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REQUEST FOR PROPOSALS

SEALED PROPOSALS will be received by Pace's Purchasing Department, 550 West Algonquin Road, Arlington Heights, Illinois 60005 until 3:00 PM on the day(s) listed for the purpose of purchasing the following material or service:

DESCRIPTION

OPENING DATE

RFP No. 409202
Technical Support for Pace's HP3000 Applications

February 24, 2012

This procurement/project may be funded in major part by the U.S. Department of Transportation, Federal Transit Administration ("FTA") and the Illinois Department of Transportation ("IDOT") and/or the Regional Transportation Authority ("RTA"), pursuant to financial assistance agreements with said agencies.

All proposals must be only in the form prescribed by Pace, and must be made in accordance with this Request for Proposals, and other Contract Documents, all of which are on file available for examination at the office of Pace at the above address and are made a part of this notice as though fully set forth herein. Copies of these documents can be obtained by downloading them from Pace's website, www.pacebus.com. They may also be obtained upon written request to the Pace Purchasing Department, 550 W. Algonquin Road, Arlington Heights, IL 60005, or by calling 847-228-4238.

Pace reserves the right to reject any proposal or any part or parts thereof or to reject any and all proposals.

Pace, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-4 and Title 49, Code of Federal Regulations, Subtitle A, Part 21 (non-discrimination in Federally assisted Programs of the Department of Transportation) issued pursuant to said Act hereby notifies all Proposers that it will affirmatively ensure that Disadvantaged Business Enterprises will be afforded full opportunity to submit proposals in response to this Invitation and will not be discriminated against on the grounds of race, color, creed, or national origin in consideration for an award.

All Proposers will be required to certify that they are not on the Comptroller General's list of ineligible contractors.

Bid Published Date:
January 27, 2012

PACE SUBURBAN BUS SERVICE
By: Susan Jung Lundy
Purchasing Department Manager



Thomas J. Ross
Executive Director

January 27, 2012

SUBJECT: Request for Proposal No. 409202
Technical Support for Pace's HP 3000 Applications

Ladies/Gentlemen:

Pace, the Suburban Bus Division of the Regional Transportation Authority, is seeking proposals for the services of qualified Contractor to provide support for Pace's HP 3000 Applications. The offeror must submit a proposal that utilizes the approach as described in the attached Scope of Work.

Proposals are due by 3:00 P.M on February 24, 2012. Proposals received after this time and date will not be accepted. All submittals should be clearly marked with the RFP No.409202, the title, "Technical Support for HP 3000 Applications" and the RFP due date of February 24, 2012.

- a) Submit the original agreement contract along with all exhibits in their entirety. To be a valid submission, the agreement contract must be signed, dated and submitted on the RFP due date and all forms must be completed, date, signed, and/or notarized (when applicable). The contract and exhibits submitted shall be the originals provided with this bid package and shall not be altered or modified. Any exceptions to the terms and conditions of the contract shall be clearly detailed in a *Request for Change to Terms and Conditions* form which is included as Exhibit E.
- b) Submit one original and three copies of your technical proposal. See the technical proposal section included in Exhibit A for specific requirements for this RFP.
- c) Include only one copy of your original price proposal (Exhibit C) in an envelope clearly marked with the RFP number, title, and due date. The price proposal is to be submitted separately, but concurrently with your technical proposals and the original agreement contract/exhibits.

Proposals will be evaluated and the award made on the basis of the technical and price criteria contained in the proposal documents. The technical evaluation factors are listed in descending order of importance. Technical evaluation factors will be worth 70% of the total proposal score and price will be worth 30%.

Pace reserves the right to award this contract without discussion therefore offerors should put forth their best efforts in preparing their proposal to permit a thorough evaluation. Questions regarding this RFP shall be submitted in writing to my attention at kristine.hennessy@pacebus.com or via fax at 847-228-4204 no later than 3:00 PM, ten (10) business days prior to the RFP closing date of February 24, 2012.

Should you require any additional information, you may contact me at (847) 228-2401.

Sincerely,

Kristine Hennessy
Senior Contract Buyer

AGREEMENT CONTRACT
PACE SUBURBAN BUS SERVICE

THIS CONTRACT is entered into (to be completed by Pace), by and between Pace, the Suburban Bus Division of the Regional Transportation Authority, an organization under the laws of the State of Illinois (hereinafter called Pace) and (to be completed by Pace) hereinafter called (Contractor) having regional offices located at (to be completed by Pace)

1. Scope and Description of Services: The contractor shall provide technical support services for Pace's HP 3000 legacy applications as fully described in the attached exhibits. This is an ***Indefinite Delivery/Indefinite Quantity*** Contract with firm, fixed rates for services to be performed on an as-needed basis. Compensation will be based solely on the tasks approved by Pace and in accordance with the fees and rates included in this Exhibit C. The contract maximum is 1,960 hours per year. This is a not-to-exceed contract maximum and not a firm commitment to purchase.
2. Basis of Award: Award will be made to the vendor who represents the best overall value to Pace. This Contract shall be effective as of the date when it is signed by Pace and a fully executed Contract is mailed to the winning proposer.
3. Terms of Payment for Services: Compensation for services by the Contractor shall be paid in accordance with this section, but total compensation shall not exceed the sum of (**\$ to be completed by Pace**). All payments shall be made in accordance with the following:
 - a. Invoicing – The Contractor will invoice Pace Accounts Payable, 550 W. Algonquin Road, Arlington Heights, IL 60005 based on services rendered and expenses incurred. All invoices must show Pace Contract Number (to be completed by Pace). Payment will be made within 30 days of receipt of an approved invoice. In order to ensure timely payment of all invoices, CONTRACTORS ARE REQUIRED TO:
 - (1) CERTIFY that invoices reflect actual services rendered and costs that were incurred, and that payment is due. This certification is to be signed and must appear on the Contractor's invoices. Failure to include the certification with the invoices may be cause for delay in payment until the required certification is received.
 - (2) IDENTIFY the level of personnel who have completed the task(s) being billed, their hourly rate(s), and the number of hours worked on each task.
 - (3) ATTACH a detailed description of the work included in each completed task being billed on the invoice. The Contractor shall prepare and submit progress reports which describe the work already performed and anticipated during the coming time period as set forth elsewhere in these documents. The invoice shall include the description of services and location services were rendered

- (4) ATTACH a detailed listing, in an invoice or series of invoices, of all equipment furnished to Pace as part of this Contract. All equipment should be itemized with corresponding part/model and serial numbers where applicable. The itemized listing shall be provided on an invoice with the shipment date and delivery location indicated. If the Contractor's invoices are billed as progressive or acceptance payments, any equipment shipped to Pace during that billing period must be itemized on an invoice with the associated cost for each item.
 - (5) MAINTAIN on file a copy of all subcontractor's invoices paid by the Contractor on behalf of Pace. Subcontractor's invoices should be clearly identified as line item references on the Contractor's invoice. If equipment is provided and shipped to Pace by a subcontractor or the Contractor's outside supplier, the Contractor is responsible for obtaining and submitting the itemized listing of equipment that is shipped to Pace.
- b. Payment – Payment will be made thirty (30) days after receipt of an approved invoice minus 0% retention. Pace will pay the 0% retention upon final acceptance of the services contracted for herein.
4. Time for Completion of Services: The Contractor shall complete all services described herein within 24 months from the effective date of this Contract and agrees to complete each phase of the work in accordance with the schedule of work, if applicable, as set forth elsewhere in these documents. The contract shall commence July 16, 2012 and shall be valid for a period of 24 months.
5. Contract Documents: The following Exhibits are attached hereto and made a part hereof and shall become a part of any contract award. If there is any conflict in the provisions contained in these Exhibits, then the more stringent shall take precedence.

Exhibit A: Scope of Work

Exhibit B: General Contract Conditions

Exhibit C: Price Proposal

Exhibit D: Insurance Requirements

Exhibit E: Pace Locations

Exhibit F: Request for Change to Terms and Conditions (if proposed and if accepted)

Exhibit G: Contractor's Technical Proposal
6. Pace DBE Requirements: Pace has determined that ZERO PERCENT (0%) DBE participation is required for this contract.
7. Insurance Requirements: The successful proposer will be required to provide evidence of all required insurance coverage, limits, endorsements, etc. for the duration of the contract plus two additional

years. Evidence of required insurance coverage shall be provided on an Acord 25-S (or equivalent) Certificate of Insurance form. The Certificate of Insurance and required policy endorsements (CG 20 10 or CG 20 37 or CG 20 26, CA 2048, etc.) must be submitted to and approved by Pace **prior to** contract award and **prior to** the required insurance policy expiration date. For a complete list of all insurance coverage requirements, please see Exhibit D of this RFP.

8. Indemnification: The Contractor shall indemnify, keep and save harmless Pace, its agents, officials and employees against all injuries, losses, claims, suits, costs and expenses which may accrue against Pace arising out of the services or products provided under this Contract, including any copyright or patent infringement or claim of such infringement arising from the intended use of goods or services furnished hereunder. The Contractor agrees to indemnify and hold harmless Pace, its employees and Officers, from any and all claims by persons or entities that may arise out of and in the course of its performance of this contract, and from any and all claims by its subcontractors, employees or independent contractors which may arise out of and in the course of performance of this contract. Any and all claims for unemployment benefits and worker's compensation benefits are expressly waived by the Contractor, its subcontractors, employees, and independent contractors, who agree to maintain separate policies of insurance as hereinafter are provided in this agreement. The Contractor shall retain independent counsel and at its expense shall assume and defend all claims, demands and suits covered in this indemnification section.
9. Retention of Records: The Contractor shall maintain records to verify the actual time devoted and costs incurred. These records shall be maintained for a minimum period of five years after completion of the contract at which time the Contractor may request permission from Pace to dispose of the records. Upon fifteen (15) days notice from Pace, all time sheets, billings, and other documentation used in preparing said records shall be made available for inspection, copying, or auditing by Pace at any time during normal business hours at Pace's headquarters location.
10. Ownership of Records: Pace shall retain ownership of all plans, specifications, and related documents, and all other documents, including but not limited to those mentioned above, prepared by the Contractor under the contract.
11. Audit and Inspection of Records: The Contractor shall permit the authorized representative of Pace, the Regional Transportation Authority, the State of Illinois, the U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit all data and records of the Contractor relating to his performance under the Contract. Contractor acknowledges and agrees that representatives of the Office of Executive Inspector General and Office of Inspector General of Pace, have the authority and ability to: examine any record, information, data, reports, plans, projections, matters, contracts, correspondence, or other materials, and interview any employee, officer, or agent of Contractor with respect to performance of the terms, and provision of goods and/or services of this contract. Contractor agrees to cooperate fully and expeditiously with any investigation or audit conducted by an Inspector General.
12. Termination for Insufficient Funds: It is expressly agreed that Pace's obligation to pay for the services provided under this Contract shall be limited to the availability of funds from (1) Pace's revenues and budget for the fiscal years covered by this Contract and from (2) funds that may be received from the Federal Transit Administration, the Illinois Department of Transportation, the Regional Transportation Authority, and/or other funding agencies to be specifically applied for the services provided under this Contract. In the event that Pace determines that funds are not available

from these sources to pay any remaining unpaid part or parts of the Contract, Pace's obligations to pay such unpaid part or parts of the Contract shall be terminated immediately and Pace shall have no further obligations under the Contract in respect to payment, with the exception of payment for authorized services already performed and costs already accrued.

13. Proposal Submittal Check List: (The following documents should be submitted with your proposal or it may be considered non-responsive.)

- ☐ Return **all** original proposal documents, please ensure that the contract is signed and dated*
- ☐ Sign and **notarize** the Non-Collusion Affidavit
- ☐ Sign the Contractor's Certification Regarding Suspension and Debarment
- ☐ Acknowledge any addenda on page 5 of this Agreement Contract; submit all documents as instructed by the addenda
- ☐ Complete and sign the Certification of Restrictions on Lobbying
- ☐ Submit your Price Proposal in a separate envelope marked Price Proposal for RFP No. 409202 for Technical Support of Pace's HP3000 Applications

* There is an understanding that the vendor's submissions, if including Request for Change to Terms and Conditions set forth in this RFP as allowable in Exhibit B, Section A, Article 15, is conditional upon successful negotiations with Pace.

