



**GARY PUBLIC TRANSPORTATION CORPORATION (GPTC)
PRIME CONTRACT TERMS AND CONDITIONS**

Vendor should be aware that the contents of the purchase order (PO) constitutes a sound and complete contractual agreement. Additionally, the contractor should be aware of the contents of any certifications and guidelines in addition to the purchase order, that it will be required to execute as required by the Federal Transit Administration (FTA) and Gary Public Transportation Corporation. Failure of contractor to accept these obligations will result in the rejection of its quote, bid, proposal or cancellation of any award. The model clauses set forth in these requirements are adopted and expressly made part of the purchase order, contract and agreement; and in construing such clauses, all references to the Recipient or government shall be referenced to all participating agencies and/or GPTC, and all references to the vendor/contractor shall refer to the party awarded any contract as a result of this procurement transaction.

Background

Gary Public Transportation Corporation (GPTC) is funded, in part, by the Federal Transit Administration (FTA) of the United States of America. Various Federal Statutes and Regulations govern the purchasing procedures of GPTC. Basic requirements and the associated required documents and responsibilities will be found in **Office of Management and Budget (OMB) Circular A-102, and in FTA Circular C-4220.1F**. The Statutes, Regulations, and Circulars governing the procurements by GPTC require among other things that purchases be made according to approved plans and specifications, which will become part of the contractual documents between GPTC and the successful vendor(s).

GPTC solicits responses for construction, equipment, and/or services according to the following General Specifications and/or Technical Specifications that generally apply to the product or service requested. The Technical Specifications, Scope of Services, and any applicable Special services, will be found in the solicitation document(s).

Bid and Contract Procedure

GPTC reserves the right, when necessary, to postpone the times at which bids are scheduled to be received and opened, and to amend the Solicitation Statement of Work. Prompt notification of such postponement or amendment shall be given by GPTC to all prospective bidders who have requested or received the solicitation documents.

If the work is amended, any responder from whom a bid had been received prior to the giving notice of amendment will be entitled to withdraw the submission and resubmit their response in conformance with the changed work.

Where manufacturers, brands, names, model numbers, processes, or other specific items are mentioned in the Scope of Services, the words, “Or approved equal” shall be deemed to follow. All items must be furnished as specified unless a responder requests and receives permission to substitute an approved equal. Each request must be made in writing and received at the GPTC Procurement Department offices during business hours, not less than five (5) working days before the date upon which the submissions are due. Each request is to be accompanied by such samples, technical data, test results, or other information as necessary to demonstrate that the substitute requested is equal to or better than the item that is specified in the Statement of Work. GPTC will give prompt written notice of its response to each submitted request. The decision of GPTC as to the acceptability or non-acceptability of the requested substitution will be at its sole discretion and shall be final and non-arbitrable.

Upon receipt, all submissions shall be date and time stamped. Any submittal received after the time and date specified in this offer, or any amendment thereto, will be returned. No late submission will be considered in the selection process regardless of reason for lateness, including delays by the United States Postal Service.

All submissions received on-time will be publicly recorded and witnessed. No bid may be withdrawn after the opening. Submitted terms and conditions by vendor must be guaranteed for a term of not less than thirty (30) days, or until Board action (if required) whichever is longer. GPTC reserves the right to reject any and all submissions at any time in the procurement process prior to final contract execution. After bids are opened and read, GPTC will examine each bid to determine if the responder was responsive to the solicitation document, and if the proposer is a responsible vendor and able to fulfill any potential award.

Definition of Responsive:

All procurement certifications and form blanks, if applicable, must be filled in, all offered goods and/or services must conform with the Statement of Work requested, unless an alternate but equal request has been submitted for approval; and all information required in the request for submissions documents must have been completed and submitted in a timely and requested manner (i.e., sealed envelope) to conform with the definition of the term, *responsiveness*.

Any alteration, erasure, or interlineations of the document may cause the submission to be determined as non-responsive. However, GPTC reserves the right to accept any offer or to reject any and all offers, or to waive any defect or irregularity found in any offer.

Definition of Responsible:

GPTC may consider among other factors the Contractor’s record of integrity, experience, and past performance record with GPTC, the financial status, the capability to perform the project as defined, or whether the bidder is in default on any contract or other obligation to GPTC, the consolidated City of Gary, the State of Indiana, or the Federal government. In arriving at a determination, GPTC may institute a pre-award survey on any or all respondents. Bidders will be required to cooperate with the pre-award survey team if one is used. Failure to do so may result in the determination of the vendor as being a non-responsive vendor.

A proposer shall not add to, delete from, or change any specification, term or condition within the solicitation package unless authorized to do so by an amendment issued by GPTC to the solicitation. In addition, bidders must confine their response to the spaces provided on any furnished submittal form, quote form or cost form, except where the Form itself may make an exception to the contrary.

Alternate bids may be submitted but shall be submitted in a format that is easily understood, shows conformance with the contents of the Statement of Work, and contains full explanation as to the effectiveness of the alternate proposed in satisfying the intent of the solicitation.

All prices must be furnished to match the requested units or quantities as shown on the Submission Pricing Sheets or Quote Sheets. Where indicated the total extended price should be shown. In case of a discrepancy between the unit price and the extended price, the unit price shall prevail. No changes will be allowed to the point of placement of decimal points and zeroes. All submissions will be for the exact quantities and/or breakdowns reflected in the statements and conditions of the solicitation document(s).

