

Southeastern Pennsylvania Transportation Authority

Part II

Contract

for

Federal Legislative Consulting Services

**Contract
for
Federal Legislative Consulting Services**

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**Contract
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THIS CONTRACT, entered into this _____ day of _____, 20_____, by and between the Southeastern Pennsylvania Transportation Authority ("SEPTA"), a body corporate and politic exercising the power of the Commonwealth of Pennsylvania as an agency and instrumentality thereof, with offices located at 1234 Market Street, Philadelphia, Pennsylvania and _____ (hereinafter called "Contractor/Consultant"), a _____, organized under the laws of _____, with principal offices located at _____.

W I T N E S S E T H:

WHEREAS, SEPTA is involved in an undertaking known as Federal Legislative Consulting Services (hereinafter known as the "Project"); and

WHEREAS, SEPTA desires to engage Contractor/Consultant to perform certain technical and professional services in connection with the Project as more fully set forth hereinafter; and

WHEREAS, Contractor/Consultant has agreed to comply with all requirements of the Contract as set forth in the accompanying Attachments 1 through 10 attached hereto and made part hereof.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Incorporation of Recitals

The recitals above are hereby incorporated into the Body of the Contract.

2. Contract Documents

Attachments 1 through 10, inclusive, are hereby incorporated into this document and the Attachments are deemed to be a part thereof.

Attachment 10 is notice and a summary of notices by SEPTA of the requirements that the Commonwealth of Pennsylvania impose on contracts which they fund in whole or in part. Contractor/Consultant acknowledges that Attachment 10 do not constitute legal advice by SEPTA thereon. Hence, Contractor/Consultant, to whatever extent Contractor/Consultant deems necessary, must obtain its own legal advice on these requirements.

3. Engaging of Contractor/Consultant

SEPTA hereby agrees to engage Contractor/Consultant to perform, and Contractor/Consultant hereby agrees to perform, all the services hereinabove referenced and hereinafter described and more fully set forth in Attachments 1 through 10.

4. Time of Performance

- a. Contractor/Consultant shall perform all the services required under the Contract within a total of 1,095 calendar days from the effective date stated in SEPTA's written Notice to Proceed.
- b. Contractor/Consultant shall commence performance promptly upon the effective date stated in SEPTA's Notice to Proceed. Time is of the essence in the performance of services under the Contract.
- c. Contractor/Consultant understands and agrees that any costs incurred prior to the effective date stated in a Notice to Proceed are not allowable costs and Contractor/Consultant will not be reimbursed by SEPTA for any such costs.
- d. Contractor/Consultant shall meet all other time limits set forth in Attachments 1 through 10.

5. Data Available to Contractor/Consultant

All SEPTA maintained information, reasonably available and necessary for carrying out the services required to be performed under the Contract, shall be furnished to Contractor/Consultant. Contractor/Consultant shall familiarize itself with SEPTA operations and with the Project to the extent necessary to furnish the services required under the Contract.

6. Personnel To Be Used in Providing Services

a. Responsibility for Personnel

Contractor/Consultant agrees that all personnel used in performance of the Contract shall be considered employees of Contractor/Consultant or its subcontractors/subconsultants and in no event shall any of the personnel employed in the performance of the Contract be considered employees of SEPTA.

b. Only Certain Employees to Perform Services

Contractor/Consultant shall provide SEPTA with a list of all Proposer's (and/or subcontractor's) managers and field representatives who will perform services under the Contract.

Contractor/Consultant shall furnish a resume, brief biographical sketch and services history of each person involved with performing services required under the Contract.

Personnel designated within the proposal as "Key Personnel" for the performance of the required services, shall not be removed nor have their level of participation reduced by the Contractor/Consultant prior to the completion of their assignment under the Contract without the prior written approval of SEPTA.

Contractor/Consultant agrees that it will perform all the services required under the Contract using employees of Contractor/Consultant or its authorized subcontractors/subconsultants. Contractor/Consultant further agrees that none of the personnel performing services under the Contract has or shall have any contractual, financial or familial relationship with SEPTA or any of its officers, employees or agents or with any agency providing funds to SEPTA at any time during the course of the Contract.

c. Only Professionally Qualified Employees to Perform Services

All of Contractor/Consultant's personnel providing services under the Contract shall be technically qualified to perform the services required hereunder and, unless otherwise provided herein, as required by the nature of the services, will be fully licensed Commonwealth of Pennsylvania and authorized in conformity with all state licensing requirements and all governmental statutes, ordinances, and other provisions dealing with the services provided by such personnel. Due to the nature of the work being performed in the Federal arena, the Firm may use attorneys licensed in other jurisdictions or registered lobbyists as necessary to complete the assignment.

7. Contractor/Consultant to Cooperate with SEPTA's Designated Project Representatives

Contractor/Consultant shall cooperate with and coordinate all of the efforts of its personnel with SEPTA's Project Manager, who shall be responsible for technical direction provided by SEPTA, and SEPTA's Contract Administrator, who shall be responsible for the administration of the Contract on SEPTA's behalf (sometimes collectively referred to as "Project Representatives"). All changes in the services to be performed must receive the prior written authorization of SEPTA's Contract Administrator. The Project Representatives shall also monitor and review the progress of the Proposer Services in order to aid in the program coordination. The participation by the Project Representatives shall not relieve the Contractor/Consultant from its obligations under the terms of the Contract.

Contractor/Consultant shall take direction, within the scope of services contemplated by the Contract, from SEPTA's Project Representatives in carrying out the Project but shall remain solely professionally responsible for the services.

8. Total Contract Price

Contractor/Consultant agrees to complete performance of all services required by the Contract documents at a total cost to SEPTA not to exceed Dollars (\$ _____) which shall be in accordance with pricing submitted in

attachment #3 "Price Proposal" or Best & Final Offer (BAFO), if applicable. Said total cost to SEPTA hereinafter referred to as "Total Contract Price."

9. Method of Payment

- a. To obtain payment of a portion of the Total Contract Price, Contractor/Consultant may submit to SEPTA, not more than once each calendar month, an invoice for payment for services rendered in the preceding month, in such form and reasonable detail as SEPTA may require. Such invoices shall not be for amounts inconsistent with the actual physical progress of the services Contractor/Consultant has performed on the Project as determined by SEPTA's Project Representatives. If the Contractor/Consultant uses a DBE, each invoice shall include a DBE Invoice Payment Report (a sample copy of the DBE Invoice Payment Report is attached to the Contract). In each invoice Contractor/Consultant shall:
 - (1) Certify that all services described were performed in conformity with the terms of the Contract and that it is entitled to receive the amounts specified under the terms of the Contract in accordance with said description.
- b. Payments due to Contractor/Consultant under the Contract shall be made within thirty (30) calendar days after written approval of Contractor/Consultant's invoice by SEPTA's Project Representatives.

10. Audit and Inspection of Books and Records

Contractor/Consultant shall keep written records in reasonable detail of all services performed by it under the Contract. All written records, reports, work sheets, data, and information prepared, generated, or obtained in connection with Contractor/Consultant's performance of services for SEPTA shall be made available during the term of the Contract and for a period of five (5) years thereafter, together with all books and other data or information, in whatever form contained, relating to Contractor/Consultant's performance under the Contract. Contractor/Consultant shall permit the audit and examination of the aforementioned material, including the making of excerpts and transcriptions, by appropriate officers or representatives of SEPTA and any governmental funding agency providing financial assistance for the Project, including the United States Department of Transportation, the Office of the Comptroller General of the United States, and the Pennsylvania Department of Transportation.

Contractor/Consultant shall require its subcontractor/subconsultants to keep written records in reasonable detail of all services performed by them for Contractor/Consultant under the Contract and to maintain all books, data, information and records in a form that will support the invoice billed to Contractor/Consultant. Contractor/Consultant shall further require that all written records, reports, work sheets, data, and information prepared, generated, or obtained in connection with such subcontractor's/subconsultant's performance of services for Contractor/Consultant shall be made available during the term of the Contract and for a period of five (5) years thereafter to SEPTA, together with all books and other data or

information, in whatever form contained, relating to such subcontractor's/subconsultant's performance for Contractor/Consultant.

11. Overpayments

If at any point SEPTA determines that Contractor/Consultant has been overpaid, SEPTA's Contract Administrator shall notify Contractor/Consultant in writing of the overpayment. Contractor/Consultant shall remit the amount of the overpayment to SEPTA within thirty (30) calendar days of said notification or notify SEPTA of its disagreement. If Contractor/Consultant does not agree with SEPTA's determination, it shall follow the dispute process outlined in Paragraph 31, "Disputes."

12. All Information and Findings to Remain Confidential

Contractor/Consultant agrees that all information relating to research investigations (patentable or unpatentable), specifications and other evaluations, drawings, tracings, plans, and other data which have been obtained by Contractor/Consultant from SEPTA or are evolved or developed by Contractor/Consultant (or by others under his direction or supervision) in connection with the performance of the Contract or the efforts in conjunction with employees of SEPTA shall be deemed to be confidential information belonging solely to SEPTA. Further, during the term of the Contract and thereafter for a minimum period of three (3) years after the services, Contractor/Consultant shall not use or disclose such information for any purpose (or permit its usage or disclosure by others under Contractor/Consultant's supervision or direction) except to the extent necessary to perform services under the Contract, unless Contractor/Consultant can demonstrate to the satisfaction of SEPTA that such information was actually known to Contractor/Consultant prior to the Contract or was independently and properly obtained or developed by Contractor/Consultant apart from any connection with SEPTA or its employees, directly or indirectly, without breach of any confidential relationship or was publicly available. Contractor/Consultant, through the use of employment contracts and other legally acceptable methods, shall ensure that during the term of the Contract and for three (3) years after the services, none of its employees or former employees accept any employment or assignment which uses any of the information developed in connection with this Project.