Addendum Acknowledgment: The proposer hereby acknowledges receipt of the following Addenda that are incorporated herein by reference. (If there were No Addenda, write NONE) _____. **Failure to acknowledge Addenda may be cause for the proposal to be considered non-responsive.**

Addendum No. ____

Addendum No. ____

Addendum No. ____

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the dates recited below:

CONTRACTOR

PACE

Company Name

Signature

Street Address

Printed/Typed Name

City, State & Zip Code

Title

Authorized Signature

Date

Date

Printed/Typed Name

Title

Telephone Number and Fax Number

E-mail Address

REQUEST FOR PROPOSAL NO. 409202
TECHNICAL SUPPORT FOR PACE'S HP 3000 APPLICATIONS
SCOPE OF WORK

GENERAL INFORMATION

Pace has a number of legacy applications that support our business that are running on Pace's HP 3000 server. Because HP decided to discontinue manufacturing the HP 3000 server, Pace saw this as an opportunity to acquire modern and more functional technology. A new project to seek and implement an alternative solution was established and called the **HP 3000 Migration Project**. Subsequently, Pace began replacing its legacy applications with Oracle EBS in several phases, see summary below.

Phase	Description	Status
<i>Phase I & II</i>	<i>Procurement, Order Management, iStore, General Ledger, Accounts Receivable, Accounts Payable and Grants Accounting</i>	<i>Completed</i>
<i>Phase IIIA, Parts IA, IB & IC</i>	<i>eAM & Inventory Re-Evaluation & Conference Room Pilot (First Draft)</i> <i>Oracle Assets Conference Room Pilot (First Draft)</i>	<i>Completed</i>
Phase IIIB, Parts I & II	eAM and Inventory Conference Room Pilot Baseline & Implementation	RFP Development (not issued to date)

The current Oracle EBS phase Pace is in the process of implementing is Phase III for EAM and Inventory. A future phase is Human Resources which is tentatively targeted for 2013. As the Oracle EBS modules are configured, developed and implemented, Pace must continue supporting HP 3000 legacy applications that are waiting to be moved to Oracle or to some other platform. As part of the ongoing HP 3000 Migration Project, Pace requires assistance on building interfaces to the legacy system, converting legacy data and moving data into the applicable Oracle EBS database, the Oracle data warehouse or other databases as needed.

CONTRACT TYPE

This is an **Indefinite Delivery/Indefinite Quantity** Contract with firm, fixed rates for services to be performed on an as-needed basis. Compensation will be based solely on the tasks approved by Pace and in accordance with the fees and rates included in Exhibit C. The contract maximum is 1,960 hours per year. This is a not-to-exceed contract maximum and not a firm commitment to purchase.

SCOPE OF SERVICES AND TASKS

1. The Contractor shall provide general technical support for Pace's legacy HP 3000 applications which includes the Transit Information System (TIS), Fixed Assets, Bus Operations, Paravehicle, Request Control System (RCS), Grants Management, Vanpool Management, Safety, and Farebox Collections.
2. The Contractor staff assigned to this project shall complete the following specific production tasks:
 - a. development and implementation of required interfaces
 - b. downloading and converting legacy data into the Oracle EBS database, the Oracle data warehouse or other databases, as applicable
 - c. defining and developing reports using Powerhouse, Crystal Reports, and Oracle's Discoverer tool
3. The Contractor shall be assigned special projects from time to time. Special projects shall require business and technical analysis expertise, experience developing project plans and overseeing the execution of plans.
4. The Contractor shall be required to document all their work in accordance with Pace standards.

CONTRACTOR QUALIFICATIONS

1. The Contractor shall provide qualified staff knowledgeable and experienced in the HP 3000 system including the operating system, utilities, Cognos Powerhouse toolset and the Turbo Image database.
2. The Contractor shall provide qualified staff with verifiable hands-on expertise in Cobol, QTP, QDesign, Turbo Image, Adager, Quick, Quiz, and QEdit in an HP 3000 environment and Crystal Reports and Oracle's Discoverer tools for developing reports in a Business Objects XI environment.
3. Assigned staff shall be knowledgeable and experienced in full life cycle development, business and technical analysis, project management and planning and be articulate and logical in communicating verbally and in writing.
4. Assigned staff shall have previous experience creating project briefs, project plans, and managing projects. Knowledge of transportation systems or having worked in a transportation company is highly desirable.

CONTRACT REQUIREMENTS

1. Familiarization, training, and gaining knowledge about Pace's network environment will be the responsibility of the Contractor.
2. Contractor staff may be required to provide their own laptops which will be connected to Pace's network after Pace has determined that the laptop uses virus detection/protection software, updates are current and that it is set to automatically download update files.
3. Contractor staff is strictly prohibited from accessing internet sites at Pace that do not directly relate to the scope of work of the Contract. Any exceptions must be discussed with Pace MIS Management before that site is accessed.
4. Pace reserves the right to interview and approve all Contractor staff assigned to this Contract prior to the performance of any work. Contractor shall provide a copy of the proposed staff's resume (with the Contractor verifying work history, experience, and skills) at least 10 business days before staff begins work on the project. At the sole discretion of Pace, a criminal and financial background check may be required at the time the Contractor's staff begins work. Pace will review all required documentation and as a last step, interview, and approve or reject the proposed staff.
5. Contractor staff assigned to this Contract shall comply with all Pace policies that apply to Pace employees.
6. Contractor staff assigned to this Contract must be in good standing with the Contractor.
7. The Contractor shall assign the individual(s) proposed for this assignment to complete the work required. No substitutions shall be allowed without Pace approval.
8. The Contractor shall not remove the assigned consultant(s) without Pace's written consent. Any substitutions of consultant(s) shall be timely so as not to impede contract progress and made only with persons of equal abilities and qualifications.
9. Pace reserves the right to direct the removal of any consultant(s) assigned to this Contract. If the Contractor fails to provide suitable and timely replacements, Pace may equitably adjust the contract amount to compensate for the loss. The Contractor shall not provide consultants that Pace discovers are learning on the job and/or are not as qualified as represented by the Contractor. Pace reserves the right to deny the Contractor removal of staff it determines as essential to the successful completion of tasks or projects.
10. All Contractor work products shall conform, where applicable, to Pace standards and shall be easily maintainable by others.

PLACE OF PERFORMANCE

All work shall be performed at Pace Headquarters, 550 West Algonquin Road, Arlington Heights, IL 60005 or at other Pace locations as needed and determined by Pace, see Exhibit E for Pace locations.

PERIOD OF PERFORMANCE

The period of performance will be for two years with a maximum of 1,960 hours per year. The contract shall commence July 16, 2012 and shall be valid for a period of 24 months.

EVALUATION CRITERIA

The Evaluation Committee will score each proposal according to the general evaluation criteria and scoring system described below. Technical proposals will be weighted at 70% and price will be weighted at 30% of the evaluation. Evaluation of price is kept separate from the technical scoring of the proposal. Do not include any pricing information in your technical proposal.

Technical Criteria

Technical proposals will be evaluated based on the following criteria, which are listed in descending order of importance.

1. HP 3000 legacy system hands-on technical skills

- Operating system and utilities
- Cobol, QTP, QDesign, MPEX, Turbo Image, Adager, Quick Quiz and QEdit to support/troubleshoot and/or code applications
- Develop, code, and test interfaces to other systems
- Develop, code, and test data conversions to Oracle and other databases

2. Report development skills

- Developing requirement specifications
- Develop, code, test and implement reports using Crystal Reports, Powerhouse, and Oracle's Discoverer tool

3. Business and technical analysis and full life cycle development skills

- Performing business and technical analysis including developing and/or evaluating business workflow processes and technologies
- Transportation industry experience

4. Project management and planning experience

- Developing and maintaining project plans
- Managing project team tasks and activities
- Managing project change control
- Managing user expectations

Price Criteria

Pricing will be evaluated and scored on the basis of the Grand Total included on Exhibit C.

PROPOSAL CONTENT AND RFP SUBMISSION REQUIREMENTS

Contract Documents

Submit the original ***Agreement Contract*** with all exhibits in their entirety. To be a valid submission, the agreement contract must be signed, dated and submitted on the RFP due date.

All forms must be completed, dated, signed and/or notarized (when applicable). The contract and exhibits submitted shall be the originals provided with the solicitation package and shall not be altered or modified.

Any exceptions to the terms and conditions of the contract shall be clearly detailed in a ***Request for Change to Terms and Conditions*** form which is included as Exhibit F.

Technical Proposals

Submit one original and 3 copies of your technical proposal. Technical proposals shall provide a straight-forward, concise description of Contractor's capabilities to satisfy the requirements of the RFP and will be incorporated as an exhibit in the final contract. Pace shall not be liable for any expense incurred in the preparation of the proposals. Pace shall be under no obligation to return any responses to this RFP or other materials submitted as a result of this RFP.

Technical proposals shall provide a straightforward, concise description of the Contractor's capabilities to satisfy the requirements of the RFP. Pace shall not be liable for any expense incurred in the preparation of the proposals. Pace shall be under no obligation to return any responses to this RFP or other materials submitted as result of this RFP.

1. Submit identity and resume of the staff to be assigned to this contract. Background information, qualifications and responsibilities under the proposed program shall be included. Highlight areas applicable to each of the ***Technical Criteria*** provided later in this document.
2. Provide the necessary information to thoroughly address each of the four (4) skill requirements listed in the ***Technical Criteria*** section below. Specifically cover each bullet within criteria 1-4.
3. Include a copy of each Technical Criteria in your proposal and indicate the years of experience next to each bullet point.

Price Proposal

Submit only one copy of your original price proposal (Exhibit C) in an envelope clearly marked with the RFP number, title and due date. The price proposal is to be submitted separately, but concurrently with your contract documents and technical proposals.

RFP PROCESS

Properly submitted proposals will be evaluated based on the criteria described in an earlier section. **Successful proposals may be further evaluated through oral presentation and interview** and additional negotiations (including the Best and Final Offer process). Award will be made to the vendor who represents the best overall value to Pace. Questions regarding this RFP shall be submitted in writing to Kristine Hennessy, Senior Contract Buyer at kristine.hennessy@pacebus.com no later than ten (10) business days prior to the RFP closing date. The RFP closing date is February 24, 2012 at 3:00 PM. Proposals submitted after this date and time will not be accepted.

ILLINOIS FREEDOM OF INFORMATION ACT/CONFIDENTIALITY

As a government agency, Pace is subject to the Illinois Freedom of Information Act (5 ILCS 140/1, et. seq. as amended). Therefore, the contents of this Request for Proposals (RFP) and the Contractor's proposal submitted in response to this RFP are subject to the Illinois FOIA statutes. However, there are various items that may be exempt. If any proprietary, privileged, or confidential information or data is included in the Contractor's proposal, ***each page that contains this information or data should be marked as such (e.g., "Proprietary and Competition Sensitive")*** in order to indicate your claims to an exemption provided in the Illinois FOIA.

It is Pace's sole right and responsibility, however, to make the determination whether these items are exempt or not exempt under the Illinois FOIA statutes. ***See Exhibit B for additional details.***

PACE SUBURBAN BUS SERVICE
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SERVICE CONTRACTS
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PACE SUBURBAN BUS SERVICE
INSTRUCTIONS TO CONTRACTORS & GENERAL CONTRACT CONDITIONS

The following instructions, terms and conditions shall apply to Pace solicitations and Contracts. All Bidders or Proposers shall be referred to as "Contractors" and all bids or offers as "Bids" or "Bid Quotations" in this section of the Contract.

SECTION A - INSTRUCTIONS TO CONTRACTORS & GENERAL TERMS AND CONDITIONS

1. Conditions of Acceptance of Bid: This Invitation for Bid or Request for Proposal expressly limits acceptance to the terms and conditions stated herein and any supplementary or additional terms and conditions annexed hereto or incorporated herein by reference. Any additional or different terms and conditions proposed by the Contractor are objected to and hereby rejected unless accepted by Pace prior to the time and date of bid opening. The Contractor further understands and agrees that if this bid is accepted, the Contractor is to furnish any and all of the services upon which prices are quoted, at the price and delivery time stated, subject to all terms, conditions, and requirements set forth in the bid and in the resulting Contract. Pace reserves the right to extend the bid quotation opening date and to reject any or all bid quotations or any part thereof. Pace further reserves the right to excuse informalities in the bid quotations and bidding when, in the judgment of Pace, the best interests of Pace will be served and the spirit of competition will be maintained.

Any questions regarding this Invitation for Bid must be submitted no later than seven (7) business days prior to the bid opening unless stated elsewhere in the solicitation documents. Questions submitted after this date will not be accepted.

Award shall be made by mailing a properly executed Contract to the successful bidder.