Federal Participation

The resulting contract for the procurement of the requirements specified herein, is subject to the applicable terms and conditions of the Master Agreement for Financial Assistance between GPTC and the FTA. Review and approval by FTA is a condition required prior to the award of the contract to a sole response or any award to other than the apparent low offer. Any responder to which such an award is proposed by GPTC shall be notified in writing.

No Govern Obligation to Third Parties: Federal Participation does not infer or obligate the Federal Government in any form or fashion to any third party contractor. The purchaser and the 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, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

Further, 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 contractor who will be subject to its provisions.

Federal Changes: The purchaser and the contractor agree that they will be compliant with the requirements as found in **49 CFR Part 18** regarding the applicability of all Federal Regulations to third party contracts in that: 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 (**Form FTA MA (2) dated October, 1995**) between purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to comply shall constitute a material breach of this contract.

Incorporation of Federal Transit Administration (FTA) Terms: The Contractor and purchaser agree that in compliance with **FTA Circular 4220.1F** certain standard terms and conditions required by DOT, whether or not expressly set forth in the preceding contract provisions shall be included by reference. All contract provisions required by DOT, as set forth in **FTA Circular 4220.1F** are hereby incorporated by reference. Anything to 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 GPTC requests, which would cause GPTC to be in violation of the FTA terms and conditions.

Bonds

Bid/Proposal Bond: Some Bids/Proposals may require a Bid/Proposal Bond from a Surety Company licensed to do business in the State of Indiana or a certified or cashier's check drawn on a solvent banking institution in the amount specified in the solicitation document. All bonds are to be made payable to the Gary Public Transportation Corporation and shall serve as a guarantee that should the offer be accepted by GPTC the Responder will within thirty (30) working days after notification of acceptance, enter into a contract for the work offered or accepts GPTC's Purchase Order for the solicited goods/services.

In the event the offer is not accepted by GPTC, the obligation of the Bond and/or certified check will be considered null and void. Any certified checks submitted during the Bid process shall be returned to the Responder.

If the successful vendor does not enter into a Contract or Purchase Order agreement with GPTC after the acceptance of the offer, the obligation of the Bond or certified check shall be forfeit to GPTC for ascertained or liquidated damages for the failure to enter into the Contract or Purchase Order.

Performance Bond: In compliance with **49 CFR Part 29**, all construction activities and contracts exceeding \$100,000 shall be subject to a performance bond for One Hundred percent (100%) of the face amount of the contract. The successful vendor shall be required to submit within ten (10) working days of the notification of the award of the contract, and at its own expense, a Performance Bond issued by a surety company licensed to do business in the State of Indiana or a certified check drawn on a solvent banking institution, conditioned on the satisfactory completion of the Contract. The bond will not be released until releases by all suppliers and contractors are secured and presented to GPTC.

Failure to supply a Performance Bond, or failure to maintain a Performance Bond in effect for the term of the Contract, will be defined as a material breach of the contract and will result in termination of the Contract within thirty (30) working days with penalties and damages as defined in the Statement of Work being enforced. Bonding requirements may be applied to any contract at the discretion of GPTC, but must be applied to those detailed in the referenced Circular.

All construction projects shall comply with the provisions established and set forth in **Seismic Safety Requirements, 42 U.S.C. 7701 et seq., 49 CFR Part 41**. These codes and regulations are hereby incorporated into this contract by reference. The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation **Seismic Safety Regulations 49 CFR Part 41** and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance

with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

Supplies, Materials, Equipment, and/or Service Specifications

It is hereby agreed by GPTC that time is of the essence of this Agreement. The contractor shall supply the said supplies, materials, equipment, and/or service in conformance with these General Specifications, and any and all Special and/or Technical Specifications detailed in the Scope of Work of this solicitation.

In the event that the supplies, materials, equipment, and/or services are not delivered or performed by the contractor, a liquidated damage provision in the sum of the difference in cost plus an administrative fee, for GPTC to procure the items or services from the next most desired respondent will be assessed. However, any delay in compliance with the terms and conditions of any award or contract resultant from an award shall not result in liquidated damage if such delay is beyond the control of the contractor.

Definitions of delays beyond the control of the contractor: Delays can include, but are not limited to, Acts of God; Acts of the Federal Government; Acts of the State Government; Acts of a Municipal Governmental Agency; or acts of war by a foreign power. Also beyond the control of the contractor are guarantee restrictions and strikes by labor forces. In every case, the failure to perform must be beyond the control and without the fault or negligence of the contractor.

If delays are caused by the default of a subcontractor, the assessment of damages against the contractor shall apply.

Comparison, Testing, and Evaluation

GPTC may, during the term of this contract and without liability from the contractor, purchase reasonable amounts of similar "requirements" from competitive suppliers for the purposes of comparison, testing, and evaluation.

GPTC may require submission of samples for testing and evaluation from the lowest submitter(s) prior to the award of a contract. If asked for, the samples must be delivered to the location specified within three (3) business days from the date the request is made by GPTC. Failure to comply with this requirement will eliminate the respondent from further award consideration.

Time and Consideration

Failure to conform to the contractual delivery schedule for goods or services will be cause for GPTC to terminate the contract for default if GPTC chooses to do so. If such failure is deemed to be caused by contractor negligence, the liquidated damages clause of the contract may be applied.

