

**INVITATION FOR BID  
# IFB 10-6-280**

**“Michigan Road Enhancements”**

**July 19, 2010  
Released**

**Due Date  
July 30th, 2010**

**INDIANAPOLIS PUBLIC TRANSPORTATION CORPORATION  
1501 WEST WASHINGTON STREET  
INDIANAPOLIS, IN 46222**

**PHONES:  
(317) 614-9252 Al Burns  
(317) 614-9281 Melissa Halinski**

**FAX: (317) 266-9163**

**PROCUREMENT SCHEDULE  
IFB #10-6-280**

<b>Advertise First Time and Release</b>	<b>July 19, 2010</b>
<b>Advertise Second Time</b>	<b>July 22, 2010</b>
<b>No pre-bid meeting for this procurement</b>	
<b>Written Questions Due</b>	<b>July 23, 2010</b>
<b>Answers to Written Questions Due</b>	<b>July 26, 2010</b>
<b>Offers Due</b>	<b>July 30, 2010 11:00 AM (EST)</b>
<b>Bid Opening</b>	<b>July 30, 2010 11:15 AM (EST)</b>

**INDIANAPOLIS PUBLIC TRANSPORTATION CORPORATION**  
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**SECTION 1**  
**INTRODUCTION & SCOPE OF WORK**

## **Section 1 INTRODUCTION**

### **Section 1.1 History:**

The Indianapolis Public Transportation Corporation, hereinafter IPTC or IndyGo, is a Municipal Corporation, a component unit within the consolidated City of Indianapolis, Marion County, State of Indiana.

This project is being done in conjunction with the city of Indianapolis' pedestrian improvement project along the Michigan Road Corridor. This project will enhance the transit rider experience by creating safer access to transit stops.

### **Section 1.2 Proposals; Due Time, Date, and Location:**

**Bidding Firms must submit one original proposal with appropriate seals and signatures and 1 copy of proposal.** Any alteration to the forms contained in the IFB or failure to submit all certifications referenced may be cause for the proposal to be declared as non-responsive.

**All proposals and copies must be submitted no later than 11:00 AM (EST) on July 30th, 2010.** Proposals should be labeled with "IFB #10-6-280 Michigan Road Enhancements" and sent to the attention of:

**Melissa Halinski  
Procurement at IPTC  
1501 W. Washington Street  
Indianapolis, IN 46222**

**ALL OFFERS TO THIS IFB WILL BE PUBLICLY OPENED AND PRICES READ ALOUD ON July 30th, 2010 AT 11:15 AM in IPTC Board Room.**

Under no circumstance will any proposal be accepted later than the time or date detailed or at any other location than that specified. This restriction is absolute and includes, but is not limited to, failure of a private delivery service or the United States Postal Service to deliver documents in a timely or scheduled manner. No response will be accepted that is not in the hard copy format. Electronic responses are not valid for this IFB solicitation. Proposals received after the due date and time will be returned un-opened.

### **Section 1.3 Pre-Proposal Conference**

There will not be a pre-proposal meeting for this procurement. Written questions are due July 23rd, 2010. Please email to [mhalinski@indygo.net](mailto:mhalinski@indygo.net). Answers will be posted in addendum format on IndyGo's website by July 26<sup>th</sup>, 2010.

### **Section 1.4 Term of Engagement:**

This is a single project and will end at contract closeout. This project must be completed by November 30<sup>th</sup>, 2010.

### **Section 1.5 History of the Service:**

IPTC has contracted out this type of work in the past.

### **Section 1.6 Purpose:**

The purpose of this procurement is to solicit bids for a pedestrian trail/walkway project for better accessibility to transit stops. IndyGo will be building 2 sections of the Michigan Road Trail that is part of the City project between 86<sup>th</sup> Street and Westlake/71<sup>st</sup> street. IndyGo's focus will be 3 bus stops in the project area.

### **Section 1.7 Project Specifications/ Bid Documents:**

See Exhibit #1 General Conditions  
Exhibit #2 Technical Specifications  
Exhibit #3 Special Conditions  
Exhibit #4 Project Drawings

#### **Section 1.7.1 RISKS AND ASSUMPTIONS**

All changes must be submitted and approved through official change order methodology.

URS is the Architect of Record, operating on behalf of the City of Indianapolis.

All changes and / or drawings, submittals, etc. shall be sent to URS via the IPTC Project Manager for this project, Annette Darrow.

**Section 1.7.2 Bonds, Insurance, and Special Requirements:**

Bid security of 5% of the total amount of their Base-Bid amount submitted shall be submitted in the form of a certified check, cashiers check, or a bid bond. Bid bonds shall be executed by the Bidder and a surety company approved by the Owner and qualified to do business in the State of Indiana. Check or bid bond shall be made payable to Indianapolis Public Transportation Corporation.

Each bidder shall include in his proposal the cost of a Performance Bond in the amount of 100% of the Contract Sum.

Each bidder shall include in his proposal the cost of a Payment Bond for 100% of the Contract Sum.

Provide a list of any pending lawsuits.

Workers Compensation & Disability: Statutory Limits

Employer's Liability:

Bodily Injury by Accident: \$ 100,000  
each accident

Bodily Injury by Disease: \$ 500,000  
policy limit

Bodily Injury by Disease: \$ 100,000  
each employee

Commercial General Liability:  
(Occurrence Basis) Bodily injury, personal injury, property damage, contractual liability, products- completed operations. NOTE: GENERAL AGGREGATE TO APPLY PER LOCATION/PROJECT

General Aggregate Operations Limit \$2,000,000  
(other than Products/Completed):

Products/Completed Operations: \$2,000,000

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<u>Personal &amp; Advertising Injury Limit:</u>	<u>\$1,000,000</u>
<u>Each Occurrence Limit:</u>	<u>\$1,000,000</u>
<u>Fire Damage (any one fire):</u>	<u>\$ 50,000</u>
<u>Medical Expense Limit</u> (any one person):	<u>\$ 5,000</u>
<u>Comprehensive Auto Liability</u> (single limit) (owned, hired and non-owned) Bodily injury and property damage each accident	<u>\$1,000,000</u>
<u>Umbrella Excess Liability</u> each occurrence and aggregate	<u>\$5,000,000</u>
The Deductible on the Umbrella Liability shall not be more than	<u>\$ 10,000</u>

**Each bidder shall include in his proposal the cost of a Labor and Material (Payment) Bond in the amount of their bid. The bonds shall be executed by the Bidder and by a surety company with an A.M. Best rating of A- or better, approved by the Owner and qualified to do business in the State of Indiana. Bonds shall be executed on AIA Form A312. Bonds shall be made payable to Indianapolis Public Transportation Corporation.**

**Section 1.8 Federal Participation: (If applicable)**

IPTC receives Federal financial assistance through the U. S. DOT Federal Transit Administration.

**Section 1.9 Reserved Right:**

IPTC reserves the right to withdraw this solicitation at any time in the process prior to contracting upon notification to all vendors in receipt of the solicitation documents by fax, letter or email to their last know business address. If such action is taken by IPTC, no vendor will have claim for recompense.

**Bid Offer Cost Form**

\_\_\_\_\_ submits  
(Company Name) (IN Contractor License No.)

pricing for **IFB# 10-6-280 Michigan Road Enhancements**

Having examined the Place of The Work and all matters referred to in section 1.7 Project Specifications/Bid Documents, for the above mentioned project, we the undersigned, hereby offer to enter into a Contract to perform the Work for the Contract Sum of:

**A. BASE BID:**

\$ \_\_\_\_\_ dollars,  
in lawful money of the United States of America.

All applicable Federal, State of Indiana, City of Indianapolis taxes are included in the Bid Sum for the Base Bid. The bid price shall include no sales tax.

