

FTA REGULATORY COMPLIANCE CLAUSES

Reference to “Bidders and bids” is interchangeable to references to “Proposer and proposals”

1.0 FTA FUNDING REQUIREMENT

The Federal Transit Administration may finance this project in part or in whole. Accordingly, federal requirements apply to this Contract and if those requirements change, then the changed requirements shall apply to the project as required. Notwithstanding any involvement of the FTA in this Contract, the federal government shall have no obligations or liabilities to any third-party Contractor. Pueblo Transit and the Contractor/Consultant recognize that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. 3801 et seq. and U.S. DOT regulations, “Program Fraud Civil Remedies, “ 49 CFR Part 31, apply to actions pertaining to this Contract. Pueblo Transit and the Contractor/Consultant also agree to comply with the requirements of 49 U.S. C. 5323 (h) (2) by refraining from the use of any FTA assistance to support procurements using exclusionary or discriminatory specifications. Pueblo Transit also agrees to refrain from using state or local geographic restrictions unless otherwise allowed by FTA.

2.0 MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

The Contractor/Consultant shall permit the authorized representatives of Pueblo Transit, the United States Department of Transportation and the Comptroller General of the United States to inspect, audit, make copies and transcriptions of all work, materials, payrolls and other data and records of the Contractor/Consultant relating to its performance under the Contract. The Contractor/Consultant shall maintain all such records for a period of three (3) years after Pueblo Transit makes final payment under this Contract.

3.0 INTEREST OF MEMBERS OF, OR DELEGATES TO CONGRESS

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising from it.

4.0 ENERGY CONSERVATION

The Contractor/Consultant shall recognize 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 (42U.S.C. Section 6321 et seq.).

5.0 TITLE VI COMPLIANCE

During the performance of this Contract, the Contractor/Consultant shall comply with all requirements of the Civil Rights act of 1964, as amended; the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time; and any implementing requirements of FTA; all of which are incorporated by reference and made a part of this Contract.

6.0 EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Contract, the Contractor/Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, disability, age, national origin, ancestry, marital status, pregnancy, medical condition, or sexual orientation. The Contractor/Consultant shall take affirmative action to insure that applicants are employed, and the employees are treated during their employment, without regard to their race, color, religion, gender, disability, age, national origin, ancestry, marital status, pregnancy, medical condition, or sexual orientation. Such actions 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. Contractor/Consultant shall comply with any implementing regulations FTA may issue.

7.0 ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

The Contractor/Consultant agrees to comply with all applicable requirements of the American with Disabilities Act of 1990 (ADA), 42 U.S.C. Sections 12101 et seq. and 49 U.S.C. Section 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794; Section 16 of the Federal Transit Act, as amended; 49 U.S. C. App. Section 612; and implementing regulations and requirements of FTA, as amended.

8.0 COVENANTS AGAINST GRATUITIES

Contractor/Consultant shall not offer or provide gifts, favors, entertainment, or any other gratuities of monetary value to any official, employee, or agent of Pueblo Transit during the period of this Contract or for a period of one year thereafter.

9.0 NON-COLLUSION AFFIDAVIT

By submitting a bid, the Bidder represents and warrants that such bid is genuine and not a sham, or collusive, or made in the interest or in behalf of any person not herein named, and that the bidder has not, directly or indirectly, induced or solicit any other bidder to put in a sham bid, or any person, firm or corporation to refrain from bidding, and that the bidder had not in any manner sought by collusion to secure to the bidder an advantage over any other bidder.

10.0 PENALTY FOR COLLUSION

If, at any time, it shall be found that the person, firm or corporation to whom a Contract has been awarded has, in presenting any bid or bids, colluded with any other party or parties, then the Contract so awarded shall be null and void and the Contractor and its bondsmen shall be liable to Pueblo Transit for all loss or damage which Pueblo Transit may suffer thereby and the Board of Directors may advertise for a new Contract for said labor, supplies, materials or equipment.

11.0 BID PROTEST PROCEDURES

11.1 General Procedures

- a. Any Bidder or Contractor whose direct economic interest would be affected by the award of the Contract or the failure to award the Contract may file a protest, claim or dispute with Pueblo Transit pursuant to these protest procedures prior to filing any protest, claim or dispute with the FTA.
- b. Protests, claims or disputes, where applicable, shall be in writing and filed with the City of Pueblo directed to the Director of Purchasing, 230 S. Mechanic Street, Pueblo, CO 81003.

11.2 Protest Before Bid Opening

Protests with respect to an Invitation for Bid or Request for Proposal shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and could not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. In that case, the protest shall be submitted within five (5) calendar days after such aggrieved person knows or should have known of the facts giving rise to the protest. The protest shall clearly identify:

- a. the name, address, and telephone number of the protester
- b. the grounds for the protest, any and all documentation to support the protest and the relief sought
- c. steps that have been taken to date in an attempt to correct the alleged problem or concern.

11.3 Protest After Award

- a. Any individual or entity may file a protest with Pueblo Transit alleging a violation of applicable federal, state law and/or Pueblo Transit policy or procedure relative to seeking, evaluating and/or awarding a procurement Contract. In addition, any individual or entity may file a protest with Pueblo Transit alleging that Pueblo Transit has failed to follow its Procurement Protest Procedures. Such protest must be filed no later than five (5) calendar days from the notice of award or non-award of the procurement Contract.

