

**PIERCE TRANSIT GENERAL TERMS AND CONDITIONS AND REQUIREMENTS
OF THE FEDERAL TRANSIT ADMINISTRATION AS APPLICABLE
(FOR PURCHASES NOT COVERED BY SEPARATE CONTRACT)**

GENERAL LEGAL COMPLIANCE

The Bidder shall be responsible for ascertaining and complying with applicable federal, state and local laws and regulations which in any manner affect those engaged or employed in the Work, equipment or materials employed in the Work or the conduct or means or methods of the Work.

1. PROPERTY RIGHTS: All records or papers of any sort relating to Pierce Transit and to the project will at all times be the property of Pierce Transit and shall be surrendered to Pierce Transit upon demand. All information concerning Pierce Transit and said projects, which is not otherwise a matter of public record or required by law to be made public, is confidential, and the Contractor will not, in whole or in part, now or at any time disclose that information without the express written consent of Pierce Transit.

2. CONTRACTOR RELATIONSHIP

A. The Contractor is and shall be at all times during the term of this Contract an independent contractor and not an employee of Pierce Transit, and shall not be entitled to any of the usual benefits incident to employment with Pierce Transit.

B. Any and all employees of the Contractor, while engaged in the performance of any work or service required by the Contractor under this Contract, shall be considered employees of the Contractor only and not of Pierce Transit and any and all claims that may or might arise under the Workers' Compensation Act on behalf of said employees, while so engaged and any and all claims made by a third party as a consequence of any negligent act or omission on the part of the Contractor's employees, while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the Contractor.

C. The Contractor shall not engage, on a full or part-time basis, or other basis, during the period of the Contract, any professional or technical personnel who are, or have been at any time during the period of this Contract, in the employ of Pierce Transit, except regularly retired employees, without written consent of Pierce Transit.

3. CONFIDENTIAL MATERIALS AND PUBLIC DISCLOSURE:

A. This Contract and all records provided to Pierce Transit by Contractor hereunder may be public records subject to disclosure under the Washington State Public Records Act and/or other laws requiring disclosure or discovery of records. In the event Pierce Transit receives a request for such disclosure, Pierce Transit will provide Contractor with ten (10) days' written notice prior to release of responsive records. The parties acknowledge that Pierce Transit is not liable for any release of records pursuant to public disclosure or discovery laws. The applicability or exercise of any exemption to redact or withhold a record is in Pierce Transit's sole and absolute discretion, and Pierce Transit is not liable for a good faith production of records under RCW 42.56.060.

B. Contractor shall mark certain record(s) as "Confidential" or "Proprietary" as appropriate given the potential sensitive subject of Contractor's work under this Contract. If

Contractor fails to so mark record(s), then Pierce Transit, upon request, may release said record(s) without the need to satisfy the requirements of subsection A above.

4. INDEPENDENT CONTRACTOR RELATIONSHIP:

- A. The Contractor is and shall be at all times during the term of this Contract an independent contractor and not an employee of Pierce Transit, and shall not be entitled to any of the usual benefits incident to employment with Pierce Transit.
- B. Any and all employees of the Contractor, while engaged in the performance of any work or service required by the Contractor under this Contract, shall be considered employees of the Contractor only and not of Pierce Transit and any and all claims that may or might arise under the Workers' Compensation Act on behalf of said employees, while so engaged and any and all claims made by a third party as a consequence of any negligent act or omission on the part of the Contractor's employees, while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the Contractor.
- C. The Contractor shall not engage, on a full or part-time basis, or other basis, during the period of the Contract, any professional or technical personnel who are, or have been at any time during the period of this Contract, in the employ of Pierce Transit, except regularly retired employees, without written consent of Pierce Transit.

