



Suburban Bus Division of the
Regional Transportation Authority

550 West Algonquin Road • Arlington Heights, Illinois 60005

| | |
|--------------------------------|-------------------------|
| PURCHASE ORDER NO. 230135 B | BEGIN DATE 01-MAY-20 |
| CAPITAL No | END DATE 30-APR-23 |
| F.O.B | BUYER D Whitten |
| PAYMENT TERMS Net 30 Days | PO: 1 OF 1 |

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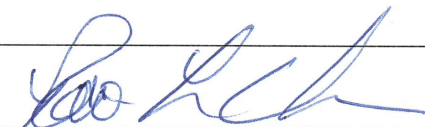
Cummins Inc
1600 Buerkle Rd
White Bear Lake, MN 55110

NOTICE TO VENDOR

For prompt payment, send your invoice with PACE
PO Number, in duplicate to:

ACCOUNTING SECTION
PACE – HEADQUARTERS
550 W ALGONQUIN RD
ARLINGTON HTS, IL 60005-4412
(847) 364-8130

| ITM NO | QUANTITY | U/M | SKU NO | DESCRIPTION | VEN PART NO | UNIT PRICE | EXTENSION |
|--------|----------|---------|--------|--|-------------|------------|--------------|
| 1 | | Dollars | | This confirms Contract 230135 dated May 1, 2020 between Pace, the Suburban Bus Division of the Regional Transportation Authority and Cummins Sales and Service for Service Contract for Repair of Engines and Transmissions. | | | 1,287,833.32 |

| | |
|--|---|
| For Internal Use Only | |
| 1 | 11.10101.5101.503501.301.000000000.000000 |
| REQUISITION NO. 419795 | TOTAL NOT TO EXCEED 1,287,833.32 |
|  | 5/1/20 |
| Signature | Date |

Contract No. (230135)

INVITATION FOR BID NO. 419795
SERVICE CONTRACT FOR REPAIR OF CUMMINS ENGINES,
DETROIT DIESEL ENGINES AND ALLISON TRANSMISSIONS
SPECIAL CONTRACT CONDITIONS/BID PRICE

THIS CONTRACT is entered into (May 1, 2020) by and between Pace, Suburban Bus Division of the Regional Transportation Authority (hereinafter called Pace) and the Bidder/Contractor indicated below.

1. **General Description:** Pace is seeking a Multiple Award Time and Materials Service Contract for repair of Cummins engines, Detroit diesel engines and Allison transmissions for Pace – owned buses. Services shall be performed in accordance with the attached *Exhibit C, Scope of work* on an as-needed basis.
2. **Contract Term:** The contract period will be three (3) years. Contract shall begin immediately upon execution and shall be valid for a period of thirty-six (36) months.
3. **Basis of Award:** A contract will be awarded to each bidder that has been determined to be qualified to provide the required services as specified in *Exhibit C, Scope of work*. Bidders may bid on the repair of Group I Cummins Diesel Engines, Group II Cummins compressed natural (CNG) Engines, Group III Detroit Diesel Series 50 Engines, Group IV Allison Transmissions in Diesel Buses and Group V Allison B400R Transmission in compressed natural (CNG) Buses. The decision of Pace in determining the Proposer’s compliance with these qualification requirements shall be final. Pace reserves the right to award Contracts to multiple qualified bidders to provide repair services. This Contract shall be effective as of the date when it is signed by Pace. The prices submitted with the Bid shall be firm, fixed unit prices for the duration of the contract. Bids shall be irrevocable for a period of ninety (90) days.
4. **Approved Products:** The Contractor must be authorized by the OEM. All equipment must be new unless otherwise specified. See *Exhibit C, Scope of work* for further details.
5. **Pace DBE Requirements:** Pace has determined that ZERO PERCENT (0%) DBE participation is required for this Contract. Pace encourages the Prime Contractor to offer contracting opportunities to the fullest extent possible through outreach and recruitment activities.
6. **Insurance Requirements:** The successful bidder will be required to provide evidence of all required insurance coverage, limits, endorsements, etc. for the duration of the contract plus one additional year. 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 IFB.

7. **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.
8. **Payment/Invoicing:** All invoices are to reference the contract number, description of services, location services were rendered, part number, quantity shipped, unit prices, and extensions. The Contractor shall provide 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 model and serial numbers where applicable. The itemized listing should 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. If equipment is provided and shipped to Pace by a subcontractor, the Contractor is responsible for obtaining and submitting the itemized listing of equipment that is shipped to Pace. The Contractor will invoice Pace at 550 W. Algonquin Road, Arlington Heights, IL 60005. Electronic invoices shall be submitted to accounts.payable@pacebus.com. Payment will be made within 30 days of receipt of an approved invoice.
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) day's 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. **Exhibits:** The following Exhibits are attached hereto and become a part of any award that may result. If there is any conflict in the provisions contained in these Exhibits, then the more stringent shall take precedence.

Exhibit A – Special Contract Conditions/Bid Price
Exhibit B – General Contract Conditions
Exhibit C – Scope of Work
Exhibit D – Insurance Requirements
Exhibit E – Drug and Alcohol Policy
Exhibit F - Vendor Survey

14. **Bid Submittal Check List**: The following documents should be submitted with your bid or it may be considered non-responsive.

Bidders are further cautioned not to qualify their bids by modifying the contract documents, either by alteration or supplemental statements or documents (including but not limited to quotation forms, agreement documents, or exceptions). All bids are to be in accordance with this Invitation for Bid and become the property of Pace. Bids that are not so made may be rejected as non-responsive.

- Complete the Bidders Bid Sheet
- Sign the Non-Collusion Affirmation at the bottom of the Bidders Bid Sheet
- Complete and sign the Contract Signature Page
- Acknowledge any addenda on page 9 of Exhibit A submit all documents as instructed by any addenda
- Submit certifications and licenses of technicians / mechanics
- Complete and sign the Certification of Compliance with Pace's Drug and Alcohol Policy and Testing Program in Exhibit E
- Complete and provide Vendor Survey in Exhibit F
- Complete and sign the Certification of Restrictions on Lobbying
- Sign the Contractor's Certification Regarding Suspension and Debarment
- Submit one (1) set of **all** bid documents in a sealed envelope stating IFB No. (419795) for (Service Contract for Repair of Cummins Engines, Detroit Diesel Engines and Allison Transmissions)

Any questions regarding this Invitation for Bid must be submitted no later than 2:00 PM on January 30, 2020. Questions regarding this IFB shall be submitted in writing to Denise Whitten, Senior Contract Buyer, at denise.whitten@pacebus.com and Evan Roglich, Contract Buyer II at evan.roglich@pacebus.com or via fax at 847-228-4204. Questions submitted after this date and time will not be accepted.

The bid opening date is **February 11, 2020 at 2:00 P.M.** at Pace Headquarters, 550 West Algonquin Road, Arlington Heights, Illinois 60005. Any bids received after this date and time will be rejected.

INVITATION FOR BID NO. 419795
SERVICE CONTRACT FOR REPAIR OF CUMMINS ENGINES,
DETROIT DIESEL ENGINES AND ALLISON TRANSMISSIONS
BIDDERS BID
(SUBMIT ONE (1) BID)

This is a Multiple Award Order Contract using fixed fully burdened hourly rates and fixed cost for parts for repair services of Cummins Engines, Detroit Diesel engines and Allison transmissions for Pace – owned buses. Pace reserves the right to award Contracts to multiple qualified bidders to provide repair services. There are no minimums for any contract awarded. The maximum awarded is \$2,387,833.32. This is a *Not to Exceed* Total Contract Maximum and is not a firm commitment to purchase services.

- Bidders are **not** to modify this bid by alternation and/or supplemental statements or documents which may be cause for your bid to be rejected as non-responsive.
- The unit pricing quoted must be firm and include delivery and all other applicable charges. No additional charges will be allowed. In the event of a discrepancy between the unit cost and total, the unit cost shall prevail.
- Travel and mileage charges shall be calculated using common internet mapping programs from street address to street address. Travel and mileage shall be calculated from point to point. Pace shall not incur any charges for procuring any parts or supplies needed to perform repairs. Travel and mileage charges shall be listed separate on invoice. Contractor shall provide Pace Inspector copies of all related paper work for each repair as listed in *Exhibit C, Scope of Work*.
- All work shall be completed on a time and material basis in accordance with the labor rates and costs specified in the Bidder's Price Proposal. The Contractor shall provide Pace with an estimated cost for the necessary repairs. Upon approval by Pace, the Contractor shall complete the authorized work. Any work started before Pace's approval shall be the responsibility of the Contractor. Any subcontracted work must be Pre-approved by Pace in writing.
- The costs of the following items are not allowed under this contract: miscellaneous shop supplies, diagnostic charges, EPA disposal charges, repair validation and sales tax.

**INVITATION FOR BID NO. 419795
SERVICE CONTRACT FOR REPAIR OF CUMMINS ENGINES,
DETROIT DIESEL ENGINES AND ALLISON TRANSMISSIONS
BIDDER'S PRICE PROPOSAL**

GROUP I – Cummins Diesel Engine

| ITEM | YEAR 1 | YEAR 2 | YEAR 3 |
|--|----------------|----------------|----------------|
| Labor Rate | \$115.00 /hour | \$118.45 /hour | \$122.00 /hour |
| Mechanic Travel Rate | \$0.00 /hour | \$0.00 /hour | \$0.00 /hour |
| Mileage Charge | \$3.00 /mile | \$3.00 /mile | \$3.00 /mile |
| Discount/Mark-up for parts based on Fleet Pricing per \$1,000.00 +/⓪ | % 15 /parts | % 15 /parts | % 15 /parts |

GROUP II – Cummins CNG Engine

| ITEM | YEAR 1 | YEAR 2 | YEAR 3 |
|--|----------------|----------------|----------------|
| Labor Rate | \$115.00 /hour | \$118.45 /hour | \$122.00 /hour |
| Mechanic Travel Rate | \$0.00 /hour | \$0.00 /hour | \$0.00 /hour |
| Mileage Charge | \$3.00 /mile | \$3.00 /mile | \$3.00 /mile |
| Discount/Mark-up for parts based on Fleet Pricing per \$1,000.00 +/⓪ | % 15 /parts | % 15 /parts | % 15 /parts |

GROUP III– Detroit Diesel Series 50 Engines

| ITEM | YEAR 1 | YEAR 2 | YEAR 3 |
|--|------------------------|------------------------|------------------------|
| Labor Rate | \$ <u>NO BID</u> /hour | \$ <u>NO BID</u> /hour | \$ <u>NO BID</u> /hour |
| Mechanic Travel Rate | \$ <u>NO BID</u> /hour | \$ <u>NO BID</u> /hour | \$ <u>NO BID</u> /hour |
| Mileage Charge | \$ <u>NO BID</u> /mile | \$ <u>NO BID</u> /mile | \$ <u>NO BID</u> /mile |
| Discount/Mark-up for parts based on Fleet Pricing per \$1,000.00 +/- | % <u>NO BID</u> /parts | % <u>NO BID</u> /parts | % <u>NO BID</u> /parts |

GROUP IV – Allison Transmissions in Diesel Buses

| ITEM | YEAR 1 | YEAR 2 | YEAR 3 |
|--|------------------------|------------------------|------------------------|
| Labor Rate | \$ <u>NO BID</u> /hour | \$ <u>NO BID</u> /hour | \$ <u>NO BID</u> /hour |
| Mechanic Travel Rate | \$ <u>NO BID</u> /hour | \$ <u>NO BID</u> /hour | \$ <u>NO BID</u> /hour |
| Mileage Charge | \$ <u>NO BID</u> /mile | \$ <u>NO BID</u> /mile | \$ <u>NO BID</u> /mile |
| Discount/Mark-up for parts based on Fleet Pricing per \$1,000.00 +/- | % <u>NO BID</u> /parts | % <u>NO BID</u> /parts | % <u>NO BID</u> /parts |

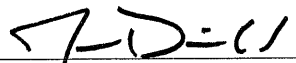
GROUP V – Allison B400R Transmission in CNG Buses

| ITEM | YEAR 1 | YEAR 2 | YEAR 3 |
|--|------------------------|------------------------|------------------------|
| Labor Rate | \$ <u>NO BID</u> /hour | \$ <u>NO BID</u> /hour | \$ <u>NO BID</u> /hour |
| Mechanic Travel Rate | \$ <u>NO BID</u> /hour | \$ <u>NO BID</u> /hour | \$ <u>NO BID</u> /hour |
| Mileage Charge | \$ <u>NO BID</u> /mile | \$ <u>NO BID</u> /mile | \$ <u>NO BID</u> /mile |
| Discount/Mark-up for parts based on Fleet Pricing per \$1,000.00 +/- | % <u>NO BID</u> /parts | % <u>NO BID</u> /parts | % <u>NO BID</u> /parts |

NON-COLLUSION AFFIRMATION

IMPORTANT: This affirmation must be signed and submitted with the bid/proposal.

The bidder or proposer submitting this bid or proposal hereby affirms that such bid/proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company, organization or corporation; that such bid/proposal is genuine and not collusive or sham, and that said bidder/proposer has not been a party to any agreement or collusion among bidders/proposers or prospective bidders/proposers in restraint of freedom of competition by agreement to bid a fixed price, or otherwise, or to refrain from bidding/proposing 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/proposer or anyone else interested in the proposed Contract. The bidder/proposer 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 (III. Rev. Stat. Chap.38,33E-1,ET.SEQ).



 (Signature of Person Affirming Bid/Proposal)

**INVITATION FOR BID NO. 419795
SERVICE CONTRACT FOR REPAIR OF CUMMINS ENGINES,
DETROIT DIESEL ENGINES AND ALLISON TRANSMISSIONS
CONTRACT SIGNATURE PAGE**

Addendum Acknowledgment: The bidder hereby acknowledges receipt of the following Addenda that are incorporated herein by reference. (If there were No Addenda, write "NONE") 1 . **Failure to acknowledge Addenda may be cause for the bid to be considered non-responsive.**

Addendum No. 1
Addendum No.
Addendum No.

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

CONTRACTOR

**PACE, SUBURBAN BUS DIVISION OF THE
REGIONAL TRANSPORTATION AUTHORITY**

Cummins Inc.