**B. ACCEPTANCE**

1. This offer shall be open to acceptance and is irrevocable for sixty days from the bid closing.
2. If this bid is accepted by IPTC within the time period stated above, we will:
  - a. Execute the Agreement within five days of receipt of Notice of Award.
  - b. Furnish the required bonds within three days of receipt of execution.
  - c. OWNER shall give CONTRACTOR a written Notice to Proceed specifying the date on which CONTRACTOR shall commence Work. The date designated in the Notice to Proceed will be the date on which the Contract Time will commence to run. No extension of time will be granted due to CONTRACTOR delay in submission of the executed Agreements or documents, as required in Sections 2.1 and 2.2.
3. If this bid is accepted within the time stated, and we fail to commence the Work or we fail to provide the required Bond(s), the security deposit shall be forfeited as damages to the Owner by reason of our failure, limited in amount

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to the lesser of the face value of the security deposit or the difference between this bid and the bid upon which a Contract is signed.

**C. CONTRACT TIME:**

1. If this bid is accepted we will complete the work by November 30<sup>th</sup>, 2010.

**SECTION 2.0**  
**VENDOR INSTRUCTIONS**

**Section 2.1 Notice To Vendors:**

Vendors are furnished the following instructions to clarify conditions for work, development and presentation of offers, clarification of contents, review of concerns, and other pertinent information from which knowledge of preparing and offering a responsible and responsive offer may be developed.

All forms required in the certification pages must be completed or the Bid Offer will be considered as non-responsive.

**Section 2.2 Required Responses:**

***The following items are listed as required. Failure to include them in your submission will cause the offer to be ruled non-responsive.***

- } All certifications contained in the package.
- } Bid Bond
- } List of references, with contact information (Firms having used your services, numbering three)
- } Completed Bid Offer Cost Form, with original signature and clear well defined price.

**Section 2.3 Limitation of Responsibility:**

IPTC is not responsible, and will not accept any responsibility, for the cost incurred by any vendor in the specific preparation or the associated activities aiding in the preparation of any offer.

IPTC is not responsible to return to any vendor the offer submitted to IPTC as a response to this solicitation.

**Section 2.4 Vendor Warrants and Sub contractor restrictions:**

Vendor will warrant that all information provided by it in connection with this offer is true and accurate, and that vendor by virtue of its submission is capable of supplying all work requested herein without brokering or delegating to a third party.

Vendor will warrant that it will not delegate or subcontract its responsibilities under the Agreement beyond the level revealed in the solicitation without the prior written permission of IPTC.

**Section 2.5 Responsiveness and Responsibility Definitions:**

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All offers must be responsible and responsive.

The definition of responsive for the submitting parties to this solicitation is:

All form blanks must be filled in or zeroed, all materials must conform to the work requested unless an alternate has been approved in writing by IPTC prior to the submission date and time, and all associated certificates and other associated information must be included in the submission package. Any alteration, erasure, or interlineations of the documents may be cause for the offer to be determined non-responsive. However IPTC reserves the right to waive any defects or irregularities in any submission, to accept all submissions, or to reject any and all submissions.

The definition of responsible for the submitting parties is:

IPTC may consider among other factors, the Contractors record of integrity, experience, and past performance, its financial status, the capability to fulfill the offer as stated, or whether the vendor is in default of any contract or other obligation to IPTC, the Federal, State, or Local Government(s). In arriving at a determination, IPTC may institute a pre-award survey on any or all vendors. Vendors will be required to cooperate with the pre-award survey team. Failure to cooperate may result in a finding of non-responsibility.

### **Section 2.6 Taxes:**

IPTC is tax exempt from Federal and State excise, use, and sales taxes.

### **Section 2.7 Independent Contractor:**

The successful vendor shall be considered, and shall accept status as being that of, an independent contractor to IPTC, and shall recognize that they are not an employee or officer of the Corporation.

### **Section 2.8 Contract Required:**

A selected vendor recommendation will be presented to the Board or their designee for award and authorization to enter into contractual discussions and the pursuit of a contract.

IPTC reserves the right to ask questions for clarification to offer items of any submitter during the information verification process without such effort being construed as bargaining.

Upon authorization by the IPTC Board to award a contract based upon a particular offer submitted by a designated vendor, vendor and IPTC will work

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diligently to complete a contractual arrangement for the services within seven calendar days of the Board action. Failure of the sides to reach a contractual arrangement may nullify the action of the IPTC Board as to the award of the services and release IPTC to attempt to secure a contract through negotiations with the next most reasonable Offeror.

Submission of an offer will be construed as tacit acknowledgment and agreement to this section, and a dedication on the part of the vendor to seek in good faith a contractual arrangement consistent with this solicitation and its offer.

The Contract found in Attachment "A" is that contract proposed for use on this procurement. **The vendor MUST include notification with their response of any exception taken to the proposed contract.** Failure to provide exceptions shall result in mandatory acceptance of the contract as submitted herein by default.

**SECTION 3**

**COMPLIANCE WITH REGULATIONS  
& GENERAL REQUIREMENTS**

**Section 3 Compliance With Regulations & General Requirements**

**3.1 Federal Regulations:**

Federal Procurement Regulations establish certain submissions be required from any third party contract IPTC enters into with any vendor. In order that IPTC may be compliant with the Federal Requirements of FTA Circular C 4220.1F, each vendor is required to complete and submit as a part of the offer package completed certifications as defined in this section.

**3.2 Required Submissions:**

The following pages of certifications must be completed and returned with your offer. Some portion of these required certifications may / will not be applicable to the contents of the scope of work that is a part of this solicitation. However the offer submitted must contain completed, signed, and sealed (if required) documents. If the document is not applicable write "N/A" on the face of the document and sign in the appropriate block.

**3.3 Failure to supply:**

Failure to supply the required certifications shall result in the determination the offer is "Non – Responsive".

**3.4 Notary Seals:**

Any certification requiring a Notary Public Seal, must be sealed in the package marked original, and may be copied in the subsequent number of offer packages required in Section 2.0, Vendor Instructions.

**CERTIFICATE OF PROCUREMENT INTEGRITY  
(MUST BE RETURNED WITH YOUR OFFER)**

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I, \_\_\_\_\_, am the officer or designated employee responsible for the preparation of this bid offer and hereby certify that to the best of my knowledge and belief, with the exception of any information described below on this certificate, have no information concerning a violation or possible violation of Section 27(a),(b),(c), or (e) of the FPPA \* (41 USC 23) as implemented in the FAR, occurring during the conduct of this procurement.

As required by Subsection 27 (d) (1) (B) of the FPPA, I further certify that each officer, employee, agent, representative, and/or consultant of

\_\_\_\_\_  
(insert firm name)

who has participated personally and substantially in the preparation or submission of this offer, has certified that he/she is familiar with, and complied with, the requirements of Subsection 27(a) concerning any violation or possible violation of the FPPA, pertaining to this document.

Violations or possible violations: (enter "NONE" if none exist)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Responsible Officer or Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed name of Responsible Officer or Employee

This certification concerns a matter within the jurisdiction of an agency of the United States and making a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, U.S. Code, Section 1001.

- Section 27 became effective July 16, 1989

**DBE PARTICIPATION FORM**  
**IPTC has set a 15% goal for this project.**

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Bidder must check the appropriate box, provide the information requested, sign and submit this form with its bid. Failure to complete and submit this form may result in rejection of the bid as non-responsive.

[ ] Bidder will meet the DBE goal for this contract. Bidder is certified according to requirements of DOT 49 C.F.R. Part 26 as a DBE eligible for participation in DOT assisted contracts, and will be performing \_\_\_\_\_ percent (\_\_\_\_%) of the contract work.