13. Data to Become Property of SEPTA

All data, notes and other works developed in the performance of the Contract shall become the sole property of SEPTA and may be used on any other Project without additional compensation to Contractor/Consultant. Contractor/Consultant agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. Contractor/Consultant, for a period of three years after completion of the Project, agrees to furnish all retained works on the request of SEPTA's Project Representative. Unless otherwise provided in the Contract, Contractor/Consultant shall have the right to retain copies of all works beyond such period.

14. Interest of Contractor/Consultant

Contractor/Consultant agrees, for itself and its employees involved in this Project, that it has no interest and shall not acquire any interest, direct or indirect, including any business interest or other pecuniary or beneficial interest which would conflict in any way whatsoever with performance of services in connection with the Project. In addition, Contractor/Consultant is hereby referred to the provisions of Paragraph 6 “Personnel To Be Used in Providing Services,” of the Contract.

15. Assignment of Rights, Delegation of Duties Restricted

Contractor/Consultant shall not assign any rights arising under the Contract without the prior written consent of SEPTA. Contractor/Consultant shall not delegate, without the prior written consent of SEPTA, any duties in performance of services under the Contract.

16. Subcontracting

a. Subcontracting Restricted

Beyond those subcontractors/subconsultants proposed by the Contractor/Consultant and made part of the Contract, Contractor/Consultant shall not subcontract any portion of the services which are the subject of the Contract without the prior written consent of SEPTA. Contractor/Consultant agrees to be fully liable and responsible for the acts and omissions of subcontractors and subconsultants just as Contractor/Consultant is for the acts and omissions of persons employed by Contractor/Consultant.

b. Award of Subcontracts and Other Contracts for Portion of the Work

- (1) Any new or additional or substituted subcontractor/subconsultant proposed by Consultant after the award shall be subject to the prior written approval of SEPTA's Project Representative.
- (2) Consultant shall not make any substitution of any subcontractor/subconsultant or for any person or organization that has been previously accepted by SEPTA as part of the Contract unless and until requested to do so by SEPTA and/or unless such substitution is expressly approved by SEPTA in writing. No increase in total contract price shall be allowed for any such substitution.

c. Subconsultant/Subcontractor Relations

The Contractor/Consultant shall deal with each Subcontractor/Subconsultant in accordance with the terms and conditions of a written Contract between the Contractor/Consultant and such Subcontractor/Subconsultant. Said written Contract shall not be inconsistent with any term or condition of the Contract, shall include all terms and conditions required by the Contract and shall in every respect protect SEPTA's interests in the Work and the conduct thereof.

In the absence of good and sufficient reasons, within twenty (20) business days of the receipt of payment from SEPTA by the Contractor/Consultant, the Contractor/Consultant shall pay each Subcontractor/Subconsultant with whom it has contracted their earned share of the payment the Contractor/Consultant received.

In addition, Contractor/Consultant shall pay its Subconsultant(s)/Subcontractor(s) any retainage Contractor/Consultant has withheld from its Subconsultant(s)/Subcontractor(s) within twenty (20) business days after a Subconsultant's/Subcontractor's work is satisfactorily completed.

With regard to any claim or dispute with respect to payment of a subconsultant or subcontractor, or supplier at any tier, Contractor/Consultant expressly agrees to defend, indemnify and hold SEPTA harmless in the event any suit is brought on account of a dispute between any of the parties including but not limited to subconsultants, subcontractors, suppliers and materialmen and in particular, Contractor/Consultant shall assume the defense affirmatively at its sole cost whenever such suit is brought in any jurisdiction.

17. Interpretation of Scope

SEPTA's Project Manager and/or Contact Administrator shall have the right to make, in writing, interpretations of the scope of services.

18. Changes

- a. The services set forth in Attachments 1 through 10 of the Contract may be reduced, modified or expanded within or beyond the scope of the Contract by written modifications executed by SEPTA and Contractor/Consultant.

Except as provided in paragraph "b" below, in the event that SEPTA requires a reduction, expansion, or modification of the services, SEPTA shall issue to Contractor/Consultant a written notification which specifies such reduction, expansion, or modification. Within fifteen (15) calendar days after receipt of the written notification, Contractor/Consultant shall provide SEPTA's Contract Administrator with a detailed price and schedule proposal for the services to be performed or to be reduced. This proposal may be accepted or rejected by SEPTA or modified by negotiations between Contractor/Consultant and SEPTA. A written Amendment to the Contract shall be executed by both parties.

- b. Notwithstanding paragraph "a" above, SEPTA may at any time, by written order, make changes within the general scope of the Contract to the services to be performed by Contractor/Consultant. If any such change causes an increase or decrease in the price of, or the time required for, the performance of any portion of the services under the Contract, SEPTA's Contract Administrator shall make equitable adjustment in any one or more of the following: price; completion schedule; or other affected terms; and shall modify the Contract in writing accordingly. Any claim by Contractor/Consultant for adjustment under this paragraph must be asserted within thirty (30) calendar days from the date of receipt by Contractor/Consultant of the notification of change; provided

however that SEPTA's Contract Administrator, if the Contract Administrator decides that the facts justify such actions, may receive and act upon such claim at any time prior to final payment under the Contract. Failure to agree to any adjustment shall be a dispute within the meaning of Paragraph 31 Disputes. However, nothing in this paragraph shall excuse Contractor/Consultant from proceeding with the Contract as changed.

- c. No services for which an additional amount will be charged by Contractor/Consultant shall be furnished without the prior express written authorization of SEPTA's Contract Administrator.

19. Infringement of Patents, Trademarks and Copyrights

Contractor/Consultant shall defend, indemnify and save harmless SEPTA, its Board Members, officers, agents, servants, workers, employees, subsidizers and indemnittees from liability of any kind and will pay all costs and expenses, including consequential damages, for or on account of or existing from any infringement or violation or alleged violation of any patent, trademark and/or copyright or any right of any person, firm or corporation resulting from any negligence on the part of Contractor/Consultant in performance of the Contract.

20. Covenant Against Contingent Fees

Contractor/Consultant hereby warrants that it has not employed or retained any company or person other than a bona fide employee working for Contractor/Consultant solely to solicit or secure the Contract and that it has not paid or agreed to pay any person or company other than a bona fide employee working solely for Contractor/Consultant, any fee, commission, percent or brokerage fee, gift or other consideration contingent upon or resulting from the award or making of the Contract. In the event of breach or violation of this warrant, SEPTA shall have the right to terminate the Contract without further liability to Contractor/Consultant or to any third party.

21. Termination for Convenience of SEPTA

SEPTA shall have the right to terminate the Contract, in whole or in part, at any time by written notice to the Contractor/Consultant. The Contractor/Consultant shall be paid all reasonable costs as determined by SEPTA in accordance with 48 CFR Subpart 31.2, that specifies the special treatment of certain costs under Subpart 31.2, Section 31.205-42, "Termination Costs."

Such costs will include contract work performed up to the date of termination; any actual costs associated with termination for convenience, as agreed to by SEPTA; and profit on Work performed up to the time of termination. However, the agreed amount may not exceed the Contract Sum. Furthermore, SEPTA will not pay any anticipatory profits and/or consequential damages claimed by the Contractor/Consultant as a result of termination of the Contract. The amount of profit paid shall be determined by the parties based on the amount

of actual work completed. The Contractor/Consultant shall submit promptly its termination claim to SEPTA and SEPTA shall determine the settlement amount to be paid the Contractor/Consultant. If the Contractor/Consultant has any property in its possession belonging to SEPTA, the Contractor/Consultant shall account for same and dispose of it in the manner SEPTA directs.

22. Termination of Contract for Cause

If Contractor/Consultant fails to remedy to SEPTA's satisfaction the breach or default of any of the terms, covenants, or conditions of the Contract within ten (10) calendar days after receipt by Contractor/Consultant of written notice from SEPTA setting forth the nature of said breach or default and/or if the Contractor/Consultant is suspended or debarred by any federal agency or by the Commonwealth of Pennsylvania, SEPTA shall have the right to terminate the Contract without any further obligation to Contractor/Consultant. Any such termination for cause shall not in any way operate to preclude SEPTA from also pursuing all available remedies against Contractor/Consultant.

In the event that SEPTA elects to waive its remedies for any breach by Contractor/Consultant of any covenant, term or condition of the Contract, such waiver by SEPTA shall not limit SEPTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of the Contract.

In the event that it is ultimately determined by SEPTA that the Contractor/Consultant was not in default or that the failure to perform arose out of causes beyond the control and without fault of the Contractor/Consultant, the termination shall be treated as one of convenience and the Contractor/Consultant's sole rights and exclusive remedies shall be those set forth in Paragraph 21.

The Contractor/Consultant 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

23. Indemnification

In addition to all other obligations of Indemnification specified herein, Contractor/Consultant agrees to release and be liable for and to defend, indemnify and save harmless SEPTA, its Board members, officers, agents, servants, workers, employees, subsidizers and indemnities, the Pennsylvania Department of Transportation, the City of Philadelphia and any and all government funding agencies providing funds or services in connection with this Project (hereinafter collectively referred to as "SEPTA"), from and against any and all loss, cost, damage, liability and expense, including consequential damages, counsel fees, whether or not arising out of any claim, suit or action at law, in equity, or otherwise, of any kind or nature whatsoever, including negligence, arising out of the performance of the work by reason of any accident, loss or damage of property, including the work site, property of SEPTA and Contractor/Consultant, or injury, including death, to any person or persons, including employees of SEPTA, Contractor/Consultant, which may be sustained either

during the term of the Contract, or upon or after completion of the Project, whether brought directly by these persons or by anyone claiming under or through them including heirs, dependents and estates.