All disputes that might arise under this contract may not be viewed as cause for termination, which, if they cannot be resolved between the contractor and GPTC, will be handled through compulsory arbitration by a mutually acceptable arbiter. All contracts in excess of One Hundred Thousand Dollars (\$100,000) shall contain provisions for dispute resolution and contractual requirements and conditions governing the legal remedies in contracts where a breach or violation of contract terms occur. All provisions pertaining to contract dispute resolution found in **FTA Circular 4220.1F** are subject to

applicability and execution in this contract. **49 CFR Part 18** also applies. Both **FTA Circular 4220.1F** and **49 CFR Part 18** are hereby included in the contract by reference.

Disputes: Disputes arising in the performance of this contract, which are not resolved by agreement of the parties, shall be decided in writing by the authorized representative of GPTC, the Chief Administration Officer. This decision shall be final and conclusive unless ten (10) days from the date of receipt of its copy, the contractor mails or otherwise furnishes a written appeal to the Chief Executive Officer. In connection with any such appeal, the contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Chief Executive Officer shall be binding upon the contractor and the contractor shall abide by the decision.

Performance During Disputes: Unless otherwise directed by GPTC, contractor shall continue performance under this contract while matters in dispute are being resolved.

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

Remedies: Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matters in question between the GPTC and the contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Indiana.

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

Termination

For all contracts entered into by GPTC and any contractor or subcontractor for which the amount of costs shall be Ten Thousand Dollars (\$10,000) or more, any termination shall be in accordance with the provisions found in **49 U.S.C. Part 18, and FTA Circular 4220.1F**. These provisions shall apply to contracts at all tiers of the project.

Termination for Convenience (General Provision): GPTC 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 GPTC to be paid the contractor. If the contractor has any property in its possession belonging to GPTC, the contractor will account for the same, and dispose of it in the manner GPTC directs.

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, GPTC may terminate this contract for default. Termination shall be effected by the serving of 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 GPTC 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, GPTC, after setting up a new delivery performance schedule, may allow the contractor to continue work, or treat the termination as a termination for convenience.

Opportunity to Cure (General provision): GPTC at its sole discretion may, in the case of a termination for breach or default, allow the contractor fourteen (14) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which the cure is permitted and other appropriate conditions.

If the contractor fails to remedy to GPTC's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within fourteen (14) working days after receipt by the contractor or written notice from GPTC setting forth the nature of the breach or default, GPTC shall have the right to terminate the contract without any further obligation to the contractor. Any such termination for default shall not in any way operate to preclude GPTC from also pursuing all available remedies against the contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach: In the event that GPTC elects to waive its remedies for any breach by contractor of any covenant, term, or condition of this contract, such waiver by GPTC shall not limit GPTC's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

Termination for Convenience (Professional or Transit Service Contracts): GPTC, 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, GPTC shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Default (Supplies and Services): If the contractor fails to deliver supplies or fails to perform, the services in the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, GPTC may terminate this contract for default. GPTC 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, for services performed in accordance with the manner of 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 the GPTC.

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, GPTC 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 GPTC's goods, the contractor shall, upon direction of GPTC, protect and preserve the goods until surrendered to GPTC or its agent. The contractor and GPTC shall agree on payment for the preservation and protection of goods. Failure to agree on 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 GPTC.

Termination for Default (Construction): If the contractor refuses or fails to prosecute the work or any separate part, with the diligence that will ensure 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 other provisions of this contract, GPTC may terminate this contract for default. GPTC shall terminate by delivering to the contractor a Notice of Termination specifying the nature of the default. In this event GPTC 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 GPTC resulting from the contractor's refusal or failure to complete the work within the specified time, whether or not the contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by GPTC 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 GPTC, acts of another contractor in the performance of a contract with GPTC, epidemics, quarantine restrictions, strikes, freight embargoes; and
- 2) The contractor, within ten (10) days from the beginning of any delay, notified GPTC in writing of the causes of delay. If, in the judgment of GPTC, the delay is excusable, the time for completing the work shall be extended. The judgment of GPTC shall be final and conclusive on the parties, but subject to appeal under the dispute 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 GPTC.

Termination for Convenience or Default (architect and Engineering): GPTC may terminate this contract in whole or in part, for its convenience or because of the failure of the contractor to fulfill the contract obligations. GPTC will 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 convenience of GPTC, 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, GPTC may complete the work by contract or otherwise and the contractor shall be liable for any additional cost incurred by GPTC.

If after termination for failure to fulfill the 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 GPTC.

Termination for Convenience of Default (Cost Type Contractors): GPTC may terminate this contract, or any portion of it, by serving Notice of Termination on the contractor. The notice shall state whether the termination is for convenience of GPTC 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 GPTC, or property supplied to the contractor by GPTC. If termination is for default, GPTC 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 GPTC and the parties shall negotiate settlement to be paid the contractor.

If the termination is for the convenience of GPTC, 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, GPTC 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, GPTC, after setting up a work schedule, may allow the contractor to continue work, or treat the termination as a termination for convenience.

References

GPTC requires the vendors submitting responses to solicitations to furnish a list of at least three (3) references, which are now, or within the past five years been a customer of the vendor and to whom has been provided services of a similar nature. This list shall include the following:

Customer Name

Name of Procurement Officer
Customer Address (where operation takes place)
Customer Telephone Number

If requested, the list must be part of the bid/quote/proposal submission. Failure to comply with that request would result in the removal of the vendor from any further consideration for contractual agreement.

Warranties and Guarantees

The contractor will deliver to GPTC any and all Warranties and Guarantees for the contracted goods and/or services delivered in their hand from a manufacturer or other provider as a result of the contractual arrangement with GPTC.