2. Authorities and Limitations

- 2.1 This Contract is made and shall be interpreted under the laws of the State of Illinois and Contractor agrees and consents that only the courts of Illinois and Federal appellate courts shall have jurisdiction over controversies arising out of this Contract.
- 2.2 The articles, sections, paragraphs or other headings shown are for convenience and reference only and in no way define, limit or describe the scope or intent of this Contract or its Exhibits.
- 2.3 This Contract together with any other document expressly incorporated herein contain the entire agreement between the parties hereto and there are no prior or contemporaneous oral or written understandings or agreements binding on Pace affecting the subject matter of this Contract other than those expressly referred to therein. No agreement, other understanding or acknowledgment, invoice, or other form used by the Contractor to modify or alter the provisions of this order resulting from acceptance by Contractor of this Contract will be binding upon Pace unless made in writing and signed by Pace's authorized representative.
- 2.4 All services/work shall be performed under the direction of the Pace Purchasing Department Manager who alone shall have the power to bind Pace and to exercise the rights, responsibilities, authorities and functions vested in him by the Contract documents, except that he shall have the right to designate authorized representatives to act for him. Wherever any provision in this Contract specifies an individual (such as, but not limited to, Engineer, Resident Engineer, Inspector, Site Manager or Architect) or organization, whether Pace or private, to perform any act on behalf of or in the interests of Pace, that individual or organization shall be deemed to be Pace Purchasing Department Manager's authorized representative under this Contract but only to the extent so specified.

The Pace Department Manager, Purchasing may, at any time during the performance of this Contract, vest in any such authorized representatives, additional power and authority to act for him or designate additional representatives, specifying the extent of their authority to act for him or designate additional representatives to the extent deemed necessary by him.

- 2.5 The Contractor shall perform the Contract in accordance with any order (including but not limited to instruction, direction, interpretation or determination) issued by an authorized representative in accordance with the authority to act for the Pace Department Manager, Purchasing; but the Contractor assumes all the risk and consequences of performing the Contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) of anyone not authorized to issue such order.
3. Withdrawal of Bids: Once submitted, bids may only be withdrawn with Pace's consent prior to bid opening and may be superseded by a subsequent timely bid. Any bid received after the time and date specified for opening, or any postponement thereof, will not be considered. Bids shall be irrevocable for a period of ninety (90) days after the opening thereof by Pace.

4. Errors in Bids: The Contractor is cautioned to verify any Bids made before submission. No bid may be withdrawn or changed after it has been opened unless Pace has determined:
 - a. That an obvious mistake of a mechanical or clerical nature was actually made; not just an error in judgment, such as underestimating material or service costs.
 - b. That the "mistaken" Contractor was not guilty of culpable negligence in making the error, or in delay in communicating the fact to Pace on discovery.
5. Irregular Bids: The Contractor understands that the bid must show the unit prices for all services which are proposed to be furnished, and that extensions must be shown and that if not so shown, their bid may be rejected as irregular.
6. Performance: It is understood and agreed that time of performance is of the essence of this Contract. If the Contractor is delayed in the performance of the services purchased under the Contract by a cause beyond his control, he must immediately upon receiving knowledge of such delay, give written notice to Pace and request an extension of time for completion of the Contract. Pace shall examine the request and determine if the Contractor is entitled to an extension. Pace shall notify the Contractor of the decision in writing.
7. Assignments: The Contractor agrees that neither this Contract nor any part of it or any of the monies due from this Contract may be assigned without the prior written consent of Pace. Any successor or assign under this Contract will be required to accede to all of the terms, conditions and requirements of this Contract as a condition precedent of such succession or assignment. Assignment of any portion of the work by subcontract must be approved in advance by Pace, in writing.
8. Waiver: Pace's failure to promptly enforce any of the conditions of this Contract shall not constitute a waiver of any of Pace's other rights.
9. Termination: Pace may terminate this Contract at any time hereafter, with or without cause, by giving written notice to the Contractor at the address specified above. Termination shall be effective upon receipt of such notice by the Contractor. If Pace terminates this Contract other than for breach thereof by the Contractor, Pace agrees to pay the Contractor, and Contractor agrees to accept as its sole remedy, cancellation charges equal to the remaining unpaid costs accrued and obligated to date of cancellation. In the event of breach or violation by the Contractor of any provision of the Contract, Pace may allow the Contractor a reasonable opportunity to cure the breach prior to termination under this provision. Upon termination of this Contract for breach by the Contractor, the Contractor assumes liability for all excess costs incurred by Pace to complete the Scope of Services specified in the Contract.
10. Price Warranty: The Contractor warrants that the unit price(s)/hourly rates(s) charged herein do not exceed the unit prices/hourly rates charged by the Contractor to any other customers in substantially similar transactions. The Contractor agrees to make any price rebate which this warranty may require.
11. Payment: Payments will be made in accordance with the terms in the Contract, or the Contractor's invoice, whichever are more favorable to Pace. The payment date shall be calculated from the receipt of invoice or final acceptance of the goods or services, whichever is later in accordance with the Local Government Prompt Payment Act. Under the Act, Pace will pay the Contractor within thirty (30) days of its approval of Contractor's invoice. Contractor agrees that it shall pay all subcontractors who have completed satisfactory work under the subcontract no later than thirty (30) days from receipt of payment by Pace. The Contractor further agrees to return any retainage payments withheld from subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Pace is exempt from State of Illinois and local taxes.
12. Warranties: The following warranty will apply unless otherwise provided for in the Contract documents. The Contractor warrants that articles or work products delivered hereunder shall be free from defects of material and workmanship and that all products furnished will conform to samples, specifications and/or drawings submitted as may be applicable, and are fit for the purpose for which purchased. The warranty period shall be for one (1) year from the date of delivery or date of final acceptance whichever is later. Pace may return any nonconforming or defective items or work products to the Contractor or require correction or replacement of the item at the time the defect is discovered, all at the Contractor's risk and expense. Acceptance of items or work products by Pace or payment therefore, shall not relieve the Contractor of his responsibilities hereunder.
13. Additional Charges: The price quoted for each service is the full purchase price, including delivery charges, and includes all premiums on bonds, material or service costs, patent royalties and all other overhead charges of every kind and nature. The Contractor warrants

that prices include all charges for packing, crating and transportation to F.O.B. points.

14. Contractors Record and Qualifications: The Contractor, within forty-eight hours after being requested in writing by Pace, shall furnish evidence satisfactory to Pace of the Contractor's ability and responsibility, financial and otherwise, to furnish the service specified in the manner and at the time prescribed and in accordance with the specifications of Pace.
15. Modifications to Contract
 - a. For Invitation for Bids (IFBs), request for any change in the Contract bid documents must be submitted and received in writing no later than ten (10) business days prior to the bid opening date.
 - b. For Request for Proposals (RFPs), requests for any change in the Contract proposal documents must be submitted as Contract exceptions along with the technical and price proposals on the RFP due date.
 - c. Request for any change in the Contract after award shall be submitted in writing to Department Manager Purchasing for his prior approval. Oral change orders are not permitted. No change in the Contract shall be made except in writing signed by the Department Manager of Purchasing or his designated representative. The Contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting, any specification change not properly ordered by written modification to the Contract and signed by Pace.
16. Cash Discounts: The Contractor offering the lowest bid shall be determined by comparing the gross individual unit prices, or the gross bid total, as applicable. Cash (early payment) discounts are not taken into consideration when determining the lowest bid.
17. Indemnification: The Contractor shall indemnify, keep and save harmless Pace, its agents, officials and employees against all injuries, losses, claims, suits, costs and expenses which may accrue against Pace arising out of the services or products provided under this Contract, including any copyright or patent infringement or claim of such infringement arising from the intended use of goods or services furnished hereunder. The Contractor agrees to indemnify and hold harmless Pace, its employees and Officers, from any and all claims by persons or entities that may arise out of and in the course of its performance of this Contract, and from any and all claims by its subcontractors, employees or independent contractors which may arise out of and in the course of performance of this Contract. Any and all claims for unemployment benefits and worker's compensation benefits are expressly waived by the Contractor, its subcontractors, employees, and independent contractors, who agree to maintain separate policies of insurance as hereinafter are provided in this agreement. The Contractor shall retain independent counsel and at its expense shall assume and defend all claims, demands and suits covered in this indemnification section.
18. Processing Data Between Years and Centuries: Hardware, software and firmware delivered under this Contract shall be able to accurately process data between years and centuries.
19. Regulatory Compliance: All services furnished hereunder by the Contractor shall comply with all Federal, State and local laws, rules and regulations as applicable, including, but not limited to:
 - a. Surface Transportation Assistance Act of 1982, Section 165a of Public Law 100-17 (Buy America).
 - b. The Occupational Safety and Health Act of 1970, and the Illinois Toxic Substance Act, with respect to the design, construction or use for their intended purpose of said goods or services and the labeling of all goods and containers for the protection and safety of persons and property.
20. Disclosures: The Contractor shall not use or disclose any data, designs or other information belonging to or supplied by or on behalf of Pace, unless expressly authorized in writing by Pace. Upon Pace's request, such data, designs or other information and any copies thereof shall be returned to Pace. Where Pace's data, designs or other information are furnished to the Contractor's suppliers for procurement of services by the Contractor for use in the performance of Pace Contracts, the Contractor shall insert the substance of this provision in its Contract.
21. Non-Collusion: In submitting a signed bid proposal to Pace, the Contractor warrants and represents that it has not paid and agrees not to pay any bonus, commission, fee or gratuity to any employee or official of Pace or to any other Contractor for the purpose of obtaining this Contract.
22. Conflict of Interest: Members of the Board, officers and employees of Pace, their spouses, their children, their parents, their brothers and sisters and their children, are prohibited from having or acquiring any Contract or any direct pecuniary interest in any Contract

which will be wholly or partially performed by the payment of funds or the transfer of property of Pace in accordance with Section 4.03 of the Pace Regulations Governing Public Bidding (Ordinance SBD 92-102).

23. Conflict In Provisions: In the event of a conflict between any of the terms and conditions contained in the base Contract and its referenced exhibits, the base Contract provisions shall apply unless otherwise provided for.
24. Approximate Quantities: Where approximate or estimated quantities are stated, the unit prices quoted in the bid will apply regardless of whether the actual quantities are greater or lesser than the assumed quantities, the stated total notwithstanding.
25. Equal Employment Opportunity: In connection with the execution of this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, national origin, ancestry, marital status, physical or mental handicap or unfavorable discharge from military service. The Contractor shall take affirmative actions to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, national origin, ancestry, marital status, physical or mental handicap or unfavorable discharge from military service. Such action shall include but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. If the Contractor is required to file an Affirmative Action Plan with any federal, state or local agency, the Contractor assures Pace that it is in full compliance with such filing requirements.

The Contractor agrees to comply with all provisions of the "Illinois Human Rights Act", 775 ILCS Title 5, as now or hereafter amended and with all rules, regulations, and guidelines on discrimination in employment as now or hereafter promulgated thereunder. All such provisions, rules, resolutions and guidelines, including but not limited to; Article VI "Equal Opportunity Clause" of the Rules and Regulations of the Department of Human Rights are hereby incorporated into the Contract by reference.

26. Disadvantaged Business Enterprise Compliance Requirements: Pursuant to Federal regulations for Disadvantaged Business Enterprise (DBE) programs, Contractor agrees to the following DBE assurances, and agrees to include this clause in all subcontracts:

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Pace deems appropriate.

PACE HAS SET A GOAL OF 0% DBE PARTICIPATION FOR THIS CONTRACT

SECTION I DBE RESPONSIVENESS REQUIREMENTS

In order to be considered responsive, a bidder must make good faith efforts to meet the goal for Disadvantaged Business Enterprise (DBE) participation in this contract. A bidder can accomplish this by:

- A. Properly complete and sign Schedule A (Summary of DBE Participation).
Schedule A must list the name, description of DBE's scope of work, and dollar amount of participation of each, and only each DBE that will participate in this contract. If the bidder is itself a DBE, the DBE bidder must indicate on Schedule A what scope of work its forces will actually perform outside of the work of any subcontractor, and the dollar amount of that work. If this amount does not satisfy the DBE goal, the DBE bidder must list the additional DBE subcontractor(s) that will satisfy the DBE goal, along with their scope of work and agreed upon subcontract amount(s).

ANY DBE(s) LISTED ON SCHEDULE A MUST BE DBE CERTIFIED BY THE ILLINOIS UNIFIED CERTIFICATION PROGRAM (IL UCP) AT THE TIME OF THE BID OPENING.

- B. Properly complete Schedule B (Confirmation of Proposed DBE Participation) of this Exhibit.

The bidder must comply with section A and B of this Paragraph 26, *Disadvantaged Business Enterprise Compliance Requirements* and submit all documentation with submittal of the bid. If the bidder fails to do so, its bid will be deemed non-responsive and will be rejected.