Contractor/Consultant also agrees for itself and on behalf of its agents, servants, subconsultants/ subcontractors, materialmen and employees to defend, indemnify and hold harmless SEPTA from and against any and all claims of any kind or nature whatsoever regarding subconsultants/subcontractors and materialmen and agrees to assume the defense of SEPTA to any such suit at its cost and expense. The Contractor/Consultant further assumes the risk of loss and damage to materials, machinery and equipment to be incorporated in the Work at all times prior to delivery to the Project site or while in the possession or under the control of the Contractor/Consultant.

Contractor/Consultant, for itself and its employees, Board members, officers, agents, servants, workers, contractors/consultants, subconsultants/subcontractors, licensees and invitees , or any other person working on Contractor/Consultant's behalf, hereby releases and agrees to be liable for and to defend, indemnify and save harmless SEPTA, even if SEPTA is negligent in whole or in part, for any claims made by an employee, Board member, officer, agent, workman or servant of the Contractor/Consultant's or any other person working on Contractor/Consultant's behalf, including claims for compensation or benefits payable to any extent by or for Contractor/Consultant under any workers' or similar compensation acts or other employee benefit acts, and Contractor/Consultant expressly waives its statutory protection under §303, as amended, of The Pennsylvania Workers' Compensation Act, 77 P.S. §481 (b).

In addition, Contractor/Consultant shall indemnify SEPTA for any fines and legal fees incurred because employees, agents, or workers supplied by Contractor/Consultant are not authorized to work in the United States.

24. Insurance

The Contractor shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations are by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable for (Note: All insurance carriers providing this coverage shall have an A.M. Best Rating of "A-" or greater):

1. claims under workmen's compensation, disability benefit and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of its employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees;

4. claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person; and
5. claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

B. EVIDENCE OF COMPLIANCE

1. Certificates of Insurance

Simultaneously with the execution of the Agreement, the Contractor shall furnish Southeastern Pennsylvania Transportation Authority (SEPTA) with CERTIFICATES OF INSURANCE and any other documents which SEPTA may require, such as copies of policies or endorsements, as evidence of compliance with these Insurance Requirements which are an integral part of the Contract. In the Description of Operations section of the Insurance Certificate please include the RFP number 21-00123-AHAC Federal Legislative Consulting Services.

2. Written Approval Required

Such Certificates or other documents must be approved in writing by the SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY, before a Notice to Proceed will be given.

C. POLICIES TO REMAIN IN FORCE

1. Until completion and acceptance

All insurance coverage which the Contractor is required to provide for the Contract shall be maintained in full force and effect until all of the Work of the Contract shall have been completed and accepted by SEPTA.

2. All policies shall provide for not less than (10) days or more than thirty (30) days written notice to SEPTA before cancellation by the Company issuing the insurance. If such notice is not provided for within the basic terms of the policy, it shall be provided by endorsement or notation on the Certificate.

3. Replacement coverage required

In the event that any or all of the insurance coverages required by the Contract are cancelled, are reduced below the required minimum limits or lapse, then the Contractor will be suspended from further prosecution of the Work until such time as replacement coverage satisfactory to SEPTA has been obtained and is in force.

D. ADDITIONAL INSUREDERS REQUIRED

The Contractor shall have all liability policies designated "Additional Insureds Required" endorsed to include the following as Additional Insureds: SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY

ADDITIONAL INSURED LANGAUGE:

1. SEPTA must be provided with true copies of declaration pages and policies of insurance upon request.
2. SEPTA is to be listed as additional insured on all applicable liability policies excluding Workers Compensation and Professional Liability.
3. Workers Compensation must provide a waiver of subrogation.
4. Each policy shall state that the insurance provided to the additional insureds is primary and non-contributory to any other insurance available to the additional insured.
5. SEPTA must be the certificate holder on all applicable liability coverage with respect to this project and it should be noted on the insurance certificate and policies.
6. SEPTA must be provided with proof of insurance that demonstrates compliance with these requirements as well as all limit as and other mandated aspects of coverage.

E. CONTRACTUAL LIABLITY (HOLD HARMLESS) COVERAGE

Policy shall be written or endorsed to include coverage for the liability assumed by the terms of the Contract and the Indemnification Agreement. Certificate or policy will state that the coverage applies to the Contract described as: Federal Legislative Consultant Services.

WAIVER OF LIABILITY FOR PREMIUMS

All policies wherein the parties designated in Paragraph C. above are included as additional insureds shall contain a Waiver of Liability for the payment of premiums covering those additional Insureds.

F. SELF-INSURANCE RETENTION LANGUAGE

Self-Insurance Retention (SIR) is limited to \$50,000 or less, subject to SEPTA's approval. Every self-insured retention must be declared to SEPTA.

- G. The contractor shall, as a condition of the contract, provide and maintain at its own cost and expense the following kinds and amounts of insurance. The insurance required shall be written for not less than any limits of liability specified below or required below, whichever is greater.

1. GENERAL LIABILITY INSURANCE (excluding vehicles)

Comprehensive General Liability Insurance for Bodily Injury and Property Damage to others. Covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 combined limit per occurrence and \$2,000,000 annual aggregate.

a. Minimum Limits of Liability

Products/Completed Operations Aggregate Per Project	\$2,000,000
Fire Damage Legal Liability (any one fire)	\$300,000
Personal and Advertising Injury Limit	\$1,000,000

b. Products Completed Operations

This insurance must be maintained for at least 12 years after substantial completion and acceptance of the project, or to the applicable Statute of Repose in the jurisdiction where the Project is located, whichever is longer.

Policy shall be written or endorsed to include as additional Insureds those parties or persons designated and apply on a Primary/Non-Contributory basis.

c. Additional Insureds

Policy shall be written or endorsed to include as additional Insureds those parties or persons designated and apply on a Primary/Non-Contributory basis.

d. Coverage: Premises operation; blanket contractual liability; personal injury liability; products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability and broad form property damage (including completed operations).

2. **AUTOMOBILE LIABILITY**

Liability Insurance (covering all autos, trucks, and other vehicles used in connection with this Project or Contract) for bodily injury and Property Damage to others.

a. Minimum Limits of Liability

\$1,000,000 combined Single Limit (Bodily Injury and Property Damage) per occurrence.

b. Additional Insureds

Policy shall be written or endorsed to include as additional Insureds those parties or persons designated and apply on a Primary/Non-Contributory basis.

c. Hired and Other Non-Owned Vehicles

Vehicle Liability Policy shall be written or endorsed to include coverage for Hired, Leased or other Non-Owned Vehicles.

3. **PROFESSIONAL LIABILITY/ERRORS AND OMMISIONS**

Applicable if a Prime contractor or applicable subcontractors will perform or retain others to perform professional services in connection with the work, including engineering, architectural, testing, environmental assessment or remediation, design-build, or construction management services. Coverage shall include any error, omission, or wrongful act on the part of the insured covering losses caused by Professional work that arise from the operations described under the scope of services of this Contract.

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the person/vendor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. If such coverage is secured on a “claims made” basis, extended reporting coverage shall be secured for a minimum of five (5) years following the completion of Prime contractor or Sub-Contractor’s work.

Per Claim \$1,000,000
Aggregate Limit \$1,000,000

If such coverage is secured on a “claims made” basis, extended reporting coverage shall be secured for a minimum of five (5) years following the completion of Prime contractor or Sub-Contractor’s work.

4. **WORKER'S COMPENSATION INSURANCE**

Workers Compensation of not less than \$ 1,000,000 and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. Must include a Waiver of Subrogation where permitted by state law, naming Southeastern Pennsylvania Transportation Authority (SEPTA).

5. **UMBRELLA/EXCESS LIABILITY INSURANCE**

- a. Occurrence Limit: \$1,000,000
- b. Aggregate Limit (where applicable): \$1,000,000
- c. Policy to apply excess of the Commercial General Liability (following form Per Project Aggregate Limit), Commercial Automobile Liability and Employer’s Liability Coverages and “drop-down” for defense and indemnity in the event of exhaustion of the underlying insurance, to the extent such insurance is used to satisfy the above-noted requirements.
- d. Additional Insureds
Policy shall be written or endorsed to include as additional Insureds those parties or persons designated and apply on a Primary/Non-Contributory basis.

H. **PAYMENT OF SEPTA CLAIMS**

Contractor shall require its insurance carrier(s) to make checks in payment of SEPTA claims payable directly to SEPTA.

25. **Personnel Security Measures**

SEPTA reserves the right to impose personnel security measures upon the Contractor/Consultant and its employees as SEPTA deems necessary and appropriate to ensure the safety of its patrons, employees and property. These measures may include, but are not limited to, registration of all employees of the Contractor/Consultants and its subcontractors/subconsultants who shall be working on SEPTA property, photo identification of all registered employees, and background investigations of all registered employees. In addition, SEPTA reserves the right to institute personnel security measures, which may be imposed at any time during the course of the Work. SEPTA shall assume the costs of such security measures. The Contractor/Consultant and its employees shall cooperate fully with SEPTA in implementing and enforcing security measures on SEPTA property. The Contractor/Consultant shall be notified by SEPTA, in writing, regarding what is required by SEPTA to carry out any personnel security measures that are being imposed on the Contractor/Consultant.