5. DESIGNATED EMPLOYEES: The employees who will perform the services on behalf of the Contractor shall be designated by the Contractor and a list of such designated employees shall be provided to Pierce Transit at the commencement of Contractor's work. No other individuals may perform the services required by this Contract without the express written permission of Pierce Transit. Pierce Transit may, however, require the removal of any employee and the Contractor shall replace such employee upon demand by Pierce Transit.

6. SUBCONTRACTORS: Subcontractors, if any, who will perform work under this Contract shall be the firms designated in this Contract, if any. No other subcontractors shall perform the services required under this Contract without the express written permission of Pierce Transit. The Contractor is expected to audit and review all invoicing and billing by subcontractors and will ensure that all personnel and billing rates are applied in strict conformance of the Contract.

7. EQUAL EMPLOYMENT OPPORTUNITY

Pierce Transit is an equal opportunity employer, and all Contractors on Pierce Transit projects are required to follow a policy of affirmative action to ensure that applicants are employed and employees are treated in a manner in full compliance with the requirements of Executive Order 11246.

8. ETHICS:

- A. The Contractor warrants that it has not employed nor retained any company, firm or person, other than a bona fide employee working solely for it, to solicit or secure this Contract, and that it has not paid or agreed to pay any company, firm or person, other than a bona fide employee working solely for it, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, Pierce Transit shall have the right to annul this Contract without liability.
- B. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising there from.
- C. No member, officer, or employee of Pierce Transit or of a local public body during his tenure shall have any interest, direct or indirect, in this Contract or its proceeds.
- D. Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, disability, age, marital status, political affiliation, national origin, and/or any protected classifications under state or federal laws.

9. AUDIT: For a period of thirty-six (36) months from completion of work under this Contract. Contractor shall permit the authorized representatives of Pierce Transit, the U.S. Department of Transportation, the Controller General of the United States, and/or the Washington State Auditor's Office to inspect and audit all data and records of Contractor relating to his performance under this Contract.

10. ASSIGNMENT: This Contract may not be assigned or otherwise transferred by either party hereto, nor will the Contractor delegate, nor hire additional persons to perform services and duties under this Contract, without the advance written consent of Pierce Transit.

11. WAGE AND HOURS LAW COMPLIANCE: Contractor shall comply with all applicable provisions of the Fair Labor Standards Act and all other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall at all times save Pierce Transit free, clear and harmless from all actions, claims and expenses arising out of said Act and rules and regulations that are or may be promulgated in connection herewith.

12. SOCIAL SECURITY AND OTHER TAXES: Contractor assumes full responsibility for the payment of all payroll taxes, use, sales, income or other form of taxes, fees, licenses, excises, or payments required by any city, county, federal or state legislation which is now or may during the term of the Contract be enacted as to all persons employed by the Contractor and as to all duties, activities and requirements by the Contractor in performance of the work on this project and under this Contract and shall assume exclusive liability thereof, and meet all requirements there under pursuant to any rules or regulations.

13. INSURANCE:

- A. The Contractor shall procure and maintain for the duration of this Contract liability insurance against claims for injuries to persons or damage to property or business losses that may arise from or in connection with the Contractor's own work including the work of the Contractor's agents, representatives, employees, Subcontractors or Subcontractors' employees.
- B. Pierce Transit shall be named as an additional insured on the following Contractor's liability insurance policies, and before beginning work, Contractor shall provide Certificates of Insurance listing Pierce Transit as an additional insured on policies providing the types and minimum limits of coverage as follows:
 - 1. Business auto coverage for any auto no less than \$1,000,000 per accident limit.
 - 2. Commercial general liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employer's liability.
 - 3. Pierce Transit reserves the right to receive a certified and complete copy of all of the Contractor's current insurance policies with all endorsements upon fifteen (15) days' notice.
- C. The Contractor is responsible for the payment of any deductible or self-insured retention that is required by any of the Contractor's insurance carriers. If Pierce Transit is required to contribute to the deductible under any of the Contractor's insurance policies, the Contractor shall reimburse Pierce Transit the full amount of the deductible.
- D. It is the intent of this Contract for the Contractor's insurance to be considered primary in the event of a loss, damage or suit. Pierce Transit's own insurance will be considered excess coverage in respect to Pierce Transit. Additionally, the Contractor's commercial general liability policy must provide cross-liability coverage as would be achieved under a standard Insurance Services Organization (ISO) separation of insureds clause.
- E. The Contractor shall request from his insurer a modification of the ACORD certificate to include language that notification will be given to Pierce Transit for any cancellation, suspension or material change in the Contractor's coverage.