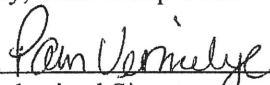
Company Name

1600 Buerkle Road

Street Address

White Bear Lake, MN 55110

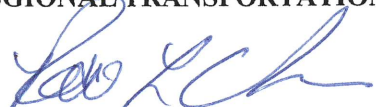
City, State & Zip Code

 (Pam Vermilye)

Authorized Signature

2/10/2020

Date



Signature

PAOLO L. DONAHUE

Printed/Typed Name

EXECUTIVE DIRECTOR

Title

5/1/20

Date

Daniel Cross

Printed/Typed Name

Account Executive, Bus & Transit

Title

(708) 215-2641, Fax (708) 482-6455

Telephone Number and Fax Number

daniel.cross@cummins.com

E-mail Address

PACE SUBURBAN BUS SERVICE
INSTRUCTIONS TO CONTRACTORS & GENERAL CONTRACT CONDITIONS
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PACE, SUBURBAN BUS SERVICE
INSTRUCTIONS TO CONTRACTORS & GENERAL CONTRACT CONDITIONS
MATERIALS AND SUPPLIES WITH SERVICES CONTRACTS

The following instructions, terms and conditions shall apply to Pace solicitations and Contracts for materials and supplies. All Pace Contracts shall be governed by Illinois Law. 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 Specifications.

SECTION A – INSTRUCTIONS TO CONTRACTORS

1. Documents: The Contractor declares he has fully examined this Invitation for Bid or Request for Proposal including all attachments, exhibits and addenda as applicable and that he is familiar with all of the conditions effecting the Contract, and understands that in making this quotation the Contractor waives all right to plead any misunderstanding regarding same. The Contractor's quotation shall comply with all federal, state and local laws, rules and regulations applicable.

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 the 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 the 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 Chief Procurement Officer who alone shall have the authority to bind Pace and to exercise the rights, responsibilities, authorities and functions vested within the Contract documents, except that the Chief Procurement Officer shall have the right to designate authorized representatives to act on their behalf. 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 Chief Procurement Officer authorized representative under this Contract but only to the extent so specified.

Pace's Chief Procurement Officer may, at any time during the performance of this Contract, vest in any such authorized representatives, additional power and authority to act on their behalf or designate additional representatives, specifying the extent of their authority to act or designate additional representatives to the extent deemed necessary.

- 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 Chief Procurement Officer, 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. Conditions of Acceptance: 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 items or 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.

4. 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.
5. 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.
6. Irregular Bids: The Contractor understands that the bid must show the unit prices for all material or 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.
7. Additional Charges: The price quoted for each item is the full purchase price, including packaging and 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.
8. 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 material or service specified in the manner and at the time prescribed and in accordance with the specifications of Pace.
9. Modifications to Contract
 - a. 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.
 - b. Request for any change in the Contract after award shall be submitted in writing to Chief Procurement Officer for prior approval. Oral change orders are not permitted. No change in the Contract shall be made except in writing signed by the Chief Procurement Officer or a 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.
10. 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 selecting the lowest bid.
11. 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.

SECTION B – GENERAL TERMS AND CONDITIONS

1. Delivery: It is understood and agreed that time of delivery is of the essence of this Contract. If the Contractor is delayed in the delivery of goods or 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.
2. Entire Agreement: This Contract contains the entire agreement of the parties. It may not be modified or terminated orally, and no claimed modification, termination, or waiver shall be binding on Pace unless in writing signed by the Chief Procurement Officer or the duly authorized representative. No modification or waiver shall be deemed effected by the Contractor's acknowledgment or confirmation containing other or different terms. All titles to clauses contained in this Contract are for identification only and shall not be construed as being a substantive part of the agreement. The Section headings contained in this Contract are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Contract.

3. **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.
4. **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 to such succession or assignment. Assignment of any portion of the work by subcontract must be approved in advance by Pace, in writing. Pace reserves the right to assign all or part of the specified deliverables in this Contract as originally advertised, competed, evaluated, and awarded including base and option quantities.
5. **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.
6. **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 the 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.
7. **Price Warranty:** The Contractor warrants that the unit price(s) charged herein do not exceed the unit prices 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.
8. **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 the Contractor's invoice. The 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. This requirement is also applicable to all sub-tier subcontractors and suppliers, and shall be made a part of all subcontracts and agreements. Pace is exempt from local, state, and federal taxes.
9. **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.
10. **Regulatory Compliance:** All goods and 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.
11. **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.

12. 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

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. The bidder must comply with Paragraphs A and B below and submit all documentation with submittal of the bid. If the bidder fails to do so, its bid may be deemed non-responsive and may be rejected.

- A. Properly completing and signing Schedule A (Summary of DBE Participation). Schedule A is a list of all DBE subcontractors, their scope of work to be performed and dollar amount of participation of each DBE subcontractor.

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. Schedule B must list the name of the DBE subcontractor, a detailed 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 B 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).

DBE RESPONSIBILITY REQUIREMENTS

- A. DBE Joint Ventures

If the bidder is a DBE joint venture, a two-party signed joint venture agreement (Schedule C) 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 C (if a joint venture) without prior written approval from Pace.

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 SECTION B, *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 as 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 *49CFR 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, Suburban Bus Division of the Regional Transportation Authority 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 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, Suburban Bus Division of the Regional Transportation Authority 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, Suburban Bus Division of the Regional Transportation Authority must examine similar transactions particularly those in which DBEs do not participate.
 - c. If a DBE firm acting as a 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, Suburban Bus Division of the Regional Transportation Authority 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, Suburban Bus Division of the Regional Transportation Authority 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 person both owns and operates distribution equipment for the products. Any supplementing of regular dealer's 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 this 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 Contractor's DBE achievements or Pace's overall goal until the amount being counted toward the goal has been paid to the DBE.

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 C (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:
 - a. the names, addresses, and telephone numbers of DBEs that were considered
 - b. a description of the information provided regarding the plans and specifications for the work selected for subcontracting
 - c. 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.

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
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 ten (10) business days after its reconsideration request was received by Pace, Suburban Bus Division of the Regional Transportation Authority, 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, Suburban Bus Division of the Regional Transportation Authority's decision shall be final.

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 Contractor must submit to the DBE Liaison Officer at Pace copies of SIGNED contracts between the Contractor and the DBE company/companies listed on its original DBE Schedules A and B.

FAILURE TO PROVIDE THE SIGNED SUBCONTRACT(S) TO PACE 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 Account Payable.
2. The Contractor must submit copies of the form illustrated below (including support documentation) to the DBE Liaison Officer on a quarterly basis. This form must be used in order to properly credit the Contractor’s progress in attaining the DBE goal.

SAMPLE ONLY – DO NOT COMPLETE

| Subcontract or Name (Company) | Description of services/work/product performed | Committed Percentage (for this reporting quarter) | Committed Percentage (YTD) | Total paid to Sub (Current quarter) | YTD paid to Sub (From date of contract) |
|-------------------------------|--|---|----------------------------|-------------------------------------|---|
| | | | | \$ | \$ |
| | | | | \$ | \$ |
| | | | | \$ | \$ |
| | | | | \$ | \$ |
| Total | | | | | \$ |

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 or Termination of DBE Firms

The Contractor may not terminate a listed and approved DBE subcontractor or an approved substitute DBE firm without the prior written approval of Pace’s DBE Liaison Officer and Pace’s Project Manager. This includes, but is not limited to, instances in which a Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. The Contractor will have to show good cause in order to terminate the listed and approved DBE firm.

Good Cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract;
2. The listed DBE subcontractor fails or refuses to perform work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor;
3. The listed DBE subcontractor fails or refuses to meet the Contractor’s reasonable, nondiscriminatory bond requirements;
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215, and 1200 or applicable state law;
6. Pace’s DBE Liaison Office has determined that the listed DBE subcontractor is not a responsible Contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract.
10. Other documented good cause that Pace’s DBE Liaison Office determines compels the termination of the DBE subcontractor. Provided that good cause does not exist if;
 - The Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Contractor can self-perform the work for which the DBE subcontractor was engaged; or
 - So that the Contractor can substitute another DBE or non-DBE subcontractor after contract award.

Before the Contractor seeks to terminate and/or substitute a DBE subcontractor, the Contractor must give notice in writing to the DBE subcontractor, with a copy to Pace’s Project Manager and Pace’s DBE Liaison Officer, of its intent to request to terminate and/or substitute, and the reason for the request. The DBE firm will have five (5) working days (or less if required by public necessity) to respond to the Contractor’s notice and advise the DBE Liaison Officer and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why Pace should not approve the Contractor’s action.

In the situation where the DBE’s work scope has been modified by Pace, the Contractor must immediately notify Pace’s Project Manager and Pace’s DBE Liaison Officer to discuss a revised “Commitment to DBE Participation”.

These provisions apply to post-award terminations and pre-award deletions of, or substitutions for, DBE firms put forward by offerors in negotiated procurements.

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 Contractor 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 subcontractors’ payroll records, tax returns and records, and books of accounts for the Contractor and all subcontractors working on any Pace, Suburban Bus Division of the Regional Transportation Authority contract. Full access shall be granted upon 48-hours’ notice by Pace, Suburban Bus Division of the Regional Transportation Authority or any duly authorized representative thereof or any law enforcement authority.

F. Change Orders

The contract specific DBE goals applicable to a contract may also be applicable to change orders or contract modifications, when the proposed change order work relates to the services provided by the DBE subcontractor.

G. Non-Compliance and Sanctions

1. Determination of Non-Compliance

- a. It will 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. Prior to contract closeout, the DBE Liaison Officer shall determine whether a Contractor has complied with the obligations under its compliance plan and other related requirements. The Contractor has the burden of proving compliance with all obligations and requirements
- c. If the Contractor fails to fulfill the requirements of the compliance plan or other compliance-related contractual obligation, Pace will notify the Contractor of the deficiencies. Following notification, the Contractor 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, Suburban Bus Division of the Regional Transportation Authority

DBE Schedule A Checklist

A completed and signed Schedule A consists of the following elements:

- 1. Contractor
- 2. Name of Project
- 3. Phone
- 4. Email
- 5. IFB/RFP Number
- 6. **TOTAL** Estimated Contract Amount
- 7. Projected DATES
- 8. Title of Affiant (Contractor Duly Authorized Representative)
- 9. Contractor Company Name
- 10. DBE Participant(s) Company Name(s)
- 11. Scope of Work / Description (In Detail) for Each DBE Participant
- 12. Dollar Amount of Each DBE Contract - **Total** from each DBE's Schedule B)
- 13. Net DBE Credit *60% credited for materials and supplies (see notation below if applicable)
- 14. TOTAL Dollar Amount for All DBE Contracts Listed
- 15. TOTAL Net DBE Credit (If applicable)
- 16. Printed or Typed Name of Contractor 's Affiant
- 17. Title of Affiant
- 18. Signature of Affiant
- 19. Date Signed

Note: This Checklist serves solely as a reference guide to assist the Bidder in adequately submitting all required documents
Instructions for NET DBE CREDIT

If the materials or supplies are obtained from a DBE manufacturer, count 100 percent (100%) of the cost of the materials or supplies toward DBE goals.

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.

If the materials or supplies are purchased from a DBE regular dealer, count 60 percent (60%) of the cost of the materials or supplies toward DBE goals.

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.

Pace will not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

SCHEDULE A

CONTRACTOR - SUMMARY OF DBE PARTICIPATION AS SUBCONTRACTOR, SUPPLIER AND/OR CONSULTANT

NAME OF CONTRACTOR: (1) _____ NAME OF PROJECT: (2) _____

PHONE # (3) _____ EMAIL: (4) _____ IFB/RFP NUMBER: (5) _____

TOTAL ESTIMATED CONTRACT AMOUNT: (6) \$ _____ PROJECTED BEGINNING/ENDING DATES OF WORK: (7) _____

In connection with the above captioned contract, I HEREBY DECLARE AND AFFIRM that I am the (8) _____ and duly authorized representative of (9) _____

(Title of Affiant)

(Name of Contractor)

and that I have personally reviewed the material and facts set forth in and submitted with the attached Disadvantaged Business Enterprises (DBE) Schedules for each DBE. Listed below is/are the agreement(s) that correspond(s) with the Schedule B submitted by **each** DBE and **listed separately** for **each** DBE participating on the above mentioned contract:

| NAME OF DBE SUBCONTRACTOR (10) | SCOPE OF WORK TO BE PERFORMED (11) | AGREED SUBCONTRACT PRICE (12) | NET DBE CREDIT * (13) |
|---|---------------------------------------|--------------------------------------|--------------------------|
| | | | |
| | | | |
| | | | |
| NOTE: PRICES REPRESENTED ON THIS PAGE SHOULD ACCURATELY REFLECT AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR. | | TOTAL DBE (14) CONTRACT AMOUNT \$ | |
| * ONLY 60% OF AGREED SUBCONTRACT PRICE MAY BE CREDITED FOR MATERIALS AND SUPPLIES LIST ONLY BONA FIDE DBE OWNED & CONTROLLED FIRMS THAT WILL PARTICIPATE IN THIS CONTRACT. | | TOTAL NET (15) DBE CREDIT \$ | |

AFFIDAVIT OF CONTRACTOR – *failure to submit this form without a signature will result in the bid being rejected in its entirety*

The undersigned will enter into formal agreements with all listed DBE firms for work as indicated by this Schedule A and accompanying Schedules, and will enter into such agreements within thirty (30) calendar days after receipt of the contract executed by Pace. In the event the Contractor cannot meet said thirty (30) day schedule, it must provide a written explanation for the delay and an estimate date by which the written agreement will be completed.

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 Contractor from participation in future government contracts and may result in conviction for a Class 2 felony, including a penalty for one and a half times the value of the contract. Any substitutions of the above-named subcontractors requires prior written approval from Pace.

I do solemnly declare and affirm under penalty of perjury that the contents of the foregoing document are true and correct, and no material facts have been omitted, and that I am authorized on behalf of the Contractor to make this affidavit.

(Name of Contractor's Affiant – Print or Type)

Title of Affiant

(Signature)

(Date)

DBE Schedule B Checklist

**Letter of Intent from DBE to Perform as Subcontractor, Supplier
and/or Consultant**

A completed and signed Schedule B consists of the following elements:

- 1. IFB/RFP Number
- 2. Name of Project
- 3. DBE Participant Company Name
- 4. Contractor Company Name
- 5. DBE Participant Address
- 6. DBE Participant Phone Number
- 7. DBE Participant Email Address
- 8. Date of IL UCP DBE Certification Letter
- 9. Description/Type of Work (In Detail)
- 10. Quantity/Unit Price, if Applicable
- 11. Dollar Amount of DBE Contract Total Sum Amount for Work or Extended Price for individual Quantity Items) **NOTE: Specify Total Value**
- 12. Grand Total of above Amount(s) and/or Extended Price(s)
- 13. Phase (if Applicable) in Which Above-Described Work Will Be Performed

Subcontracting Levels

- 14. % *___ of the dollar amount of the DBE's Subcontract will be sublet to DBE Contractors.
- 15. % *___ of the dollar amount of the DBE's Subcontract will be sublet to non-DBE Contractors.
 - * *This is to disclose the % of above-named DBE participant's work to be further subcontracted to others (DBE or non-DBE), not the DBE Participant's % of work on the Contractor's contract.*
 - * *% is to be filled in with a Zero (0) if the above-named DBE Participant will not be further subcontracting any of the work described in this Schedule B*
- 16. Explanation and Description of the Work To Be Sublet (if applicable)
- 17. Printed Name/Title of Owner, President or Authorized Agent of DBE Company
- 18. Signature of Owner, President or Authorized Agent of DBE Company
- 19. Date Signed

If proposing to perform as a DBE/non-DBE Joint Venture:

- 20. Completed SCHEDULE C must be attached

Note: This Checklist serves solely as a reference guide to assist the Bidder in adequately submitting all required documents.