26. Notices

All Notices given by either party to the other shall be effective only if given in writing and sent to the following addresses of the parties, or to such other address as may be designated in writing by the parties:

TO SEPTA: Assistant General Manager of Procurement, Supply Chain & DBE
Procurement, Supply Chain & DBE Division
Southeastern Pennsylvania Transportation Authority
1234 Market Street, 11th Floor
Philadelphia, PA 19107-3780

TO CONTRACTOR/CONSULTANT:

27. Compliance with State and Local Laws and Contract Requirements

Contractor/Consultant shall comply in performance of services hereunder with all applicable laws, ordinances and regulations, judicial decrees or administrative orders, ordinances and codes of federal, state and local governments. See Attachments 10.

28. Governing Law, Forum Selection, and Consent to Jurisdiction

All matters or claims arising out of, related to, or in connection with the Contract, the Project or the relationship between the parties shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to the principles of conflicts of laws of such state. All matters, disputes, claims, litigation, or proceedings of any nature whatsoever based upon, arising out of, under or in connection with the Contract, the Project or relationship between the parties shall be solely and exclusively brought, maintained, resolved, and enforced in the state or federal courts located in the City of Philadelphia, Pennsylvania, irrespective of any procedural rules or laws related to venue and forum non convenes, including but not limited to any choices Contractor/Consultant may have under any such rules or law. Contractor/Consultant hereby expressly consents to the jurisdiction of the state and federal courts located in the City of Philadelphia and hereby expressly and irrevocably waives any objection which Contractor/Consultant may have or hereafter may have to jurisdiction or venue in the state and federal courts located in the City of Philadelphia and any claim that such court is inconvenient or lacks personal jurisdiction over Contractor/Consultant. Contractor/Consultant represents and acknowledges that the choice of jurisdiction and venue described above is reasonable and has been freely and voluntarily made by Contractor/Consultant. Further, the choice of jurisdiction and venue described above shall be mandatory and not permissive in nature, thereby precluding the possibility by Contractor/Consultant of litigation or trial in any other jurisdiction, court or venue other than specified above, except that any final judgment may be enforced in other jurisdictions in any manner provided by law.

29. Waiver of Breach of Contract

No waiver of any breach of any covenant, term, or condition of the Contract shall constitute a waiver of such covenant, term, or condition, or of any subsequent breach thereof.

30. SEPTA Equal Employment Opportunity/Affirmative Action Contractual Requirements

Contractor/Consultant covenants and agrees to abide by all stipulations attached hereto and made a part hereof as Attachment 10 for all services to be performed in connection with the Contract.

31. Disputes

- a. Disputes arising in the performance of the Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of SEPTA's Assistant General Manager of Procurement, Supply Chain & DBE of

Procurement. This decision shall be final and conclusive, unless within ten (10) calendar days from the date of receipt of its copy, the Contractor/Consultant or SEPTA Project Manager mails or otherwise furnishes a written appeal to the Assistant General Manager of Procurement, Supply Chain & DBE of Procurement. The Assistant General Manager of Procurement, Supply Chain & DBE of Procurement may authorize a representative not involved with the initial decision to review the appeal. In connection with any such appeal, the Contractor/Consultant or SEPTA Project Manager shall be afforded an opportunity to offer evidence in support of its position. The decision of the Assistant General Manager of Procurement, Supply Chain & DBE of Procurement, or his/her authorized representative, shall be the final determination of SEPTA.

b. Performance During Disputes

Unless otherwise directed by SEPTA, Contractor/Consultant shall continue performance under the Contract while matters in dispute are being resolved.

32. Third Party Contract Rights

It is agreed that SEPTA, neither by this paragraph nor by any other provisions in the Contract or other statements prior to or contemporaneous with the Contract creates any right or expectation in any third party or third parties (including, without limitation, subcontractors/subconsultants) enforceable at law or in equity or any other proceeding against SEPTA, its Board Members, officers, agents, servants, workers, employees, subsidizers, indemnities or assigns.

33. Prohibited Interest

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

34. Integration

Subject to SEPTA's right to rely upon substantial representations made by Contractor/Consultant in making the decision to award the Contract to Contractor/Consultant, the Contract represents the entire and integrated contract between SEPTA and Contractor/Consultant and supersedes all prior or contemporaneous negotiation, representation, or contract, either written or oral. The Contract may not be amended, modified, or changed except as provided in Paragraph 18, "Changes."

35. Severability

If any paragraph, clause, section or part of the Contract is held or declared to be void or non-enforceable for any reason, all other paragraphs, clauses, sections or parts shall nevertheless continue in full force and effect.

36. Disadvantaged Business Enterprise (DBE) Requirements

The Contractor/Consultant shall fully comply with the DBE requirements as found in Attachment 6 which is attached hereto and made a part hereof.

37. Joint and Several Liability

If two or more individuals, corporations, partnerships, or other business associations (or any combination of two or more thereof) shall sign the Contract as Contractor/Consultant, the liability of each such individual, corporation, partner or other business association to perform the obligations hereunder shall be deemed to be joint and several and all notices, payments and agreements given or made by, with or to any such individual, corporation, partner or other business association shall be deemed to have been given or made by, with or to all of them. In like manner, if Contractor/Consultant shall be a partnership or other business association, the members of which are by virtue of state or federal law are subject to personal liability, the liability of each member shall be joint and several.

38. Warranties

- a. Title: Contractor/Consultant covenants and warrants that good title to all the Material and/or Equipment furnished under the Contract shall vest in SEPTA immediately upon delivery and acceptance by SEPTA.
- b. General: Contractor/Consultant warrants that all Material and/or Equipment meets all requirements and standards set by the Scope of Services. All Material and/or Equipment shall be new, the best of its kind or quality, reasonably fit for its intended use as set forth in the Scope of Services, and of safe, substantial, and durable construction. Contractor/Consultant further warrants that any Material and/or Equipment, shall conform to representations and descriptions, either oral or written, made by the Contractor/Consultant and any literature, sample, or other vehicle of information supplied by Contractor/Consultant prior to the time of the proposal due date for the Contract. Contractor/Consultant further warrants that any sample provided represents a minimum standard of quality for the Material and/or Equipment furnished hereunder.
- c. Payment of Suppliers and Subcontractors: Contractor/Consultant warrants that all workmen, subcontractors and suppliers will be satisfied by Contractor/Consultant prior to Contractor/Consultant rendering any invoice to SEPTA so that, at the time SEPTA makes payment to Contractor/Consultant, no part of the performance under the Contract shall be subject to any claim or lien.
- d. Material and Workmanship. In addition to all warranties implied by law, Contractor/Consultant expressly warrants all Material and/or Equipment against any defect in design, material or workmanship which may be discovered during the three-year term of the contract. Contractor/Consultant shall make any necessary repairs to and any replacements of all or parts of the Material and/or Equipment during the period set forth above, at no additional cost to SEPTA.

In the event that the warranty work is to be completed after the expiration of the Contract, the Contractor/Consultant hereby agrees to maintain in force and/or extend all of the insurance as originally required by the Contract when it was in force, with SEPTA and any other entity required by SEPTA named as additional insured. The Contractor/Consultant is to procure a Right of Entry Permit from Procurement, Supply Chain & DBE and may be required to submit proof of insurance before SEPTA will issue the permit.

e. Additional Warranties.

- (1) If the customary standard warranties for the Material and/or Equipment exceed the period specified above, such warranties shall run to SEPTA.
- (2) If separate or additional warranties covering the Material and/or Equipment are furnished by the manufacturer, supplier, or seller of component part or parts of any item of said Material and/or Equipment, SEPTA shall have the right, but not the duty, to benefit from these separate or additional warranties, along with the primary warranties set forth hereinabove. SEPTA shall look only to Contractor/Consultant for fulfillment of all warranty requirements expressed and implied by the making of the Contract.
- (3) The existence of any separate or additional warranties which run to the Contractor/Consultant from the manufacturer, supplier, or installer of a component part of an item of Material and/or Equipment shall not relieve Contractor/Consultant of its obligation to repair or replace any of the Material and/or Equipment on account of faulty design, manufacture or workmanship during the warranty period. SEPTA shall not be required to look to any other party for fulfillment of warranty provisions.

39. Performance Bond -Not Used

40. Liquidated Damages – Not Used

41. Delivery

- a. Delivery shall be as required in the Scope of Services.
- b. All items shall be delivered in good condition, complete, ready for operation or use, and in conformity with the Scope of Services and other terms and conditions of this Contract.

42. Inspection

Prior to the Shipment: If SEPTA so elects, the Project Manager may inspect the Material and/or Equipment prior to shipment or delivery. The Contractor/Consultant shall give the Project Manager sufficient advance notice of the date when the Material and/or Equipment will be completed and available for inspection. If the Project Manager has elected to inspect

prior to shipment or delivery, Contractor/Consultant shall not ship or deliver Material and/or Equipment without such inspection being made unless Contractor/Consultant has a specific written Waiver of Inspection signed by the Project Manager.

[END OF PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by the undersigned duly authorized officers, as of the day and the year first above written.