The contractor shall warrant concerning the requirement:

- Conformance to specifications
- Products free from defects, functionally acceptable, of good materials and workmanship and suitable for the intended use.
- No United State or Foreign PATENT infringement
- Compliance with all Federal, State, and Municipal Statutes, regulations, circulars codes, and ordinances

The contractor shall not assign nor transfer any interest in this agreement without the prior written consent of GPTC. In addition, none of the services covered by this agreement shall be sub-contracted or contracted out, unless quoted that way in the original bid response without the written approval of GPTC.

Price

GPTC shall pay to the contractor the price(s) stated in the contractor's bid or alternate bid as accepted by GPTC.

All items are to be delivered F.O.B. destination, unless otherwise stated. All transportation costs from the shipping point to the destination shall be paid by the contractor and included in the submitted price. Full responsibility for any damages incurred while in transit shall be borne by the contractor.

All invoices for supplies, services, materials or equipment shall be submitted to:

Gary Public Transportation Corporation
Attention: Accounts Payable Department
100 West 4th Avenue, Third Floor
Gary, IN 46402

Invoice Submission, Contents, and Payments

Vendors shall submit invoices for all work completed. **GPTC may not pay in advance for work not performed, and will not pay for work not clearly defined with a clear statement of the deliverable for which the payment is requested.** GPTC requires all invoices submitted clearly define and show on the face of the invoice the project or applicable purchase order number for which the invoice is being submitted. Commodity invoicing should show Purchase Order (and contract number if applicable), part numbers, quantities, and unit as well as extended prices, and any delivery, core or set-up charges included by date. Service invoicing should show Purchase Order number (and contract number if applicable), a detail of the content of work completed, the person or group completing the work, the charges for the work completed, and any associated additional charges applicable. GPTC will review and process for payment acceptable invoices, or return faulty invoices to the vendor within fourteen (14) days.

All invoices retained for processing will be paid in thirty (30) days from receipt of properly executed invoice.

Single Offers

If only One (1) offer is received, GPTC is required under the terms of **FTA Circular 4220.1F** to conduct a cost and price analysis. That analysis will then be submitted to the FTA prior to any award. Vendor is required to hold pricing firm until FTA approval or rejection is received. Vendors are required to provide for the analysis any requested information. Failure to provide the requested information will result in the vendor being removed from consideration for contract completion.

GPTC reserves the right to accept or reject the submitted offer on the basis of the analysis or comparison alone if it is deemed in the best interest of GPTC to accept or reject.

Invoice Payment

Payment terms of the contract shall be NET 30 DAYS except where Cash Discount Terms are requested and included on the Bid cost sheet by the respondent. Vendor cash discount terms on invoices that offer to GPTC better cash discounts than the Bid may be accepted. The minimum acceptable payment term is NET 30 DAYS.

Request for terms of less than this will most probably not be honored unless supported by a need or circumstance that would justify a change in policy on the part of GPTC.

Indemnity

The contractor shall indemnify GPTC, GPTC's board of directors, and all of its agents and/or employees, and hold them harmless from all losses, damages, costs, expenses, claims, suits, judgments in law and equity, that may at any time arise, or be set up, by any breach of any express or implied warranties arising out of the furnishing of supplies, materials, equipment, and/or services under this agreement; or arising out of any other failure of the contractor to meet the obligations of the contract. GPTC will give the contractor prompt notice in writing of the institution of any suit or proceeding and permit the contractor through his counsel to defend same, and will deliver all needed information, assistance, and authority to enable the contractor to do so.

Title VI Compliance, Civil Rights Act of 1964

During the performance of this contract, the contractor agrees to the following:

- A) The contractor shall comply with the regulations relative to **Non-discrimination in Federally Assisted programs of the DOT, Title 49, CFR, Part 21**, as they may have been amended from time to time, which are herein referenced and made a part of this contract.
- B) The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, age, or national origin in the selection and retention of subcontractors, including procurement of materials and lease of equipment.
- C) The contractor shall not participate either directly or indirectly in the discrimination prohibited by **Section 21.5** of the regulations, including employment practices, when the contract covers a program set forth in Appendix B of the regulations.
- D) In all solicitations, either by competitive bids or negotiations, made by the contractor for work to be performed under a subcontract, including procurements or materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under the contract and the regulations relative non-discrimination on the grounds of race, color, sex, age, or national origin.
- E) The contractor shall provide all information and reports required by the regulations or directives issued pursuant thereto, and shall permit access to the books, records, accounts, other sources of information and its facilities as may be determined by GPTC or the FTA, to be pertinent to ascertain compliance with such regulations, orders, and instructions. All in accordance with the provisions as set forth in with **49 U.S.C. 5325, 18 CFR 18.36, and 49 CFR 633.17**, or any other law, regulation, code, requirement, or directive applicable to the access of records. Where any formation is required or when a contractor is the exclusive contractor for any good or service under the terms of this contract, that contractor may be required to certify such assurances to GPTC and/or FTA as appropriate and shall set forth in that certification what efforts have been made to obtain and to provide the information.