14. DEFENSE AND INDEMNIFICATION AGREEMENT: To the extent permitted by law, the Contractor shall specifically and expressly defend, indemnify, and hold harmless, Pierce Transit, its officers, agents and employees at its own expense from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatsoever kind in nature, including reasonable attorneys' fees and claims by the employees of the Contractor, arising out of and in connection with performance of this Contract as a result of Contractor's own acts or omissions. Contractor agrees that Pierce Transit is entitled to select and appoint its own counsel for defense of any suit, claim or action subject to the defense and indemnity provisions herein. If such suits, claims, actions, losses, costs, penalties, and damages are caused by or result from the concurrent negligence of the Contractor and Pierce Transit, then this defense and indemnity provision shall be valid and enforceable only to the extent of the Contractor's negligence. In instances of alleged concurrent negligence, Contractor shall provide a defense to Pierce Transit pending the final determination of Contractor and Pierce Transit's proportionate share of negligence, if any. Further, Contractor shall not be required to hold Pierce Transit harmless or defend Pierce Transit, its officers, agents, and employees from any and all suits, claims, actions, losses, costs, penalties, and damages arising from the sole negligence of Pierce Transit, its officers, agents, and employees. This indemnification obligation shall include, but is not limited to, all claims brought against Pierce Transit by an employee or former employee of the Contractor.

The indemnification provided herein shall apply to and require each party to defend, indemnify and hold harmless the other party for claims brought by an employee of one party against the other party if said claims are alleged to have arisen from the alleged negligent actions or omissions of the employee's employer, and in such case, the Contractor and Pierce Transit, with respect to each other only, waive and will not assert against each other, any immunity under the Washington State Industrial Insurance Act (RCW Title 51). This waiver is limited to actions by and between the Contractor and Pierce Transit only and does not extend to the employees of either party. The Contractor and Pierce Transit expressly do not waive their immunity against claims brought by their own employees.

The parties' rights and obligations with regard to defense and indemnity provisions will survive the termination or expiration of this Agreement.

15. DISPUTE RESOLUTION: Any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be subject to the dispute resolution procedures in this Subparagraph. Prior to the initiation of any action or proceeding to resolve disputes between Pierce Transit and Contractor, the parties shall make a good faith effort to resolve any such disputes by negotiation between representatives with decision-making power, who shall not have substantive involvement in the matters involved in the dispute, unless the parties otherwise agree. Failing resolution, the parties shall attempt to resolve the dispute through a mediation conducted by a person(s) or organization experienced in mediation initiated within thirty (30) days from the date of the request unless extended by agreement of both parties. The positions expressed and mediator's recommendations, if any, shall not be admissible as evidence in any subsequent proceeding. At all times during the course of any unresolved dispute between the parties, the Contractor shall supervise, direct and perform the Work in a diligent and professional manner and without delay as provided under the terms of the Contract. The good faith completion of

negotiation efforts and mediation pursuant to this Article shall be a prerequisite to the filing of any litigation.

16. CONTENT AND UNDERSTANDING: This Contract contains the complete and integrated understanding and agreement between the parties and supersedes any previous understanding, agreement or negotiation whether oral or written.

17. GOVERNING LAW AND VENUE: This Contract and the rights and obligations of the parties hereunder shall be governed by the laws of the State of Washington. Pierce County Superior Court shall be the venue for any legal action.