ATTEST:

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY

CAROL R. LOOBY
SECRETARY TO THE BOARD

LESLIE S. RICHARDS
GENERAL MANAGER

ATTEST:

(SECRETARY)

BY: _____
PRESIDENT OR VICE PRESIDENT

(Please type name)

(Please type name)

APPROVED AS TO FORM:

BY: _____, Esquire
Office of General Counsel
Southeastern Pennsylvania
Transportation Authority

Attachment 1

Technical Proposal

for

Federal Legislative Consulting Services

Insert

(Technical Proposal)

Attachment 2

Scope of Services

for

Federal Legislative Consulting Services

FEDERAL LEGISLATIVE CONSULTANT SERVICES

SCOPE OF SERVICES

1. Represent the Authority's interests before the White House and appropriate federal departments and agencies to secure essential approvals to advancing plans, programs and projects. Assist in securing Congressional approvals when appropriate.
2. Assist the Authority in securing federal funding for advancing its capital program.
3. When requested, work with the Authority to secure federal approval of desired initiatives such as those involving: creative public/private partnerships, innovative financing strategies, or long-term revenue generation through the use of government assets.
4. Identify opportunities for and assist in securing traditional and non-traditional federal funding for mass transit projects related to the introduction of state-of-the-art equipment, intelligent transportation systems, system security needs and "jobs to work" services.
5. Identify opportunities for and assist in securing funding for pilot projects, demonstration programs, and the introduction of "best practices" to improve service delivery to customers.
6. Establish and maintain good working relationships with key Administration and Congressional officials and their staffs.
7. Establish and maintain good working relationships with the Philadelphia congressional members and their staffs, in order to maximize the Authority's input and influence in federal matters relating to public transportation.
8. Prepare testimony and written comments on pending federal legislation and regulations to be presented on behalf of the Authority at federal Administrative and Congressional hearings,
9. Work with Administration and Congressional members and their staffs during annual budget preparations, to maximize budgetary authorizations.
10. Work with key members of the national transit industry, such as the American Public Transit Association (APTA), other transit advocacy and research organizations, and other major national transportation authorities, to assist in developing policy statements and coordinated positions on federal legislation and regulations.
11. Work with SEPTA staff, other commuter rail operations, APTA, Congress and their staff members to assure that any changes made to AMTRAK's structure or funding levels do not negatively impact the Authority.

12. Monitor non transit federal legislation, including but not limited to employment, labor, investment, ADA and highway legislative proposals, for potential impact on the Authority. When such potential impact is identified, provide advice and assistance to the Authority as necessary.
13. Work with Authority staff, SEPTA's Congressional delegation, and appropriations and authorizing committees and leadership members and their staffs, to assure favorable treatment of the Authority's interests during re-authorization of FHA and FTA funding programs.
14. Maintain frequent contact with SEPTA staff via telephone, fax, E-mail, etc., and provide written status reports on current issues at least bi-weekly, or as deemed necessary.
15. Meet the overall goal of maximizing funding and reducing the burden of unfunded federal mandates.
16. Work in concert with both SEPTA's Assistant General Manager for Public and Government Affairs and its Special Counsel for Legislation to further the Authority's federal agenda.
17. Travel as required to cover meetings at other transit properties, as well as APTA meetings.
18. Update the SEPTA Board with a personal report as necessary, but a minimum of once a year.

[END OF SECTION]

Attachment 3

Price Proposal for Federal Legislative Consulting Services

PRICE PROPOSAL FORM

	Monthly Rate	Total Year 1 Rate
Year One	\$ _____	x 12 Months \$ _____
Year Two	\$ _____	x 12 Months \$ _____
Year Three	\$ _____	x 12 Months \$ _____
Total of All Three Years \$ _____		

Consulting Firm Name

Attachment 4

Certification Regarding Lobbying

Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an Officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: _____

Company Name: _____

Title: _____

Date: _____

[END OF SECTION]

Attachment 5

Disadvantaged Business Enterprise (DBE)

Requirements

REQUEST FOR PROPOSAL WITHOUT DBE GOALS

Disadvantaged Business Enterprise (DBE) Participation solicitation and contract provisions pursuant to U. S. Department of Transportation regulations (Title 49 CFR part 26), FTA Circular 4716.1A, and SEPTA Policy are provided in this Section.

A. DBE CONTRACT GOALS

In connection with this solicitation and any resulting contract, SEPTA has not established a goal for Disadvantaged Business Enterprise (DBE) participation. This is in accordance with the DBE Regulations at 49 CFR part 26, which require SEPTA to attempt to use race-neutral means of obtaining DBE participation whenever possible.

B. DEFINITIONS

1. **"Affiliation"** has the same meaning the term has in the Small Business Administration regulations, 13 CFR part 121:
 - (a) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
 - (1) one concern controls or has the power to control the other; or
 - (2) a third party or parties controls or has the power to control both; or
 - (3) an identity of interest between or among parties exists such that affiliation may be found.
 - (b) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.
2. **"Contract Sum"** means total contract price, including any change orders and amendments.
3. **"Disadvantaged Business Enterprise" or "DBE"** means a for-profit small business concern (a) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individual(s); and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it and is certified as such by SEPTA's DBE Program Office or by Pennsylvania's Unified Certification Program (PAUCP).
4. **"Joint Venture"** means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which purpose they combine their property,

capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct clearly defined portion of the work to be performed by the joint venture and whose share in the capital contribution, control, management, risks and profits of the joint venture are commensurate with its ownership interest (see paragraph D.5. below).

5. **"Small Business Concern"** means a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121), that also does not exceed the following size determinations:
 - (a) to be an eligible DBE, a firm (including its affiliates) must be an existing for-profit small business, as defined by Small Business Administration (SBA) standards found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.
 - (b) In addition to the requirements of (a) above, a firm must also meet the annual gross receipts requirements defined in SBA regulations 13 CFR §121.402

6. **"Socially and Economically Disadvantaged Individuals"** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
 - (a) Any individual which SEPTA finds to be a socially and economically disadvantaged individual on a case-by-case basis.
 - (b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) "Black Americans" which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "Hispanic Americans" which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) "Native Americans" which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (iv) "Asian-Pacific Americans" which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U. S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v) "Subcontinent Asian Americans" which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) Women;
 - (vii) any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

C. **SUBMISSION REQUIREMENTS**

1. In connection with this solicitation and any resulting contract, SEPTA has not established

goals for Disadvantaged Business Enterprise (DBE) participation. This is in accordance with the DBE Regulations at 49 CRF §26.39, §26.51, which require SEPTA to attempt to use race-neutral means of obtaining DBE participation whenever possible. If your firm utilizes a certified DBE subconsultant/supplier, a dually executed DBE Participation Schedule which is attached must be submitted for each DBE subconsultant/supplier, with the Technical Proposal and include the following:

- (a) The name and address of the DBE firm that will participate in the Contract.
- (b) A description of the work that the DBE will perform
- (c) The percent of the participation of the DBE firm participating

The Proposer is required to submit a properly executed DBE Participation Schedule for each DBE subconsultant/supplier identified to participate in the Contract.

Within forty-eight (48) hours from notification by SEPTA< Proposer is required to submit a Commitment/Confirmation document for each DBE firm scheduled to participate. The Commitment/Confirmation document represents:

- (a) The proposer's commitment to use a DBE subconsultant/supplier whose participation it submitted to meet a contract goal; and
- (b) The DBE subconsultant/supplier's confirmation that it is participating in the Contract as provided in the Proposer's commitment.
- (c) If the contract goal is not met, Proposer must provide evidence of its Good Faith Efforts in accordance with Paragraph E. Determination of DBE Responsibility.

In accordance with 49 CFR §26.39 (Fostering Small Business Participation), the Proposer is also required to identify all other subconsultants/suppliers scheduled to participate in the Contract by submitting the attached Non-DBE Participation Schedule with their Technical Proposal.

Any questions regarding DBE and or SBE Participation should be directed to SEPTA's DBE Program Office at (215) 580-7278.

- 2. The requirements of this section also apply to DBE Proposers for prime contracts. In determining whether a DBE Proposer for a prime contract has met a Contract goal, the work the DBE has committed to perform with its own forces as well as the work it has committed to be performed by DBE subconsultants and DBE suppliers will be counted.
- 3. SEPTA's DBE Program Office will provide upon request SEPTA's DBE Directory. The DBE Directory is revised on a continual basis; i.e., at least weekly, and identifies all firms eligible to participate as DBEs in SEPTA's program. Additionally, interested persons can obtain access to a state-wide combined directory through SEPTA's membership in the Pennsylvania Unified Certification Program (PAUCP) at <http://www.paucp.com>. These DBE directories list the firm's name, address, phone number, fax number, email address and the types of work the firm has been certified to perform as a DBE.

D. DETERMINATION OF PERCENTAGE OF DBE PARTICIPATION

DBE participation shall be credited toward achieving the DBE Goal as follows:

1. When a DBE participates in a contract, only the value of the work actually performed by the DBE will be counted toward DBE goals.
2. SEPTA will count the entire amount of that portion of a construction contract (or other contract covered by paragraph D.3. below) that is performed by the DBE's own forces, including the cost of supplies and materials obtained by the DBE for the work of the contract, and supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subconsultant purchases or leases from the prime contractor or its affiliates).
3. SEPTA will count 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 contract, toward DBE goals, provided SEPTA determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
4. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subconsultant is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
5. When a DBE performs as a participant in a joint venture, SEPTA will count a portion of the total value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
6. SEPTA will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract, as determined by SEPTA's DBE Program Office.
 - (a) A DBE is considered to perform a commercially useful function when it is responsible for execution of a specific scope of work in a contract and is carrying out its responsibilities by actually performing, managing, and supervising the 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 negotiating price, determining quality and quantity when ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, SEPTA will 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 and other relevant factors.
 - (b) 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 funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, SEPTA will examine similar transactions, particularly those in which DBEs do not participate.
 - (c) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, 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, SEPTA will presume that the DBE is not performing a commercially useful function.