The following access to records requirements apply to this type of contract:

- 1) Where the purchaser is not a State but a local government, and is the FTA Recipient or a sub-grantee of the FTA recipient in accordance with **49 CFR 18.36 (i)**, the contractor agrees to provide purchaser, 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 CFR 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 the purchaser is a State and the FTA recipient or sub-grantee of the FTA recipient in accordance with **49 CFR 633.17**, contractor agrees to provide the purchaser, 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 the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, an hospital, or other non-profit organization, and is the FTA recipient or a sub-grantee of the FTA recipient in accordance with **49 CFR 19.48**, contractor agrees to provide the purchaser, FTA Administrator, or the Comptroller General of the United States or any of their duly authorized representatives with 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.
 - 4) Where any purchaser which is the FTA recipient or a sub-grantee 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 the purchaser, the Secretary of Transportation, and the Comptroller General of the United States or any authorized representative of any of them for the purposes of conducting an audit or 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 reasonable 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 the purchaser, 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)**.
- F) In the event of the contractor's violation of the non-discrimination clauses of this contract, GPTC retains the right to impose such contract sanctions as it or the FTA may determine to be appropriate, including but not necessarily limited to:

Withholding of payments to the contractor under the contract until the contractor complies, and/or cancellation, termination, or suspension of the contract in part or in whole.

Labor Provisions

In the event this contract requires the hiring of Mechanics, or Laborers, all provisions of **29 CFR Section 5.5** will apply. The contractor will be responsible for compliance by any subcontractor with any and all clauses set forth in this regulation.

Disadvantaged Business Enterprise

Assurances, 49 CFR, Part 26.13

Required Contract Provisions:

The following assurances are included in all agreements between GPTC and the vendors to whom contracts are issued.

1. Any and all financial assistance agreements signed by GPTC will include an assurance that GPTC will not discriminate on the basis of race, color, national origin, or gender in the award and performance of any DOT assisted contract or in the administration of its DBE program or the requirements of **49 CFR, Part 26** to ensure nondiscrimination in the award and administration of DOT assisted contracts. GPTC's DBE program, as required by **49 CFR, Part 26**, and as approved by USDOT, will be incorporated by reference in all applicable agreements.
2. Implementation of this program is a legal obligation, and failure to carry out its terms shall be treated as a violation of this agreement.
3. Each contract that GPTC signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) will include the following assurance:

"The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or gender 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 GPTC deems appropriate."

Prompt Payment Mechanism, 49 CFR, Part 26.29

GPTC has established a mechanism for prompt payment of DBE subcontractors by prime contractors. Prime contractors are required to pay subcontractors within five days from the receipt of payment from GPTC. They are further required to return funds retained within thirty (30) days after the subcontractor's work is satisfactorily completed. Clauses requiring prompt payment have been included in all GPTC agreements with contractors. Prime contractors are required to include this language (clauses) in their contracts with subcontractors. Any delay or postponement of payment may only take place for good cause, with prior approval of GPTC.

Where there are disputes, prime contractors and subcontractors will be required to use appropriate Alternative Dispute Resolution (ADR) mechanism to resolve payment disputes. GPTC will participate in the resolution if necessary.

Failure to carry out prompt payment requirements will be considered a breach of contract with the following results:

1. GPTC will not reimburse prime contractors for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
2. GPTC will not award future contracts to prime contractors who refuse to pay promptly.

Financial Institutions, 49 CFR, Part 26.27

GPTC has thoroughly investigated its service area for banks and financial institutions owned and controlled by DBEs. The results of the investigation revealed that there are no such institutions within the City of Gary. However, GPTC encourages the prime contractors, subcontractors, and various vendors to search for and utilize services provided by financial institutions that are owned and/or controlled by DBEs, and requires all such parties to make good faith effort to do so.

GPTC, in accordance with **Title VI of the Civil Rights Act of 1964, 778 §252, 42 U.S.C. 2000d to 2000 – 4, and Title 40, CFR, DOT, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally Assisted Programs of the DOT** issued pursuant to such act, hereby notified all vendors that it will affirmatively insure that for any contract entered into pursuant to this advertisement; Minority Business Enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminate against on the grounds of race, color, sex, age or national origin in the consideration of award.

DBE is a small business concern and is a business of which at least 51% is owned and controlled by a Minority group member(s). The minority ownership must exercise actual day-to-day management, as well as actively participate in management and policy decisions affecting the business.

Small business concerns are a small business as defined by **Section 3 of the Small Business Act and Appendix B – Section 106(c)** determinations of Business Size. Socially and economically disadvantaged individuals are those who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted permanent resident) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities and individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

NOTE: Minority includes the following groups: African-American, Spanish American, Native-American, Asian, Pacific Islander, Alaskan Natives, and women.

- 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, Central or South American, or other Spanish or Portuguese culture of origin, regardless of race.

- iii. “Native American” which include 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, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas.
- v. “Asian Indian Americans” which includes persons whose origins are from India, Pakistan, and Bangladesh.

The contributions of capital, equipment, or expertise that has been made by the minority owners must be real, substantiated, and documented. It is the policy of GPTC that DBE vendors should participate to the greatest extent possible consistent with the laws of the State of Indiana in contracts awarded by GPTC.

It is the policy of DOT that DBEs as defined in **49 CFR Part 23** and amended in **Section 106(c) of the Surface Transportation Assistance Act of 1987**, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently the DBE requirements of **49 CFR 23** and amended by **Section 106(c) of the Surface Transportation Assistance Act of 1987** apply to this agreement and is considered pertinent to any contract resulting from this solicitation. It is further the policy of GPTC to promote the development and increase the participation of business owned and controlled by the disadvantaged. DBE involvement in all phases of GPTC’s procurement activities are encouraged.

Calendar year goals have been set in an attempt to match procurements with available disadvantaged businesses. GPTC’s goal for budgeted service contract, bus repair parts, and other materials and supplies for DBEs participation have been established at 10%.

