieve a commensurate increase in DBE participation.

2. Furthermore, the Contractor will insure that the following clause is placed in every contract or subcontract resulting from this project: "The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT assisted contracts. Failure by the Contractor or Subcontractor to

carry out these requirements is a material breach of the contract, which may result in the termination of this contract or such other remedy as the VPTA deems appropriate.”

#### E. Goal

In accordance with the provisions of 49 CFR Part 26 and its DBE Program, the VPTA has established a goal for DBE participation in this Contract, which the Contractor will be expected to make a good faith effort to meet or exceed. This goal, expressed as a percentage of the total Contract price, including change orders issued pursuant to the change provisions of this Contract is: 0 %

#### F. DBE Modifications or Substitutions

In the event that the Contractor wishes to modify its DBE Commitment Form after a contract is awarded, then the Contractor must notify the VPTA Director of Procurement in writing, and request approval for the modification. The Contractor may not, without VPTA’s prior consent, terminate for convenience a DBE Subcontractor approved by VPTA under this Contract and then perform the work of the Contract with its own forces. This will include any changes to items of work, material, services or DBE firms which differ from those identified on the DBE Commitment Form on file with the VPTA Director of Procurement. When a DBE Subcontractor is terminated, or fails to complete its work for any reason, the Contractor must make good faith efforts to find another DBE Subcontractor to substitute for the original DBE. These good faith efforts must be directed at finding another DBE to perform at least the same amount of work under this Contract as the DBE that was terminated or failed to complete its work. The Contractor must provide the VPTA with any and all documents and information as may be requested with respect to the requested substitution. If the VPTA determines that the Contractor failed to make good faith efforts, the VPTA will provide the opportunity for administrative consideration. As part of this reconsideration, the Contractor will have the opportunity to provide written documentation or argument and to meet with a designated VPTA official concerning the issue of whether it met the goal or made adequate good faith efforts to do so. A written decision will be sent to the Contractor explaining the basis for finding that the Contractor did or did not meet the goal or make adequate good faith efforts to do so.

#### G. Reporting And Recordkeeping

1. The Contractor shall submit documentation concerning the Contractor’s performance in meeting the DBE goal during the period of the Contract.
  - a. If the duration of this Contract is less than one (1) year, within sixty (60) days of execution of this Contract, unless extended by the VPTA in writing, the Contractor shall enter into written subcontract agreement(s) with the DBEs listed in its DBE Commitment Form or with substitutes which have been approved by the VPTA.
  - b. If the duration of this Contract is one (1) year or more, not later than thirty (30) days before a subcontractor commences work on the Contract, unless extended by the VPTA in writing, the Contractor shall enter into written subcontract agreement(s) with the DBEs listed in its DBE Commitment Form or with substitutes which have been approved by the VPTA.
  - c. Copies of the Contractor’s executed subcontract agreement(s) with DBEs shall be provided to the VPTA’s Director of Procurement by the Contractor immediately upon execution with a duplicate copy mailed to the Project Manager.
2. The Contractor shall submit a work schedule outlining when the DBE Subcontractor(s) will commence and complete work on the project.
3. The Contractor shall submit monthly reports on progress towards meeting its DBE goal. The monthly DBE progress reports shall be mailed to the VPTA’s Director of Procurement, with a

duplicate copy to the VPTA's Project Manager.

4. The Contractor shall promptly notify the VPTA of any situation in which any regularly scheduled progress payment is not made to a DBE.

5. The willful making of false statements or provisions of incorrect information will be referred for appropriate legal action.

H. Prompt payment mechanisms established by VPTA for DBEs

1. Prime to pay DBE sub within 5 days of receiving payment from VPTA

2. Prime to return retainer within 30 days of completion of sub's work

3. Prime is required to include prompt payment language in sub contract

4. Failure to carry out prompt payment is considered breach of contract; VPTA will not reimburse prime for work performed by sub unless and until the prime ensures the sub is promptly paid, VPTA will not award future contract