[ ] Bidder will meet the DBE goal for this contract. If awarded this contract, bidder will subcontract with the DBE(s) listed below which will be performing a total of \_\_\_\_\_ percent (\_\_\_\_%) of the total dollar amount of contract work. Each DBE listed below is certified according to requirements of DOT 49 C.F.R. Part 26 for participation in DOT assisted contracts.

DBE Name Dollar Amount of <u>and Address</u> <u>Contract Work</u>	Description <u>of Work</u>	Percent of <u>Total</u>

(Attach additional sheets)

[ ] Bidder does not meet the DBE goal for this contract. Bidder certifies that it has made good faith efforts in accordance with the Invitation for Bid to meet the DBE goal, but, despite those efforts, has been unable to meet the goal. The Good Faith Efforts Documentation Form is attached to this Participation Form.

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

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

Name (Print): \_\_\_\_\_

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

**DBE GOOD FAITH EFFORTS DOCUMENTATION FORM**

**DBE GOAL: 15%**

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If bidder has indicated on the DBE Participation Form that it does not meet the DBE goal, bidder must submit this form with its DBE Participation Form as documentation of its good faith efforts to meet the goal. Failure to submit this form with its bid may render this bid non-responsive. IPTC may require that bidder provide additional substantiation of good faith efforts.

<u>Date</u>	<u>Firm and Contact Person</u>	<u>Area of Expertise</u>
1) _____		
<u>Response</u>		

<u>Date</u>	<u>Firm and Contact Person</u>	<u>Area of Expertise</u>
2) _____		
<u>Response</u>		

<u>Date</u>	<u>Firm and Contact Person</u>	<u>Area of Expertise</u>
3) _____		
<u>Response</u>		

<u>Date</u>	<u>Firm and Contact Person</u>	<u>Area of Expertise</u>
4) _____		
<u>Response</u>		

**CERTIFICATION OF RESTRICTIONS ON LOBBYING**  
(Must be returned with your offer)

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I, \_\_\_\_\_, hereby certify on behalf of the Indianapolis Public Transit Corporation that:

No appropriated Federal funds have been paid or will be paid, by or on behalf of the undersigned to any person influencing or attempting to influence an officer or employee of any Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal Grant, the making of any Federal Loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with it's instructions.

The undersigned shall require that the language of this certification be included in the awards documents for any and all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction is made or entered into. Submission of this certification is prerequisite for making or entering into this transaction as imposed by Section 1352, Title 31, USC. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

By: \_\_\_\_\_  
(Signature of Authorized Official)

\_\_\_\_\_  
(Title of Authorized Official)

**ACKNOWLEDGMENT OF ADDENDUM**  
(Must be returned with your Offer)  
**OFFER IFB # 10-6-280**

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The undersigned acknowledges receipt of the following amendment(s) to the Bid and supporting documentation.

ADDENDUM NUMBER \_\_\_\_\_ DATED: \_\_\_\_\_

ADDENDUM NUMBER \_\_\_\_\_ DATED: \_\_\_\_\_

ADDENDUM NUMBER \_\_\_\_\_ DATED: \_\_\_\_\_

ADDENDUM NUMBER \_\_\_\_\_ DATED: \_\_\_\_\_

ADDENDUM NUMBER \_\_\_\_\_ DATED: \_\_\_\_\_

ADDENDUM NUMBER \_\_\_\_\_ DATED: \_\_\_\_\_

Note: Failure to acknowledge receipt of all amendments that may have been issued may cause the Proposal offer to be considered non-responsive to the solicitation. No further consideration will be given to non-responsive offers. Acknowledged receipt of each amendment must be clearly established and included with the bid response.

\_\_\_\_\_  
(Proposing Company Name)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State, and Zip Code)

\_\_\_\_\_  
Signature of Authorized Company Official

\_\_\_\_\_  
Date

**CERTIFICATION REGARDING DEBARMENT**  
(Must be returned with your offer)

To be submitted on all contracts reasonably anticipated to exceed \$25,000.00 in value.

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THE UNDERSIGNED PROPOSER/OFFER/SUBCONTRACTOR ("ATTESTER") CERTIFIES, TO THE BEST OF IT'S KNOWLEDGE AND BELIEF THAT:

The attester and/or any of its principals or subcontractor:

Are not presently debarred, suspended, proposed for debarment, or declared ineligible for award of contracts by any Federal Agency.

Have not for a three (3) year period preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offences in connection with obtaining, or attempting to obtain, or performing a public (Federal, State, or Local) contract or subcontract: violation of Federal or State antitrust status relating to the submission of offers, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

Are not presently indicted for, or otherwise criminally or charged in any civil action by a government entity with commission of any of these offenses enumerated above.

The Attester has not, within a three (3) year period preceding this offer, had one (1) or more contracts terminated for default by any governmental agency.

"Principals", for the purpose of this certification, means officers, directors, owners, partners, and persons having a primary management or supervisory responsibilities within a business entity.

This certification concerns a matter that may be within the jurisdiction of an agency of the United States and the making of false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, USC.

The Attester shall immediately notify the Procurement Department at any time the attester learns that its certification was erroneous when submitted or has become erroneous.

A certification in which any of the items detailed above exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Attester's responsibility. Failure of the Attester to furnish a certificate or provide such additional information as requested by IPTC may render the Attester non-responsive.

Nothing contained in the forgoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

If it is later determined that the Attester knowingly rendered an erroneous certification, in addition to other remedies available to IPTC, the Authority may terminate the contract resulting from this solicitation for default.

If Attester is unable to certify to any of the statements in this certification, attach an explanation to this certification.

\_\_\_\_\_  
(Signature of Authorized Company Official)

\_\_\_\_\_  
Company Name TYPED

\_\_\_\_\_  
(Title of Official, Including Name, Typed)

**CHECKLIST FOR BID OFFER IFB# 10-6-280**

(Must be returned with your Offer)

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Offers will be received until the date and time listed. All offers **must** be received at the office of the Procurement Manager. All offers are subject to public opening and date and time indicated for submittal.

5 % Bid Bond or certified check required with proposal

100% Performance Bond required at contract award

100% Payment Bond required at contract award

**BID Data Check List**

Did you read and understand the General Specifications? Yes \_\_\_ No \_\_\_ Initials \_\_\_

Did you read and understand the Scope of Work? Yes \_\_\_ No \_\_\_ Initials \_\_\_

Are there any exceptions to the instructions as described? Yes \_\_\_ No \_\_\_ Initials \_\_\_

If yes, explain: \_\_\_\_\_

\_\_\_\_\_

**Certificate Items Required To Be Returned**

- Bid Offer Cost Form \_\_\_\_\_
- Certificate of Procurement Integrity \_\_\_\_\_
- DBE Commitment Form \_\_\_\_\_
- Certificate of Restriction on Lobbying \_\_\_\_\_
- Acknowledgment of Amendments \_\_\_\_\_
- Certificate Regarding Debarment \_\_\_\_\_
- Bid Check List \_\_\_\_\_
- Affidavit of Non-collusion \_\_\_\_\_
- DOT Assisted Contracts Bidders List Certification \_\_\_\_\_
- Offer (correct number of copies, and signatures) \_\_\_\_\_
- 3 references with contact information \_\_\_\_\_

It is the responsibility of the vendor to notify IPTC if the contents of the solicitation do not match the description found in the Table of Contents included in the solicitation. Failure of the vendor to complete all forms and sign at all signature blocks will disqualify the offer from consideration.

NO OFFER SHALL BE ACCEPTED OR CONSIDERED THAT IS RECEIVED LATER THAN THE TIME AND DATE STATED AS THE SUBMISSION REQUIREMENT. Time given in the solicitation is the current time observed by the Consolidated City of Indianapolis, Indiana.