Contractors agrees to ensure that DBEs as defined in **49 CFR Part 23 and Section 106(c) of the STURAA of 1987**, have the maximum opportunity to participate in part or in whole with Federal Funds provided under this agreement. In this regard, the contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The contractor shall not discriminate on the basis of race, color, age, religion, sex, national origin, or physical handicap I the award and performance of subcontracts.

DBE Obligation

GPTC will provide guidance and assistance as may be necessary to assist the contractor to ensure that DBEs, as defined in **49 CFR Part 23**, have the maximum opportunity participate in the performance of contractors and subcontractors financed in whole or in part by FTA funds. Contractors shall not discriminate on the basis of race, color, sex, age, or national origin in the award and performance of DOT assisted contracts.

If a specific DBE goal is assigned to this contract, the goal will be clearly stated in the Scope of Work of this solicitation. If the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBEs in the work provided, GPTC may declare the contractor non-compliant and in breach of contract. If a goal is not stated in the Scope of Work, it will be understood that no specific DBE goal has been assigned this contract.

The contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts financed in part or in whole with Federal Funds. All necessary steps will be taken to assure total and full compliance with the intent and the contents of **49 CFR Part 23** as amended.

The contractor shall keep records and documents for a reasonable time following performance of this contract to indicate compliance with GPTC's DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of GPTC and will submit them to GPTC upon request.

Program Fraud and False or Fraudulent Statements and Related Acts

In all contracts made with or subcontracts made for GTC, it is understood that the following requirements are a necessary and vital part of the agreement(s).

The contractor acknowledges that the provisions of the **Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations "Program Fraud Civil Remedies", 49 CFR Part 31** apply to its actions pertaining to this Project. Upon execution of the underlying contract the contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or 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 cause to be made, a false, fictitious, or fraudulent claim, statement, submissions, 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 **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 finance in whole or in part with Federal assistance provided by FTA. It is further agreed that the two clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.

Offer of Assistance

GPTC will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- Identification of qualified DBEs
- Available listing of Minority Assistance Agencies
- Holding conferences for Scope of Work to emphasize requirements.

Statement of Non-Collusion

In submitting a response, the contractor affirms that the Offer is genuine and not collusive or a sham; that said Responder is not financially interested in, or otherwise affiliated in a business way, with any other respondent on the same contract; that said Responder has not colluded, conspired, connived, nor agreed directly or indirectly, with any submitter or person to submit a sham bid or that such other person shall refrain from Offering, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any person to fix the price of this or any other bid, or to fix any overhead, profit, or other cost element of said Bid Price, or this or any other submitter, or to secure any advance against GPTC or any persons interested in the proposed contract; and that all statements contained in said Offer are true; and further that such Respondent has not directly or indirectly submitted this Offer or the contents thereof, or divulged information or data relative thereto to any association, or any member or agent thereof. Failure to sign and have notarized the Non-Collusion Affidavit on Form 95 will result in disqualification of this Offer. Contractor further certifies that Non-Collusion as here defined and sworn by his affidavit is in full compliance with the nature and intent of the **Sherman Anti-Trust Act** as amended, the **Clayton Act** as amended, the **Robinson-Patman Act** as amended, and the **Federal Trade Commission Act** as amended.

Buy America

This procurement is subject to FTA's "Buy America" requirements as defined in **49 CFR 661**. The "Buy America" certificate, included in this bid document, must be completed and submitted with the submittal. All items not conforming to the "Buy America" criteria must be submitted as a request for approved alternate, as defined in this document. Any Offer which does not include a properly executed "Buy America" certificate will be considered non-responsive and excluded from the award process.

Restriction on Lobbying

Lobbying requirements included in this contract require the maximum flow down to all tiers of the contract/subcontract process. They are pursuant to **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 CFR Part 19, Appendix A, Section 7**.

Mandatory Clause/Language:

- Clause and specific language therein are mandated by **49 CFR Part 19, Appendix A**. Modifications have been made to the Clause pursuant to **Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65[to be codified at 2 U.S.C. § 1601, et seq.]**
- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by **31 U.S.C. 1352(b)(5)**, as amended by **Section 10 of Lobbying Disclosure Act of 1995**, and DOT implementing regulations, "New Restrictions on Lobbying" at **49 CFR § 20.110(d)**.
- Language in lobbying Certification is mandated by **49 CFR Part 19, Appendix A, Section 7**, which provides that contractors file the certification required by **49 CFR Part 20**, as amended by "Government Wide Guidance For New Restrictions on Lobbying" **61 Fed. Reg. 1413 (1/198/96)** as mandated by **49 CFR Part 20, Appendix A**.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995; P.L. 104 – 65 [to be codified at 2 U.S.C. § 1610 et seq.] Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by **49 CFR Part 20**, “New Restrictions on Lobbying”. Each tier certifies to the tier above that it will not and has 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 other award covered by **31 U.S.C. 1352**. Each tier shall also disclose the name of any registrant under the **Lobbying Disclosure Act of 1995** who has made lobbying contacts on its behalf with Non-Federal funds with respect to that Federal contract, grant, or award covered by **U.S.C. 1352**. Such disclosures are forwarded from tier up to tier to the recipient.

Interest of Public Officials

No member of, or delegate to the Congress of the United States, shall be admitted to any share or part of the contract or to any benefit arising therefrom. No member, officer, or employee of GPTC or of a local body, during his/her tenure, or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

State, Federal, and OSHA Requirements

The contractor agrees to submit and comply with the contents and intent of the latest Federal and State amendments of all work site regulations, laws, rules, and regulations and to impart all training and documentation to support that certified compliance with same.