- (d) When a DBE is presumed not to be performing a commercially useful function, SEPTA will accept evidence from the DBE or prime contractor to rebut this presumption. Evidence from independent sources, such as trade journals or independent studies by consultants, is particularly desirable in such circumstances.
7. SEPTA will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
- (a) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - (b) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract.
 - (c) The DBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
 - (d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
 - (e) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 - (f) For purposes of this paragraph D.7., a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
8. SEPTA will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- (a) If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials and supplies toward DBE goals. For purposes of this section, a "manufacturer" is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the Specifications.

- (b) If the materials or supplies are purchased from a DBE Regular Dealer count 60% of the cost of the materials and supplies toward DBE goals. For purposes of this section, 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 brought, kept in stock, and regularly sold to the public in the usual course of business. 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. 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 as previously provided if the person both owns and operates distribution equipment. 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. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.
- (c) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, SEPTA will only 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 SEPTA determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. No portion of the cost of the materials and supplies themselves will be counted towards DBE goals.

- 9. SEPTA will not count the participation of a DBE subconsultant toward the prime contractor's DBE achievements until the amount being counted toward the goal has been paid to the DBE.

E. **DBE MODIFICATION(S) OR SUBSTITUTION(S)**

- 1. If after award a DBE subconsultant included on the DBE Participation Schedule submitted to SEPTA, is terminated, or fails to complete its work on the Contract for any reason, SEPTA must be notified within 48 hours.
- 2. If after award of the Contract, a DBE subconsultant is terminated, or fails to complete its work on the Contract for any reason, SEPTA will require the prime contractor to make good faith efforts to find another DBE subconsultant to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same dollar value of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established by SEPTA.

F. **REPORTING AND RECORDKEEPING REQUIREMENTS**

To ensure that all obligations under the contracts awarded to DBEs are met, SEPTA's DBE Program Office shall monitor the Contractor's performance during the life of the Contract.

1. Upon execution of its SEPTA contract, the Contractor shall enter into written subcontract agreement(s) with the DBE(s) listed in its DBE Participation Schedule. Copies of the Contractor's executed subcontract agreement(s) with DBEs shall be provided to SEPTA's DBE Program Office by the Contractor immediately upon execution.
2. The Contractor shall submit a work schedule outlining when the DBE subconsultant(s) will commence and complete work on the project, at such times as prescribed by SEPTA's DBE Program Office
3. The Contractor shall keep a regular accounting of actual expenditures of funds made under all contract and subcontract agreements with DBEs; specifically, an accounting of the actual amount of DBE expenditures for each contract. **The Contractor shall submit a DBE Invoice Payment Report to SEPTA with each invoice or request for payment from SEPTA.**
4. The Contractor shall submit monthly reports of actual contract expenditures to DBE's by the Contractor. This information must be submitted electronically via SEPTA's website (<http://bizweb.septa.org/bizwebsepta>).
5. The Contractor and subconsultant(s) shall permit access to their books, records and accounts by SEPTA (or its designated representative) or the Federal Transit Administration (FTA) for the purpose of investigation to ascertain compliance with these specified requirements. Such records shall be maintained by the Contractor in a fashion which is readily assessable to SEPTA and/or the FTA for a minimum of five (5) years following completion of this Contract.
6. With regard to any claim or dispute with respect to payment of a subconsultant at any tier, Contractor expressly agrees to defend, indemnify and hold SEPTA harmless in the event any suit is brought on account of a dispute between any of the parties including but not limited to subconsultant(s), supplier(s) and material men and in particular, Contractor shall assume the defense affirmatively at its sole cost whenever such suit is brought in any jurisdiction.

G. **FTA DBE AUDIT REQUIREMENT – DBE INVOICE PAYMENT REPORT**

The Contractor shall keep a regular accounting of actual expenditures of funds made under all contract and subcontract agreements with DBEs, specifically, an accounting of the actual amount of DBE expenditures for each contract.

H. **MISCELLANEOUS**

The Contractor is encouraged to utilize the services of financial institutions owned and controlled by socially and economically disadvantaged individuals as defined at 49 CFR part 26.5.

[END OF PAGE]



**REQUEST FOR PROPOSAL
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION SCHEDULE**

As specified in the DBE Participation Section included in the Proposal Documents, the Proposer shall furnish to SEPTA's satisfaction the details of disadvantaged business enterprise participation.

NOTE: Firms must be Pennsylvania Unified Certification Program (PA UCP)-certified prior to being listed on a DBE Participation Schedule.

PROJECT NAME: _____

PROPOSAL NO.: _____

TABLE I. ALL WORK/SERVICES TO BE PERFORMED BY THE DBE FIRM

1 NAME OF DBE FIRM CONTACT PERSON, BUSINESS ADDRESS, TELEPHONE NUMBER		2 DESCRIPTION OF WORK TO BE PERFORMED ¹	3 TOTAL DBE AGREED PRICE TO BE CREDITED TO DBE GOAL ²
Firm Name:			
Contact:			
Address:			
Tele. No.:			

(Type or Print all information)

TABLE II. MATERIAL/SUPPLIES TO BE PURCHASED FROM "REGULAR DEALERS"

1 NAME OF DBE FIRM CONTACT PERSON, BUSINESS ADDRESS, TELEPHONE NUMBER		2 DESCRIPTION OF MATERIAL TO BE SUPPLIED ¹	3 TOTAL DBE AGREED PRICE TO BE CREDITED TO DBE GOAL ² (Total Price x .6)
Firm Name:			Total Price:
Contact:			X .6
Address:			Amount Credited to DBE Goal:
Tele. No.:			

(Type or Print all information)

Name of Proposer: _____ **Tele. No.:** () _____
(type or print)

Contact: _____ **Email:** _____
(type or print)

Signature: _____ **Title:** _____

- ❖ **A FULLY COMPLETED DBE PARTICIPATION SCHEDULE, FOR EACH DBE FIRM DESIGNATED TO PARTICIPATE, IS REQUIRED TO BE SUBMITTED WITH THE TECHNICAL PROPOSAL.**
- ❖ **FAILURE OF THE PROPOSER TO SUBMIT FULLY COMPLETED DBE PARTICIPATION SCHEDULE(S) WITH THEIR TECHNICAL PROPOSAL MAY RESULT IN THE REJECTION OF THEIR PROPOSAL.**
- ❖ **PROPOSER MUST SIGN AND DATE ABOVE.**
- ❖ **PROPOSER WILL BE REQUIRED TO PROVIDE A COMMITMENT/CONFIRMATION DOCUMENT FOR EACH DESIGNATED DBE FIRM UPON REQUEST FROM SEPTA.**

Proposers are hereby notified that the information contained herein will be verified with the designated DBE firm. Additionally, if and when the award of a contract is made, the DBE firm listed herein will be simultaneously notified of the award.
SEPTA reserves the right to waive informalities herein in its sole reasonable discretion.

¹ See Section D. "Determination of Percentage of DBE Participation" for discussion of types of participation and credit given toward achieving the DBE Goal.

² This must be expressed as a percentage of the Proposer's total maximum price to SEPTA.



Disadvantaged Business Enterprise (DBE) INVOICE PAYMENT REPORT (IPR)

APPLICATION DATE: _____ PERIOD FROM: _____ TO: _____ CONTRACTOR NAME AND ADDRESS: _____ _____ PROJECT NAME: _____ _____ CONTRACT NUMBER: _____ PURCHASE ORDER NUMBER: _____	FOR SEPTA'S USE ONLY Contractor's Application for Payment <input type="checkbox"/> APPROVED <input type="checkbox"/> REJECTED <input type="checkbox"/> ITEM(S) DISALLOWED (specify): _____
SEPTA Project Manager	

PART I: CONTRACT INFORMATION	PART II: DBE INFORMATION
Original Contract Sum: _____	Original DBE Subcontractor(s) Sum: _____
Net Change by Change Order: _____	Net Change by Change Order: _____
Contract Sum to Date: _____ \$0.00	DBE Subcontractor(s) Sum to Date: _____ \$0.00
Total Billed to Date: _____	Total Invoices Submitted for DBE Payment to Date: _____
Retainage: 0.00% _____ \$0.00	Retainage: 0.00% _____ \$0.00
Total Billed to Date Less Retainage: _____ \$0.00	Total Invoices Submitted for DBE Payment to Date Less Retainage: _____ \$0.00
Total Previous Invoices Submitted Less Retainage: _____	Total Previous Invoices Submitted Less Retainage: _____
Current Amount Due: _____ \$0.00	Current DBE Payment Due: _____ \$0.00

List DBE Subcontractor(s), DBE Invoice Number(s) and the current DBE Payment Due:		
DBE Subcontractor Name	DBE Invoice Number	DBE Amount Due

The undersigned Contractor certifies that the above listed DBE charges have been incurred by the respective DBE subcontractor(s) and that the DBE firm(s) has(ve) been paid or will be paid this amount from the proceeds of the attached invoice. The Contractor further certifies that records supporting these DBE expenditures, including retainage, shall be maintained and made available to SEPTA or its designee upon request.

Company Official: _____ <small>(type or print)</small>	Title: _____ <small>(type or print)</small>
_____	Date: _____
<small>(signature)</small>	



**SEPTA
NON-DBE PARTICIPATION SCHEDULE
(Request for Proposals)**

As specified in the DBE Participation Section included in the Solicitation Documents, the Proposer must furnish to SEPTA the details of non-DBE subconsultant participation.