SECTION II DBE RESPONSIBILITY REQUIREMENTS

A. DBE Joint Ventures

If the bidder is a DBE joint venture, a two party signed joint venture agreement (Schedule D) must be submitted to Pace for Pace's approval along with your bid. This agreement must address the administrative, financial, and field responsibilities of each partner. The DBE participation must meet the criteria as set forth in the definitions in the following section "Calculating DBE Participation."

B. Substitutions

The bidder cannot substitute any DBEs listed on Schedule A or D (if a joint venture) without prior written approval from Pace.

SECTION III CALCULATING DBE PARTICIPATION

Pace will only count those DBEs that are certified by the IL UCP at the time of bid opening towards a Pace contract goal.

A. Definitions

"Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern that meets all of the following criteria:

1. 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 individuals
2. Whose management structure and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it
3. Is certified by the IL UCP at the time of bid opening

"Good Faith Efforts" means efforts to achieve a DBE goal which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. This definition is not intended to relieve the bidder of any of the responsiveness (or responsibility) requirements listed in Paragraph 26, ***Disadvantaged Business Enterprise Compliance Requirements*** of this Exhibit.

"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 the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

"Small Business concern" means with respect to firms seeking to participate as DBEs in DOT-assisted contracts, 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 cap on average annual gross receipts specified in 49 CFR Part 26.65(b).

"Socially and Economically Disadvantaged" individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

1. Any individual who Pace finds to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, members of which are presumed to be socially and economically disadvantaged:
 - a. *"Black Americans,"* which includes persons having origins in any of the Black racial groups of Africa;
 - b. *"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;
 - c. *"Native American,"* which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - d. *"Asian Pacific American,"* 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 Island, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

- e. “*Subcontinent Asian American*,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Island, Nepal or Sri Lanka;
- f. “*Women*”
- g. Any additional groups whose members are designated a socially and economically disadvantaged by the United States Small Business Administration (SBA), at such time as SBA designation becomes effective.

B. General Conditions/DBE Calculations

Pace will use the certification standards of Subpart D of 49 *CFR Part 26* and the certification procedures of Subpart E of 49 *CFR Part 26* to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Pace will make its certification decision based on the facts as a whole.

As a partner in the IL UCP, Pace can provide, upon request, a directory of IL UCP DBE firms. The directory will also be available electronically at www.pacebus.com.

As required by 49 CFR Part 26.55, Pace counts DBE participation toward overall and contract goals as follows:

1. When a DBE participates in a contract, Pace counts only the value of the work actually performed by the DBE toward the DBE goal. Participation will only be credited in the DBE’s area of specialization. Credit for work in other areas requires additional support documentation for each of those areas.
2. Pace counts the entire amount of that portion of a contract that is performed by the DBE’s own forces. This includes the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
3. Pace counts 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 a DOT-assisted contract, toward DBE goals, provided Pace 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 subcontractor 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, Pace counts a portion of the total dollar 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. Pace counts expenditures to a DBE toward DBE goals only if the DBE is performing a commercially useful function on this contract
 - a. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the 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, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, Pace must 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 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, Pace must examine similar transactions particularly those in which DBEs do not participate.
 - c. If a DBE firm acting as a prime contractor and/or as a subcontractor under this contract does not perform or exercise responsibility for at least thirty percent (30%) 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, Pace must presume that it is not performing a commercially useful function.
 - d. Pace uses the following factors in determining whether a DBE trucking company is performing a commercially useful function:
 - i. 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;
 - ii. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract;
 - iii. 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;
 - iv. 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;
 - v. 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 only for the fee or commission it receives as a result of the lease agreement. 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; and
 - vi. For purposes of this subparagraph (d), 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.
 - e. If a DBE is presumed not to be performing a commercially useful function as provided in these requirements, the DBE may present evidence to rebut this presumption. Pace may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
 - f. Pace's decisions on commercially useful function matters are subject to review by the Federal Transit Administration, but are not administratively appealable to United States Department of Transportation.
7. Pace counts 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, Pace counts 100 percent (100%) of the cost of the materials or supplies toward DBE goals;
 - b. For purposes of these requirements, 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;
 - c. If materials or supplies are purchased from a DBE regular dealer, Pace counts sixty percent (60%) of the cost of the materials or supplies toward DBE goals;

- d. For purposes of these requirements, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - i. 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;
 - ii. 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 provided in this paragraph if the persons both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis;
 - iii. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of the paragraph;
 - iv. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, Pace counts 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 Pace determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar service. Pace will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however;
8. Pace will not count toward its overall goal the dollar value of work performed under a contract by a firm after it has ceased to be certified.
9. Pace will not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements or Pace's overall goal until the amount being counted toward the goal has been paid to the DBE.

SECTION IV GOOD FAITH EFFORTS

In order to be responsive, a bidder must make good faith efforts to meet Pace's DBE goal in either of two ways. The bidder must either 1) document how it will meet the full goal by completing and signing Schedule A or D (if a joint venture); or 2) document its attempt to meet the goal through detailed, corroborating evidence, i.e. demonstrate that it took *all necessary and reasonable steps* which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if the bidder was not fully successful. Pace will make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. Pace will consider the quality, quantity, and intensity of the different kinds of efforts that the bidder/proposer made. The efforts employed by the bidder should be those that one would reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements.

The following is a list of types of action that Pace will consider as part of the evaluation of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory check list, or to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:

- A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, if applicable, advertising, and/or written notices) the interest of all certified DBEs who have the ability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder might otherwise prefer to perform these work items with its own forces.
- C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. Negotiating in Good Faith with interested DBEs

1. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes:
 - the names, addresses, and telephone numbers of DBEs that were considered
 - a description of the information provided regarding the plans and specifications for the work selected for subcontracting
 - evidence as to why additional agreements could not be reached for DBEs to perform the work.
2. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take into consideration a firm's price and capabilities, as well as contract goals. The fact that there may be some additional costs involved in finding and using DBEs, however, is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Bidders are not, however, required to accept high quotes from DBEs if the price difference is excessive or unreasonable.

- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The bidder's standing within the industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by Pace or the bidder.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices, and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

Pace will also take into account the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to commit to the contract goal, but others commit to the goal, Pace will raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have committed to the goal. If the apparent successful bidder fails to commit to the goal, but meets or exceeds the average DBE participation obtained by other bidders, Pace may view this, in conjunction with other factors, as evidence that the apparent successful bidder made good faith efforts.

The DBE Liaison Officer for Pace is responsible for determining whether a bidder has properly committed to meet the DBE goal and whether a bidder who has not committed to meeting the goal has documented good faith efforts in order to be responsive. Pace must be satisfied that all information is complete and accurate, and adequately documents the bidder's good faith efforts before Pace commits to the performance of the contract by the successful bidder.

SECTION V RECONSIDERATION

In accordance with 49 CFR §26.53(d), if Pace determines that a bidder is not responsive because it has not committed to meeting the contract goal or has not documented sufficient good faith efforts, it will notify the bidder in writing, and the bidder will have five (5) business days after receipt of this notification to request administrative reconsideration. The bidder must make this request in writing to the following Pace Reconsideration Official:

General Counsel
Pace Suburban Bus
550 W. Algonquin Road
Arlington Heights, IL 60005

The Reconsideration Official will not have played any role in the original determination that the bidder did not document sufficient good faith efforts.

As part of this Reconsideration, the bidder shall have the opportunity to provide written documentation or argument concerning the issue of whether it committed to meeting the contract goal or made adequate good faith efforts to do so. The bidder can also request in writing to meet in person with Pace's Reconsideration Official to discuss these issues; this request for a meeting must be submitted

within five (5) business days after receipt of notification of non-compliance. Pace will send the bidder a written decision within 10 business days after its reconsideration request was received by Pace, explaining Pace's basis for the finding that the bidder did or did not meet the goal or did or did not make adequate good faith efforts to do so. The result of this reconsideration process is not administratively appealable to the United States Department of Transportation and Pace's decision shall be final.

SECTION VI DOCUMENTATION REQUIREMENTS

A. Documentation of Subcontracts and Subcontractor Agreements after Contract Award

Within thirty (30) days upon receipt of an executed purchase order and contract, the Prime Contractor must submit to the DBE Liaison Officer at Pace copies of SIGNED contracts between the Prime Contractor and the DBEs companies listed on its original DBE Schedules A and B.

FAILURE TO PROVIDE THE SIGNED SUBCONTRACT(S) TO THE DBE LIAISON OFFICER WITHIN THE TIME FRAME REQUIRED SHALL CONSTITUTE A BREACH OF THIS CONTRACT, AND UPON SUCH BREACH, PACE MAY TERMINATE THIS CONTRACT AND/OR EXERCISE OTHER SANCTIONS, PENALTIES, OR REMEDIES AS ALLOWED BY LAW OR EQUITY, AND AS PACE DEEMS APPROPRIATE.

B. Documentation of Payments Made to DBE Firms

1. The Contractor must submit copies of the DBE's monthly contract invoices, including support documentation to the DBE Liaison Officer at the same time they are submitted to Pace Accounts Payable.

The form illustrated below, must be used in order to properly credit the contractor's progress in attaining the DBE goal.

SAMPLE ONLY – DO NOT COMPLETE

Date Paid to DBE	Invoice#	Description	Qty	UOM	Unit Price	Total

2. Copies of canceled checks (both sides), wire transfers or other forms of payments to DBEs must be provided on a monthly basis.

- C. Pace may make on-site visits from time to time during the course of this contract to ensure compliance with the requirements set forth herein.

Pace may require verification of any commitment represented to us in connection with the Contractor's use of DBE businesses in the performance of this contract.

Pace reserves the right to review the certified payrolls for the Contractor and all contractors working on this contract.

Further, if problems should arise with respect to the Contractor's subcontract with any DBEs, please contact Pace's DBE Liaison Officer so that Pace may be apprised of all DBE issues.

D. Substitution of DBE Firms

The Contractor must obtain prior written approval from Pace in order to substitute any DBE, which Pace has approved for participation in this contract. In addition, the Contractor cannot terminate for convenience a DBE listed on Schedule A (or an approved substitute DBE firm), and then perform the work of the terminated subcontract with its own forces or those of an affiliate or substitute firm, without Pace's prior written consent. The Contractor shall make a good faith effort to replace a DBE that is terminated, or whose work scope has changed, or has otherwise failed to complete its work on this contract with another certified DBE, to the extent needed to meet the contract goal. The Contractor shall notify the DBE Liaison Officer immediately and provide reasonable documentation of the DBE's inability or unwillingness to perform its subcontract. In this situation, the Contractor must obtain Pace's prior approval of a substitute DBE, and must provide a copy of the new sub-contract with the substitute DBE, or documentation of good faith efforts to substitute the initial DBE with another DBE. In the situation where the DBE's work scope has been modified by Pace, the Contractor must immediately notify the Pace Project Manager AND Pace's DBE Liaison Officer to address a revised "Commitment to DBE Participation."

E. Inspections and Records

1. Pace may, with or without notice, periodically conduct on-site visits of any contract performance site or the place of business of any prime vendor or DBE subcontractor from time to time during the course of a contract to ensure compliance with the requirements set forth in Pace's contracts. The DBE department may be assisted by other Pace staff, and shall be entitled to reasonable access to facilities, personnel, and records related to the compliance plan.
2. Pace may require verification of any commitment represented to us in connection with the Contractor's use of DBE businesses in the performance of this contract
3. Pace reserves the right to review the certified payrolls, performance/payment records concerning sub contractors' payroll records, tax returns and records, and books of accounts for the Contractor and all contractors and sub contractors working on any Pace contract. Full access shall be granted upon 48 hours notice by Pace or any duly authorized representative thereof or any law enforcement authority.

F. Change Orders

The contract specific DBE goals applicable to a contract are also applicable to change orders or contract modifications.