SCHEDULE B
CONFIRMATION OF PROPOSED DBE PARTICIPATION

Proposer's failure to submit both pages of this form with its bid will result in the bid being rejected in its entirety

IFB/RFP NUMBER: (1) _____

NAME OF PROJECT: (2) _____

FROM: (3) _____
(Name of DBE firm)

TO: (4) _____ and Pace,
(Name of Contractor)

(5) _____
(Address of DBE Firm)

(6) _____
(Phone Number of *Authorized Agent of DBE firm*)

(7) _____
(Email Address of *Authorized Agent DBE firm*)

The DBE status of the undersigned is confirmed by the attached Letter of Certification from the IL UCP dated, (8) _____
(If proposing to perform as a DBE/non-DBE Joint Venture, the Letter of Certification from the DBE venturer is attached along with a completed Schedule B and joint venture agreement).

The undersigned is prepared to provide the following described services or supply the following described goods in connection with the above named project/contract:

| Description/Type of Work (In Detail) (9) | Quantity (If Applicable) (10) | Dollar Amount of DBE Contract (11) |
|---|--------------------------------------|---|
| | | |
| | | |
| | | |
| | | |
| | | TOTAL VALUE \$ _____ (12) |

Multi-Phase Project(s). For those projects that are multi-phase, please indicate the phase in which the DBE will be performing work: (13)

SCHEDULE B
AFFIDAVIT OF DBE SUBCONTRACTOR

Subcontracting Levels

(14) % _____ of the dollar amount of the DBE's subcontract will be sublet to **DBE Subcontractors**.

(15) % _____ of the dollar amount of the DBE's subcontract will be sublet to **non-DBE Subcontractors**.

NOTICE: IF THE DBE WILL NOT BE SUBCONTRACTING ANY OF THE WORK DESCRIBED IN THIS SCHEDULE, A ZERO (0) MUST BE SHOWN IN EACH BLANK ABOVE.

IF **ANY** DOLLAR AMOUNT OF THE DBE's SCOPE OF WORK WILL BE SUBLET, A BRIEF EXPLANATION AND DESCRIPTION OF THE WORK TO BE SUBLET MUST BE LISTED BELOW: (16)

NOTICE: Any misrepresentation regarding the status of a person or an entity in order to qualify for DBE status may result in conviction for a Class 2 felony, including a penalty for one and a half times the value of the contract. Material misrepresentation on any matter will also be grounds for terminating any contract which may be awarded, and for initiating action under federal or state laws concerning false statements.

The undersigned will enter into a formal written agreement for the above work with the Contractor conditioned upon their execution of a contract with Pace, and will do so within thirty (30) calendar days of their receipt of a signed contract from Pace.

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.

(17) _____
Print - Name and Title

(18) _____
Signature of Owner, President or Authorized Agent of DBE

(19) _____
Date

Pursuant to 49 CFR §26.13(b), each subcontract the contractor signs with a subcontractor must include the following assurance:

{ The contractor, sub recipient or subcontractor 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. }

Pursuant to 49 CFR §26.27, Pace encourages you to utilize financial institutions owned and controlled by socially and economically disadvantaged individuals within your community.

SCHEDULE C
AFFIDAVIT OF DBE/NON-DBE JOINT VENTURE

This Schedule C need not be submitted if all joint ventures are DBEs. In such a case, however, the written joint venture agreement and a copy of the current IL UCP Letter of Certification for each DBE must be submitted.

ALL INFORMATION REQUESTED BY THIS SCHEDULE MUST BE ANSWERED IN THE SPACES PROVIDED BY JOINT VENTURERS AT ANY TIER. ADDITIONAL SHEETS MAY BE ATTACHED.

I. Name of joint venture: _____

Address of joint venture: _____
Street City State Zip

Phone number of joint venture: _____

II. Identify each non-DBE venture(s): _____

Name of Firm: _____

Address: _____
Street City State Zip

Phone: _____

Contact person for matters concerning DBE compliance: _____

III. Identify each DBE venturer(s): _____

Name of Firm: _____

Address: _____
Street City State Zip

Phone: _____

Contact person for matters concerning DBE compliance: _____

IV. Describe the role(s) of the DBE venturer(s) in the joint venture:

V. Attach a copy of the joint venture agreement. In order to demonstrate the DBE venturer's share in the ownership, control management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) the contributions of capital and equipment; (2) work items to be performed by the DBE's own forces, (3) work items to be performed under the supervision of the DBE venturer; and (4) the commitment of management, supervisory and operative personnel employed by the DBE to be dedicated to the performance of the project.

VI. Attach a copy of the current IL UCP Letter of Certification for each DBE joint venturer.

VII. Ownership of the Joint Venture:

A. What is the percentage(s) of DBE ownership in the joint venture?

DBE ownership percentage(s): _____

Non-DBE ownership percentage(s): _____

SCHEDULE C
AFFIDAVIT OF DBE/NON-DBE JOINT VENTURE

VII. Ownership of the Joint Venture *(continued)*:

A. Specify DBE/non-DBE percentages for each of the following (provide narrative descriptions and other detail as applicable):

1. Sharing of profit and loss: _____

2. Capital contributions: _____

(a) Dollar amounts of initial contribution: _____

(b) Dollar amounts of anticipated on-going contributions: _____

3. Contributions of equipment *(specify types, quality and quantities of equipment to be provided by each venturer)*:

4. Other applicable ownership interests, including ownership options or other agreements, which restrict or limit ownership and/or control:

5. **Provide copies of all written agreements between venturers concerning this project.**

6. Identify each current Pace contract and each contract completed during the past two (2) years by either of the joint venture partners participating in this joint venture:

VIII. Control of and Participation in the Joint Venture. Identify by name and firm those individuals who are, or will be, responsible for and have the authority to engage in the following management functions and policy decisions. (Indicate any limitations to their authority such as dollar limits and co-signatory requirements.):

A. Joint venture check signing:

B. Authority to enter contracts on behalf of the joint venture:

SCHEDULE C
AFFIDAVIT OF DBE/NON-DBE JOINT VENTURE

C. Signing, co-signing and/or collateralizing loans:

D. Acquisition of lines of credit:

E. Acquisition and indemnification of payment and performance bonds:

F. Negotiating and signing labor agreements:

G. Management of contract performance. *(Identify by name and firm only):*

1. Supervision of field operations: _____

2. Major purchases: _____

3. Estimating: _____

4. Estimating: _____

IX. Financial Controls of Joint Venture:

A. Which firm and/or individual will be responsible for keeping the books of account?

B. Identify the "managing partner," if any, and describe the means and measure of their compensation:

SCHEDULE C
AFFIDAVIT OF DBE/NON-DBE JOINT VENTURE

C. What authority does each venturer have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties participating in the performance of this contract or the work of this project?

X. State the approximate number of personnel (by trade) needed to perform the joint venture's work under this contract. Indicate whether they will be employees of the majority firm, DBE firm, or the joint venture.

| Trade | Non-DBE Firm (number) | DBE (number) | Joint Venture (number) |
|-------|--------------------------|-----------------|---------------------------|
| | | | |
| | | | |
| | | | |
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| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Professional

Administrative/Clerical

Unskilled Labor

If any personnel proposed for this project will be employees of the joint venture:

A. Are any proposed joint venture employees currently employed by either venture? _____
Employed by non-DBE (number): _____ Employed by DBE: _____

B. Identify by name and firm the individual who will be responsible for joint venture hiring:

XI. Please state any material facts and additional information pertinent to the control and structure of this joint venture:

The undersigned affirm that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our joint venture and the intended participation of each venturer in the undertaking. Further, the undersigned covenant and agree, under which work is done for Pace by the venturers, to provide to Pace current, complete and accurate information regarding actual joint venture work and the payment therefore, and any proposed changes to any provision of the joint venture, or those of each venturer relevant to the joint venture by authorized representatives of Pace, its Inspector General or any of its funding agencies.

Any misrepresentation regarding the status of a person or an entity in order to qualify for DBE status may result in conviction for a Class 2 felony, including a penalty for one and a half times the value of the contract. Material misrepresentation on any matter will also be grounds for terminating any contract which may be awarded, and for initiating action under federal or state laws concerning false statements.

NOTE: *If, after filing this Schedule C and before the completion of the joint venture's work on the project, there is any change in the information submitted, the joint venture must inform the DBE Liaison Officer directly in writing or through the contractor if the joint venture is a subcontractor.*

| | |
|--|--|
| _____ Name of DBE Partner Firm | _____ Name of Non-DBE Partner Firm |
| _____ Signature of Affiant | _____ Signature of Affiant |
| _____ Name and Title of Affiant (Type of Print) | _____ Name and Title of Affiant (Type of Print) |
| _____ Date | _____ Date |

13. 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 supplies by the Contractor for use in the performance of Pace Contracts, the Contractor shall insert the substance of this provision in its Contract.

14. 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 19-59).
15. 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.
16. Trade Names: In cases where an item is identified in these Contract documents by a manufacturer's name, trade name, catalog number or reference, it is understood that the Contractor shall furnish the item so identified or shall furnish an "equal" unless specified elsewhere in the bid documents. The specific article, equipment or material mentioned shall be understood as establishing the type, function and minimum standard of design, efficiency, quality and performance desired and shall not be construed in such a manner as to exclude manufacturer's products of comparable design, efficiency, quality and performance. Bid quotations on other makes or catalog numbers will be considered for current or future purchases provided the Contractor clearly states that an "equal" is proposed and he furnishes sufficient information with his bid to determine compliance.
17. 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.
18. Approximate Quantities and Line Items: Pace may accept and make award based on less than all of the items or for less than all of the units indicated under any given item, unless the bidder qualifies the bid by specific limitations or unless otherwise provided for in the solicitation. Bids may be submitted for quantities less than those specified. Pace reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid. Where approximate 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.
19. 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.
20. 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: Chief Procurement Officer
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 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 Request for Proposal (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.

21. 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.

22. Dispute Resolution:

- a. Governing Law - This contract will be governed by and construed in accordance with the laws of the State of Illinois.
- b. Notice of Dispute and Negotiation - Either party may initiate a dispute by sending notice of a dispute to the other party. Once initiated, the parties shall attempt to promptly resolve the dispute through good faith negotiations.
- c. Performance During Dispute - Unless otherwise directed by Pace's authorized representative, contractor shall continue performance under this contract while matters in dispute are being resolved.
- d. Litigation, Venue and Jurisdiction - If the dispute is not resolved within fourteen (14) days after receipt of a notice of dispute, either party may then submit the dispute to an Illinois court of competent jurisdiction. The parties agree to submit to the exclusive jurisdiction of the Illinois courts over any claim or matter arising under or in connection with this contract.

SECTION C – 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 \$150,000). 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 \$150,000 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. **Recovered Materials:** The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.
14. **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
15. **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.
16. **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.

17. **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.
18. **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.
19. **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.
20. **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.
21. **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.
22. **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.
23. **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.
24. **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 655 which if applicable shall be attached as a separate exhibit to this Contract.
25. **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.
26. **Veterans Employment**: Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

IDOT/RTA/State Requirements

27. **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.

28. **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.

29. **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.
30. **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.
31. **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.
32. **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.
33. **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.)

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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 subcontracts, sub-grants, and Contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance 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 5th day of February, 2020

By: 
(Signature of authorized official)

Jason Diehl
(printed/typed name)


Senior Finance Manager
(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.

 / Senior Finance Manager

(Signature and Title of Authorized Official)

INVITATION FOR BID NO. 419795
SERVICE CONTRACT FOR REPAIR OF CUMMINS ENGINES,
DETROIT DIESEL AND ALLISON TRANSMISSIONS
SCOPE OF WORK

Pace is seeking a manufacturer or factory authorized contractor(s) to repair Cummins engines, Detroit Diesel engines, and Allison transmissions. The contractor(s) shall be factory authorized and operate an approved repair facility for Cummins engine models ISB, ISL, ISX, ISL-G, Detroit Diesel model Series-50, and Allison transmission models B300R, B400R, B500, and xFE.

Pace's service area is 3,500 square miles in Northeast Illinois surrounding Chicago. In this service, Pace operates its fleet out of 10 facilities that are directly operated by Pace and another 8 contract carrier facilities that operate Pace buses.

SCOPE OF WORK

This is a **Time and Material Contract** for required services of Cummins Engines, Detroit Diesel Engines and Allison Transmissions to Pace owned buses. The pricing quoted must be firm and include delivery and all other applicable charges. No additional charges will be allowed. Pace requires engine and or transmission repairs both in the field (at Pace or contract carrier facilities) and in the contractor's own repair facility for its bus fleet which consists of: *The quantities below is not a firm commitment to purchase services.*

- 227 Eldorado EZ Rider buses equipped with Cummins ISB diesel engines and Allison B300R transmissions. Model Year 2007 to 2011
- 2 Orion 7 BAE Hybrid buses equipped with Cummins ISB diesel engines and BAE electric drive. Model Year 2011
- 72 Eldorado Trolley replica buses equipped with Cummins ISB diesel engines and Allison B300R transmissions. Model Year 2017
- 30 MCI D4000 Coaches equipped with Cummins ISX diesel engines and Allison B400R transmissions. Model Year 2013 to 2017
- 337 Eldorado Axxess buses equipped with Cummins ISL diesel engines and Allison B400R transmissions. Model Year 2013 to 2017, with an additional 23 – 2020's with ISL engines and xFE transmissions.
- 108 Compressed Natural Gas (CNG) powered buses at our South Division located in Markham, IL. These buses are equipped with a Cummins ISL-G engine and an Allison B400R transmission. *The Contractor's facility shall be compliant with the National Fire Protection Associate (NFPA) Code 52 Vehicular Natural Gas Fuel Systems Code.*

- 75 New Flyer XD4000 buses equipped with Cummins ISL diesel engines and Allison xFE transmissions will be added mid-2020.