\_\_\_\_\_  
Offerors Signature

**AFFIDAVIT OF NON-COLLUSION**

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THE UNDERSIGNED, HAVING SUBMITTED A BID, PROPOSAL, OR QUOTATION FOR

\_\_\_\_\_ in accordance with notice given by the Procurement Office of the Indianapolis Public Transit Corporation and/or its Board of Directors for the purposes or support of the transit services in and for the Consolidated City of Indianapolis, Indiana, for and behalf of himself, or themselves, first being duly sworn says:

That said bidder, quoter, or proposer has not directly or indirectly entered into any combination, collusion, undertaking, or agreement relative to price to be bid by any person, or to prevent any person, or persons, or company from submitting pricing: or to entice any bidder, quoter, or proposer to refrain from pricing for such supplies, merchandise, service, or contract, and that said bid so made is without reference or regard to any other bid or bids, and without agreement, understanding or combination, either directly or indirectly, with any person or persons, with reference to such bidding in any way or manner whatsoever.

Signed: \_\_\_\_\_  
Proposer or Agent

STATE of \_\_\_\_\_

SS:

County of \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

My commission expires \_\_\_\_\_

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

\_\_\_\_\_  
SEAL

Dated at \_\_\_\_\_  
City State Date

**Failure to properly Notarize and Return This Form Will Invalidate Your Bid**

**DOT ASSISTED CONTRACTS  
BIDDERS LIST**

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[49 CFR, Part 26]

49 CFR, Part 26 requires that all recipients of Federal Funds collect certain information from all bidders submitting responses to solicitations. To assist in the building of demographics for the area upon which reasonable and effective expectations of DBE/MDE opportunities may be based, all bidders are required to return this certificate with their offer. Any offer submitted that does not contain a completed copy of this form will be ruled as non-responsive and dropped from further consideration in the procurement process for the solicitation.

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

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

Firm Phone: (\_\_\_\_) \_\_\_\_\_ Firm Fax: (\_\_\_\_) \_\_\_\_\_

**General Classification of firm by quantity of employees**

Less Than 10                       11 – 50                       51 – 100                       101 – 500  
 501 – 1000                       1001 – 5000                       More than 5000

**General Classification of Firm in Age of Existence**

0 – 5 years                       6 – 10 years                       11 – 50 years                       Over 50 years

**General Classification by Type**

This firm is a Small Business                       This firm is a certified DBE  
 This firm is a certified WBE                       This firm is not one of the above.

**General Classification by Annual Gross Income**

The approximate annual gross income for this firm is less than \$100,000  
 The approximate annual gross income for this firm is \$100,000 - \$250,000  
 The approximate annual gross income for this firm is \$250,001 - \$500,000  
 The approximate annual gross income for this firm is \$500,001 - \$1M  
 The approximate annual gross income for this firm is \$1M - \$5M  
 The approximate annual gross income for this firm is greater than \$5M

I certify this information is accurate to the best of my knowledge.

\_\_\_\_\_  
Signature                      Printed Name                      Date

**3.6 Other Federal Requirements:**

The following paragraphs may or may not be part of the enforcement for this procurement.

**Background**

Indianapolis Public Transportation Corporation (IPTC) 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 IPTC. Basic requirements and the associated required documents and responsibilities will be found in **OMB Circular A-102, and in FTA Circular C-4220.1F**. The Statutes, Regulations, and Circulars governing the procurements by IPTC require among other things that purchases be made according to approved plans and specifications, which will become part of the contractual documents between IPTC and the successful vendor(s).

IPTC 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, and any applicable Special services, will be found in the Statement of Work (Section 2) of this RFP.

**Bid and Contract Procedure**

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

If the work is amended, any responder from whom an offer 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 Work (Section 2), 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 IPTC Purchasing Department offices during business hours, not less than five (5) working days before the date upon which the submissions are to be opened. 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. IPTC will give prompt written notice of its response to each submitted request. The

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decision of IPTC as to the acceptability or non-acceptability of the requested substitution will be at its sole discretion and shall be final and non-arbitral.

Submittals must be placed in an envelope, marked clearly with the number assigned to the solicitation by the responder before submission to the Purchasing offices. All submissions must be received at the Purchasing Department Office of IPTC located at 1501 West Washington Street, Indianapolis, IN 46222, no later than the date and the time shown in the Schedule of Procurement.

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 unopened. 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 recorded and witnessed during a public opening of the offer in accordance with the location, date, and time listed herein. No Bid Offer may be withdrawn after the opening. Submitted terms and conditions must be guaranteed for a term of not less than sixty (60) days, or until Board action (if required) whichever is longer. IPTC reserves the right to reject any and all submissions at any time in the procurement process prior to final contract execution. IPTC will examine each offer to determine if the responder was responsive to the solicitation, and if the vendor is a responsible vendor and able to fulfill any potential award.

### *Definition of Responsive:*

All certifications and forms blanks must be filled in, all offered goods and/or services must conform with the Scope 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 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, IPTC 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:* IPTC may consider among other factors the Contractor's record of integrity, experience, and past performance record with IPTC, 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 IPTC, the consolidated City of Indianapolis, the State of Indiana, or the Federal government. In arriving at a determination IPTC may institute a pre-award survey

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on any or all respondents. Vendors 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 vendor 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 IPTC. In addition vendors must confine their response to the spaces provided on any furnished submittal form or Cost Form, except where the Form itself may make an exception to the contrary.

Alternate offers may be submitted but shall be submitted in a format that is easily understood, shows conformance with the contents of the Scope 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. 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.

### **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 IPTC and the FTA.

***No Government 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 and shall not be subject to any obligations or liabilities to the purchaser, contractor, 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 4220.1E** 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 IPTC requests that would cause IPTC to be in violation of the FTA terms and conditions.

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters. 49 CFR Part 29; Executive Order 12549.** All Proposers must submit a completed certification regarding Debarment, Suspension, and Other Responsibility Matters or their Bid Offer will be judged Non-responsive.

### **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 cashiers check drawn on a solvent banking institution in the amount specified in the BID Checklist of the RFP (Section 2). All bonds are to be made payable to the Indianapolis Public Transportation Corporation and shall serve as a guarantee that should the offer be accepted by IPTC the Responder will within thirty (30) working days after notification of acceptance, enter into a contract for the work offered or accepts IPTC's Purchase Order for the solicited goods/services.

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

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

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**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 IPTC.

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 (Section 2) being enforced. Bonding requirements may be applied to any contract at the discretion of IPTC, but must be applied to those detailed in the referenced Circular.

**Construction Requirements:** In addition to the Bonding requirements above, all contracts for construction in excess of Two Thousand Dollars (\$2000) shall require adherence to the **Davis-Bacon Act, 40 U.S.C. § 276 a-5 (1995), 29 CFR § 5 (1995)**. The full provisions which apply to the contract being solicited and to all sub-contractual arrangements pertaining to the same directly and indirectly. It shall be the responsibility of the contractor to pass down in all contract documents and purchase documents the requirements contained herein.

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

Contributions made or cost reasonably anticipated for bona fide fringe benefits under **Section 1(b)(2) the Davis-Bacon Act** on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or cost incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such

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laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in **29 CFR part 5.5(a)(4)**. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided, that the employer's payroll records accurately set forth the time spent in each classification in which the work is performed. The wage determination and the Davis-Bacon poster (**WH-1321**) shall be posted at all times by the contractor and its' subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by workers.

(ii) Whenever the minimum wage rate prescribed in the contract for the class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iii) if the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of labor may require a contractor to set aside in a separate account assets for the meeting of the obligations under the plan or program.