PROJECT NAME: _____

RFP NO.: _____

1. **WORK/SERVICES TO BE PERFORMED BY SUBCONSULTANTS**
2. **MATERIAL/SUPPLIES TO BE PURCHASED FROM SUPPLIERS**

NAME OF FIRM CONTACT PERSON, BUSINESS ADDRESS, TELEPHONE NUMBER		DESCRIPTION OF WORK/SERVICES TO BE PERFORMED / MATERIAL TO BE SUPPLIED	TOTAL PARTICIPATION
Firm Name:			%
Contact:			
Address:			
Tele. No.:			
Firm Name:			%
Contact:			
Address:			
Tele. No.:			
Firm Name:			%
Contact:			
Address:			
Tele. No.:			
Firm Name:			%
Contact:			
Address:			
Tele. No.:			
Firm Name:			%
Contact:			
Address:			
Tele. No.:			

(Type or Print all information)

Name of Proposer: _____ **Tele. No.:** () _____
(type or print)

Email: _____

Contact: _____ **Title:** _____
(type or print)

Signature: _____ **Date:** _____

MUST BE PROVIDED ON PROPOSER'S OFFICIAL LETTERHEAD

RE: DBE PARTICIPATION - COMMITMENT/CONFIRMATION

SEPTA RFP No. _____

Project Name: _____

<Proposer> is committed to contracting with <DBE Firm> for participation on the SEPTA solicitation referenced above. <DBE Firm> is scheduled to provide the following services and/or materials/supplies:

<Provide a Detailed Description of the Services and/or Materials/Supplies* to be furnished by the named DBE Firm>.

For approximately \$<\$\$,\$\$\$>, or xx% of the total contract.

(*60% of the total agreed price for DBE suppliers will be credited towards the DBE goal)

_____ Proposer's Representative Name/Title <i>(please type or print)</i>	_____ Signature	_____ Date
_____ DBE Firm's Representative Name/Title <i>(please type or print)</i>	_____ Signature	_____ Date

Attachment 6

SEPTA Solicitation Statistics



SEPTA SOLICITATION STATISTICS

Dear Contractor/Consultant/Subcontractor/Subconsultant:

In accordance with Federal Regulation 49 CFR part 26.11, SEPTA must maintain bidding statistics on **all** contractors/consultants and subcontractors/subconsultants bidding on contracts. Please include copies of this form with your bid/proposal package to any subcontractors/subconsultants. You are required to return the form for each bidder/proposer with your bid/proposal package. This applies to both disadvantaged business enterprises (DBEs) and non-DBEs (a DBE is a firm which meets the criteria set forth in 49 CFR part 26).

Thank you for your assistance with this request. If you should have any questions, comments or suggestions, please contact the Director of SEPTA's DBE Program Office at 215-580-3710.

The information gathered on this form will be used for statistical purposes only and is set forth under 49 CFR part 26.

Firm Name:	_____
Firm Address:	_____
Description of Services:	
NAICS Code: _____ (www.census.gov/epcd/www/naics.html)	
Status: DBE _____ Non-DBE _____	
Month/Year firm established: _____	

Company Owner(s) Ethnic Group Membership: *(optional)*

- Black

 Hispanic

 Native American
 Asian Pacific

 Subcontinent Asian
 Other *(specify)* _____

Annual Gross Receipts of the Firm: (check one)

- | | |
|-----------------------------------|----------------------------------|
| Less than \$500,000 _____ | \$500,000 - \$1 Million _____ |
| \$1 Million - \$5 Million _____ | \$5 Million - \$10 Million _____ |
| \$10 Million - \$20 Million _____ | Above \$20 Million _____ |

Project Name: _____	Bid Number: _____
Name (Type or Print): _____	Date: _____
Title: _____	
Signature: _____	Telephone No.: () _____
Email Address: _____	Facsimile No.: () _____

Rev 092410

Attachment 7

Project Progress

And

Performance Evaluation Form

PERFORMANCE EVALUATION (OTHER THAN ARCHITECT-ENGINEER)				1. FUND NUMBER		
				1		
				2. PURCHASE ORDER		
				3. CPMS NUMBER		
IMPORTANT: Be sure to complete both pages of this Performance Evaluation. If additional space is necessary for any item, use Remarks Section on next page.						
4. TYPE OF REPORT <i>(Check one)</i> <input type="checkbox"/> INTERIM <input type="checkbox"/> COMPLETION OF SERVICE OR STUDY <input type="checkbox"/> TERMINATION			5. REPORT NUMBER		6. DATE OF REPORT	
7. NAME AND ADDRESS OF CONSULTANT			8. PROJECT DESCRIPTION AND LOCATION			
9. OFFICE RESPONSIBLE FOR						
A. SELECTION OF CONSULTANT		B. NEGOTIATION/AWARD OF CONTRACT		C. ADMINISTRATION OF CONTRACT		
10. CONTRACT DATA						
A. TYPE OF WORK			B. TYPE OF CONTRACT <input type="checkbox"/> FIXED PRICE <input type="checkbox"/> COST PLUS FIXED FEE <input type="checkbox"/> OTHER <i>(Specify)</i>			
C. PROJECT COMPLEXITY <input type="checkbox"/> DIFFICULT <input type="checkbox"/> SIMPLE <input type="checkbox"/> ROUTINE		D. PROFESSIONAL SERVICES CONTRACT				
		INITIAL CONTRACT SUM		CLAIMS BY CONSULTANT		FINAL CONTRACT SUM
		NO.	AMOUNT	NO	AMOUNT	
E. DATE OF NOTICE TO PROCEED		F. CONTRACT COMPLETION DATE <i>(Including extensions)</i>			G. ACTUAL COMPLETION DATE	
11. KEY CONSULTANT DATA						
A. NAMES		B. ADDRESS		C. SPECIALTY		
12. OVERALL RATING <input type="checkbox"/> EXCELLENT <input type="checkbox"/> AVERAGE <input type="checkbox"/> POOR				13. RECOMMENDED FOR FUTURE CONTRACTS? <input type="checkbox"/> YES <input type="checkbox"/> NO <i>(If "NO", explain in REMARKS on reverse)</i>		
14A. NAME AND TITLE OF RATING OFFICIAL				15A. NAME AND TITLE OF REVIEWING OFFICIAL		
14B. SIGNATURE		14C. DATE		15B. SIGNATURE		
				15C. DATE		

PERFORMANCE EVALUATION (Other than Architect/Engineer)

(Continuation from previous page)

Consultant:

Performance Elements	N/A	Excellent	Average	Poor	No Information	Signature & Date
Professionalism						
Accuracy of Work						
Cooperation						
Completeness						
Coordination						
Effectiveness of Management						
Timely Performance						
Personnel Qualifications						
Quality of Presentation						
Quality of Work						

REMARKS *(Explain all Excellent and Poor ratings.)*

Attachment 8

Certification Regarding Compliance

With

Immigration Reform and Control Act of 1986

Certification Regarding Compliance with Immigration Reform and Control Act of 1986

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. Contractor has and will continue to comply with, for the duration of this Contract, the requirements of 8 U.S.C. § 1324a with respect to the hiring, recruiting or referral for employment of an alien in the United States of America.
2. Contractor will:
 - 1) Complete the Employee Eligibility Form (I-9) for each person that it hires
 - 2) Utilize the electronic employment verification system (“E-Verify”) designated in Executive Order 12989, and shall keep each I-9 Form on file for at least three (3) years, or one (1) year after employment ends, whichever is longer.
3. Contractor shall require that the provisions of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the parties entered into this Contract. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Act 43 of 2006, the Illegal Alien Labor on Assisted Act also known and cited as the Prohibition of Illegal Alien Labor on Assisted Projects Act.

Signature: _____

Company Name: _____

Title: _____

Date: _____

[END OF SECTION]

Attachment 9

Commonwealth of Pennsylvania Contract Requirements

Commonwealth of Pennsylvania Contract Requirements

DEFINITIONS:

- A. For the purpose of these provisions, the term **Contractor** is defined as any person, including, but not limited to, a proposer, offeror, supplier, or subgrantee, who will furnish or perform or seeks to furnish or perform, goods, supplies, services, construction or other activity, under a purchase order, contract, or subgrant with SEPTA.

SR-1 Nondiscrimination/Sexual Harassment Clause.

A. APPLICABILITY

This article applies to all purchase orders and contracts.

B. The contractor agrees:

In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under any subgrant agreement, contract, or subcontract, a subgrantee, a contractor, a subcontractor, or any person acting on behalf of SEPTA shall not discriminate in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

Any subgrantee, contractor or any subcontractor or any person on their behalf shall not in any manner discriminate in violation of the PHRA and applicable federal laws against or intimidate any of its employees.

Any subgrantee, contractor or any subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the grant services are performed shall satisfy this requirement.

Any subgrantee, contractor or any subcontractor shall not discriminate in violation of the PHRA and applicable federal laws against any subgrantee, contractor, subcontractor or supplier who is qualified to perform the work to which the grant relates.

Each subgrantee, contractor and subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and

local laws and regulations relating to nondiscrimination and sexual harassment. Each subgrantee, contractor and subcontractor further represents that it has filed a Standard Form 100 Employer Information Report (“EEO-1”) with the U.S. Equal Employment Opportunity Commission (“EEOC”) and shall file an annual EEO-1 report with the EEOC as required for employers subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. Any subgrantee, any contractor or any subcontractor shall, upon request and within the time periods requested by SEPTA, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the granting agency and the Bureau of Small Business Opportunities (BSBO), for the purpose of ascertaining compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause.

Any subgrantee, contractor or any subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subgrant agreement, contract or subcontract so that those provisions applicable to subgrantees, contractors or subcontractors will be binding upon each subgrantee, contractor or subcontractor.