CONTRACT REQUIREMENTS

The Contractor shall be an Authorized OEM Dealer or Distributor and must be certified by the OEM for the application to perform these repairs. The Contractor shall have sufficient plant capacity, factory trained and skilled labor, parts and shop equipment necessary to perform the required repairs. In addition, the Contractor shall be able to perform the repair work at either their own facility or at one of Pace's facilities. Contractor's shall abide by all Pace policies and procedures while working onsite.

The Contractor shall be required to start repairs within twenty-four (24) hours of notification by Pace Maintenance Technical Service staff. The work under this Contract is critical to the availability of Pace buses for revenue service, delay in completion of this work will impact Pace's ability to provide service, inconvenience to the riding public and affect Pace's operating costs. Therefore, the Contractor shall be liable for payment to Pace the sum of one hundred fifty dollars (\$150.00) per bus for each 24-hour period that the Contractor fails to respond to Pace's request for repairs. Such monies shall be paid as liquidated damage, not a penalty, to partially cover the loss of revenue and expenses to Pace. Pace may recover such liquidated damages by deducting the amount therefore out of any monies (invoices) due or that may become due to the Contractor.

The Contractor shall provide copies of certifications and licenses of technicians / mechanics.

The Contractor shall only assign staff that have been factory trained / certified by the manufacturer to perform repairs.

The Contractor shall e-mail daily status reports to Pace Maintenance Technical Service staff assigned to this project.

The Contractor shall provide to Pace Maintenance Technical Service staff the following documentation for each repair.

- 2- copies of the invoice
- 1 - copy of the Technicians report
- 1 - copy of internet travel / maps & showing mileage route used

The Contractor shall have the ability to file warranty claims on behalf of Pace for repairs on Cummins Engines and Allison Transmissions.

Pace shall inspect the facilities of potential Contractors and determine their capabilities to complete the work required. Contractor's facilities shall meet all local building codes to perform repairs to Pace owned CNG powered buses. Approval shall be at Pace's sole discretion.

Pace Maintenance Technical Service staff shall have the right to communicate with the contractors' technicians performing the repairs to Pace vehicles.

Pace Maintenance Technical Service staff shall have the right to inspect Pace vehicles in process at the contractors' facility.

Pace shall have the right to supply parts for any repairs.

Any vehicle towing shall be approved by Pace, any vehicle towed without Pace's approval will be at the Contractor's expense.

The costs of the following items are not allowed under this contract: miscellaneous shop supplies, diagnostic charges, repair validation charges, EPA disposal charges and sales tax.

LOCATIONS / ONSITE REPAIR LOCATIONS

Pace may add additional locations or remove locations as necessary throughout the term of the Contract.

| | Location Name | Street | City |
|----|--------------------------------|----------------------------------|-------------------------|
| 1 | Pace East Dundee | 401 Christina Drive | East Dundee, IL 60118 |
| 2 | Pace Fox Valley Division | 400 Overland Drive | North Aurora, IL 60542 |
| 3 | Pace Heritage Division | 9 Osgood Street | Joliet, IL 60433 |
| 4 | Pace McHenry Facility | 5007 Prime Parkway | McHenry, IL 60050 |
| 5 | Pace North Division | 1400 West 10th Street | Waukegan, IL 60085 |
| 6 | Pace North Shore Division | 2330 Oakton Drive | Evanston, IL 60202 |
| 7 | Pace Northwest Division | 900 E. Northwest Highway | Des Plaines, IL 60016 |
| 8 | Pace River Division | 957 S. State Street | Elgin, IL 60123 |
| 9 | Pace South Division | 2101 West 163rd Place | Markham, IL 60428 |
| 10 | Pace South Division 2 | 2107 West 163rd Place | Markham, IL 60428 |
| 11 | Pace South Holland | 405 Taft Drive | South Holland, IL 60473 |
| 12 | Pace Southwest Division | 9889 South Industrial Drive | Bridgeview, IL 60455 |
| 13 | Pace West Division | 3500 W. Lake Street | Melrose Park, IL 60160 |
| 14 | First Student Naperville | 31 W 330 Schoger Drive | Naperville, IL 60544 |
| 15 | First Student Westmont | 250 West 63 rd Street | Westmont, IL 60559 |
| 16 | Highland Park Transit | 1150 Half Day Road | Highland Park, IL 60035 |
| 17 | MV Transportation – Romeoville | 720 Parkwood | Romeoville, IL 60446 |
| 18 | Village of Niles | 6859 West Touhy Avenue | Niles, IL 60714 |

Insurance Requirements – 419795

The Insurance documentation must be submitted, reviewed and approved by Pace, the Suburban Bus Division of the Regional Transportation Authority (further known as Pace) prior to the Contract award. At Pace’s discretion, the bidder or proposer’s failure to submit the required compliant insurance documents may result in a “Not Responsible” determination against your company. 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** (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) 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 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 and endorsements and shall be issued to **Pace** for the duration of the contract or agreement term **plus** one additional year. 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 a **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-\$2,500,000
General Aggregate-\$5,000,000
Products/Completed Operations Aggregate-\$2,000,000
Personal & Advertising Injury-\$1,000,000

- With respect to the **Commercial General Liability Insurance**, the **Regional Transportation Authority (RTA)** and **Pace, the Suburban Bus Division of the RTA**, shall be added by endorsement as Additional Insureds on the *Contractor's* CGL policy.
 - 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.
 - With respect to the **Business Auto Liability Insurance**, the **Regional Transportation Authority (RTA)**, and **Pace, the Suburban Bus Division of the RTA**, shall be added by endorsement as Additional Insureds on the *Contractor's* Auto policy.
 - Umbrella Liability Insurance** affording limits of not less than **\$3,000,000** each occurrence and **\$3,000,000** 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. **Umbrella Liability Insurance is not required when the Primary General Liability policy limits and the Primary Automobile Liability policy limits are equal to or greater than the combined total of the Primary and Umbrella insurance policy limits requirement.**
 - Garage Liability/Garage Keepers Coverage: \$1,000,000** CSL-Garage Liability. Garage Keepers written on a Comprehensive Form shall provide a location limit of not less than **\$1,000,000** 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/conversion locations/facilities. 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.
- Note:** Commercial General Liability will satisfy the Garage Liability coverage requirement or Garage Liability will satisfy the Commercial General Liability Insurance requirement. Both policies are not required; however, Garage Keepers Coverage is required.
- 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

The Insurer and/or Agent/Broker shall endeavor to provide the written notice of cancellation to **Pace's** Insurance Liaison **10** days prior to the effective date of cancellation. 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.

Pace, the Suburban Bus Division of the Regional Transportation Authority
Attn: Insurance Liaison
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 not responsible. 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 Insurance Liaison. *Contractors* shall not commence work herein until they have obtained the required insurance and has received **Pace's** approval.



229506/227571/224468/219887/220215/

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/22/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

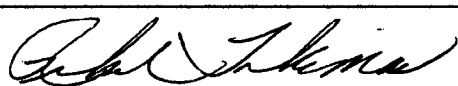
| | | |
|--|---|-----------------------|
| PRODUCER Aon Risk Services Central Inc. 200 E Randolph St., Suite 0900 Chicago, IL 60601 | CONTACT NAME: A. I. King Insurance Agency, Inc. PHONE (A/C, No, Ext): 317-841-6004 E-MAIL ADDRESS: cummins@aikinginsurance.com | FAX (A/C, No): |
| | INSURER(S) AFFORDING COVERAGE | |
| INSURED <i>cert</i> Cummins Inc. 500 Jackson Street Mail Code 91676 Columbus IN 47201-6258 | INSURER A: Old Republic Insurance Company NAIC # 24147 | |
| | INSURER B: Allianz Global Risks US Insurance Co NAIC # 35300 | |
| | INSURER C: Ace American Insurance Company NAIC # 22667 | |
| | INSURER D: | |
| | INSURER E: | |
| | INSURER F: | |

COVERAGES **CERTIFICATE NUMBER:** 52546018 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|-------------------------------------|-------------------------------------|--|-------------------------|-------------------------|--|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: | <input checked="" type="checkbox"/> | | MWZY 302202-19 | 12/1/2019 | 12/1/2020 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 18,000,000 \$ |
| A | <input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY | <input checked="" type="checkbox"/> | | MWTB 314312-19 | 12/1/2019 | 12/1/2020 | COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Phy Damage \$ Self Insured |
| B | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$ | | | USL 00126119 | 12/1/2019 | 12/1/2020 | EACH OCCURRENCE \$ 25,000,000 AGGREGATE \$ 25,000,000 \$ |
| A | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | | <input checked="" type="checkbox"/> | MWC 314311-19 | 12/1/2019 | 12/1/2020 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000 |
| C | Property Leased/Rented Equipment | | | PEX D37400233 008 PEX D37400233 008 | 8/1/2019 8/1/2019 | 8/1/2020 8/1/2020 | Limit: \$10,000,000 Special Form including Earthquake & Flood Limit: \$25,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Garage Keepers Liability is included in the above Auto policy with a \$ 2,000,000.
See Addendum:

| | |
|--|---|
| CERTIFICATE HOLDER Pace, the Suburban Bus Division of the Regional Transportation Authority Attn: Insurance Liaison 550 West Algonquin Road Arlington Heights IL 60005-4412 | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE  Richard Trakimas |
|--|---|



ADDITIONAL REMARKS SCHEDULE

| | | | |
|---|------------------|---|--|
| AGENCY Aon Risk Services Central Inc. | | NAMED INSURED Cummins Inc. 500 Jackson Street Mail Code 91676 Columbus IN 47201-6258 | |
| POLICY NUMBER | | EFFECTIVE DATE: | |
| CARRIER | NAIC CODE | | |

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability (03/16)

HOLDER: Pace, the Suburban Bus Division of the Regional Transportation Authority Attn: Insurance Liaison

ADDRESS: 550 West Algonquin Road Arlington Heights IL 60005-4412

Diesel engine sales and service. Regional Transportation Authority (RTA) and Pace, the Suburban Bus Division of the RTA are included as an Additional Insured for work performed where required by contract. This insurance is primary, non-contributory, and not excess of any other insurance of Pace. A waiver of subrogation applies in favor of the Additional Insureds where required by written contract. Thirty (30) day notice of cancellation applies in favor of the additional insured.



ADDITIONAL REMARKS SCHEDULE

| | | | |
|---|------------------|---|--|
| AGENCY Aon Risk Services Central Inc. | | NAMED INSURED Cummins Inc. 500 Jackson Street Mail Code 91676 Columbus IN 47201-6258 | |
| POLICY NUMBER | | EFFECTIVE DATE: | |
| CARRIER | NAIC CODE | | |

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: Certificate of Liability (03/16)

HOLDER: Pace, the Suburban Bus Division of the Regional Transportation Authority Attn: Insurance Liaison
ADDRESS: 550 West Algonquin Road Arlington Heights IL 60005-4412

For Project at 1600 S. Wolf Road, Wheeling, IL 60090 the Regional Transportation Authority (RTA) and Pace, the Suburban Division of the RTA are added to the General Liability and Auto Liability policies as Additional Insured. This insurance is primary, non-contributory, and not excess of any other insurance of Pace. A waiver of subrogation applies in favor of the Additional Insureds on the Workers Compensation insurance. Thirty (30) day notice of cancellation applies in favor of the additional insured.

POLICY NUMBER: MWZY 302202-19

COMMERCIAL GENERAL LIABILITY
CG 20 37 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

| Name Of Additional Insured Person(s) Or Organization(s) | Location And Description Of Completed Operations |
|---|--|
| All persons or organizations as required by written contract or agreement | On File With Company |

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

POLICY NUMBER: MWZY 302202-19

COMMERCIAL GENERAL LIABILITY
CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

| Name Of Additional Insured Person(s) Or Organization(s) | Location(s) Of Covered Operations |
|---|--|
| All persons or organizations as required by written contract or agreement | On File With Company |

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

POLICY NUMBER:

COMMERCIAL AUTO
CA 20 48 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

| |
|--|
| <p>Named Insured: Cummins Inc.</p> <p>Endorsement Effective Date: 12/01/19</p> |
|--|

SCHEDULE

| |
|--|
| <p>Name Of Person(s) Or Organization(s):</p> <p>All Persons or Organizations as Required by Contract or Agreement</p> |
|--|

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section II – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section I – Covered Autos Coverages of the Auto Dealers Coverage Form.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

POLICY NUMBER: MWZY 302202-19

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

All persons or organizations as required by contract or agreement

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

SCHEDULE

Name of Person or Organization:

Only those Persons or Organizations for whom you are required to waive your rights of recovery under the terms of a written contract.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The **Transfer Of Rights Of Recovery Against Others To Us** Condition is changed by adding the following:

We waive any right of recovery we may have against the person(s) or organization(s) shown in the Schedule because of payments we make for injury or damage. This waiver applies only to the person or organization shown in the Schedule.

Transfer of Rights of Recovery Against Other to Us

USL00126119 Cummins Inc. 12/01/2019 to 12/01/2020



4. The "first named insured" must keep records of the information we need for premium computation, and send us copies at such times as we may request.

N. Representations or Fraud

By accepting this policy, you agree:

1. The statements in the Declarations are accurate and complete;
2. Those statements are based upon representations you made to us;
3. We have issued this policy in reliance upon your representations; and
4. This policy is void in any case of fraud by you as it relates to this policy or any claim under this policy.

O. Retained Limits Provisions

1. The "retained limits" listed in the Schedule of Retained Limits will apply whether or not there is any available "scheduled underlying insurance" or "other insurance".
 - a. If there is "scheduled underlying insurance" or "other insurance" applicable to a "loss", amounts received through such "scheduled underlying insurance" or "other insurance" for payment of the "loss" may be applied to reduce or exhaust the "retained limit".
 - b. If the applicable "retained limit" is specifically designated in the Schedule of Retained Limits as including "defense expenses", then amounts received through "scheduled underlying insurance" providing coverage to the "insured for the payment of "defense expenses" shall reduce the "retained limit".
 - c. If the applicable "retained limit" is not specifically designated in the Schedule of Retained Limits as including "defense expenses", then amounts received through "scheduled underlying insurance" for the payment of "defense expenses" shall not reduce the "retained limit".
2. Insofar as an endorsement attached to this policy indicates that coverage afforded by the terms of the endorsement apply in excess of a specific "retained limit" or "self-insured retention", with respect to any coverage afforded by such endorsement the provisions of the endorsement with respect to "retained limit" or "self-insured retention" will apply.

P. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the "first named insured" this insurance applies:

1. As if each "named insured" were the only "named insured"; and
2. Separately to each "insured" against whom claim is made or "suit" is brought.

Q. Transfer of Rights of Recovery Against Others to Us

1. If the "insured" has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The "insured" must do nothing after loss to impair them. At our request, the "insured" will bring "suit" or transfer those rights to us and help us enforce them.
2. Any amount recovered will be apportioned in the inverse order of payment of "loss" to the extent of actual payment. The expenses of all such recovery proceedings will be apportioned in the ratio of respective recoveries.
3. If prior to the time of an "occurrence" you waive any right of recovery against a specific person or organization for injury or damage as required under an "insured contract", we will also waive any rights we may have against such person or organization.

R. Transfer of Your Rights and Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual "named insured".

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having

POLICY NUMBER: MWC 314311 19

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

ALL PERSONS OR ORGANIZATIONS WHERE REQUIRED BY WRITTEN CONTRACT

(NOT APPLICABLE IN TEXAS AND UTAH)

DATE OF ISSUE: 10/01/19

WC 00 03 13

(Ed. 4-84)

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TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

- 1. Specific Waiver
Name of person or organization

- Blanket Waiver
Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

- 2. Operations:
ALL TX OPERATIONS

- 3. Premium:
The premium charge for this endorsement shall be 0 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described

- 4. Advance Premium: **INCLUDED**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. (The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **12/01/2019**

Policy No. **MWC 314311 19**

Endorsement No.

Insured **CUMMINS INC.**

Premium **INCL.**

Insurance Company **OLD REPUBLIC INSURANCE COMPANY**

Countersigned By *Gary Hico*

WC 42 03 04 B
(Ed 6-14)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 43 03 05

POLICY NUMBER: **MWC 314311 19**

UTAH WAIVER OF SUBROGATION ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Utah is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule. Our waiver of rights does not release your employees' rights against third parties and does not release our authority as trustee of claims against third parties.

Schedule

ALL PERSONS OR ORGANIZATIONS WHERE REQUIRED BY WRITTEN CONTRACT.

DATE OF ISSUE: 10/01/19

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DRUG AND ALCOHOL TESTING PROGRAM

Pace Drug and Alcohol Policy

In accordance with the Omnibus Transportation Employee Testing Act of 1991 and United States Department of Transportation (DOT) Regulations, Pace adopted the Pace Suburban Bus Drug and Alcohol Policy and Testing Program. As a condition of providing contracted services for Pace, all contractors must have a program in place which complies with 49 CFR Part 655, as amended and 49 CFR Part 40, as amended. Copies of Parts 655 and 40 are available in the drug and alcohol program manager's office and can be found on the internet at the Federal Transit Administration (FTA) Drug and Alcohol Program website: <https://transit-safety.fta.dot.gov/DrugAndAlcohol>.

A copy of the Pace policy is included in Attachment 1. It is essential that this document be understood in order to gain detailed information regarding Pace's drug and alcohol policy. **All safety-sensitive employees of the Contractors providing service to Pace must receive a company adopted policy which explains the company's drug/alcohol testing program. The Federal Transit Administration has provided a Policy Builder Tool to assist in the creation of a compliant policy. The link is: <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/PolicyBuilder/CreatePolicy.aspx>**

While the Contractor is responsible for complying with, 49 CFR Part 655, as amended, and 49 CFR Part 40, as amended, the following information includes some of the key elements contained in a compliant Drug and Alcohol Policy and Testing Program.

FTA requires testing for drivers and persons holding other safety-sensitive positions in the following circumstances:

- Pre-employment (drug testing only)
- Post-accident
- Random
- Reasonable suspicion
- Return to Duty/Follow-Up

Drug Testing in Pre-employment Health Evaluation

All operators and employees in safety-sensitive positions shall undergo a Department of Transportation National Institute on Drug Abuse Panel 5 (NIDA-5) drug testing as a part of the pre-employment health evaluation. Employees who refuse to submit to pre-employment drug testing may not perform in a safety-sensitive position.

Post-Accident Drug and Alcohol Testing

All safety-sensitive employees involved in an accident or incident shall undergo **DOT NIDA-5** drug testing and a DOT breath alcohol test if:

- The accident or incident results in a fatality
- The accident or incident results in any injury that must be immediately treated away from the scene of the accident or incident
- The accident or incident results in any vehicle being transported away from the scene of the accident or incident by a tow truck or other vehicle due to disabling damage

Date: January 1, 2020

In the case of all other accidents covered by this policy (i.e., those not involving a fatality), each safety-sensitive employee operating the Pace vehicle at the time of the accident will be tested unless management determines, using the best information available at the time of the decision, that the safety-sensitive employee's performance can be completely discounted as a contributing factor to the accident. Additionally, any other safety-sensitive employees whose performances could have contributed to the accident, as determined by management using the best information available at the time of the accident, will be tested.

If safety-sensitive employees must be tested for drugs and alcohol, they may not operate, dispatch, or perform maintenance on any vehicle in contractor service until the results of the drug/alcohol test are received. Refusal to sign the necessary forms for drug/alcohol testing or refusal to be tested will result in the employee being prohibited from performing safety-sensitive functions.

Note: The employee must be accompanied to the testing facility by a supervisor, trainer, or other staff person.

Random Drug and Alcohol Testing

All safety-sensitive employees are required to submit to random **DOT NIDA-5** drug testing and DOT breath alcohol testing. Contractors are to ensure that at least fifty (50) percent of the total number of safety-sensitive employees are randomly selected for drug testing and ten (10) percent are randomly selected for alcohol testing each year. In conducting these tests, the method for random selection must be unannounced, as well as random. For contractors participating in Pace's random drug and alcohol testing pool, the above percentages do not apply. The designated contact person will be notified when safety-sensitive employees have been selected for random testing.

Drug and Alcohol Testing for Reasonable Suspicion

Safety-sensitive employees will be required to submit to a **DOT NIDA-5** drug testing and/or DOT breath alcohol testing when observation of an employee indicates the possibility that the employee may be reporting for work or working under the influence of drugs or alcohol. Requests for employees to undergo reasonable suspicion tests will be based on specific contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the person to whom the request is directed. Supervisors who are in a position to make this determination must be trained in the facts, circumstances, physical evidence, physical signs and symptoms, and patterns of performance and/or behavior associated with drug use and alcohol misuse.

Safety-sensitive employees who are tested for drugs and alcohol as a result of reasonable suspicion may not operate, dispatch, or perform maintenance on any vehicle in contractor service until the results of the drug/alcohol test are received. Refusal to sign the necessary forms for drug/alcohol testing or refusal to be tested will result in the employee being prohibited from performing safety-sensitive functions.

Note: The employee must be accompanied to the testing facility by a supervisor, trainer, or other staff person.

Drug and Alcohol Testing Guidelines

1. Contractors must make arrangements with a medical facility to have testing done.
2. Only tests which screen for the **five drugs (NIDA-5) and/or breath alcohol** are acceptable for pre-employment (drug only), post-accident, random, and reasonable suspicion testing. Any employee

testing positive for drugs or alcohol may not operate, dispatch, or maintain a vehicle in Pace service, or operate a Pace-owned vehicle.

3. Any employee testing positive for drugs may not operate or maintain a vehicle in Pace service or operate a Pace-owned vehicle.
4. Any employee testing positive for drugs may request that a split sampling analysis be conducted using samples obtained from the initial test. However, if the employee tests positive on the initial test and does not request a split sample test, Pace will require that the employee be removed from Pace service.

Reporting Requirements

In compliance with Federal Transit Administration (FTA) requirements regarding drug and alcohol testing, several reports must be submitted to the FTA by Pace on a recurring basis. In order for Pace to accurately complete these reports, certain information regarding the number of tests conducted and the reasons for testing must be provided to Pace by each contractor. **Therefore, contractors must track the number and type of all drug and alcohol tests, as well as the reasons for testing (e.g., post-accident, random, etc.).** Pace will provide the contractor with specific forms and instructions for reporting this information.

Certification of Compliance to the DOT Drug/Alcohol Policy

The Certification Statement contained in Attachment 2 must be signed by the contractor and submitted along with the bid document.

PACE SUBURBAN BUS DIVISION

DRUG AND ALCOHOL POLICY

AND TESTING PROGRAM

Effective: January 1, 1995

Revised: May 1, 2007
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(Pursuant to Resolution of the
Pace Suburban Bus Division Board of Directors)

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I. Overview

Under the Drug-Free Workplace Act of 1988, the U.S. Congress required recipients of federal funds to take certain steps to provide for drug-free workplaces for their employees. Additionally, under the Omnibus Transportation Employee Testing Act of 1991, the U.S. Congress directed the Federal Transit Administration (“FTA”) to issue regulations on drug and alcohol testing for mass transit workers in safety-sensitive positions. In response, the FTA has published regulations prohibiting drug use and alcohol misuse by transit employees and requiring transit agencies to test for prohibited drug use and alcohol misuse. These regulations are 49 CFR Part 655, “Prevention of Prohibited Drug Use and Alcohol Misuse in Transit Operations.” In addition, the Department of Transportation (“DOT”) has issued 49 CFR Part 40, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” and amendments which prescribes the testing methods to be followed.

This document sets forth the drug and alcohol policy and testing program of Pace Suburban Bus Division (“Pace”) and has been adopted by the Pace Board of Directors pursuant to resolution. It was developed to comply with the requirements identified in the foregoing laws and FTA and DOT regulations. Where applicable, the document will identify those policies and procedures that are Pace-mandated drug and alcohol policies and testing programs not required by the DOT or the FTA. Additionally, in adopting this policy and program, Pace does not otherwise waive its right to enforce already established rules, policies, or programs, or the terms and provisions of any applicable collective bargaining agreement governing drug and alcohol use, possession and testing. Moreover, this document is intended to be read consistent with and subject to any otherwise applicable law or regulation presently in effect or which in the future may take effect. If any section or provision of this document should be held invalid by operation of law, none of the remainder shall be affected.

II. Introduction

A. Policy and Program Purposes

Pace performs a vital service for the public. To ensure that this service is delivered safely and effectively, each Pace employee has the responsibility to perform his/her duties in a safe, conscientious, and courteous manner.

The purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace and to reduce the probability of accidents or incidents related to the use and/or misuse of alcohol and other drugs by employees so that transit services are delivered safely, efficiently, and effectively.

This policy outlines four principles as a means to achieve Pace’s goal of providing a workplace free from the effects of drug and alcohol use and/or misuse for its employees. The first principle emphasizes deterrence from the use of drugs and alcohol in or affecting the workplace. Pace will make education and training available for all employees regarding the effects of substance abuse on individuals and on the workplace. Supervisors and managers will receive specialized training in detection, early intervention, and enforcement.

The second principle is treatment and rehabilitation. Pace maintains an Employee Assistance Program (“EAP”) to assist employees with personal problems, including those surrounding the misuse of drugs and alcohol. Pace supports rehabilitation before an employee’s job is in jeopardy. Although employees are encouraged to receive help for drug and alcohol problems, participation in Pace’s EAP will not excuse an employee’s failure to comply with Pace rules and regulations; nor will it preclude discipline for rule or policy violations.

The third principle is detection. Toward this end, Pace employs six (6) FTA mandated drug and/or alcohol tests in the following circumstances: pre-employment, reasonable suspicion, post-accident, random, return to duty, and follow-up. The foregoing drug and/or alcohol tests will apply to all full-time, part-time, seasonal and temporary employees of Pace engaged in the performance of safety-sensitive functions. It also applies to: applicants for positions of employment involving the performance of safety-sensitive functions for Pace and operators who are third party contractors.

The fourth principle is enforcement, which is essential if deterrence, rehabilitation, and detection are to be successful. All employees must be fit for duty as defined within this policy. Accordingly, the failure to properly report the dispensing, possession, or use of a controlled substance or narcotic contrary to the terms of this policy, and the use or possession of intoxicants contrary to the terms of this policy is prohibited and will result in disciplinary action up to and including discharge.

B. Employee and Management Responsibilities

All Pace employees covered by this policy are required to refrain from using drugs and alcohol contrary to the specific prohibitions identified herein. Ms. Melinda J. Metzger, General Manager and Chief Operating Officer (or a designated representative) will monitor Pace Department and Division practices to ensure compliance. Anyone with questions regarding this policy, its practices or procedures should contact the General Manager and Chief Operating Officer, 550 West Algonquin Road, Arlington Heights, Illinois 60005, or by phone (847) 228-2302.

Employees are responsible for ensuring adherence to this policy. Managers and supervisors will be held accountable for both the application of the policy and the consistency of its enforcement. To that end, Pace prohibits the discriminatory application, implementation, or enforcement of any provision of this policy on the basis of race, color, age, sex, religion, national origin and ancestry, sexual orientation, veteran status, or disability.

C. Confidentiality

Confidentiality will be maintained throughout the drug and alcohol screening process. Pace will maintain records in a manner so that disclosure of information to unauthorized persons does not occur. Additionally, the specimen collection site, testing laboratory, medical review officer (“MRO”), breath alcohol technician (“BAT”), and substance abuse professional (“SAP”) will be held to strict confidentiality requirements consistent with the following:

- The testing laboratory: shall maintain employee test records in confidence as provided by DOT requirements; shall ensure the security of data transmission and limit access to any data transmission, storage, and retrieval system; will report individual drug test results only to the employee tested, the designated MRO, or the decision makers in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee and arising from a certified positive drug test; and shall retain all records pertaining to a given urine specimen for a minimum of two (2) years.
- The MRO, BAT, and SAP will report individual test results only to: the employee tested; Pace's EAP (if applicable); and the Pace management official empowered to recommend or take administrative action (or the official's designated agent).

Pace will release individual test results to the employee tested upon written request. Pace will not release individual test results to any other party absent a specific written consent of the employee tested authorizing such release to a specifically identified person(s) except as follows:

- To the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee tested and arising from a test administered under this policy.
- To the National Transportation Safety Board ("NTSB") about any post-accident test performed for an accident under NTSB investigation.
- When requested by the DOT or any state or federal agency with regulatory authority over Pace or any of its employees.

EAP personnel will be expected to carry out all actions relative to this policy in a manner which respects the dignity and confidentiality of those involved. EAP records are regarded as confidential medical records and are not available for inspection by anyone except EAP staff absent a written release of information by the employee. EAP personnel will release information to Pace personnel only on a need-to-know basis subject to advance notice to the employee whenever feasible. In any case where the employee raises a claim against Pace involving his/her participation in the EAP, the employee shall be deemed to have waived his/her right to confidentiality and Pace shall have the right to explore thoroughly and evaluate the employee's participation in the EAP.