G. Non-Compliance and Sanctions

1. Determination of Non-Compliance
 - a. It shall be the responsibility of Pace's DBE Liaison Officer to monitor the Compliance Plan, as well as the fulfillment of any special conditions, work order goals, or other obligations of the contract as it pertains to the DBE program and DBE goals.
 - b. At contract closeout, the DBE Liaison Officer shall determine whether a prime vendor has complied with the obligations under its compliance plan and other related requirements. The prime vendor has the burden of proving compliance with all obligations and requirements.
 - c. If the prime vendor fails to fulfill the requirements of the compliance plan or other compliance-related contractual obligation, Pace will notify the prime vendor of the deficiencies. Following notification, the prime shall have sixty (60) days to cure the deficiencies. If the deficiencies are not cured, Pace shall make a determination of non-compliance and recommend the imposition of sanctions
2. Sanctions for Non-Compliance
 - a. Sanctions for non-compliance may include but are not limited to the following:
 - i. Withholding of payments under the contract;
 - ii. Recommendation not to exercise contract renewal option, if any;
 - iii. Termination of the contract
 - iv. Debarment from future business with Pace

SCHEDULE A
PRIME CONTRACTOR
SUMMARY OF DBE PARTICIPATION

NOTE: TO BE COMPLETED AND RETURNED WITH
 BID/PROPOSAL (See "Compliance Requirements")

NAME OF CONTRACTOR: _____

NAME OF PROJECT: _____

TOTAL ESTIMATED CONTRACT AMOUNT: \$ _____

SPECIFICATION NUMBER: _____

NAME OF DBE SUBCONTRACTOR	ADDRESS	SCOPE OF WORK TO BE PERFORMED	PROJECTED BEGINNING/ENDING DATES OF WORK	AGREED SUBCONTRACT PRICE	NET DBE CREDITS *
NOTE: PRICES REPRESENTED ON THIS PAGE SHOULD ACCURATELY REFLECT AGREEMENT BETWEEN PRIME CONTRACTOR AND SUBCONTRACTOR.			TOTAL DBE CONTRACT AMOUNT \$ _____		
*/ ONLY 60% OF AGREED SUBCONTRACT PRICE MAY BE CREDITED FOR MATERIALS AND SUPPLIES.			TOTAL NET DBE CREDIT \$ _____		

LIST ONLY BONA FIDE DBE OWNED & CONTROLLED FIRMS THAT WILL PARTICIPATE IN THIS CONTRACT.

The undersigned hereby certifies that arrangements have been made with the DBE firm(s) listed above for the work indicated in this Schedule A conditional upon receiving notice that a Contract with Pace has been executed. I understand that if I knowingly provide incorrect information or false statements or fail to comply with Contract DBE requirements that Pace has an obligation (49 CFR 29.17(B)) to inform the U.S. Department of Transportation who may then initiate actions which would prohibit the general contractor from participation in future government Contracts. Any substitutions of the above-named subcontractors requires prior written approval from Pace.

 Signature

 Date

SCHEDULE B**CONFIRMATION OF PROPOSED DBE PARTICIPATION**

Pace IFB No. _____

Name of Project: _____

_____ at _____
 (Name of DBE Firm) (Address)

hereby certifies that it is providing the following services for this Contract:

as provided in Schedule A of _____'s proposal.
 (bidder/offeror/Prime Contractor)

I further understand that any willful falsification, fraudulent statement, or misrepresentation will result in appropriate sanctions, which may include debarment and/or prosecution under applicable State and Federal laws.

 Print Name and Title

 Signature - **Must be signed by DBE**

 Date

DBE participation from any other Contract will not count towards the DBE goal on this Contract.

*Schedule B is required for all Contracts that have a DBE goal pursuant to 49 CFR part 26.53(b)(2)(v).

**NOTE: TO BE COMPLETED AND RETURNED WITH BID PROPOSAL
ONLY IF CONTRACT SPECIFIC GOALS CANNOT BE MET
(See "Compliance Requirements")**

SCHEDULE C

DBE UNAVAILABILITY CERTIFICATE

Note: The bidder is to prepare this form for each DBE contact made where the DBE was found to be unavailable to perform the work solicited. When unable to obtain the DBE firm's signature, this form must be completed by the bidder, indicating the reason(s) why the signature of the DBE was not obtained.

Name of Project: _____

Specification No.: _____

I, _____, the _____,

(Name)

(Title)

of _____, certify that on _____, I

(Prime or General Bidder)

(Date)

contacted the following DBE firm to obtain a bid for work to be performed on the above-named project.

<u>DBE FIRM</u>	<u>SCOPE OF WORK SOUGHT</u>	<u>FORM OF BID SOUGHT (i.e., Unit Price, Materials and Labor, Labor Only, etc.)</u>
_____	_____	_____

The DBE firm was unavailable for work on this project for the following reasons:

(Name of DBE Firm)

By: _____
(Signature)

Its: _____
(Title)

Phone: _____

Date: _____

(Name of Prime or General Bidder)

By: _____
(Signature)

Its: _____
(Title)

Phone: _____

Date: _____

Additional sheets can be obtained by calling Pace's DBE Liaison Officer at (847) 228-4257.

SCHEDULE D**APPLICATION FOR JOINT VENTURE**

1. Name of joint venture: _____
2. Address of joint venture: _____

3. Telephone Number: _____
4. Identify the firms which comprise the joint venture. (The DBE partner must complete Schedule A.)

 - a. Describe the role of the DBE firm in the joint venture, listing the specific responsibilities of the DBE firm: _____

 - b. Describe very briefly the experience and business qualifications of each non-DBE joint venturer: _____

5. Nature of the joint venture's business: _____

6. Provide a copy of the joint venture agreement.
7. What is the claimed percentage of DBE ownership? _____
8. Provide copies of the following indicating proof of ownership of the joint venture:
 - a. Profit and loss sharing
 - b. Capital contributions, including equipment
 - c. Other applicable ownership interests
9. Control of and participation in this Contract. Identify by name, race, sex and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision making, including, but not limited to, those with prime responsibility for:
 - a. Financial decisions: _____

 - b. Management decisions, such as:
 - i. Estimating: _____

 - ii. Marketing and sales: _____

 - iii. Hiring and firing of management personnel: _____

 - iv. Purchasing of major items or supplies: _____

 - c. Supervision of field operations: _____

NOTE: If, after filing this Schedule D and before the completion of the joint venture's work on the project, there is any significant change in the information submitted, the joint venture must inform Pace's DBE Liaison Officer, either directly or through the prime Contractor if the joint venture is a subcontractor.

AFFIDAVIT

The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to the grantee current, complete and accurate information regarding actual joint venture work and the payment therefore and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the grantee or the Federal funding agency. Any material misrepresentation will be grounds for terminating any Contract which may be awarded and for initiating action under Federal or State laws concerning false statements.

Name of Firm

Name of Firm

Signature

Signature

Name

Name

Title

Title

Date

Date

STATE OF ILLINOIS)

COUNTY OF COOK)

On this ____ day of _____, 201_, before me appeared _____,
to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by
_____ to execute the affidavit and did so as his or her free act and deed.

Notary Public

Commission expires: _____

STATE OF ILLINOIS)

COUNTY OF COOK)

On this ____ day of _____, 201_, before me appeared _____,
to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by
_____ to execute the affidavit and did so as his or her free act and deed.

Notary Public

Commission expires: _____

27. Retention of Records: Unless otherwise specified elsewhere in the Contract, the Contractor shall maintain all records produced under the Contract, including records to support actual time and costs incurred, for a minimum period of five (5) years after completion of the Contract. All records maintained under the Contract shall be subject to inspection and audit by Pace and/or its designated agent upon reasonable notice to the Contractor.

28. Bid Protest Procedures

SECTION I

A. Pace will hear and consider a bona fide bid protest regarding its procurement actions in accordance with the following procedures. Due to the significantly reduced role of FTA in bid protests, as described in Section II, it is anticipated that the majority of all protests will be evaluated and finally decided by Pace. Accordingly, Pace intends to provide a thorough review of all bona fide bid protests. Pace's primary concern, however, is the timely procurement of needed capital equipment, supplies or services. It does not intend to allow the filing of bid protests to unnecessarily delay the procurement process, especially if the protest involved is vexatious or frivolous in nature.

Notwithstanding the availability of these protest procedures, any interested party is encouraged to exhaust all methods described in the Contract Documents of resolving a procurement issue before filing a formal protest with Pace. In its consideration of a bid protest, Pace reserves the right to give due consideration to the good faith efforts of the protestor to resolve the issue involved through informal methods.

B. Definitions

For purposes of this section

1. The term "days" refers to working days of Pace
2. The term "interested party" means any person (a) who is an actual bidder/proposer or prospective bidder/proposer in the procurement involved, and (b) whose direct economic interest would be affected by the award of the Contract or by a failure to award the Contract

C. Submission of Protests

Any interested party may file a bid protest with Pace on the basis that Pace has failed to comply with applicable Federal or State law or with Pace's Procurement Regulations. The protest must be filed in accordance with the timing requirements set forth in subsection D of this section, and must include:

1. The name and address of the protestor
2. The number of the Contract solicitation
3. A statement of the grounds for the protest, and in particular the Federal or State law or Authority Regulation alleged to have been violated; this statement should be accompanied by any supporting documentation the protesting party desires Pace to consider in making its decision

Protests should be submitted to: Department Manager, Purchasing
Pace
550 W. Algonquin Road
Arlington Heights, IL 60005

D. Types of Protests and Timing

The requirement for timely filing of a bid protest with Pace will depend upon the type of protests involved. Pace will consider the following three types of protests by interested parties.

1. Protests regarding solicitation

Any bid protest regarding the solicitation by Pace must be filed no later than **five (5) days** before the opening of bids/closing date of the Request for Proposal. Any protest filed after that date which raises issues regarding the solicitation will not be considered by Pace.

This type of protest would include any claim that the solicitation contained exclusionary or discriminatory specifications, any challenge to the basis of award, or any claim that the solicitation documents or the solicitation process violated applicable Federal or State law, or that Pace failed to follow its Procurement Regulations in the solicitation of bids/proposals.

2. Protests regarding bid evaluation (Invitation for Bids)

Any bid protest regarding the evaluation of bids, submitted in response to an Invitation for Bid (IFB) issued by Pace, must be filed with Pace no later than **fifteen (15) days** after the public opening of bids. Any protest filed after such date which raises issues regarding the IFB evaluation will not be considered by Pace.

This type of protest would include any challenge to determinations by Pace of the responsiveness of a bid or the responsibility of a bidder, or any claim that the evaluation of bids violated Federal or State law or Pace's Procurement Regulations.

3. Protests regarding proposal evaluation (Request for Proposals)

The Request for Proposal (RFP) evaluation process, and all evaluation materials associated with this process, shall be considered confidential until final award of the Contract is made. Therefore, any protest regarding the evaluation of proposals, submitted in response to an RFP issued by Pace, must be filed with Pace no later than **fifteen (15) days** after the date of Contract award. Any protest filed after such date which raises issues regarding the RFP evaluation will not be considered.

This type of protest would include any challenge to determinations by Pace of the responsiveness of a proposal or the responsibility of a proposer, or any claim that the evaluation of proposals violated Federal or State law or Pace's Procurement Regulations.

4. Protests Regarding Award of Contract

Any protest regarding the award of the Contract must be filed no later than **fifteen (15) days** after the date of award. Any protest regarding the award of the Contract filed after that date will not be considered by Pace.

This type of protest will only be entertained by Pace if the protestor is able to demonstrate that the party awarded the Contract fraudulently represented itself as a responsible bidder or that Pace violated Federal or State law or its Procurement Regulations in the award of the Contract.

E. Pace Response

1. Types of Protests

Pace will notify the protestor upon timely receipt of a bid protest and may, where appropriate, request additional information from the protestor. Pace may, in its discretion, meet with the protestor to review the matters raised by the protest. Pace's consideration of the particular types of protests will, except as otherwise provided in Paragraph 2 of this subsection, be in accordance with the following provisions:

a. Protests regarding solicitation

Upon receipt of a timely filed protest regarding the solicitation, Pace will postpone the opening of bids until resolution of the protest. No additional bids will be accepted during the period of postponement.

If the protest regarding the solicitation involves a claim of unduly restrictive or exclusionary specifications, Pace will, in evaluating the protest, consider both the specific need of Pace for the feature or item challenged and whether competition is negatively impacted by including the specification regarding that feature or item. If Pace determines that such feature or item was included in the specification in order to meet justified and valid transit needs of Pace, and was not unduly restrictive of competition or designed to exclude a particular competitor, then Pace will have grounds to deny the protest.

b. Protest regarding bid evaluation (Invitation for Bids)

Upon receipt of a timely filed protest regarding the evaluation of bids, submitted in response to an Invitation for Bid (IFB) issued by Pace, Pace will suspend its evaluation, or award, of any or all bids submitted until resolution of the protest if Pace determines that the protestor has established that there is substantial evidence that there are doubts regarding the responsiveness of a bid or the responsibility of a bidder or regarding Pace's compliance with Federal or State law or its Procurement Regulations.

c. Protest regarding proposal evaluation (Request for Proposals)

Upon receipt of a timely filed protest regarding the evaluation of proposals, submitted in response to an RFP issued by Pace, Pace will issue a stop work order, if necessary, until the resolution of the protest if Pace determines that the protestor has established that there is substantial evidence that there are doubts regarding the responsiveness of a proposal or the responsibility of a proposer or regarding Pace's compliance with Federal or State law or its Procurement Regulations.

d. Protests after award

Upon receipt of a timely filed protest regarding the award of a Contract, Pace will issue a stop work order, if necessary, until the resolution of the protest if Pace determines that the protestor has established a **Prima facie** case that the Contract was awarded fraudulently or in violation of Federal or State law or Pace's Procurement Regulations.