(iv)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in accordance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a wage classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe

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benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30-days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(iv) (B) or (C) of this section, shall be paid to all workers performing the work in the classification under this contract from the first day on which work is performed in the classification.

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

**(3) Payrolls and basic records:** (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the **United States Housing Act of 1937**, or under the **Housing Act of 1949**, in the construction or development of

the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in **Section 1(b)(2)(B) of the Davis-Bacon Act**), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under **29 CFR 5.5(a)(1)(iv)** that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in **Section 1(b)(2)(B) of the Davis-Bacon Act**, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the IPTC for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under **29 CFR part 5**. This information may be submitted in any form desired. Optional Form **WH-347** is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock number 029-005-00014-1), U.S. Government Printing office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance", signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under **29 CFR part 5** and that such information is correct and complete;
2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, **29 CFR part 3**.
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the

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classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form **WH-347** shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph **(3)(ii)(B)** of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under **Section 1001 of Title 18 and section 231 of Title 31 of the United States Code**.

(iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or Department of labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee, of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to **29 CFR 5.12**.

(3) Apprentices and trainees: (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment, and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The Allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the

ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and training, or a State Apprenticeship Agency recognized by the bureau, withdraws approval of the apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees: Except as provided in **29 CFR 5.16**, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainees level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less

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than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity: The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of **Executive order 11246, as amended, and 29 CFR part 30.**

**(4) Compliance With Copeland Act requirements**: The contractor shall comply with the requirements of **29 CFR part 3**, which are incorporated by reference in this contract.

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

**(6) Contract Termination: Debarment**: A breach of the contract clauses in **29 CFR 5.5** may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in **29 CFR 5.12.**

**(7) Compliance with Davis-Bacon and Related Act Requirements**: All rulings and interpretations of the **Davis-Bacon Act** contained in **29 CFR parts 1,3, and 5** are herein incorporated by reference in this contract.

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

**(9) Certification of Eligibility**: (i) By entering into this contract, the contractor certifies that neither it (nor her or she) nor any person or firm who has an interest in the contractors' firm is a person or firm ineligible to be awarded Government contracts by virtue of **Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).**

(ii) No part of this contract shall be contracted to any person or firm ineligible for award of a Government contract by virtue of **Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).**

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(iii) The penalty for making false statements is prescribed in the **U. S. Criminal Code, 18 U.S.C. 1001.**

Also applicable to any and all construction contracts are the rules and regulations detailed in the **Copeland Anti-Kickback Act, 40 U.S.C. § 276c (1995), 29 CFR § 3 (1995), and 29 CFR § 5, (1995).** This code and these Regulations apply to all construction contracts in excess of Two Thousand Dollars (\$2000).

The contractor shall comply with all of the provisions of **29 CFR part 3**, which is incorporated into this agreement by reference.

**§3.1 of the Copeland Act** makes it clear the purpose of the Act is to assist in “the enforcement of the minimum wage provisions of the **Davis-Bacon Act.**” In keeping with this intent Department of Labor has included a section on the **Copeland Act** in the mandatory language of the **Davis-Bacon** provisions. The language can be found at **§ 5.5(a)(5) of the Davis-Bacon** model clauses and reads as follows:

“**Compliance with the Copeland Act Requirements.** The contractor shall comply with all the requirements of 29 CFR part 3, which are incorporated by reference in this contract.”

In addition to the above requirements for construction contracts, and to be applied to all the above and also to all turnkey, rolling stock, and operational contracts entered into between IPTC and any other vendor shall be all provisions of the **Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 327 – 333 (1995), 29 CFR § 5 (1995), AND 29 CFR § 1926 (1995).** The requirements and provisions apply to all contracts and subcontracts entered into for the performance of any and all work on the project(s) covered by this contract.

- (1) Overtime Requirements: No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on

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which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for Unpaid Wages and Liquidated Damages: The IPTC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or other Federal contract with the same prime contractor, or any other Federally assisted contract subject to the **Contract Work Hours and Safety Standards Act**, which is held by the same prime contractor, such sums as may be determined as necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

(4) Payables and Basic Records: (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of work (or under the **United States Housing Act of 1937, or under the Housing Act of 1949**, in the construction or development of the project). Such records shall contain the name address, and social security number of each such worker, his or her classification, hourly rate of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof for the types described in **Section 1(2)(B) of the Davis-Bacon Act**), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under **29 CFR 5.5(a)(iv)** that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in **Section 1(b)(2)(B) of the Davis-Bacon Act**, the contract shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers and mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

**ADA ACCESS: Title 49 Subtitle A Part 27 Non Discrimination on Basis of Disability in Programs or Activities Receiving Federal Financial Assistance. [Sec. 27.3 Applicability]**

- (a) This part applies to each recipient of Federal financial assistance from the Department of Transportation and to each program or activity that receives such assistance.
- (b) Design, construction, or alteration of buildings or other fixed facilities by public entities subject to part 37 of this title shall be in conformance with appendix A to part 37 of this title. All other entities subject to section 504 shall design, construct, or alter a building, or other fixed facilities shall be in conformance with either appendix A to part 37 of this title or the Uniform Federal Accessibility Standards, 41 CFR part 101-19 subpart 101-19.6, appendix A

[44FR 31468, May 31, 1979 as amended at 56 FR 45621, Sept. 6, 1991; 68 FR 51390, Aug. 26, 2003]

**(Applicable to construction contracts only)**

**Section 107 (OSHA):**

Contract Work Hours and Safety Standards Act: (i) The contractor agrees to comply with **Section 107 of the Contract Work and Safety Standards Act, 40 U.S.C. section 333**, and applicable DOL regulations, “Safety and Health Regulations for Construction” **29 CFR part 1926**. Among other things, the contractor agrees that it will not require any labor or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) Subcontracts. The contractor also agrees to include the requirements of this section in each subcontract. The term “subcontract” under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration, or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a “subcontractor “ under this section if the work in question involves the performance of construction work to be performed: (1) directly or near the construction site, or (2) by the employer for the specific [project on a customized basis. Thus a supplier of materials which will become an integral part of the construction is a “subcontractor” if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a “subcontractor”. The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

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.

**Buy America Requirements 49 U.S.C. 5323(j); 49 CFR Part 661**

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General Waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans, and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or Offeror must submit to the FTA recipient the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

**Supplies, Materials, Equipment, and/or Service Specifications**

It is hereby agreed by IPTC 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 (Section 2) 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 IPTC to procure the items or service from the next most desired respondent will be assessed. However any delay in compliance with the terms and conditions of any award or

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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**

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

IPTC 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 IPTC. 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 IPTC to terminate the contract for default if IPTC 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 IPTC, will be handled through compulsory arbitration by a mutually acceptable arbiter. All contracts in excess of One Hundred Thousand Dollars (\$100000) 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 occurs. 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 IPTC, The Chief Administration Officer. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its'

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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 IPTC, 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 therefor 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 IPTC 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 IPTC, the agent of IPTC or contractor 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 IPTC and any contractor or subcontractor for which the amount of costs shall be Ten Thousand Dollars (\$10000) 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):* IPTC may terminate this contract in whole or in part, at any time by written notice to the contractor when it is in the Governments' 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 IPTC to be paid the contractor. If the contractor has any property in its' possession

belonging to IPTC , the contractor will account for the same, and dispose of it in the manner IPTC 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 on the manner called for in the contract, or if the contractor fails to comply with any other provisions of the contract, IPTC may terminate this contract for default. Termination shall be effected by the 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 IPTC 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, IPTC, 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): IPTC at its' sole discretion may, in the case of a termination for breach or default, allow the contractor fourteen 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 IPTC'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 IPTC setting forth the nature of the breach or default, IPTC 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 IPTC 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 IPTC elects to waive its' remedies for any breach by contractor of any covenant, term, or condition of this contract, such waiver by IPTC shall not limit IPTC'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): IPTC, by written notice, may terminate this contract, in whole or in part, when it is in the Governments' interest. If this contract is terminated , IPTC 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, IPTC may terminate this contract for default. IPTC shall terminate by

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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 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 IPTC.