Any employee covered by this policy is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of prohibited drugs or alcohol; including any records pertaining to his/her drug or alcohol tests. Pace shall provide promptly the records requested by the employee. Access by the employee to his/her records shall not be contingent upon payment for records other than those specifically requested.

III. Implementation Guidelines for Promoting a Drug and Alcohol-Free Workplace

A. Deterrence

1. Fitness for Duty

Pace has determined that an employee is fit for duty when he/she is unequivocally able to perform his/her duties, including when he/she is ready for work or working without the presence of any alcohol or the presence of any specified drugs or their metabolites as prescribed by this policy. Employees must understand that they are responsible for assuring that their job conduct is safe and appropriate.

2. Reporting the Use of Prescription Medication

Separate from any FTA requirements, safety-sensitive employees are required to report their use of prescription medication to Pace. Safety-sensitive employees who fail to report their use of prescription medication in accordance with this section, and subsequently have a positive drug or alcohol screen, are subject to progressive discipline up to and including discharge. Accordingly, all such employees are advised to inform their physicians and/or pharmacists of their employment requirements regarding fitness for duty prior to obtaining medication.

3. Education and Training

Pace recognizes that education and training of its workforce and supervisors are major components of a successful drug and alcohol program. To that extent:

- All employees subject to testing under this policy will be provided a copy.
- Pace will display and distribute informational material about the effect of drugs along with a community service hotline telephone number to assist employees who may be experiencing problems with prohibited drugs.
- Pace will provide educational materials that explain the requirements of the FTA's alcohol rule and the policies and procedures identified in this document.
- Pace will distribute informational material about the signs and symptoms of an alcohol problem and the effects of alcohol misuse on an individual's health, work and personal life.
- A minimum of sixty (60) minutes of training will be provided to all employees subject to testing under this policy on the manifestations and behavioral cues indicating drug use on personal health, safety, and the work environment.
- A minimum of an additional sixty (60) minutes of training for the alcohol program and sixty (60) minutes of training for the drug program will be provided to supervisors who will be determining when it is appropriate to administer "reasonable suspicion" drug or alcohol tests under this policy.

In addition to the foregoing, Pace will consider and implement such other education and training programs as will help promote safety goals, maintain the integrity of Pace's drug and alcohol testing program, and enhance the benefits of the program.

B. Treatment and Rehabilitation

1. Employee Assistance Program (EAP) Responsibilities

In order to promote a drug and alcohol-free environment, Pace will work to assist eligible employees with problems due to the use of drugs or misuse of alcohol.

Accordingly, separate from any programs regarding drug and alcohol testing mandated by the FTA and DOT, Pace has established and encourages the use of its Employee Assistance Program ("the EAP"). The EAP was established in part so that an employee who recognizes that he/she has a drug use or alcohol misuse problem may have the opportunity to receive treatment and rehabilitation.

Pace's EAP will assist eligible employees with drug use and alcohol misuse problems, and related concerns, through one or more of the following depending upon the circumstances of each particular case:

- Consultation with supervisors and/or other Pace officials
- Evaluation and referral
- Individual and group counseling
- Individual case management
- Crisis intervention
- Specialized education and training programs

2. EAP Referral

There are two ways to begin rehabilitation through Pace's EAP: voluntary self-referral and management referral.

Voluntary self-referral is preferred by Pace as a means to resolve drug and/or alcohol problems. Such an option is not available to an employee after he/she has been notified to submit to a drug or alcohol test under this policy. Nor can an employee become a volunteer when subject to disciplinary action in order to avoid discipline.

Voluntary participation in the EAP will not adversely impact an employee's employment or promotional opportunities at Pace. However, employees who do

not make a commitment to overcome their drug and/or alcohol problems may experience work performance problems as a result. Accordingly, an employee who exhibits poor or improper job performance as a result or tests positive for drugs and/or alcohol pursuant to a test administered under this policy will be subject to disciplinary action.

The second avenue for referral to the EAP is through management. Supervisors and managers of Pace may refer to the EAP for an evaluation for any employee who demonstrates performance problems such as excessive absenteeism, tardiness, or overall poor work performance. Based upon the reason for the referral and the assessment of the EAP counselor, employee referred to the EAP and determined to have a drug use or alcohol misuse problem may be removed from their position and suspended or assigned to alternative duty subject to the availability of such work, the need to accommodate other employees, and any federal and state statutory and regulatory requirements.

The managerial option to refer any employee to Pace's EAP shall not, however, restrict Pace's right to terminate or otherwise discipline an employee. In the event an employee requests admission into the EAP after commission of an act (including a violation of this policy) which subjects him/her to discharge, Pace may, in its discretion, convert the discharge to a suspension and allow the employee admission into the EAP. Such a determination will be based upon the following criteria: the type of rule violation and all circumstances attendant to the incident in question; the employee's length of service; and the employee's overall work record.

Employees are directed to any pertinent collective bargaining agreement for the terms and provisions of, and restrictions and benefits attendant to, EAP participation. Any questions regarding Pace's EAP should be referred to the Regional Manager (or a designated representative).

C. Effects of Alcohol

Alcohol is the most commonly abused chemical substance in the country and in the workplace. Of the two-thirds of all Americans who drink, there are an estimated thirteen million people with serious drinking problems. A problem drinker is anyone who frequently drinks to the state of intoxication. While intoxicated, he/she may exhibit behavior that would never occur while sober. Alcohol problems have a devastating impact on family life, health, and the workplace. The family may be subject to frequent episodes of violence, physical and emotional neglect, diabetes, ulcers, hypertension, and kidney problems. Emotional health is affected as well due to alcohol misuse, presenting symptoms such as depression, anxiety, hallucinations, and insomnia. Alcohol abuse in the workplace costs corporate America millions of dollars each year through excessive absenteeism, lack of motivation, and a rise in the use of medical benefits associated with illness caused by alcoholism.

The most effective way to combat alcohol misuse is treatment. Alcohol detoxification rehabilitation is the only method of intervention used to interrupt alcoholism.

IV. Provisions for Drug and Alcohol Testing

A. General Conditions

1. Persons Subject to Testing

The following persons will be subject to alcohol testing just before, during or just after performing a safety-sensitive function and will be subject to drug testing any time while on duty pursuant to the terms of this policy:

- All full-time, part-time, seasonal, and temporary employees of Pace engaged in the performance of safety-sensitive functions;
- Applicants for positions of employment with Pace involving the performance of safety-sensitive functions;
- Employees of contractors engaged in the performance of safety-sensitive functions for Pace; and
- Employees of operators who are third party contractors engaged in the performance of safety-sensitive functions;

"Safety-sensitive functions" are performed by those persons who:

- Operate revenue service vehicles (including when not in revenue service).
- Operate non-revenue service vehicles required to be operated by a holder of a commercial driver's license.
- Dispatch or control revenue service vehicles.
- Maintain a revenue service vehicle or equipment used in revenue service.
- Carry a firearm for security purposes.

Included in the foregoing are supervisors who in fact perform safety-sensitive functions. Supervisors of covered employees who themselves do not perform safety-sensitive functions are excluded. Attached to this policy is a list of the position titles (*Appendix B*) identifying the persons subject to drug and alcohol testing.

2. Drug Rule

1. All persons covered by this policy are prohibited from using any of the following five substances: Marijuana; Cocaine; Opiates; Amphetamines; and Phencyclidine and the non-prescribed use of four (4) semi-synthetic Opioids (i.e.,

hydrocodone, oxycodone, hydromorphone, oxymorphone). Pursuant to FTA requirements, drug testing is administered in accordance with any of the following circumstances as described in detail in each case in *Section IV.B.1 a. through f.* of this policy: pre-employment; post-accident; reasonable suspicion; random; and return to duty/follow-up.

2. The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance on Pace property by any person at any time also is prohibited.

Additionally, separate from any DOT or FTA requirements:

- The use of illegal drugs by Pace employees at any time is prohibited.
- The use or possession of a controlled substance or narcotic from the time an employee reports for work until the conclusion of the employee's workday or reporting for work in an impaired condition due to the use of the same is prohibited.
- An employee may not have a controlled substance or narcotic in his/her system from the time of reporting for work until the conclusion of the workday.
- An employee shall not knowingly accept relief from or permit an employee to work who is under the influence of a controlled substance or narcotic.

3. Alcohol Rule – Required Hours of Compliance

All persons covered by this policy are prohibited from consuming alcohol:

- While performing a safety-sensitive function;
- Within four (4) hours prior to performing a safety-sensitive function (including on-call safety-sensitive employees); and
- Up to eight (8) hours following an accident or until the employee undergoes a post-accident test.

Under FTA requirements, each person covered by this policy is subject to alcohol testing:

- While performing any safety-sensitive function;
- Immediately before performing any safety-sensitive function; and
- Immediately after performing any safety-sensitive function.

Additionally, separate from any DOT or FTA requirements:

- Pace prohibits the use or possession of intoxicants on its property at any time.
- Employees, while in a Pace uniform, shall not either enter an establishment of which the main business is the selling of intoxicants or partake of an intoxicant in a public place.
- An employee shall not knowingly accept relief from or permit an employee to work who is under the influence of an intoxicant.

B. Detection

1. Circumstances for Testing

a. Pre-Employment

No applicant for employment will be placed in a safety-sensitive position by Pace unless the applicant submits to a pre-employment drug test and a verified negative drug test is received. The test will be administered as part of the pre-placement physical examination. Additionally, no Pace employee will be transferred into a safety-sensitive position unless the employee submits to a drug test and a verified negative drug test is received. The test will be administered as part of the qualifying physical examination.

If an applicant or employee drug test is cancelled, the applicant or employee must submit to another drug test.

In addition, when a covered employee or applicant has not performed a safety-sensitive function for ninety (90) consecutive calendar days regardless of the reason, and the employee has not been in the Pace random selection pool during that time, Pace will ensure that the employee takes a pre-employment drug test with a verified negative result.

If a covered employee or applicant has previously failed or refused a DOT pre-employment drug test, the employee must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in Section 655.62.

b. Reasonable Suspicion

All employees covered by this policy will be required to submit to a drug and alcohol test with Pace, as required under Section 655.43, through observations made by a supervisor, who has reasonable suspicion that the employee has used a prohibited drug or misused alcohol contrary to the terms of this policy. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions. The request to

undergo a reasonable suspicion test will be based on specific contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the person to whom the request is directed.

Supervisors who will be expected to make such a determination will be trained in the facts, circumstances, physical evidence, physical signs and symptoms, and patterns of performance and/or behavior associated with drug use and alcohol misuse.

Any supervisory person who orders an employee to undergo a reasonable suspicion test will complete a "Condition of Employee Report," a sample of which is attached as Appendix C.

c. Post-Accident

All employees covered by this policy who are involved in an accident will be required to submit to a drug and alcohol test, as required under Section 655.44. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions. An "accident" is defined as an occurrence associated with the operation of a Pace vehicle in which:

- An individual dies;
- An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or
- Any vehicle involved incurs disabling damage and is transported away from the scene by a tow truck or other vehicle.

In the case of any accident involving a fatality, each surviving safety-sensitive employee on duty in the Pace vehicle at the time of the accident will be tested.

Additionally, safety-sensitive employees not on the vehicle whose performance could have contributed to the accident, as determined by Pace using the best information available at the time of the accident, will be tested.

In the case of all other accidents covered by this policy (i.e., those not involving a fatality), each safety-sensitive employee operating the Pace vehicle at the time of the accident will be tested unless Pace determines, using the best information available at the time of the decision, that the safety-sensitive employee's performance can be completely discounted as a contributing factor to the accident. Additionally, any other safety-sensitive employees whose performance could have contributed to the accident, as determined by Pace using the best information available at the time of the accident, will be tested.

Post-accident drug tests will be performed as soon as possible but no later than thirty-two (32) hours following the accident. Post-accident alcohol tests will be performed within two (2) hours but no later than eight (8) hours following the

accident. If an alcohol test is not administered within two (2) hours following the accident, Pace will prepare and maintain a record stating the reason(s) the test was not so administered. If an alcohol test still is not administered within eight (8) hours following the accident, all attempts to administer the test will cease.

An employee subject to post-accident testing who fails to remain available for such testing, including notifying Pace of his/her location after leaving the scene of the accident, may be deemed to have refused to submit to testing.

Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary medical care.

d. Random Testing

All employees covered by this policy will be subject to random drug and alcohol testing, as required under Section 655.45. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions. The random selection method will be a scientifically valid method, such as a random number table or a computer-based random number generator. Testing rates will meet or exceed the minimum annual percentage rate set each year by the FTA Administrator. In conducting such tests, the process will be unannounced as well as random. The dates for administering unannounced testing of randomly-selected covered employees shall be spread reasonably throughout the calendar year including all days and hours during which safety-sensitive functions are performed, so as to ensure that all covered employees have a reasonable expectation that they might be randomly tested for prohibited drug use anytime while on duty. Each covered employee shall have an equal chance of being tested each time selections are conducted. Once the employee has been notified of selection for testing, the employee will be required to report immediately to the designated collection site.

e. Return to Duty

Before any employee covered by this policy is allowed to return to duty to perform a safety-sensitive function following a verified positive drug test result, an alcohol test result of 0.04 or greater, or a refusal to submit to a test, the employee will be required to:

- Be evaluated by a substance abuse professional (“SAP”) designated by Pace to determine whether the employee has followed the recommendations for action by the SAP, including participation in any rehabilitation program; and
- Pass drug and/or alcohol tests as determined by the SAP.

If a return to duty drug test is cancelled, the employee will be subject to and required to pass another drug test.

In addition to the foregoing and separate from any FTA requirements, Pace requires that all employees covered by this policy submit to a drug and alcohol test using non-DOT forms when:

- The employee is returning from a drug and/or alcohol rehabilitation program known to, or arranged by, Pace, or made known to Pace.
- The employee has signed a treatment plan, work resumption, or return to work agreement that requires the test.
- The employee is returning to work from an absence longer than thirty (30) consecutive calendar days.
- The employee is returning to duty to perform a safety-sensitive function following an alcohol test result of 0.02 or greater but less than 0.04.

f. Follow-Up

An employee who is allowed to return to duty to perform a safety-sensitive function following a verified positive drug test result, an alcohol test of 0.04 or greater, or a refusal to submit to a test will be subject to unannounced follow-up testing for at least twelve (12) but not more than sixty (60) months, as required under Section 655.47. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions. The frequency and duration of the follow-up testing will be determined by the SAP, but subject to the conducting of a minimum of six (6) tests during the first twelve (12) months after the employee has returned to duty.