2. Decisions by Pace

As indicated above, in most instances Pace will suspend the procurement process upon receipt of a bona fide bid protest. However, Pace reserves the right, notwithstanding the pendency of a protest, to proceed with the appropriate action in the procurement process or under the Contract in the following cases:

- a. where the item to be procured is urgently required
- b. where Pace determines that the protest was vexatious or frivolous
- c. where delivery or performance will be unduly delayed, or other undue harm will occur, by failure to make the award promptly

After review of a bid protest submitted under this section, Pace will issue a written decision on the basis of the information provided by the protestor, the results of any meetings with the protestor, and Pace's own investigation. If the protest is upheld, Pace will take appropriate action to correct the procurement process and protect the rights of the protestor, including re-solicitation of bids/proposals, revised evaluation of bids/proposals or Pace determinations, or termination of the Contract. If the protest is denied, Pace will lift any suspension imposed and proceed with the procurement process or the Contract, as the case may be.

The availability of review of bid protests by FTA is described in Section II. As noted in that section, under FTA's revised procurement guidelines the role of the Federal government in bid protest review is quite limited.

SECTION II - FTA BID PROTEST PROCEDURE

Under Circular 4220.1F, FTA has substantially limited its review of bid protests recognizing that most protest issues are best resolved at the State or Local level. FTA will now only accept protests alleging that: Pace failed to have written protest procedures; or, Pace violated their own protest procedures.

If a protest is brought before FTA on either of these allegations, the only remedy recognized by FTA under Circular 4220.1F is to require Pace to follow its own protest procedures. FTA does not have the right to change Pace's substantive decision by substituting FTA's judgment for that of Pace.

Any protest to FTA must be filed in accordance with the requirements contained in FTA Circular 4220.1F and may only be made by an "interested party" which FTA has defined as "an actual or prospective bidder or offerer whose direct economic interest would be affected by the award of the Contract or by failure to award the Contract."

No protest may be filed with FTA later than five days after a final decision under Pace's procedure. As used in the preceding sentence, "filed" refers to the date of receipt by FTA and "days" refers to working days of the Federal Government.

Any alleged violation of a specified Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with the applicable Federal regulations instead of the requirements of FTA Circular 4220.1F. For example, see the Buy America Requirements, 40 C.F.R. Part 661 (Section 661.15); Participation of Minority Business Enterprises in Department of Transportation Program, 49 C.F.R. Section 26.107.

29. Illinois Freedom of Information Act (FOIA)

As a government agency, Pace is subject to the Illinois Freedom of Information Act (FOIA) or 5 ILCS 140/1, et. seq. as amended. Therefore, the contents of this Request for Proposals (RFP) or Invitation for Bids (IFB) and the Contractor's proposal or bid submitted in response to this RFP or IFB are subject to the Illinois FOIA statutes. However, there are various items that may be exempt, which include but are not limited to trade secrets or commercial/financial information that are proprietary, privileged, or confidential, or where disclosure of the same would result in competitive harm (refer to Section 4002 of the Technology Advancement and Development Act and to Section 7 of the Illinois Freedom of Information Act). If any such proprietary, privileged, or confidential information or data is included in the Contractor's proposal or bid, each page that contains this information or data should be marked as such (e.g., "Proprietary and Competition Sensitive") in order to indicate your claim to an exemption provided in the Illinois FOIA.

It is Pace's sole right and responsibility, however, to make the determination whether these items are exempt or not exempt under the Illinois FOIA statutes.

SECTION B – FTA/IDOT/RTA REQUIREMENTS

**U.S. DEPARTMENT OF TRANSPORTATION (DOT)
FEDERAL TRANSIT ADMINISTRATION (FTA)
ILLINOIS DEPARTMENT OF TRANSPORTATION (IDOT)
AND THE REGIONAL TRANSPORTATION AUTHORITY (RTA)**

The following terms and conditions are incorporated herein by reference and made a part of any contract(s) issued as a result of a Pace Request for Quotation, Invitation for Bid or Request for Proposal.

FTA Requirements

1. **Fly America Requirements:** The Fly America requirements apply to all contracts greater than \$3,000 which include the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S. The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. **Surface Transportation Assistance Act/Buy America:** The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000). The Buy America requirements flow down from FTA recipients and sub-recipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$100,000 threshold applies only to the grantee's (Pace's) contracts, subcontracts under that amount are subject to Buy America.
 - A. Pursuant to Section 165.a and 165.b of the Surface Transportation Assistance Act of 1982, the Contractor acknowledges that federal funds shall not be appropriated or utilized for any contract awarded pursuant to this bid unless steel, cement and manufactured products used in such projects are produced in the United States; provided however, that the foregoing provision shall not apply where the Secretary of Transportation has made one of the following determinations:
 - (1) That the application of the foregoing provision would be inconsistent with the public interest
 - (2) That such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality
 - (3) In the case of the procurement of bus and other rolling stock (including train control, communication, and traction power equipment), that (a) the cost of components which are produced in the United States is more than 60% of the vehicle or equipment described in this paragraph, and (b) final assembly of the vehicle or equipment described in this paragraph has taken place in the United States
 - (4) That inclusion of domestic material will increase the cost of the overall project contract by more than 25%
 - B. For purposes of this section, in calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.
 - C. Likewise, the Contractor agrees as a condition of responsiveness to and in order to induce the acceptance of this Bid Proposal, that it will submit with its Bid Proposal, a completed Buy America Certification as set forth herein.

3. **Charter Service Operations:** The Charter Bus requirements apply to the following type of contract: Operational Service Contracts greater than \$3,000. The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

4. **School Bus Operations:** The School Bus requirements apply to the following type of contract: Operational Service Contracts greater than \$3,000. Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and sub-recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub-recipients may not use federally funded equipment, vehicles, or facilities.
5. **Cargo Preference – Use of United States Flag Vessels:** The Cargo Preference requirements apply to all contracts greater than \$3,000 which involving equipment, materials, or commodities which may be transported by ocean vessels. The Contractor agrees:
 - A. To utilize privately owned United States flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo lines, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.
 - B. To furnish within 20 days following the date of loading, for shipment originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to Pace (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration 400 Seventh Street, S.W., Washington, D.C. 20590, marked with appropriate identification of the project.
 - C. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.
6. **Seismic Safety:** The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings which are greater than \$3,000.00. The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.
7. **Energy Conservation Requirements:** The Energy Conservation requirements are applicable to all contracts which are greater than \$3,000. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
8. **Clean Water Requirements:** The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000. (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to Pace and understands and agrees that Pace will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
9. **Byrd Anti Lobbying Amendment:** Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. 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. The Standard Form-LLL shall be submitted to the Pace Legal Department, Attn: General Counsel who, pursuant to federal regulations, will submit the form(s) to the Federal Transit Administration.

10. **Audit:** Applicable to all contracts greater than \$3,000. The Contractor shall permit the authorized representatives of Pace, IDOT, FTA, RTA and the Comptroller General of the United States to inspect and audit all work, materials, data and records of the Contractor relating to performance under the contract.
11. **Federal Changes:** The Federal Changes requirement applies to all contracts greater than \$3,000. The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the FTA Master Agreement (available from the FTA website) between Pace and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.
12. **Clean Air Requirements:** The Clean Air requirements apply to all contracts exceeding \$100,000 including indefinite quantities where the amount is expected to exceed \$100,000 in any year. The Clean Air requirements flow down to all subcontracts which exceed \$100,000. (1) The Contractor agrees to comply with all applicable standards, order or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Contractor agrees to report each violation to Pace and understands and agrees that Pace will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
13. **Davis-Bacon and Copeland Anti-Kickback Acts:** The Davis-Bacon and Related Acts apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.

(1) Minimum Wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- (B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an

authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

(3) **Payrolls and basic records**

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

- (ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Suburban Bus Division of the Regional Transportation Authority (Pace) for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

- (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

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

(4) Apprentices and trainees

(i) Apprentices – Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees – Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage

determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

(5) **Compliance with Copeland Act requirements** – The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

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

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

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

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

(10) **Certification of eligibility** –

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

14. **Contract Work Hours and Safety Standards:** This Act applies to construction contracts greater than \$100,000 and, in very limited circumstances, non-construction projects greater than \$100,000.00 that employ laborers or mechanics on public work.

(1) **Overtime requirements** – No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** – Pace shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by

the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- (4) **Subcontracts** – The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.
15. **No Obligation by the Federal Government:** Applicable to all contracts greater than \$3,000. (1) Pace and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Pace, the Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
16. **Program Fraud and False or Fraudulent Statements or Related Acts:** These requirements are applicable to all contracts greater than \$3,000.
 - (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
 - (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
 - (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.
17. **Ineligible Contractors and Subcontractors:** Applicable to all contracts of any value. Any name appearing upon the Comptroller General of the United States' list of ineligible Contractors for federally financed and assisted projects shall not be eligible to act as a subcontractor for the Contractor pursuant to this contract. In the event the Contractor is on the Comptroller General's list of ineligible Contractors for federally financed or assisted projects, this contract may be canceled, terminated or suspended by Pace.
18. **Contracts Involving Federal Privacy Act Requirements:** When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts greater than \$3,000. The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract: (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

19. **Civil Rights:** Applicable to all contracts greater than \$3,000. The Contractor, for itself, its assignees and successors in interests, agrees that it will comply with the following regulations:
 - 1) **Construction Contracts** – For any contract for construction, the Contractor shall comply with the equal opportunity requirements of 41 CFR, Subsection 60-1.4(b)(1) and Subsection 60-1.4(c); the provisions of Executive Order 11246 Subsection 202 and as set forth in the most current FTA Master Agreement available from the FTA website. The Contractor shall include a citation to said requirements in all subcontracts.
 - 2) **Nondiscrimination** – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
 - 3) **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:
 - (a) **Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - (b) **Age** – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - (c) **Disabilities** – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - 4) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.
20. **Patent Rights:** Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information on contracts greater than \$3,000. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual. This Agreement shall be subject to the FTA's policy on any invention, improvement, or discovery conceived or first actually reduced to practice in conjunction with planning, research development or demonstration projects as stated in the most current FTA Master Agreement available from the FTA website.
21. **Copyright and Rights in Data:** Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information on contracts greater than \$3,000. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual. This Agreement shall be subject to the FTA's policy on copyrights and rights in data with respect to reports and other technical materials developed with in conjunction with planning, research development or demonstration projects. That policy as set forth in the most current FTA Master Agreement

available from the FTA website permits the author or grantee to copyright the work but FTA reserves a royalty-free nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for Government purposes.

22. **Transit Employee Protective Provisions:** The Transit Employee Protective Provisions apply to each contract greater than \$3,000 for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.

(1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

- (a) **General Transit Employee Protective Requirements** – To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
- (b) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities** – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
- (c) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas** – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

23. **Drug and Alcohol Testing:** This provision applies to all Operational Service Contracts greater than \$3,000. The Contractor agrees to participate in Pace's drug and alcohol program established in compliance with 49 CFR 653 and 654 which if applicable shall be attached as a separate exhibit to this contract.

24. **Incorporation of Federal Transit Administration (FTA) Terms:** The incorporation of FTA terms applies to all contracts greater than \$3,000. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F or most recent version are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Suburban Bus Division of the Regional Transportation Authority (Pace) requests which would cause the Suburban Bus Division of the Regional Transportation Authority (Pace) to be in violation of the FTA terms and conditions.

IDOT/RTA/State Requirements

25. **Illinois Prevailing Wage Act (820 ILCS 130):** It is the policy of the State of Illinois that a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed, shall be paid to all laborers, workers

and mechanics employed by or on behalf of any and all public bodies engaged in public works. This Act applies to the wages of laborers, mechanics and other workers employed in any public works, as stated in the Illinois Prevailing Wage Act (820 ILCS 130), by any public body and to anyone under Contract for public works. This includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented. Public works is defined as all fixed construction work performed by or on behalf of any public body, paid in whole or in part with public funds.