*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, IPTC 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 IPTC's goods, the contractor shall, upon direction of IPTC, protect and preserve the goods until surrendered to IPTC or its' agent. The contractor and IPTC 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 IPTC.

*Termination for Default (Construction):* If the contractor refuses or fails to prosecute the work or any separate 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 other provisions of this contract, IPTC may terminate this contract for default. IPTC shall terminate by delivering to the contractor a Notice of Termination specifying the nature of the default. In this event IPTC may take over the work and complete is 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. He contractor and its' sureties shall be liable for any damage to IPTC resulting from the contractors refusal or failure to complete the work within the specified time, whether or not the contractors' right to proceed with the work is terminated. This liability includes any increased costs incurred by IPTC in completing the work.

The contractors' 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

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such causes include: acts of God, acts of IUPTC, acts of another contractor in the performance of a contract with IPTC, epidemics, quarantine restrictions, strikes, freight embargoes; and

- 2) the contractor, within ten (10) days from the beginning of any delay, notifies IPTC in writing of the causes of delay. If in the judgment of IPTC the delay is excusable, the time for completing the work shall be extended. The judgment of IPTC 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 IPTC.

Termination for Convenience or Default (architect and Engineering): IPTC 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. IPTC 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 IPTC, 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, IPTC may complete the work by contract or otherwise and the contractor shall be liable for any additional cost incurred by IPTC.

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 IPTC.

Termination for Convenience or Default (Cost Type Contracts): IPTC 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 IPTC 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 IPTC, or property supplied to the contractor by IPTC. If termination is for default IPTC may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if

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any, of work performed up to the time of termination. The contractor shall promptly submit its' termination claim to IPTC and the parties shall negotiate settlement to be paid the contractor.

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

### **References**

IPTC requires the vendors submitting proposals to furnish a list of at least Three (3) references that are now or within the past five years been a customer of the vendor and to who 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
- Customer Email address

If requested the list must be part of the 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 IPTC 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 IPTC.

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 States 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 IPTC. In addition none of the services covered by this

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agreement shall be sub-contracted or contracted out, unless Proposal that way in the original bid response without the written approval of IPTC.

### **Price**

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

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:  
Indianapolis Public Transportation Corporation  
Attention: Accounts Payables Department  
1501 West Washington Street  
Indianapolis, IN 46222

### **Single Offers**

If only One (1) offer is received, IPTC is required under the terms of FTA Circular 4220.1D 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.

IPTC 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 IPTC 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 Proposal cost sheet by the respondent. Vendor cash discount terms on invoices that offer to IPTC better cash discounts than the Proposal 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 IPTC.

**Indemnity**

The contractor shall indemnify IPTC, IPTC'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. IPTC 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 of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractors' obligations under the contract and the regulations relative to 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 IPTC 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 IPTC 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 contract:**

- 1) Where the purchaser is not a State but a local government, and is the FTA recipient or a subgrantee 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 contractors' 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 contractors' 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 record 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

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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 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 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)**.

A) In the event of the contractor's violation of the non-discrimination clauses of this contract, IPTC 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**

IPTC, 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**

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**the DOT** issued pursuant to such act, hereby notifies 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 discriminated 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 residents) 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 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, 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

IPTC that DBE vendors should participate to the greatest extent possible consistent with the laws of the State of Indiana in contracts awarded by IPTC.

It is the policy of DOT that DBE's as defined in **49 CFR Part 26** 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 Part 26** 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 IPTC to promote the development and increase the participation of business owned and controlled by the disadvantaged. DBE involvement in all phases of IPTC's procurement activities are encouraged.

Contractors agrees to ensure that DBE's as defined in **49 CFR Part 26 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 DBE's 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 in the award and performance of subcontracts.

### **DBE Obligation**

#### **DBE Requirements and General Information**

A 15% goal for Disadvantaged Business Enterprise (DBE) participation is set for this project. A Disadvantaged Business Enterprise (DBE) is:

- Small for profit business
- At least 51% owned by one or more socially and economically disadvantaged individuals
- Management and daily business operations controlled by one or more socially and economically disadvantaged individuals who own the business.

Must provide proof of economic status

All Bidders are expected to comply with this goal and/or submit Good Faith Effort documentation. The Indianapolis Public Transportation Corporation (IPTC) does not certify firms, and only recognizes those DBE firms certified by the Indiana Department of Transportation (INDOT). The current list of ready, willing and able (RWA) DBEs certified by the INDOT can be found on the DBE directory link provided at <http://www.in.gov/indot/2576.htm> from there click on listing of certified business enterprises.

**All Bidders should be aware of the following:**

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- IPTC does not use set-asides or quotas to reach DBE goals
- Bidders are expected to comply with additional requirements relating to DBE participation in other sections of this Invitation For Bids (IFB) as well as provisions delineated in the IPTC General Contract Provisions (Article 243 – Disadvantaged Business Enterprise Participation).
- INDOT maintains and updates the DBE directory quarterly
- Directory made available to potential prime contractors
- DBE from a state other than Indiana must be registered with Indiana in order for the DBE participation to count towards IPTC's goals.

Contractor unable to meet goal when bidding must provide written proof of Good Faith Effort. This documentation should be submitted to Mike Moles (IPTC DBE Officer), and must address the following:

- Solicited through all reasonable and available means
- Advertised in general circulation and trade association media the sub-contracting opportunities
- Contacted DBEs to determine if interested
- Selected portions of work to be performed by DBE
- Provided interested DBEs with adequate information about contract specs, etc.
- Negotiated in good faith with interested DBEs
- Offered interested DBEs assistance in obtaining bonding, lines of credit, insurance, equipment, supplies, materials, etc.
- Utilized available minority community organizations, contractor groups, local, state and federal DBE assistance offices, and other organizations in the recruitment and placement of DBEs

The Bidder will be required to submit monthly reports on progress towards meeting its DBE goal. The report must be completed, and be an accurate reflection of the committed amount and the actual amount spent/paid to the DBE firm(s). The DBE Spend report template is attached.

Prompt payment mechanisms established by IPTC for DBEs

- Prime to pay DBE sub within 5 days of receiving payment from IPTC
- Prime to return retainer within 30 days of completion of sub's work
- Prime is required to include prompt payment language in sub contract
- Failure to carry out prompt payment is considered breach of contract; IPTC will not reimburse prime for work performed by sub unless and until the prime ensures the sub is promptly paid, IPTC will not award future contracts to prime who refuse to pay promptly

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A Joint Venture Bidder consisting of one or more DBE parties will be credited with DBE participation on the basis of percentage of the dollar amount of the Work to be performed by the DBE. For example, if such Joint Venture proposes to perform fifty percent (50%) of the dollar amount of the Work quoted at \$1,000,000 and fifty percent (50%) of the Work is to be performed by the DBE Joint Venture partner, DBE participation will be credited as twenty-five percent (25%) of the work or \$250,000.

A DBE Bidder will be credited with minority participation for the portion of the contract, which it performs, and that portion subcontracted to minority firms. For example, if an DBE Bidder proposes to perform a project quoted at \$1,000,000 and subcontracts twenty-five percent (25%) to a majority firm and twenty-five percent (25%) to a minority firm, minority participation will be credited as seventy-five percent (75%) of \$750,000.