Environmental Violations

All contracts and subcontracts awarded by GPTC or for GPTC that are in excess of \$100,000 require a contractor compliance with all applicable standards, orders, requirements, and codes issued under **Section 306 of the Clean Air Act (42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368) Executive Order 11738, and EPA Regulations (40 CFR Part 15)** which prohibits the use (under non-exempt) Federal contracts, grants, or loans) of facilities included on the EPA list of Violating Facilities. The contractor shall report any such violations to the FTA and to the EPA Assistant Administrator for Enforcement (**EN0329**). In addition, the contractor shall warrant compliance with any and all federal, State, and Local environmental laws, statutes, ordinances, and regulations in connection with the provision of all supplies and services covered by this IFB. Such provisions include but are not limited to, **Energy Conservation Requirements, 42 U.S.C. 6321 et seq., 40 CFR Part 18; Clean Air Requirements 42 U.S.C. 7401 et seq., 40 CFR 15.61, and 49 CFR Part 18; Clean Water Requirements 33 U.S.C. 1251; and Recycled Products 42 U.S.C. 6962, 40 CFR Part 247, and Executive Order 12873.**

Further, the contractor shall recognize mandatory requirements and policies relating to energy efficiencies which are contained in the State Emergency Conservation Plan issued in compliance with the Energy Policy and Conservation Act.

Use of United States Flag Vessels

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 supplies, materials, equipment, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates. The contractor agrees to furnish a legible copy of the shipping rate to GPTC within twenty (20) working days following the date of loading shipments originating outside the United States.

A copy of the shipping rate may be required to be sent to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20239, marked with the appropriate identification of the project.

Funding

GPTC notifies all potential Respondents via this Solicitation notice that funds may not presently be available for performance of this contract beyond the end of this calendar year. However, long term encumbrance of funds sufficient to cover the cost of this project will secure sufficient funds to pay for all work done in each calendar year for which a purchase order is issued. New purchase orders shall be issued on January 1 of the year for any project that may span portions of, or all of, multiple years.

State and Local Laws

Any contract entered into by Gary Public Transportation Corporation shall be defined by the law of the State of Indiana or Local ordinances and Codes of Lake County, State of Indiana. Any dispute shall be tried in a court of competent jurisdiction of Lake County of the State of Indiana. All procurements shall be governed by the applicable regulations of the FTA, the United States Code, or the State and Local Law.

ADDITIONAL REQUIREMENTS IN SPECIALIZED PROCUREMENTS

In the case of any procurement being a part of or associated with a subcontract to the procurement of vehicles for transit service, these Federal requirements will be a part of this contract.

In accordance with **Section 30**, contractor will conform with the Metrics requirements as set forth by the Departments of Labor and Transportation of the United States of America.

The contractor shall be required to certify it is compliant with the terms, intent, and conditions of **Section 3.b of 49 CFR Part 29** as it relates to Debarment and/or Suspension requirements of the Federal Transportation Administration in association with this or any other federal, state, or municipal contract, agreement, or purchase order.

The contractor agrees that it will fully comply and support the contents of “Fly America” CFR 49 Part 29, Section 14.c when any property or person employed in the actions or toward the completion of any contract funded in whole or in part by FTA financial involvement travels or is shipped from one point to another by air carrier.

In the event of an award that is in excess of \$500,000, there shall be a formal notification of Federal participation issued to all solicitations in accordance with Section 15.n of FTA Circular 4220.1F.

All vendors are hereby notified that in accordance with the laws of the State of Indiana, no response may be submitted by any vendor that is based upon formulation of cost and materials supported in part or in whole through the use of child labor.

Bid Protest Procedure

The “Bid Protest Procedure” detailed below is an integral part of the GPTC procurement policies. It is provided to ensure fairness to all prospective vendors desiring to compete for business from GPTC and to prepare a response to any solicitation in which GPTC specifies requirements for equipment, material, services, or goods.

GENERAL:

Protest(s) will only be accepted by GPTC’s Purchasing Department from officers of a business whose direct economic interest would be affected by the award of a contract or the refusal to award a contract. The Director of Procurement will consider all such protests, whether submitted before or after the award of such a contract. If oral objections are raised and the matter cannot be resolved to the satisfaction of the objector, a written protest shall be required before any further consideration is given. Protest(s) submissions should be concise, logically arranged and state clearly the grounds for protest.

All protest must include the following minimal information:

1. Business Name, Protestor name, Business address, and Business phone number.
2. Identification of the solicitation in protest by number.
3. A detailed statement of the legal and/or functional ground under protest, including copies of the relevant documents.
4. A brief statement of the relief requested.

All protest documents that are received by GPTC shall be stamped with the date and time received and logged into a “Protest File”.

DEFINITIONS:

For purposes of the Bid Protest Procedure, the following definitions apply:

1. Days refers to working days of the Federal Government.
2. File or submit refers to the date of receipt by GPTC or the FTA, as the case may be.
3. Interested Party means an actual or prospective bidder or offerer, whose direct economic interest would be affected by a reward of, or a refusal to award, a contract.
4. Bid includes the term “offer” as used in the context of negotiated procurements as well as the terms “Bid”, “Submission”, or other terms generally recognized to apply to a formal submission to a request by a business for selection of goods or services.

Protest Before An Award

Protest before an award must be submitted within the time frames specified for each of the two types of before award protest. The Director of Procurement shall notify and log as detailed above.