The foregoing is separate from and in addition to Pace's random testing program. Employees subject to follow-up testing also will remain in the standard random pool and will be tested whenever subject to random testing, even if as a result the employee is tested twice in the same month, week, or day.

In addition to the foregoing, and separate from any FTA requirements, Pace requires that any employee who participates as a volunteer in Pace's EAP comply with all drug and/or alcohol testing recommended by the EAP counselor.

2. Conduct that Constitutes a Refusal to Submit to a Test

The following conduct will be regarded by Pace as a refusal to submit to a drug and/or alcohol test and constitutes a positive test result:

- Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by Pace.

- Fail to remain at the testing site until the testing process is complete. Provided, that an employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test.
- Fail to attempt to provide a urine or breath specimen. Provided that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test.
- In a case of a directly observed or monitored collection in your drug test, fail to permit the observation or monitoring of your provision of a specimen including the failure to follow the collector's instructions to raise and lower your clothing and to turn around to permit the observer to determine if there is evidence of a prosthetic or other device that could be used to interfere with the collection process.
- Fail to provide a sufficient amount of urine or breath when directed and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.
- Fail or decline to take a second test Pace or collector has directed you to take.
- Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process.
- Fail to sign the certification at step 2 of the Alcohol Testing Form.
- Fail to cooperate with any part of the testing process, including refusal to wash hands after being directed to do so.
- Admitting to collection site personnel or Medical Review Officer that he/she has adulterated or substituted their specimen.
- The employee possesses or wears a prosthetic or other device that could be used to interfere with the collection process.
- As an employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

V. Methodology

All federally mandated drug and alcohol testing will be conducted in accordance with 49 CFR Part 40 and will include the procedures that will be used to test for the presence of illegal drugs, the non-prescribed use of semi-synthetic opioids or alcohol misuse, protect the employee and the

integrity of the drug and alcohol testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct employee.

A. Drug Testing

1. Collection Procedures

When ordered to do so by Pace, an employee shall submit to drug testing through urine analysis. At the time specimens are collected, the employee will be given written instructions setting forth his/her responsibilities. The employee's identity will be verified through the use of a photo identification card or through a representative designated by Pace.

Forty-five (45) milliliters (mL) (about 1 ½ ounces) of urine will be collected. The collection site technician will pour fifteen (15) mL into one bottle to be used as a split specimen. The remainder (at least thirty (30) mL) will be retained in the collection bottle or poured into another bottle to be used as the primary specimen.

If the employee is unable to provide at least forty-five (45) mL of urine the specimen will be discarded. The collection site technician will instruct the employee, who must remain at the collection site, to drink up to forty (40) ounces of fluids, distributed reasonably through a period of up to three (3) hours, or until the employee has provided a new urine specimen, whichever occurs first. The employee will then provide a new sample using a fresh collection container. If the employee is still unable to provide an adequate specimen, testing will be discontinued and the employee will be directed to obtain, within 5 days after the attempted provision of urine, an evaluation from a licensed physician who is acceptable to the MRO concerning the employee's ability to procure an adequate amount of urine.

Within four (4) minutes of receiving the specimen, the temperature of the specimen will be recorded. Any specimen temperature out of the range of 32°C to 38°C/90°F to 100°F will require that an observed collection take place. The collection site technician also will examine the specimen visually for any unusual color or sediment, and note the results on the custody and control form.

Both bottles will be sealed and labeled in the presence of the employee. The donor will initial the labels verifying the specimen is his/hers. A custody and control form will be completed and signed by the collection site technician and the donor. Both the primary and split specimen will be sealed in a single shipping container, together with the appropriate pages of the custody and control form. The tape seal on the container will bear the initials of the collection person and the date of closure for shipment. The specimen will be placed in secure storage until dispatched to the laboratory.

Procedures for collecting urine specimens shall allow individual privacy. If, however, any of the following circumstances exist, a collection site person of the

same gender as the individual providing the urine specimen shall obtain a specimen by direct observation.

Direct observation shall include the lifting of clothing to just above the navel or lowering to mid-thigh and turning towards the same sex collector to prove the individual is not concealing a prosthetic device to beat the test.

- The individual previously has been determined to have used a controlled substance without medical authorization and the test being conducted is a return to duty or follow-up test.
- The individual has provided a urine specimen that falls outside the normal temperature range (32°C to 38°C/90°F to 100°F)
- The collection site person observes conduct indicating an attempt to substitute or adulterate the specimen. In such event, the collection site person will prepare and maintain a written report concerning the observation.
- Individuals who have tested positive, adulterated or substituted and their split sample was not available for testing. (Splits not collected, missing or destroyed in transit.)
- Individuals providing a specimen resulting in a creatine level between 2 and 5.

2. Laboratory Testing

All drug testing will be completed in a laboratory certified by the Department of Health and Human Services (DHHS). Pace has contracted with Phamatech, Inc. (15175 Innovation Dr. San Diego, CA 92128) to conduct all drug testing administered on its behalf under this policy. As of the revised date of this policy, the Federal Register has identified Phamatech, Inc. as DHHS-certified.

An immunoassay test will be performed initially on the specimen. If any prohibited drug registers above the cutoff level on the immunoassay screen, an aliquot of the same urine specimen will be confirmed by using gas chromatography/mass spectrometry (GC,MS). All FTA and Pace mandated tests will undergo validity testing which is designed to deter and detect attempts to adulterate or substitute specimens. Testing must conform with 49 CFR Part 40 as amended and effective January 18, 2001.

All FTA-mandated drug testing will be performed to detect for the presence of the following five (5) substances: Marijuana; Cocaine; Opioids; Phencyclidine; and Amphetamines. The following initial cutoff levels will be used when screening specimens to determine whether they are negative for the identified drugs:

| Initial Test Analyte | Initial Test Cutoff ¹ | Confirmatory Test Analyte | Confirmatory Test Cutoff Concentration |
|---|----------------------------------|--------------------------------|--|
| Marijuana metabolites (THCA) ² | 50 ng/mL ³ | THCA | 15 ng/mL |
| Cocaine metabolites (Benzoyllecgonine) | 150 ng/mL ³ | Benzoyllecgonine | 100 ng/mL |
| Codeine/Morphine | 2000 ng/mL | Codeine Morphine | 2000 ng/mL 2000 ng/mL |
| Hydrocodone/Hydromorphone | 300 ng/mL | Hydrocodone Hydromorphone | 100 ng/mL 100 ng/mL |
| Oxycodone/Oxymorphone | 100 ng/mL | Oxycodone Oxymorphone | 100 ng/mL 100 ng/mL |
| 6-Acetylmorphine | 10 ng/mL | 6-Acetylmorphine | 10 ng/mL |
| Phencyclidine | 25 ng/mL | Phencyclidine | 25 ng/mL |
| Amphetamine/Methamphetamine | 500 ng/mL | Amphetamine Methamphetamine | 250 ng/mL 250 ng/mL |
| MDMA ⁴ /MDA ⁵ | 500 ng/mL | MDMA MDA | 250 ng/mL 250 ng/mL |

¹ For grouped analytes (i.e., two or more analytes that are in the same drug class and have the same initial test cutoff):

Immunoassay: The test must be calibrated with one analyte from the group identified as the target analyte. The cross-reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.

Alternate technology: Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (i.e., equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.

² An immunoassay must be calibrated with the target analyte, Δ -9-tetrahydrocannabinol-9-carboxylic acid (THCA).

³ *Alternate technology (THCA and Benzoyllecgonine):* When using an alternate technology initial test for the specific target analytes of THCA and Benzoyllecgonine, the laboratory must use the same cutoff for the initial and confirmatory tests (i.e., 15 ng/mL for THCA and 100 ng/mL for Benzoyllecgonine).

⁴ Methylenedioxyamphetamine (MDMA).

⁵ Methylenedioxyamphetamine (MDA).

All Pace-mandated testing using non-DOT forms will be performed to detect for the presence of, in addition to the foregoing five (5) substances, the following five (5) substances: Barbiturates; Benzodiazepine metabolites; Methadone; Methaqualone; and Propoxyphene.

The following initial cutoff levels will be used when screening specimens to determine whether they are negative for the identified drugs:

| <u>Drug</u> | <u>Cutoff Levels (ng/mL)</u> |
|----------------------------|------------------------------|
| Barbiturates | 300 |
| Benzodiazepine metabolites | 300 |
| Methadone | 300 |

| | |
|--------------|-----|
| Methaqualone | 300 |
| Propoxyphene | 300 |

The following confirmatory cutoff levels will be used:

| <u>Drug</u> | <u>Cutoff Levels (ng/mL)</u> |
|----------------------------|------------------------------|
| Barbiturates | 200 |
| Benzodiazepine metabolites | 200 |
| Methadone | 200 |
| Methaqualone | 200 |
| Propoxyphene | 200 |

Long-term frozen storage (-20 °C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. All confirmed positive specimens will be retained by the laboratory in their original labeled specimen bottles for a minimum of one (1) year in properly secured long-term frozen storage.

Within this one (1) year period, Pace or any other person designated by DOT regulation may request the laboratory to retain the specimen for an additional period of time. If no such request is received, the laboratory may discard the specimen after the end of one (1) year, except the laboratory shall maintain any specimen known to be under legal challenge for an indefinite period.

3. Review by Medical Review Officer (MRO)

All drug testing laboratory results shall be reviewed by a qualified medical review officer ("MRO") designated by Pace to verify and validate the test results. As of the revised date of this policy, Pace has contracted with Dr. David Nahin, National Drug Screening Inc. to serve as its MRO. Dr. Nahin has offices located at 9501 Northfield BLVD, Denver, CO 80238. Phone (877) 295-3381.

The MRO will conduct an administrative review of the control and custody form to ensure its accuracy. The MRO will review and interpret an individual's confirmed positive test by: (1) reviewing the individual's medical history; (2) affording the individual an opportunity to discuss the test result; and (3) deciding whether there is a legitimate medical explanation for the result, including legally prescribed medication. In addition, to ensure fairness to employees, the MRO will review the test results when a laboratory indicates that an employee's specimen may have been adulterated or substituted. The foregoing applies to both FTA-mandated and Pace-mandated drug testing.

4. Notification and Split Sampling

The MRO will notify each employee who has a verified positive test that the employee has seventy-two (72) hours within which to request a test of the split specimen. If the employee requests an analysis of the split specimen, the MRO

will direct the laboratory, in writing, to ship the split specimen to another DHHS laboratory for analysis. An employee may also request an analysis of the split specimen for any specimen deemed to have been adulterated or substituted.

If the analysis of the split specimen fails to confirm the presence of the drug(s), drug metabolite(s), or evidence of adulteration or substitution, found in the primary specimen, or if the split specimen is unavailable or inadequate for testing, the MRO will cancel the test and report the cancellation and the reasons for it to the DOT, the employer, and the employee.

If the employee has not contacted the MRO within seventy-two (72) hours of being notified of a verified positive drug test or evidence of adulteration or substitution, the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test or evidence of adulteration or substitution, or other unavoidable circumstances that prevented the employee from contacting the MRO in time. If the MRO concludes that there is a legitimate explanation for the employee's failure to contact the MRO, the MRO will direct that an analysis of the split sample be performed. If the MRO concludes that there is no legitimate explanation, the MRO is not required to direct the analysis of the split specimen.

If, after the MRO makes all reasonable efforts (and documents them), the MRO is unable to reach the individual directly, the MRO will contact a designated Pace representative who will direct the employee to contact the MRO as soon as possible. If, after making all reasonable efforts, the designated Pace representative is unable to contact the employee, Pace may place the employee on temporary unqualified status or medical leave.

The MRO will report each verified test result to the person designated by Pace to receive the results. Reporting of a verified positive result or taking action required as a result of a positive drug test will not be delayed pending the split sampling analysis. The MRO will maintain all necessary records and send test result reports to Pace's General Manager and Chief Operating Officer (or a designated representative), Pace's drug and alcohol program manager.

The MRO will also report all negative drug tests which indicate the urine was diluted. It is Pace policy to ensure that the retesting of employees is consistent and therefore require the immediate retesting for all negative pre-employment reasonable suspicion, return to duty and follow-up testing where results have indicated a diluted urine sample. Such re-collections will not be collected under direct observation, unless there is another basis for use of direct observation.

B. Alcohol Testing

1. Breath Testing Procedures

When ordered to do so by Pace, an employee shall submit to breath alcohol testing through the use of an evidential breath testing device ("EBT"). Upon

arrival at the collection site, the employee's identity will be verified through the use of a photo identification card or through a representative designated by Pace. The testing procedures will be explained to the employee after which the employee and a breath alcohol technician ("BAT") designated by Pace will complete, date and sign the alcohol testing form.

The BAT will inform the employee of the need to conduct a screening test. The BAT and the employee will read the sequential test number displayed by the EBT. The BAT will open an individually sealed, disposable mouthpiece in view of the employee and attach it to the EBT. The BAT will instruct the employee to blow forcefully into the mouthpiece for at least six seconds or until an adequate amount of breath has been obtained. Following the screening test, the BAT will show the employee the result displayed on the EBT or the printed result. If the result of the screening test is an alcohol concentration of less than 0.02, no further testing is required and the test will be reported to Pace as a negative test. The employee may then return to his/her safety-sensitive position. If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test will be performed. The confirmation test will be conducted at least fifteen (15) minutes, but not more than thirty (30) minutes, after the completion of the initial test. This delay prevents any accumulation of alcohol in the mouth from leading to an artificially high reading. The employee will be instructed not to eat, drink, or put any object or substance in his/her mouth. The BAT will instruct the employee not to belch to the extent possible while awaiting the confirmation test. The BAT will inform the employee that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instructions.

Before the confirmation test is administered, the BAT will conduct an air blank on the EBT. If the reading is greater than 0.00, the BAT will conduct one more air blank. If the second air blank is greater than 0.00, the EBT will not be used to conduct the test. The confirmation test will be conducted using the same procedure as the screening test. A new mouthpiece will be used.

If the initial and confirmatory test results are not identical, the confirmation test result will be deemed to be the final result. If the result displayed on the EBT is not the same as that on the printed form, the test will be cancelled and the EBT removed from service.

The BAT will sign and date the alcohol testing form. The employee will sign and date the certification statement, which includes a notice that the employee cannot perform safety-sensitive duties or operate a motor vehicle if the results are 0.02 or greater. The BAT will attach the alcohol test result printout directly onto the alcohol collection form with tamper proof tape (unless the results are printed directly on the form).

If a screening or confirmatory test cannot be completed, the BAT will, if practicable, begin a new alcohol testing form with a new sequential test number. Refusal by an employee to complete and sign the alcohol testing form, to provide

breath, or otherwise to cooperate with the collection process will be noted on the form and the test will be terminated.