A Bidder will receive sixty percent (60%) toward goal attainment for the use of minority suppliers who are not manufacturers, i.e. where a Bidder proposes to purchase \$200,000 worth of construction materials from a minority supplier who did not manufacture the materials, \$60,000 will be credited toward the Bidder's minority participation goal. However, where the minority Supplier is the manufacturer of the product supplied, the Bidder will receive DBE credit of one hundred percent (100%) of the dollar amount of the supply contract.

When a DBE participates in a contract, the value of the work actually performed will be counted as follows:

- i. The entire amount of that portion of a construction contract that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work on the contract, including supplies purchased or equipment leased by the DBE (except supplies, and equipment the DBE contractor purchases or leases from the prime contractor or its affiliate).
- ii. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service – such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work – toward DBE goals, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- iii. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontract work may be counted toward DBE goals if and only if the DBE contractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward DBE goals.

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DBE certification does not guarantee that a firm's participation will automatically count toward a contractual DBE goal. For services performed by a DBE firm to count toward a goal, the firm must perform a "commercially useful function." Accordingly, expenditures to a DBE contractor count toward DBE goals only if the DBE is performing a commercially useful function on that contract:

- i. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the entire operation or work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for: (i) Negotiating Prices, (ii) Determining appropriate quality, quantities and delivery schedules, (iii) Ordering the material, and installation there of (where applicable), as well as (iv) Paying for the material itself
- ii. To determine whether an DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, along with any other relevant factors.
- iii. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of DBE participation. Consequently, there cannot be a contrived arrangement established for the sole purpose of meeting DBE goals.
- iv. A DBE may lease equipment, as a normal course of business, to increase its capacity or to facilitate services' delivery. A lease must indicate that the DBE has exclusive use of a control over any equipment utilized on the project site or used directly toward the delivery of project services. This does not preclude leased trucks or other heavy equipment from working for others during the term of the lease – with the consent of the DBE, provided that the lease gives the DBE absolute priority for the use of the equipment. Leased trucks must display the name and DOT identification number of the DBE participating on the specified project.

The DBE receives credit for the total value of the services it provides on the contract using equipment it owns or leases, insures, and operates using operators it employs – excepting circumstances outlined in this next paragraph

The DBE who leases equipment from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE

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does not receive credit for the total value of the services provided by the lessee, since these services are not provided by the DBE.

The DBE may lease equipment from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases equipment from another DBE receives credit for the total value of the services the lessee DBE provides on the contract.

The DBE may also lease equipment from a non-DBE firm, including an owner-operator.

In determining whether a DBE is merely an extra participant in a contract or transaction, examine similar project transactions, particularly those transactions in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own workforce, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, examiners and/or investigators are directed to logically presume that it is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as described above, the DBE may present evidence to the examining entity to rebut this presumption. The original conclusions may be reevaluated relative to the type of work involved and prevailing industry practices in similar markets. Any reevaluation or decision reversal may not, in any circumstance, be construed as an endorsement for failures to rectify, going forward, and the referenced prevailing practices.

Count expenditures with DBE for material or supplies toward DBE goals in the following manner:

- i. Count 100% of the cost of the materials or supplies toward DBE goals if the materials are obtained from a DBE manufacturer. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on its premises, the materials, supplies, articles, or equipment required under the contract and of the general character described in the specifications.
- ii. Count 60% of the cost of the materials or supplies toward DBE goals if the materials or supplies are purchased from a DBE regular dealer. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in

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stock, and regularly sold to or leased to the public in the usual course of business.

- iii. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- iv. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease and not on an ad hoc or contract-by-contract basis.
- v. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions will not be considered regular dealers.

With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer:

- i. Count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided that the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. Any portion of the cost of the materials and supplies themselves will not, however, be counted toward DBE goals.

If a firm is not currently certified as an DBE at the time of the execution of the contract, the firm's participation toward any DBE goals will not be counted.

The dollar value of any work performed under a contract with a firm after it has ceased to be certified will not be counted toward the overall goal.

The participation of a DBE subcontractor toward the prime contractor's DBE achievements or the overall goal will not be counted until the amount being counted toward the goal has been paid to the DBE

A prime contractor may not count participation percentages for any DBE subcontractor, terminated for convenience, whose work it then performs using its own forces or those of an affiliate.

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When a DBE subcontractor is terminated for cause, or it fails to complete its work on the contract for any reason, prime contractors must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal originally established for the specified portion of the project.

IPTC may, at any time before or after award, require the Bidder/Contractor to submit additional information to the Owner regarding DBE certification and utilization. Such information may include but not be limited to: (i) Copies of all executed agreements for each DBE engaged to satisfy the participation goals, showing (ii) the name and address of the DBE, (iii) the scope of work to be performed, (iv) the dollar value of work to be performed or furnished by each proposed DBE subcontractor or DBE joint venture partner, (v) acknowledgement and acceptance of the agreement by the DBE.

### **DBE Program Resources**

Questions or Concerns please contact:

**Al Burns**

**DBE Liaison Officer**

**Indianapolis Public Transportation Corporation**

**1501 W Washington St.**

**317-614-9252**

[aburns@IPTC.net](mailto:aburns@IPTC.net)

Engaging Solutions, LLC

3965 N. Meridian, Suite 1B

Indianapolis, IN 46208

(317) 283-8300

Contact: Debbie Wilson

[debbie@engagingsolutions.net](mailto:debbie@engagingsolutions.net)

### **Indiana State Use Program**

Indiana's State Use Program (the Program) is a preferential purchasing program in Indiana that provides employment and training to individuals with developmental disabilities. The Program works with qualified nonprofit agencies for persons with severe disabilities to provide such products/services.

Enacted by the General Assembly of the State of Indiana, the Indiana State Law IC 5-22-13 for the purchase of products and services of persons with severe disabilities was established. Through this law, a governmental body may purchase supplies and services without advertising or calling for bids from a qualified agency.

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Respondent(s) of this proposal should indicate their desire to work with the Indiana State Use Program by contacting Wes Bickers or Dionne Castelli (317.634.4957 or [wes@inarf.org](mailto:wes@inarf.org), [dionne@inarf.org](mailto:dionne@inarf.org)). A written plan of implementation will then be developed and submitted to IndyGo for review.

### **Program Fraud and False Or Fraudulent Statements And Related Acts**

In all contracts made with or subcontracts made for IPTC 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 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, 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 financed 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**

IPTC 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:

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Identification of qualified DBE's  
Available listing of Minority Assistance Agencies  
Holding of 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 proposal 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 proposal, or to fix any overhead, profit, or other cost element of said Proposal Price, or this or any other submitter, or to secure any advance against IPTC 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.

### **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 regulation, "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, Appendix A.** modifications have been made to the Lobbying Certification pursuant to **Section 10 of the Lobbying Disclosure Act of 1995.**

- Use of “Disclosure of Lobbying Activities” Standard **Form –LLL** set forth in **Appendix B of 49 CFR Part 20**, as amended by “Government Wide Guidance For New Restrictions on Lobbying” **61 Fed. Reg. 1413 (1/19/96)** is 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. §1601 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 IPTC, 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 IPTC or for IPTC 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

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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 RFP. 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 IPTC within twenty (20) working days following the date of loading shipments originating inside the United States, or within thirty (30) 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**

IPTC 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 Indianapolis Public Transportation Corporation shall be defined by the law of the State of Indiana or Local ordinances and Codes of Marion County, State of Indiana. Any dispute shall be tried in a court of competent jurisdiction of Marion 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.