For those protest which are a protest against the allotted time for offer preparation, solicitation content, specification detail, or procedural protest, the time frame during which such protest shall be received shall be limited to three (3) days before the time/date given for the receipt of Offers (including the day of the bid opening or receipt as day three (3)). If such protests are not lodged within the specified time, the participants in the subject solicitation shall be deemed to have waived all rights to protest any procedural or specification item.

If after the submission of offers but *before* the formal award of a contract, any offerer or vendor feels the need to file a protest; such protest must be received within ten (10) days of the scheduled opening of the referenced response.

If “before award” protests are received within the specified time, the Director of Procurement shall request of each vendor submitting a response a certification of the extension of prices and waiver of time to preclude any requirements to re-solicit.

Where a written protest is received against the making of an award, the award shall not be made until five (5) days after the resolution of the protest, unless the Director of Procurement determines that:

The item(s) being procured is critical to business; or

Deliverance or performance will be unduly delayed if there is a failure to award; or

Failure to make prompt award will otherwise cause undue harm to GPTC or the State or Federal government.

In the event a determination is made that the award is to be made during the five-day period, or during the pendency of a protest, the Director of Procurement shall furnish written notification to FTA of the intent to award prior to the award. FTA reserves the right to not participate in any such award.

If such an award is made, the files will contain full and adequate documentation as to the causes and points dictating such decision be made. All persons who are party to the solicitation shall be furnished duplicate copies of all pertinent information with confirmation of the award having been made.

Protest(s) After an Award

Protest against award must be filed with the Procurement Director of GPTC within five (5) days immediately following the award. The protest will be accepted and logged and all parties shall be advised such a protest has been logged. If it appears likely that an award will need to be rescinded or an award invalidated and a delay in receipt of goods or services shall result that is not prejudicial to GPTC’s interest, a negotiated agreement to suspend performance shall be sought on a no cost basis.

GPTC shall render through the Director of Procurement, a decision on the protest within fourteen (14) days after the receipt thereof. Notice of that decision will be furnished to all interested parties. If the decision rendered by GPTC is deemed to be adverse by the protestor, it may file a protest with the Federal Transportation Administration (FTA).

FTA will only review protests regarding the alleged failure of GPTC to have a written protest procedure or the alleged failure to follow such procedures.

Alleged violations on other grounds are under the jurisdiction of appropriate State or Federal courts, or local or federal regulatory agencies. Any protest involving other matters should be filed in agreement with the directions given in particular regulations. **See, e.g., Buy American Requirements, 49 CFR Part 661 (Section 661.15); participation by Minority Business Enterprise in Department of Transportation programs, 49 CFR, Section 23.73.**

FTA's remedy for GPTC's failure to have a written protest procedure or failure to follow such procedure is limited to requiring GPTC to develop such procedures, if necessary, and to follow such procedures in reviewing the protest at issue, if GPTC desires FTA financial participation in the contract in question. In instances where GPTC has awarded to another vendor, or prior to FTA's decision on the protest, FTA may refuse to participate in funding the contract.

Protestors are required to file a protest with FTA not more than five (5) days after the rendering of a decision on the original protest by GPTC. In instances where the protestor alleges GPTC failed to make a final determination on the protest, protestors shall file a protest with the FTA not later than five (5) days after the protestor knew or should have known of GPTC's failure to make a final decision. GPTC shall not award a contract in the five (5) day period referenced except it be in accordance with the stipulations as detailed in paragraphs above. After five (5) days, GPTC shall verify with FTA that no protest is on file for the particular contract in question.

Protests filed with the FTA should be filed with the appropriate FTA Regional Office with a concurrent copy to GPTC.

Protest filed with the FTA shall:

1. Include the name and address of the protestor.
2. Identify GPTC, the project number (if applicable), and the number of the contractor solicitation.
3. Contain a statement of the grounds upon which the protest is filed. This should detail the alleged violation, failure, or oversight, and contain full supporting documentation.
4. Include copies of the local protests previously filed with GPTC and the copy of the decision regarding such protest rendered by GPTC.

FTA shall notify GPTC in a timely manner of the receipt of a protest. FTA shall instruct GPTC to notify the contractor of the protest if an award has been made or, if no award has been made, to notify all interested parties. GPTC shall instruct all who receive such notice that they may communicate further with FTA directly.

GPTC shall submit the following information to FTA not later than ten (10) days after receipt of notification of FTA of the protest.

1. A copy of the GPTC Protest Procedure
2. A description of the process followed concerning the protestor's protest; and
3. Any supporting documentation.

GPTC shall then supply copies of the submissions to FTA to the protestor.

The protestor may submit to the FTA any comments on GPTC's submission not later than ten (10) days after receipt of the GPTC submission by the protestor.

When a protest has been timely filed with GPTC before the award of a contract, GPTC shall not make an award prior to five (5) days after the resolution of the protest, or if a protest has been filed with the FTA, during the pendency of that protest, unless GPTC determines that:

1. The items procured are urgently needed; or
2. Delivery or performance will be unduly delayed by failure to make an award promptly; or
3. Failure to make an award will cause an undo hardship on GPTC, the State, or the Federal Government.

In the event GPTC determines that the award must be made in the five (5) day period, GPTC will notify FTA of that decision prior to making the award. FTA reserves the right to not participate in the funding of any contract awarded under protest pendency or during the five (5) day waiting period.

Upon receipt of the submission, FTA will either request further information or a conference among the parties, or will render a decision on the protest.