Only such laborers, workers and mechanics as are directly employed by contractors or subcontractors in actual construction work on the site of the building or construction job, and laborers, workers and mechanics engaged in the transportation of materials and equipment to or from the site, but not including the transportation by the sellers and suppliers or the manufacturer or processing of materials or equipment, in the execution of any contract or contracts for public works with any public body shall be deemed to be employed upon public works. The wage for a tradesman performing maintenance is equivalent to that of a tradesman engaged in construction or demolition.

26. **Bid Evaluation Requirements:** In the event a single bid is received, it may be necessary for Pace to conduct a price and or cost analysis of the bid price with the Contractor's full cooperation. The Contractor shall provide all documents requested by Pace to perform the analysis.
27. **The Americans with Disabilities Act:** Applicable to all contracts greater than \$3,000. The Contractor agrees to comply with, and assure that any subcontractor complies with all applicable requirements of 42 USC 12101 et seq.
28. **Use of Metric Units of Measure and English Language:** All Contract documents, conferences, letters, technical information and drawings provided by the Contractor shall be conducted or offered solely in the English language and using both the U.S. customary system of weights and measures and the Metric units system of weights and measures.
29. **Interest of Members of Congress:** No member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom.
30. **Financial Assistance Contract:** This contract is subject to the provisions of the financial assistance contracts between Pace and other sponsoring agencies which are identified in the Invitation for Bids as FTA, IDOT, and RTA.
31. **State of Illinois Non-Collusion:** The bidder shall certify that the bid/proposal submitted was not made in the interest of or on behalf of any undisclosed person, partnership, company, organization or corporation; that such bid is genuine and not collusive or sham, and that said bidder has not been a party to any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise, or to refrain from bidding and has not, directly or indirectly, by agreement, communication or conference with anyone attempted to induce action prejudicial to the interest of the Suburban Bus Division of the Regional Transportation Authority (Pace) or any bidder or anyone else interested in the proposed contract
32. **State of Illinois Ineligible Contractors and Subcontractors:** The Contractor shall certify that it is not barred from contracting with any unit of State or local government as a result of a violation of either Section 33E-3 or 33E-4 of the Illinois Criminal Code (Ill. Rev. Stat. Chap.38,33E-1,ET.SEQ.)

CERTIFICATION OF RESTRICTIONS ON LOBBYING

This Certification is required to be completed and returned with the solicitation if the offer **EXCEEDS \$100,000**. Failure to return this Certification with the solicitation may result in a determination that the offer is non responsive or unacceptable. The undersigned certifies, to the best of his or her knowledge or 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. The Standard Form-LLL shall be submitted to the Pace Legal Department, Attn: General Counsel who, pursuant to federal regulations, will submit the form(s) to the Federal Transit Administration.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and Contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance 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 failure.

Executed this _____ day of _____, _____.

By: _____
(Signature of authorized official)

(printed/typed name)

(Title of authorized official)

CERTIFICATION REGARDING SUSPENSION AND DEBARMENT

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Suburban Bus Division of the Regional Transportation Authority (Pace). If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Suburban Bus Division of the Regional Transportation Authority (Pace), the Federal Government may pursue available remedies, including but not limited to, suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(Signature and Title of Authorized Official)

NON-COLLUSION AFFIDAVIT

IMPORTANT: This affidavit must be properly completed and submitted with all bids

STATE OF _____

COUNTY OF _____

(Enter name of person making affidavit)

being first duly sworn, deposes and says that he/she is

(Enter "Sole owner", "A Partner", "President", or other proper title)

of _____
(Enter name of firm)

the bidder submitting this proposal; that such bid was not made in the interest of or on behalf of any undisclosed person, partnership, company, organization or corporation; that such bid is genuine and not collusive or sham, and that said bidder has not been a party to any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise, or to refrain from bidding and has not, directly or indirectly, by agreement, communication or conference with anyone attempted to induce action prejudicial to the interest of the Suburban Bus Division or any bidder or anyone else interested in the proposed Contract. The bidder further certifies that it is not barred from contracting with any State or unit of local government as a result of a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Illinois Criminal Code (Ill. Rev. Stat. Chap.38,33E-1,ET.SEQ.)

(Signature of person making affidavit)

SUBSCRIBED AND SWORN TO BEFORE ME

this _____ day of _____, 201__

Notary Public

(NOTARY SEAL)

R66 (5/92)

REQUEST FOR PROPOSAL NO. 409202
TECHNICAL SUPPORT FOR PACE'S HP 3000 APPLICATIONS
PRICE PROPOSAL

This is an ***Indefinite Delivery/Indefinite Quantity*** Contract with firm, fixed hourly rates for services to be performed on an as needed basis. Compensation will be based solely on the tasks approved by Pace and in accordance with the fees and rates included in this Exhibit C. The contract maximum is 1,960 hours per year. This is a not-to-exceed contract maximum and not a firm commitment to purchase.

Proposers must also submit detailed information on their hourly rates using the Cost & Profit Detail Sheet (Form 4400) including at the end of this Exhibit C.

1. **Consultant Labor Hours** – Identify the fixed, fully burdened hourly rates.

No.	Role/Classification	Per Hour Rate	No. of Hours	Total
1.1	Consultant Year 1	\$	1,960	\$
1.2	Consultant Year 2	\$	1,960	\$
1.3	Total 1 – Labor			\$

2. **Travel** – Travel expenses, if any, shall be billed at cost as they are incurred by the Contractor and are subject to the terms and conditions below.

- a. Pace will reimburse travel costs only for individuals traveling outside of the Chicago six-county region which includes Cook, DuPage, Kane, Lake, McHenry and Will counties.
- b. Costs and expenses eligible for reimbursement will be those that are reasonable, allocable and allowable, as determined by Pace in accordance with Federal Acquisition Regulation (FAR) Part 31, Contract Cost Principles and Procedures, Subpart 31.2, Contracts with Commercial Organizations.
- c. Airfare shall be the lowest customary standard, coach, or equivalent airfare offered during normal business hours.
- d. Per Diem shall include lodging, meals, and incidental expenses. Per Diem expenses shall not exceed the maximum per diem rates in effect at the time of travel as set forth in the Federal Travel Regulations, prescribed by the General Services Administration, for travel in the contiguous United States (CONUS).
- e. Itemized receipts shall be required for any expense of \$75.00 or more. Contractor shall document and provide to Pace the following information; date and place of the expense, purpose of the trip, name of person on trip and that person's title or relationship to the Contractor.
- f. Alcoholic beverages are not reimbursable.
- g. Transportation and Per Diem costs shall not exceed the totals noted below.

No.	Classification	Total
2.1	Transportation	\$
2.2	Per Diem (Lodging, Meals and Incidental Expenses)	\$
2.3	Total 2 – Travel	\$

3. **Direct and Other Costs** – Contractor shall identify firm, fixed rates for any and all direct or other costs to be incurred by Pace.

No.	Description	Unit Cost	Quantity.	Extended Cost
3.1		\$		\$
3.2		\$		\$
3.3		\$		\$
3.4	Total – Direct and Other Costs			\$

4. **Grand Total:** The Grand Total noted in 4.4 shall represent the not-to-exceed total for this contract. All services described within Exhibit A shall be complete as determined by Pace and the total cost shall not exceed the Grand Total noted in 4.4.

No.	Description	Total
4.1	Total 1 - Labor	\$
4.2	Total 2 - Travel	\$
4.3	Total 3 – Direct & Other Costs	\$
4.4	Grand Total	\$

COST AND PROFIT DETAIL – PROFESSIONAL SERVICES CONTRACTS (FORM 4400)

RFP NO. **409202**

FOR: **Technical Support for Pace's HP 3000 Applications**

PROPOSER'S NAME AND ADDRESS:

DETAIL OF DESCRIPTION	HOURS	x RATE/HOUR	= TOTAL DIRECT LABOR
1. DIRECT LABOR (specify)		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
TOTAL DIRECT LABOR			\$
2. BURDEN	BURDEN RATE (%)	x BASE	= BURDEN (\$)
O/H on Direct Labor	%	\$	\$
	%	\$	\$
	%	\$	\$
	%	\$	\$
	%	\$	\$
	%	\$	\$
TOTAL BURDEN			\$
3. FIXED FEE OR PROFIT (%) (limited to 10% of direct labor and overhead)			%
TOTAL PROFIT (\$)			\$
4. DIRECT MATERIAL (itemize)	QTY	x UNIT COST	= TOTAL
		\$	N/A
		\$	
		\$	
		\$	
		\$	
TOTAL MATERIAL			
5. SPECIAL TESTING (including field work at Government installations)	QTY	x UNIT COST	N/A
		\$	
6. SPECIAL EQUIPMENT (If direct charge - specify in number 15 on next page)		\$	
		\$	
TOTAL SPECIAL TESTING/EQUIPMENT			
7. TRAVEL (if direct charge)			
a. TRANSPORTATION			\$
b. PER DIEM OR SUBSISTENCE			\$
TOTAL TRAVEL			\$
8. CONSULTANTS (Identify - purpose - rate)			N/A
TOTAL CONSULTANTS			
9. SUBCONTRACTS (Specify in number 14 on next page - explain royalty costs, if any)			\$
10. OTHER DIRECT COSTS (Specify in number 15 on next page, if any)			\$
11. GENERAL AND ADMINISTRATIVE EXPENSE (%)			%
TOTAL GENERAL AND ADMINISTRATIVE EXPENSE (\$) – Incl. basis for calculation ____ % of item nos. _____			\$
12. GRAND TOTAL (DIRECT LABOR, BURDEN, PROFIT, MATERIALS, SUBCONTRACTS, DIRECT COSTS AND GENERAL AND ADMINISTRATIVE)			\$

A. GOVERNMENT AUDIT PERFORMED ☐ Yes ☐ No		DATE OF AUDIT:		ACCOUNTING PERIOD COVERED:	
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AUDIT		C. DO YOUR CONTRACTS PROVIDE NEGOTIATED OVERHEAD RATES? ☐ Yes ☐ No (If yes, name Agency negotiating rates)			

[illegible]

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	AMOUNT
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
TOTAL SUBCONTRACTS (Record total on number 9 on previous page)		\$

Description	Qty	x Unit Cost	= TOTAL
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
TOTAL OTHER DIRECT COSTS (Record total on number 10 on previous page)			\$

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he ☐ has, ☐ has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he ☐ has ☐ has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF CONTRACTOR

Insurance Requirements

The Insurance documentation must be submitted, reviewed and approved by Pace Suburban Bus Service (further known as Pace) prior to the Contract award. At Pace's discretion, the Contractors' failure to submit the required insurance documents may result in their proposal being rejected as "Non-Responsive". Pace also reserves the right to accept or reject the evidence of insurance coverage or other documentation provided at its own discretion.

The Contractor, Supplier and/or Vendor (further known as *Contractors*) or Subcontractors and/or Independent Contractors (further known as *Subs/Independents*) shall provide and maintain insurance coverage required by this Contract. Evidence of required insurance coverage shall be provided on an **Acord 25-S** (or equivalent) Certificate of Insurance form. It is the *Contractors'* responsibility to verify that all *Subs/Independents* insurance coverage meets or exceeds the insurance requirements outlined in this exhibit/contract. All insurers must maintain a rating of **A-VII** or better as rated by A. M. Best Company. If an A.M. Best rating is not available due to insurance coverage being underwritten by an alternative Risk Financing Method (i.e. Self Insurance, Pooling, Captive, etc.) then the *Contractors* and/or insurer(s) shall provide **Pace** with the most recent audited financial statement, audit report notes, and any applicable State Insurance Department self-insurance approval documents.

It is important to note that "Additional Insured" endorsements such as CG 2010 & CG 2037 or CG 2026 or comparable endorsement {General Liability}, CA 2048 {Automobile Liability}, and other policy endorsements (or their equivalents) required by this exhibit shall be submitted to Pace with the Acord 25-S-Certificate of Insurance before award of contract.