18. SEVERABILITY: If one or more of the Contract clauses is found to be unenforceable, illegal or contrary to public policy, the Contract will remain in full force and effect except for the clauses that are unenforceable, illegal or contrary to public policy.

19. TERMINATION OF CONTRACT

A. Termination for Convenience:

Pierce Transit for its convenience may terminate this Contract, in whole or in part, at any time by written notice to the Contractor. After receipt of a Notice of Termination, and except as directed by the Pierce Transit, the Contractor shall immediately stop work as directed in the Notice, and comply with all other requirements in the Notice. The Contractor shall be paid its costs, including necessary and reasonable Contract close-out costs and profit on that portion of the work satisfactorily performed up to the date of termination as specified in the Notice. The Contractor shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Contractor has any property in its possession belonging to Pierce Transit, the Contractor will account for the same and dispose of it in the manner Pierce Transit directs. All termination payment requests are subject to cost/price analysis to determine reasonableness and compliance with the Contract, the Contract termination agreement, applicable laws and regulations.

B. Termination for Default:

In addition to termination for convenience, if the Contractor does not deliver supplies in accordance with the Contract delivery schedule, or if the Contract is for services and the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any other material provisions of the Contract, Pierce Transit may terminate this Contract, in whole or in part, for default. Termination shall be effected by serving a Notice of Termination on the Contractor, setting forth the manner in which the Contractor is in default and the effective date of termination. The Contractor will only be paid the Contract price for goods delivered and accepted, or services performed in accordance with the manner of performance set forth in the Contract less any damages to Pierce Transit caused by such default. All termination payment requests are subject to cost/price analysis to determine reasonableness and compliance with the Contract, the Contract termination agreement, applicable laws and regulations. If the Contractor has

any property in its possession belonging to Pierce Transit, the Contractor will account for the same and dispose of it in the manner Pierce Transit directs.

If the Contract is terminated, the rights, duties and obligations of the parties, including compensation to the Contractor, shall be determined in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this Contract. The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of Pierce Transit hereunder in any manner.

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

Pierce Transit in its sole discretion may, in the case of a termination for breach or default, allow the Contractor fourteen (14) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Pierce Transit's satisfaction the breach or default or any of the terms, covenants, or conditions of the Contract within fourteen (14) calendar days after receipt by Contractor of written notice from Pierce Transit setting forth the nature of said breach or default, Pierce Transit shall have the right to terminate the Contract with a written 30-day cancellation notice without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Pierce Transit from also pursuing all available remedies against Contractor and its sureties for said breach of default.

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

C. Termination or Suspension for Non-Appropriation

Pierce Transit's Board of Commissioners may cancel this Contract at the end of the then current fiscal period for non-appropriation of funds. Such cancellation shall be upon thirty (30) days written notice to the Contractor. Pierce Transit's fiscal period ends December 31 of each year. If the Contract is terminated as provided in this subsection Pierce Transit will be liable only for payment in accordance with the terms of this Contract for costs incurred prior to the effective date of termination; and the Contractor shall be released from any obligation to provide further services pursuant to the Contract as are affected by the termination. If the Contractor has in its possession any property

belonging to Pierce Transit, the Contractor shall account for same and dispose of it in the manner Pierce Transit directs.

Funding under this Contract beyond the current appropriation year is conditional upon the appropriation by the Pierce Transit Board of Commissioners of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, the Contract will terminate at the close of the current appropriation year and the termination will be processed as a termination for convenience. Termination may be for all or part of the contract. In addition, Pierce Transit reserves the right to suspend delivery of all or part of an order if it is in the best interest of the Agency.

20. PAYMENT

Payment will be made within thirty (30) days of receipt of a correct invoice. Incorrect invoices will be subject to rejection or correction by Pierce Transit

21. CANCELLATION

If the Contractor fails to comply with the conditions of these specifications, Pierce Transit may cancel the Contract by providing a thirty (30) day written notification of intent to cancel the Contract