**Per 49 CFR Section 23.67**, manufacturers shall be required to furnish a Transit Vehicle Manufacturer certification of adherence to those rules, regulations, and requirements detailed in the referenced regulation most particularly as regards DBE compliance; ADA compliance in products, facilities, hiring practices, and accessibility to said facilities; Environmental compliance with all regulations and rules in support of the Environmental Protection Agency rules and regulations incorporated by the FTA in all of its rules, regulations, and documents.

In accordance with the requirements as found in the several sections and clauses of **FTA Circular 4220.1F**, vehicle manufacturers shall comply with all requirements as found in **Section 15.1(3)** of the Master Agreement and shall submit the vehicle they propose to offer for testing and certification to those minimal standards as set forth within and by the Department of Transportation Regulations (**49 U.S.C. 5323©**; **49 CFR Part 665**) as applicable to the funding agreements with IPTC. In addition all vehicle manufacturers shall make available their facility, in accordance with **Section 15.1(2)** of the master document between IPTC and the FTA, for an independent auditor (**49 U.S.C. 5323**; **49 CFR Part 663**) hired and directed by IPTC to inspect conditions and conformance with all contractual requirements prior to the award of a contract for vehicles and during the completion of a contract for vehicles, and retain such records and such documentation to support an Post delivery audit at recipient as may be regulated and as said inspector shall require as the representative of IPTC and through IPTC the FTA. Contractor agrees to certify compliance with FTA's Bus Testing Requirements.

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 he 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 is 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.

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Any and all contracts and/or subcontracts at all tiers for the provision of Transportation Services shall be required to comply with Transit Employee Protective Agreements as detailed in **49 U.S.C. 5310; 49 U.S.C. 5311; 49 U.S.C. 5333; and 29 CFR Part 215**. These codes, regulations, and statutes are hereby incorporated in whole as if they were written herein. Any service provider shall be required to maintain and coordinate with IPTC the Drug and Alcohol Prevention program guidelines as set forth in **FTA Circular 4220.1F, Section 31.a; Section 31.b**, or in accordance with any other publication, code, regulation, or statute referenced in said document in its' entirety. Inclusive is the binding responsibility to adhere totally with the letter and intent as found in the **Privacy Act, 5 U.S.C. 552**.

The contractor agrees to abide by the Charter Bus Requirements whether he be contractor or subcontractor as detailed in **49 U.S.C. 5323(d); 49 CFR Part 604**. He agrees to offer no charter service with vehicles secured in part or in whole with Federal financial support provided for Mass Transit. Contractor further agrees to comply with those like regulations found in School Bus Requirements as found in **49 U.S.C. 5323(f); 49 CFR part 605**.

Contractor further agrees to abide by all Rules, Regulations, and Statutes pertaining to Patent Right requirements as detailed in **Section 17 of FTA Circular 4220.1F** and with Rights in Data and Copyright Requirements as found in **Section 18 of FTA Circular 4220.1F**.

**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 4220.1d.**

**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 though the use of child labor.**

### **BID Protest Procedure**

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

GENERAL:

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Protest(s) will only be accepted by IPTC'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 copiers of the relevant documents.
4. A brief statement of the relief requested.

All protest documents that are received by IPTC 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 IPTC or the FTA, as the case may be.
3. Interested Party means an actual or prospective bidder or Offeror, 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 "Proposal", "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 proposal opening or receipt as day Three (3)). If such protests are not lodged

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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 Offeror 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 a prompt award will otherwise cause undue harm to IPTC or the State of 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 IPTC 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 lodged. 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 IPTC’s interest, a negotiated agreement to suspend performance shall be sought on a no cost basis.

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IPTC 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 IPTC 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 IPTC 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 America 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 IPTC’s failure to have a written protest procedures or failure to follow such procedure is limited to requiring IPTC to develop such procedures, if necessary, and to follow such procedures in reviewing the protest at issue, if IPTC desires FTA financial participation in the contract in question. In instances where IPTC 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 IPTC. In instances where the protestor alleges IPTC 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 IPTC’s failure to make a final decision. IPTC 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 IPTC 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 IPTC.

Protest filed with the FTA shall :

1. Include the name and address of the protestor.
2. Identify IPTC, the project number (if applicable), and the number of the contract 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 IPTC and the copy of the decision regarding such protest rendered by IPTC.

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FTA shall notify IPTC in a timely manner of the receipt of a protest. FTA shall instruct IPTC 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. IPTC shall instruct all who receive such notice that they may communicate further with FTA directly.

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

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

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

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

When a protest has been timely filed with IPTC before the award of a contract, IPTC 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 IPTC 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 IPTC, the State, or the Federal Government.

In the event IPTC determines that the award must be made in the five (5) day period, IPTC 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.

### **Contract Execution** CONTRACT NO.: 10-6-280

In WITNESS WHEREOF, this Contract has been executed by both the INDIANAPOLIS PUBLIC TRANSPORTATION CORPORATION and Contractors, Inc. the CONTRACTOR\*, on this day,\_\_\_\_\_.

IFB 10-6-280 Michigan Road Enhancements

THE INDIANAPOLIS PUBLIC TRANSPORTATION CORPORATION

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

Michael A. Terry, President and Chief Executive Officer

REVIEWED BY:

General Counsel \_\_\_\_\_ Date \_\_\_\_\_ Procurement Director \_\_\_\_\_ Date \_\_\_\_\_

Contract Specialist \_\_\_\_\_ Date \_\_\_\_\_ Project Manager \_\_\_\_\_ Date \_\_\_\_\_

Director of Security, Safety and Training \_\_\_\_\_ Date \_\_\_\_\_

THE CONTRACTOR

\_\_\_\_\_ (Seal)  
Exact Name of Contractor

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

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

\*The Contractor, if a partnership or corporation, must execute this Contract in the exact firm or corporate name as it appears in its partnership agreement or certificate of incorporation. If the Contractor is a corporation and this Contract is executed by an Officer other than the President or Vice President, the Contractor shall furnish a certified copy of by-laws or a resolution authorizing said Officer to sign, unless same has previously been furnished to the IPTC. If the Contractor is a joint venture, and an individual executes this Contract on behalf of more than one member of the joint venture, documentation shall be furnished establishing such individual's authority to bind each such member.

**Acknowledgment For The IPTC**

STATE OF INDIANA, )  
 ) SS.:

IFB 10-6-280 Michigan Road Enhancements

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ ,  
before me personally

appeared \_\_\_\_\_ to me  
known, who, being by me

first duly sworn, did depose and say: That he/she is the  
\_\_\_\_\_ of the IPTC, the public benefit  
corporation described in and which executed the foregoing instrument and that  
he/she acknowledged to me that he/she signed his/her name thereto pursuant to  
the authorization of said IPTC.

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

\_\_\_\_\_  
County of Residence

My Commission Expires: \_\_\_\_\_

**Acknowledgment for Vendor**

STATE OF INDIANA,                    )  
  ) SS.:  
COUNTY OF                                )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_,  
before me personally

appeared \_\_\_\_\_ to me known, who, being by  
me first duly sworn, did

depose and say: That he/she resides at No.  
\_\_\_\_\_ ,

in the City of \_\_\_\_\_ , in the County of  
\_\_\_\_\_ ,

in the State of \_\_\_\_\_ , that he/she is the  
\_\_\_\_\_

of

\_\_\_\_\_, the corporation described in and which executed the foregoing contract; that  
he/she knows the corporate seal of said corporation; that one of the seals affixed  
to said contract is such corporate seal, that it was affixed thereto by order of the  
Board of Directors of said corporation, and that he/she signed his/her name  
thereto by like authority.

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

\_\_\_\_\_  
County of Residence

**My Commission Expires:** \_\_\_\_\_

**SECTION 4**

**Exhibits and Attachments**