- b. A protest, dispute or claim with respect to the award of a contract either through solicitation of bids or proposals or through direct negotiation shall be submitted in writing within five (5) days of notification of such award to the City of Pueblo's Director of Purchasing for a decision. All claims shall clearly identify:

1. the name, address, and telephone number of the protester
2. the grounds for the protest and the relief sought
3. the steps that have been taken to date in an attempt to correct the alleged problem or concern
4. supporting documents

A written decision by the City of Pueblo's Director of Purchasing stating the grounds for allowing or denying the protest will be mailed to the protester prior to execution of the Contract. Such decision shall be final unless the Board of Directors accepts an appeal of the Director of Purchasing decision.

- c. FTA Protest Procedures

FTA will only review protests regarding the alleged failure of Pueblo Transit to have written protest procedures, or the alleged failure to follow such procedures. An alleged violation on other grounds are under the jurisdiction of the appropriate State or local administrative or judicial authorities. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with the Federal regulation.

FTA will only review protest submitted by an intercede party as defined in FTA 4220.1C. FTA's decision on any appeal will be final.

12.0 TERMINATION/RESOLUTION OF DISPUTES

12.1 Termination for Convenience of Pueblo Transit

In accordance with the provisions of 48 CFR 52.249.2 (Code of Federal Regulations), the performance of work or delivery of products under this Contract may be terminated in whole or in part by Pueblo Transit upon written notice to the Contractor in accordance with this clause whenever Pueblo Transit determines that such termination is in its best interests. After receipt of said notice, Contractor shall stop work on this Contract on the date and to the extent specified in said notice. After receipt of said notice, Contractor shall submit to Pueblo Transit its termination claim setting forth Contractor's actual, direct and unavoidable costs incurred which cannot be canceled as a result of said termination, together with such information as may be required by Pueblo Transit to evaluate the claim. The determination of Pueblo Transit on the claim shall be final.

12.2. Termination for Default

In accordance with the provisions of 48 CFR 52.249-8 (Code of Federal Regulations), if the Contractor should be in default and fails to remedy this default within ten (10) calendar days after receipt from Pueblo Transit of such notice of default, Pueblo Transit may in its discretion terminate this Contract or such portion thereof as Pueblo Transit determines is most directly affected by the default. The term "Default" for purposes of this provision includes, but is not limited to, the performance of work in violation of the terms of this Contract; abandonment, assignment, or subletting of this Contract without approval of Pueblo Transit; bankruptcy or appointment of a receiver for Contractor's property; failure of Contractor to perform the services or other required acts within the time specified for in this Contract or any extension thereof; refusal or failure to provide proper workmanship; failure to take effective steps to end a prolonged labor dispute; and the performance of this Contract in bad faith.

12.3 Termination for Force Majeure

The performance of work under this Contract may be terminated by Pueblo Transit, in its discretion, upon application therefore by the Contractor for unforeseen causes beyond the control and without the fault or negligence of the Contractor, including acts of God, acts of the public enemy, governmental acts, fires and epidemics whose causes irrecoverably disrupt or render impossible the Contractor's performance thereunder.

An “act of God” shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of the Contractor to foresee or make preparation in defense against.

12.4 Remedies for Breach of Contract

- a. Penalty for failure to complete Contract: In case of failure on the part of the Contractor to complete its Contract within the specified time or within authorized extensions thereof, the Contract may be terminated and Pueblo Transit, in such event, not thereafter, shall not pay the Contractor any further compensation for any labor, supplies or materials furnished by it under said Contract; and the Board may proceed to complete such Contract either by relating in writing or otherwise and the Contractor and its bondsmen shall be liable to Pueblo Transit for all loss or damage which it may suffer due to the Contractor’s failure to completed its Contract within such time.
- b. Failure to meet Contract requirements: When the Contractor fails to meet the requirements of the Contract, the product or service may be brought from any source by Pueblo Transit, and if a greater price than that named in the Contract is paid by Pueblo Transit, the excess price will be charged to and collected from the Contractor.

13.0 **DISADVANTAGED BUSINESS ENTERPRISES**

Pueblo Transit hereby notifies all respondents that recipients of Federal financial assistance from the Department of Transportation, Federal Transit Administration, are committed to and have adopted a Disadvantaged (Minority/Women) Business Enterprise (DBE) Policy, in accordance with federal regulations issued by the Department of Transportation.

This DBE Policy provides that DBE’s will be afforded every practicable opportunity to submit bids and to participate in the performance of all Contracting activities.

The DBE goal for this procurement is a five (5) percent DBE GOAL.

A Disadvantaged Business Enterprise of DBE means a small business concern of which at least 51% is owned by one or more socially and economically disadvantaged individuals, including women, or, in the case of any publicly-owned business, at least 51% of the stock is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

“Socially and economically disadvantaged individuals” means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or Women; and any other minorities or individuals found to be disadvantaged by criteria as defined in Section 8(a) of the Small Business Act, as amended, and implementing regulations.

14.0 **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 Agreement between the Purchaser 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.

15.0 **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 4220.1E, dated June 19, 2003, 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 Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Pueblo or Pueblo Transit requests which would cause Contractor to be in violation of the FTA terms and conditions.

16.0 NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

Pueblo Transit 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 Pueblo Transit, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

17.0 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

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

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

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