Each subgrantee’s, contractor’s and subcontractor’s obligations pursuant to these provisions are ongoing from and after the effective date of the agreement through the termination date thereof. Each subgrantee, contractor and subcontractor shall have an obligation to inform the SEPTA if, at any time during the term of the agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.

SEPTA may cancel or terminate the agreement and all money due or to become due under the agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the SEPTA may proceed with debarment or suspension and may place the subgrantee, contractor, or subcontractor in the Contractor Responsibility File.

SR–2 ADA Provision

A. APPLICABILITY

This article applies to all purchase orders and contracts.

B. During the term of this agreement, the contractor agrees as follows:

Pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 C. F. R. § 35.101 et seq., the contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this agreement or from activities provided for under this agreement. As a condition of accepting and executing this agreement, the contractor agrees to comply with the "General Prohibitions Against Discrimination,"

28 C. F. R. § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to the benefits, services, programs, and activities provided by SEPTA through contracts with contractors.

The contractor shall be responsible for and agrees to indemnify and hold harmless SEPTA from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth as a result of the contractor's failure to comply with the provisions of the above paragraph.

SR-3 Contractor Integrity Provisions.

A. APPLICABILITY

It is essential that those who seek to contract with SEPTA observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of SEPTA's contracting and procurement process.

DEFINITIONS. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

"Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.

"Consent" means written permission signed by a duly authorized officer or employee of SEPTA, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, SEPTA shall be deemed to have consented by virtue of the execution of this contract.

"Contractor" means the individual or entity, that has entered into this contract with SEPTA.

"Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, SEPTA's Board members or owners of 5 percent or more interest in the Contractor.

"Financial Interest" means either:

- (1) Ownership of more than a five percent interest in any business; or
- (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

"Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor's Code of Conduct,

Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.

“**Non-bid Basis**” means a contract awarded or executed by SEPTA with Contractor without seeking bids or proposals from any other potential proposer or offeror.

B. In furtherance of this policy, Contractor agrees to the following:

Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with SEPTA.

Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the SEPTA and SEPTA employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well- lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to SEPTA in writing and SEPTA consents to Contractor’s financial interest prior to SEPTA’s execution of the contract. Contractor shall disclose the financial interest to SEPTA at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor’s submission of the contract signed by Contractor.

Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:

- (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
- (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
- (3) had any business license or professional license suspended or revoked;

- (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and SEPTA will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify SEPTA in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that SEPTA may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S.3A01 et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).

When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a SEPTA officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the SEPTA contracting officer or SEPTA's Office of the Inspector General in writing.

Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify SEPTA in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse SEPTA for the reasonable costs of investigation incurred by SEPTA's Office of the Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and SEPTA that results in the suspension or debarment of the Contractor.

Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

Contractor shall cooperate with the Commonwealth's Office of the Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between SEPTA and any such subcontractor, and no third party beneficiaries shall be created thereby.

For violation of any of these Contractor Integrity Provisions SEPTA may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with SEPTA and the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

SR-4 Contractor Responsibility.

A. APPLICABILITY

This article applies to all purchase orders and contracts.

B. For the purpose of these provisions, the term "Contractor" is defined as any person, including, but not limited to, a proposer, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under institutions. The term "Contractor" may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

1. The Contractor must certify, in writing, for itself and all its subcontractors, that as of the date of its execution of any Commonwealth contract, that neither the

Contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with the bid/proposal, a written explanation of why such certification cannot be made.

2. The Contractor must also certify, in writing, that as of the date of its execution of any Commonwealth contract, it has no tax liabilities or other Commonwealth obligations.
3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the contracting agency if, at any time during the term of the contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state governmental entity. Such notification shall be made within 15 days of suspension or debarment.
4. The failure of the Contractor to notify the contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
5. The Contractor agrees to reimburse the Commonwealth for reasonable costs of investigation incurred by the Office of the Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth, which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations which do not result in the Contractor's suspension or debarment.
6. The Contractor may obtain the current list of suspended and debarred Commonwealth Contractors by either searching the Internet at <http://www.dgs.state.pa.us/debarment.htm> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125

SR-5 Retainage

A. APPLICABILITY

This article applies to all construction purchase orders and contracts.

- B.** SEPTA may withhold an amount not to exceed ten (10%) percent of SEPTA's portion of net Project cost of this Agreement to ensure substantial completion by the contractor of the Project. SEPTA may at any time release any portion of any such retainage if, in the opinion of SEPTA, the contractor has substantially completed sufficient portions of the Project to justify such payments.

SR-6 Steel Products

A. APPLICABILITY

This article applies to all purchase orders and contracts.

- B.** All steel products used or supplied in the performance of the Contract shall be products produced from steel made in the United States in conformity with the Steel Products Procurement Act of 1978 (Act No. 3 of 1978, March 3, P.L. 6 (73 P.S. §1881 et seq.)), as amended and, if the federal Buy America requirements are applicable to the Contract, in full conformity with the Buy America provisions of 49 U.S.C. §5323 (j) [formerly the Federal Surface Transportation Assistance Act of 1982, as amended] and the applicable regulations in 49 CFR part 661.

Contractor shall insert this requirement as a special condition for any subcontract awarded in the performance of the Project.

SR-7 Diverse Business Participation for Non-Federally-Funded Projects

A. APPLICABILITY

This article applies to all purchase orders and contracts.

- B.** For non-federally funded projects, the Contractor shall comply with provisions of Section 303 of Title 74 of Purdon's Statutes. 74 Pa.C.S. §303 (Diverse business participation)."

SR-8 Right To Know

A. APPLICABILITY

This article applies to all purchase orders and contracts.

- B.** Subgrantee or Contractor understands that this Agreement and records related to or arising out of the Agreement are subject to requests made pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL").

If SEPTA needs the Subgrantee's or Contractor's assistance in any matter arising out of the RTKL related to this Agreement, it shall notify the Subgrantee or Contractor using the legal contact information provided in the Agreement. The Subgrantee or Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to SEPTA.

Upon written notification from SEPTA that it requires Subgrantee's or Contractor's assistance in responding to a request under the RTKL for information related to this Agreement that may be in Subgrantee's or Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), Subgrantee or Contractor shall:

- (1) Provide SEPTA, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in Subgrantee's or Contractor's possession arising out of this Agreement that SEPTA reasonably believes is Requested Information and may be a public record under the RTKL; and
- (2) Provide such other assistance as SEPTA may reasonably request, in order to comply with the RTKL with respect to this Agreement.

If Subgrantee or Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that Subgrantee or Contractor considers exempt from production under the RTKL, Subgrantee or Contractor must notify SEPTA and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of Subgrantee or Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

SEPTA will rely upon the written statement from Subgrantee or Contractor in denying a RTKL request for the Requested Information unless SEPTA determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should SEPTA determine that the Requested Information is clearly not exempt from disclosure, Subgrantee or Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of SEPTA's determination.

If Subgrantee or Contractor fails to provide the Requested Information within the time period required by these provisions, Subgrantee or Contractor shall indemnify and hold SEPTA harmless for any damages, penalties, costs, detriment or harm that SEPTA may incur as a result of Subgrantee's or Contractor's failure, including any statutory damages assessed against SEPTA.

SEPTA will reimburse Subgrantee or Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

Subgrantee or Contractor may file a legal challenge to any SEPTA decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, Subgrantee or Contractor shall indemnify SEPTA for any legal expenses incurred by SEPTA as a result of such a challenge and shall hold SEPTA harmless for

any damages, penalties, costs, detriment or harm that SEPTA may incur as a result of Subgrantee's or Contractor's failure, including any statutory damages assessed against SEPTA, regardless of the outcome of such legal challenge. As between the parties, Subgrantee or Contractor agrees to waive all rights or remedies that may be available to it as a result of SEPTA's disclosure of Requested Information pursuant to the RTKL.

The Subgrantee's or Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Agreement and shall continue as long as the Subgrantee or Contractor has Requested Information in its possession.

[END OF SECTION]

Attachment 10

SEPTA EEO/AA Contractual Requirements

SEPTA EEO/AA Contractual Requirements

NONDISCRIMINATION:

During the performance of the Agreement, the Consultant agrees as follows:

1. The Consultant will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, age, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, religion, sex, age, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin.
3. The Consultant will send to each Labor Union or Representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said Labor Union or Worker's Representative of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Consultant will comply with all Affirmative Action provisions of the Agreement.
5. The Consultant will furnish all information and reports required by SEPTA and will permit access to its books, records, and accounts by the EEO Compliance Officer for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the Consultant's noncompliance with the nondiscrimination clause of the Agreement, the Agreement may be cancelled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further SEPTA contracts.
7. The Consultant will include the portion of the sentence immediately preceding paragraph 1 and the provisions of paragraphs 1 through 8 in every subcontract or purchase order so that such provisions shall be binding upon each subcontractant or vendor. The Consultant will take such action with respect to any subcontract or purchase order as SEPTA may direct as a means of enforcing such provisions, including sanctions for noncompliance.
8. The Consultant shall have an Affirmative Action Plan declaring that it does not discriminate on the basis of race, color, religion, creed, national origin or sex and specifying minority and female goals to assure implementation of the Plan. SEPTA shall

assure compliance with this requirement and promptly investigate suspected or reported violations.

9. SEPTA reserves the right to monitor and periodically audit its Consultants' compliance with the specifications discussed in this section. In the event the Consultant fails to comply with the nondiscrimination provisions of the Agreement, the Consultant may also be subject to termination of the contract or other remedies as provided in 49 CFR Part 26.13(b). SEPTA shall make a report of any such compliance issues to the Office of Federal Contract Compliance Programs (OFCCP).

[END OF SECTION]