The *Contractors* shall insert the substance of this Insurance Exhibit in subcontracts under this Contract and shall require all *Subs/Independents* to provide and maintain the insurance required. **It is the Contractors' sole responsibility to ensure all Subcontractors/Independent Contractors insurance is in compliance with these requirements.**

Minimum insurance requirements are those paragraphs below marked with an **X**:

- ☒ **Certificates of Insurance** shall provide evidence of all required insurance coverage, limits, endorsements, etc. and shall be issued to **Pace** for the duration of the contract or agreement term **plus** two additional years. If a *Contractors'* warranty or material warranty applies, evidence of insurance coverage shall be provided to **Pace** for the entire length of *Contractors'* warranty, and/or the length of materials warranty, whichever is greater. The *Contractors'* agent, broker, or insurer shall issue an updated Certificate of Insurance accompanied by required endorsements to **Pace** prior to the insurance policy renewal date each year.
- ☒ **Workers Compensation and Employer's Liability Insurance** affording the following limits: **Coverage A**-Statutory Benefits and **Coverage B-Employer's Liability**-\$500,000 Each Accident, \$500,000 Disease-Each Employee, \$500,000 Disease-Policy Limit. Executive Officers, Sole Proprietors, General Contractor's utilizing Independent Contractor labor, and/or others not required by the Illinois Workers Compensation Act to obtain Workers Compensation insurance coverage agree to execute the attached **hold-harmless agreement**.
- ☒ **Workers Compensation Waiver of Subrogation**
The *Contractors* and its insurer shall agree to waive their rights to subrogate against **Pace** and the Regional Transportation Authority. **Pace** shall be scheduled and/or named on the ISO WC 00 03 13 endorsement or equivalent WC Waiver of Subrogation.
- ☒ **Commercial General Liability Insurance (Broad Form)** with coverage and limits that meet or exceed the following parameters; coverage is written on an ISO CG 00 01 or other equivalent coverage form with the following limits:
 - Each Occurrence-\$1,000,000
 - General Aggregate-\$2,000,000
 - Products/Completed Operations Aggregate-\$2,000,000
 - Personal & Advertising Injury-\$1,000,000

- ☒ With respect to the **Commercial General Liability**, **Pace** shall be added as Additional Insured on the *Contractors* CGL policy through one of the following two endorsements; (1) **CG 2010 and G 2037** Blanket Additional Insured Wording directly from the *Contractors* General Liability Insurance policy or (2) **CG 2026** Designated Organization Endorsement (or comparable format) naming **Pace** as the “Designated Organization” through the issuance of either Endorsement, **Pace** shall be granted Additional Insured status for “ongoing and completed operations”.
- ☐ **Commercial General Liability-Additional Insured Vendors** – The *Contractor* shall provide **Pace** with a copy of an ISO CG 20 15 endorsement (Additional Insured-Vendors) from the Manufacturer(s) insurer of the product(s) sold to **Pace**. The endorsement shall provide the *Contractor* with Additional Insured status under the Manufacturer’s Commercial General Liability-Products/ Completed Operations policy. Endorsement CG 20 15 requires that the *Contractor* be scheduled (named) on this policy and endorsement and that the products covered under this endorsement are also scheduled. In cases where the *Contractor* sells numerous products for a specific Manufacturer, it is acceptable for the endorsement to read “All Vendors” or “Blanket all Vendors”.
- ☒ **Business Automobile Insurance** with a Combined Single Limit (CSL) of not less than \$1,000,000 per accident for bodily injury and property damage liability arising from owned, non-owned, and hired vehicles. Coverage provided shall be not less than that provided by the current ISO form CA 00 01 and contain Symbol 1- (Any Auto) defining the covered autos.
- ☐ **Business Auto Liability Insurance** shall include a **CA 2048** endorsement which shall identify **Pace** as an Additional Insured on this policy.
- ☐ **Automobile Physical Damage** with coverage afforded for **Comprehensive perils** including losses from fire, theft, vandalism, falling or flying objects, malicious mischief, lightning, windstorm, water, flood, earthquake, hail, impact with animals, missiles, riot, civil commotion, rising water, and breakage of glass (other than when caused by collision), and; **Collision perils**, including upset or collision with another vehicle, person, or any object including the ground or highway; impact with an object on or in the ground. The Physical Damage coverage limit (valuation) shall be based on the **Replacement Cost** value of the vehicle(s). Replacement Cost is defined as cost to replace new with like kind and quality and zero (\$0) in accumulated depreciation.
- ☐ If the *Contractors* are leasing **Pace** property or using **Pace**-owned vehicles/property, and are contractually obligated to insure **Pace**-owned property, the *Contractors*’ insurer or agent/broker shall name Pace Suburban Bus Service as the **Loss Payee** **Pace** shall be provided with a BP 12 03 Loss Payee (or equivalent) endorsement that specifically schedules Pace as a Loss Payee.
- ☐ **Umbrella Liability Insurance** affording limits of not less than \$_____ each occurrence and \$_____ aggregate coverage. Such umbrella coverage shall contain the following policy provisions and/or endorsements: defense, investigation, and supplementary payments “outside” or “in addition to” the policy limits, 30 day Notice of Cancellation, Definition of “Who is an insured” (includes “Any person or organization” that is an insured under any policy of underlying coverage) and the *Contractor* must maintain underlying insurance as scheduled when the Umbrella coverage was bound.
- ☐ **Professional Liability/Errors and Omissions Insurance** coverage with a limit of not less than \$1,000,000 per Occurrence and \$1,000,000 Policy Aggregate. The Professional Liability policy shall be sent to the **Pace**’s Risk Management Department for review of coverage terms, conditions, and exclusions. If Professional Liability coverage is added by endorsement to the General Liability coverage, a copy of the General Liability policy should be forwarded to **Pace** for review. **Pace** reserves the right to accept or reject the evidence of coverage provided by the *Contractor*.
- ☐ **Garage Liability/Garage Keepers Coverage** combining Business Auto Liability and Physical Damage Coverage shall provide the following minimum limits: \$1,000,000 CSL-Garage Liability. Garage Keepers written on a Comprehensive Form shall provide a location limit sufficient to cover the Fair Market Value on new **Pace**-owned vehicles/equipment and Replacement Cost Value on pre-driven **Pace** owned vehicles/equipment and all other non-owned vehicles at the specific storage/repair location. The *Contractor* shall also

furnish **Pace** with a copy of the **CA 25 14** broadened coverage endorsement. The Garage Liability policy shall include symbols 30 and 31. The Garage policy shall be written on a **CA 00 05** policy form or its equivalent. If towing services are included in the scope of work of the contract with **Pace**, then "On-Hook" Coverage of \$500,000 is also required.

- ☐ **Pollution Legal Liability Insurance (PLL) and/or Contractors Pollution Liability (CPL)** with coverage afforded for third-party claims including, but not limited to: bodily injury, property damage, and remediation expenses. Due to the variation in policy types, coverage afforded and exclusions, **Pace** requires that a copy of the actual policy be provided to us for a complete review prior to acceptance of the insurance terms or exhibit that make up this agreement. **The minimal liability limits required for this policy are \$1,000,000**
- ☐ **Fiduciary Liability** with a coverage limit in the amount of \$ _____. This liability insurance shall provide coverage to **Pace** for any loss that the *Contractor* becomes legally liable arising out of their role as fiduciaries, including the cost of defending those claims that seek to establish such liability. This insurance shall pay because of a claim made against the *Contractor* for any alleged wrongful act committed by said *Contractor* or by any other person for whom the *Contractors* are legally responsible. A wrongful act includes any violation of the responsibilities, obligations, or duties imposed on fiduciaries by the Employee Retirement Income Security Act (ERISA), as well as acts, errors, or omissions in the performance of the duties of a plan administrator or consultant.
- ☐ **Fidelity Bond** coverage in the amount of \$ _____ through a Surety Company that has a rating of at least A-VII per A.M. Best or a rating from Standard & Poor's of at least A- for the entire term of the contract. The Bond shall include all of the *Contractors'* employees in order to protect **Pace** against losses arising out of, and not limited to: theft, embezzlement, fraud, misplacement of funds, money or documents.
- ☒ **Technology Errors and Omissions/Cyber Liability Insurance** – The third-party liability policy shall include the following coverage and limits of coverage.

Third-Party Coverage Part	Includes coverage for:	Required Minimum Sublimit
Professional Services	Acts, Errors, or Omissions in the course of providing professional services	<u>\$1,000,000</u> per occurrence
Content/Media Liability	Personal and advertising injury and intellectual property infringement arising out of media content created, produced or disseminated by the insured (contractor)	\$ _____ per occurrence
Network Security Liability	Breaches in network security or unauthorized access events	<u>\$1,000,000</u> per occurrence
Privacy Liability	Wrongful disclosure of confidential information	<u>\$1,000,000</u> per occurrence

- ☒ The *Contractors'* "Other Insurance" policy clause shall be shown on the Certificate of Insurance with the following wording **"This insurance is primary, non-contributory, and not excess of any other insurance of Pace."**

Notice of Cancellation on all Policies

All insurance coverage shall contain a 30-day notice of cancellation, except in the case of non-payment of premium which is 10 days. The Insurer and/or Agent/Broker shall endeavor to provide the written notice of cancellation to **Pace's** Risk Management Department **30** days prior to the effective date of cancellation (except for non-payment of premium which is 10 days). Failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives.

Disclosure of a Deductible or Self-Insured Retention (SIR)

If your company is self-insured or utilizes a Risk Financing Mechanism in which a deductible or SIR (self-insured retention) exceeds \$25,000, **Pace** reserves the right to request the most recent audited financial statements from the contractor and documents from the State Insurance Department granting self-insurance approval.

Within five (5) business days of Pace's request and prior to contract award the insurance company, or its representative, shall submit an insurance certificate and corresponding endorsements that meet or exceed Pace's requirements.

Purchasing Manager
Pace Suburban Bus Service
550 West Algonquin Road
Arlington Heights, IL 60005-4412

FAILURE to comply with **Pace's** Insurance Requirements and provide evidence of insurance coverage as required by contract may result in your bid or proposal being rejected as non-responsive. The *Contractors'* failure to carry, maintain and/or document required insurance shall constitute a breach of the contract. Any failure by **Pace** to demand or receive proof of insurance coverage shall not constitute a waiver of *Contractors'* obligation to obtain the required insurance. The *Contractors'* expressly agree that these insurance provisions in no way limit the *Contractors'* responsibilities under other provisions of the Contract, including the hold harmless and indemnification clause. *Contractors'* insurance agent shall, upon request by **Pace**, furnish a copy of the insurance policy addressed to the Purchasing Department Manager. *Contractors* shall not commence work herein until they have obtained the required insurance and has received **Pace's** approval.

**REQUEST FOR PROPOSAL NO. 409202
TECHNICAL SUPORT FOR PACE HP 3000 APPLICATIONS
PACE LOCATIONS**

PACE HEADQUARTERS

550 W. Algonquin Road
Arlington Heights, IL 60005

PACE FOX VALLEY DIVISION

400 Overland Drive
North Aurora, IL 60542-1678

PACE RIVER DIVISION

975 S. State Street
Elgin, IL 60123-7654

PACE HERITAGE DIVISION

9 Osgood Street
Joliet, IL 60433-1863

PACE NORTHSORE DIVISION

2330 Oakton Street
Evanston, IL 60202-2700

PACE NORTHWEST DIVISION

900 E. Northwest Highway
Des Plaines, IL 60016-3030

PACE CHICAGO ADA OFFICE

547 West Jackson Blvd, 10th Floor
Chicago, IL 60661.

PACE SOUTH HOLLAND MAINTENANCE

405 Taft Drive
South Holland, IL 60473-2015

PACE SOUTHWEST DIVISION

9889 S. Industrial Drive
Bridgeview, IL 60455-2306

PACE NORTH DIVISION

1400 W. 10th Street
Waukegan, IL 60085-7606

PACE WEST DIVISION

3500 W. Lake Street
Melrose Park, IL 60160-2826

PACE SOUTH DIVISION

2101 W. 163rd Place
Markham, IL 60426-5656

REQUEST FOR PROPOSAL NO. 409202
HP 3000 APPLICATIONS SUPPORT
REQUEST FOR CHANGE TO TERMS AND CONDITIONS

Pursuant to Exhibit B, Section A, Article 15, Proposers may use this form, or a reasonable facsimile, to request a consideration for a change, addition, or elimination to/of the standard terms and conditions included in this RFP. Attach additional forms as required. Completed forms must be submitted concurrently along with your proposal. Forms submitted after the proposal due date will not be considered. Pace will negotiate in good faith only items identified on this form, or a reasonable facsimile. Alternate contracts, manual modifications, supplemental statements, or other changes noted/imbedded in other RFP documents or in the technical and price proposal submitted by the Proposer will not be considered and shall not be official or binding on Pace. Additionally, such modifications or inclusions may result in a non-responsive determination against your proposal. Only changes initiated by this form, negotiated in good faith, and incorporated into the final contract shall be official and binding.

Proposer:	
Requesting:	☐ Modification ☐ Elimination ☐ Addition
To/of:	Exhibit ____, Page ____, Section/Paragraph/Article: _____
<i>If requesting a modification to language or additional clause(s), specific language must be proposed below:</i>	
Pace Response:	☐ Change accepted as stated ☐ Change accepted with further modification as stated below ☐ Change rejected