2. Notification

The BAT will transmit all non-negative results to a designated Pace representative immediately.

3. Positive Test Results at Designated Threshold Levels

In the event of a test result of 0.02 or greater but less than 0.04, the employee shall be removed from duty for at least eight (8) hours following the administration of the test. **Separate from any FTA requirements**, in no event will the employee be allowed to return to duty unless he/she passes an alcohol test showing an alcohol concentration of less than 0.02.

In the event of a federally mandated test result equal to or greater than 0.04, the employee shall be prohibited from performing any safety-sensitive duties until he/she has been evaluated by a substance abuse professional and has passed a return to duty test.

C. Substance Abuse Professional (SAP) Evaluation

Any individual who has a verified positive drug test result or a breath alcohol concentration of 0.04 or greater will be advised of the resources available to evaluate and resolve problems associated with drug abuse or alcohol misuse, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs. The employee also will be assessed by a substance abuse professional ("SAP") designated by Pace who will determine what assistance the employee needs in resolving problems associated with prohibited drug use or alcohol misuse.

As of the revised date of the policy, Pace has contracted with Morneau Shepell, (800) 272-2727 to serve as its SAP. Morneau Shepell, also manages Pace's EAP. As discussed in *Section III, B.* of this policy, the EAP is designed to assist Pace employees with personal problems, including problems associated with drug abuse or alcohol misuse.

The SAP will carry out the following responsibilities:

- A qualified SAP will recommend education and/or treatment during the return-to-duty process.
- Evaluate whether any employee who previously tested positive and desires to return to work has properly followed the SAP's recommendations for treatment.

- Recommend whether a returning employee who previously tested positive for drug use also should be subject to return to duty and/or follow-up testing for alcohol misuse.
- Document all contacts with referred employees and present regular periodic reports to Pace's drug and alcohol program manager or his/her designee.
- Recommend whether a returning employee who previously tested positive for alcohol misuse also should be subject to return to duty and/or follow-up testing for drug use.

The foregoing applies to FTA-mandated testing only.

VI. Enforcement of Policy Through Discipline

Separate from any FTA requirement Pace will under its own authority exercise the following discipline as a result of drug and or alcohol misuse.

A. Pre-Employment

Any applicant who tests positive for drugs and/or alcohol will be disqualified from consideration for a safety-sensitive position with Pace.

B. Reasonable Suspicion

Any employee who tests positive for drugs and/or alcohol pursuant to a reasonable suspicion test administered under this policy will be discharged.

C. Post-Accident

Any employee involved in an accident who tests positive for drugs and/or alcohol pursuant to a test administered under this policy will be discharged.

D. Random

Any employee who tests positive for drugs and/or alcohol pursuant to a random test administered under this policy will be discharged.

E. Return to Duty

Any employee who tests positive for drugs and/or alcohol pursuant to a return to duty test administered under this policy will be discharged.

F. Follow-Up

Any employee who tests positive for drugs and/or alcohol pursuant to a follow-up test administered under this policy will be discharged.

G. Refusal to Take Test and/or Non-Compliance with Testing Procedures

Any employee who refuses to submit to any drug or alcohol test administered under this policy, to complete and sign the requisite testing forms, or otherwise to cooperate with the testing process in a way that prevents the completion of the test will be discharged.

H. Inability to Provide Adequate Amount of Urine Specimen or Breath

Any applicant or employee who is unable to provide an adequate amount of urine specimen for drug testing will be directed to drink up to forty (40) ounces of fluid, distributed reasonably through a period of up to three (3) hours, or until the employee has provided a new urine specimen, whichever occurs first. If the employee refuses to provide a new specimen, the collection site person shall terminate the collection.

In all cases involving an employee who cannot provide an adequate specimen within the three (3) hour period, a Pace designated MRO shall refer the employee for a medical evaluation to develop pertinent information concerning whether the employee's inability to provide a specimen is genuine or constitutes a refusal to provide a specimen. If the former, Pace will make whatever accommodation is reasonable in light of all circumstances relevant to the case. If the latter, the employee's failure to provide an adequate amount of urine will be regarded as a refusal to submit to take the test and the employee will be discharged. In pre-employment testing involving an applicant who cannot provide an adequate specimen within the three (3) hour period, the applicant will be disqualified from consideration for employment with Pace (without resort to an MRO referral).

An employee who is unable to provide an adequate amount of breath for alcohol testing will be directed to obtain an evaluation from a licensed physician who is acceptable to Pace concerning the employee's medical ability to provide an adequate amount of breath. If the physician concludes that a medical condition has or could have precluded the employee from providing an adequate amount of breath, the employee's failure to do so will not be regarded as a refusal to take the test. If the physician is unable to make such a determination, the employee's failure to provide an adequate amount of breath will be regarded as a refusal to take the test and the employee will be discharged. An applicant who is unable to provide an adequate amount of breath for alcohol testing will be disqualified from consideration for employment with Pace (without referral to a physician).

I. Urine Specimen Alteration

In any case where it has been determined that an employee has altered or attempted to alter his/her urine specimen for a drug test administered under this policy, the employee will be discharged. In any case where it has been determined that an applicant has altered or attempted to alter his/her urine specimen for a drug test administered under this policy, the applicant will be disqualified from consideration for employment with Pace.

J. Unsatisfactory Employee Assistance Program Participation

An employee allowed entry into Pace's EAP who fails to participate in the recommended treatment program, fails to comply with the terms of his/her EAP plan, or refuses to take a drug and/or alcohol screen when ordered to do so will be discharged.

K. Conviction for a Violation of a Criminal Drug Statute

As a condition of employment with Pace, an employee must notify Pace in writing of his/her conviction for a violation of any criminal drug statute no later than five (5) calendar days after such conviction. Any employee convicted for such a violation occurring on Pace property will be discharged. In all other cases, discipline, up to and including discharge will be issued based upon all circumstances relevant to the case.

L. Applicability of Policy to Pace Contractors

All Pace contractor employees who are engaged in the performance of safety-sensitive functions for Pace are subject to the provisions of this policy pertaining to *Deterrence (Section IIIA)*, *Provisions for Drug and Alcohol Testing (Section IV)*, and *Methodology (Section V)*. Employees of third party contractors which operate transportation service for Pace contractors who are engaged in the performance of safety-sensitive functions also are subject to these provisions. Pace does not mandate the application of other provisions of this policy relating to *Treatment and Rehabilitation (the Employee Assistance Program, Section IIIB)* and *Rehabilitation Policy Through Discipline (Section VI)* to contractor employees. These areas are left to the contractor's discretion. However, any contractor employee who violates Pace's policies on *Deterrence (Section IIIA)*, *Provisions for Drug and Alcohol Testing (Section IV)*, and *Methodology (Section V)* shall not be allowed to perform safety-sensitive functions in Pace-funded service.

Appendix A: Terms and Definitions

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| Adulterated Specimen | A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance. |
| Air Blank | In evidential breath testing devices (EBTs) using gas chromatography technology, a reading of the device's internal standard. In all other EBTs, a reading of ambient air containing no alcohol. |
| Alcohol | The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol. |
| Alcohol Concentration | The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test. |
| Alcohol Use | The drinking or swallowing of any beverage, liquid mixture, or preparation (including any medication), containing alcohol. |
| Aliquot | A fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen. |
| Breath Alcohol Technician (BAT) | A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device. |
| Cancelled or Invalid Test | In drug testing, a drug test that has been declared invalid by a Medical Review Officer. A cancelled test is neither a positive nor a negative test. A sample that has been rejected for testing by a laboratory is treated the same as a cancelled test. In alcohol testing, a test that is deemed to be invalid is neither a positive nor a negative test. |
| Collection Container | A container into which the employee urinates to provide the specimen for a drug test. |
| Collection Site | A place selected by Pace where employees present themselves for the purpose of providing a urine specimen for a drug test. |
| Collection Site Person | A person who instructs and assists individuals at a collection site and who receives and makes a screening examination of the urine specimen provided by those individuals. |
| Confirmation (or Confirmatory) Test | In drug testing, a second analytical procedure performed on a different aliquot of the original specimen to identify the presence of a specific drug or metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test to ensure reliability and accuracy. (Gas chromatography/mass spectrometry [GC,MS] is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.) In alcohol testing, a second test, |

following a screening test with a result of 0.02 or greater that provides quantitative data of alcohol concentration.

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| Contractor | A person or organization that provides a service for Pace consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties. |
| Controlled Substance | The substances defined and included in the Schedules of Article II of the Illinois Controlled Substances Act, 720 ILES 570/201 <u>et seq.</u> |
| DOT | The Department of Transportation or any designee of the Secretary of the Department of Transportation. |
| Drug Metabolite | The specific substance produced when the human body metabolizes a given prohibited drug as it passes through the body and is excreted in urine. |
| Drug Test | The laboratory analysis of a urine specimen collected in accordance with regulations promulgated by the DOT and analyzed in a DHHS-approved laboratory. |
| Evidential Breath Testing Device (EBT) | A device that is approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the .02 and .04 alcohol concentrations, and appears on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" because it conforms with the model specifications available from NHTSA. |
| FTA | Federal Transit Administration |
| HHS | The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services. |
| Initial Drug Test | (Also known as a "Screening drug test"). The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites. |
| Initial Specimen Validity Test | The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid. |
| Invalid Drug Test | The result reported by an HHS-certified laboratory in accordance with the criteria established by HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test. |
| Laboratory | Any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part. |

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| Limit of Detection (LOD) | The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated. |
| Limit of Quantitation | For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established. |
| Medical Review Officer (MRO) | A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results. |
| Narcotic | The substance defined and included in Section 102 of the Illinois Controlled Substances Act, 720 ILES 570/102. |
| Negative Result | The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen. |
| Pass a Drug Test | An individual passes a drug test when a Medical Review Officer determines, in accordance with procedures established by the DOT, that the results of the test: <ul style="list-style-type: none">• Showed no evidence or insufficient evidence of a prohibited drug or drug metabolite• Showed evidence of a prohibited drug or drug metabolite for which there was a legitimate medical explanation• Were scientifically insufficient to warrant further action |
| Performing a Safety-Sensitive Function | A covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions. |
| Positive Result | The result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations. |
| Prescribed Drug | Any controlled substance or narcotic prescribed by a qualified, licensed health provider. |
| Prohibited Drug | Marijuana, Cocaine, Opiates, Amphetamines, or Phencyclidine |
| Reconfirmed | The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen. |

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| Rejected for Testing | The result reported by an HHS-certified laboratory when no tests are performed for a specimen because of a fatal flaw or a correctable flaw that is not corrected. |
| Safety-Sensitive Position | A duty, position, or job category that requires the performance of a safety-sensitive function(s). |
| Screening Test (or Initial Test) | See “Initial Drug Test” definition. |
| Shipping Container | A container that is used for transporting and protecting urine specimen bottles and associated documents from the collection site to the laboratory. |
| Specimen Bottle | The bottle that, after being sealed and labeled according to procedures in 49 CFR Part 40,, is used to hold the urine specimen during transportation to the laboratory. |
| Split Specimen | In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result. |
| Split Specimen Collection | A collection in which the urine collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B). |
| Substance Abuse Professional (SAP) | A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. |
| Validity Testing | Tests conducted by the laboratory designed to deter and detect attempts to adulterate or substitute specimens. |
| Volunteer | A permanent, temporary, or part-time worker who is not compensated for his/her services unless involved either in the operation of a vehicle designed to transport sixteen or more passengers, including the driver, or in the provision of a charitable service with the expectation of receiving a benefit. The term volunteer includes any vanpool driver who pursuant to FTA regulations is not subject to drug or alcohol testing. |

ATTACHMENT 2

CERTIFICATION OF COMPLIANCE WITH
PACE'S DRUG & ALCOHOL POLICY AND TESTING PROGRAM

Date: 2/5/2020

I, Jason Diehl, Senior Finance Manager,
(Printed Name of Official) (Title of Official)

Cummins Inc.,
(Name of Company/Municipality)

DO HEREBY CERTIFY that an anti-drug and alcohol misuse prevention program has been established in accordance with the terms of the *Code of Federal Regulations, Title 49, Part 40, Part 655* ("Federal regulations"). I further certify that the program specifically includes provisions for:

1. Training for safety-sensitive employees and training for supervisors in accordance with the Federal regulations and Pace policy.
2. Testing of safety-sensitive employees for drugs and alcohol in accordance with the approved testing protocols and procedures set forth in the Federal regulations and Pace policy under the following circumstances:
 - Pre-employment (drug testing only)
 - Reasonable Suspicion
 - Post-accident
 - Random
 - Return to duty
 - Follow up
3. Use of a Medical Review Officer ("MRO") for all drug tests and a Substance Abuse Professional ("SAP") for evaluations and follow-up treatment and testing recommendations for all individuals who test positive under any drug or alcohol test, as these requirements are set forth in the Federal regulations and Pace policy.
4. Maintenance of records in accordance with the Federal regulations and Pace policy, which records will be made available upon request to Pace or its designee.



(Signature of Official)

VENDOR SURVEY

The Bidders shall provide the following information:

Indicate below what type of vehicle repairs your company can provide:

- Diesel Buses and Vehicles
- Compressed Natural Gas (CNG) Buses
- Allison Transmission B400R
(Authorized to work on Allison rebuilt transmissions through Weller.)

Facility Information

1. Number of years in bus repair business 90+ years
2. Number of Mechanics 74 in Chicagoland area
3. Mechanical/Body Shop area: 52,000 square feet (two facilities)
4. Stock Room: 17,500 square feet (two facilities)
5. Number of service bays: 36 Bays between two facilities
6. Number of Buses able to be repaired at same time: 20+ in-shop, pending availability
7. Number of service vehicles: 51 vehicles
8. CNG Approved/Compliant: Yes No (please circle answer of choice)
9. Will there be Subcontracting? Yes No (please circle answer of choice)

If yes, list what may be subcontracted out (Examples: engine work, transmission work, etc.)

Not applicable.

10. Please provide up to three (3) references where you have performed similar size and scope of services outlined in Invitation for Bid No. 419795.

1. Name: Chicago Transit Authority
Address: 7801 S. Vincennes Avenue, Chicago, IL 60620
Phone: (773) 874-7100 Contact Person: Islam Youssef
Email: iyoussef@transitchicago.com
Scope of work performed: Cummins engine warranty and non-warranty
contingent repair and parts services, complete "turnkey" mid-life overhaul

2. Name: City of Chicago, Dept. of Fleet and Facility Management
Address: 30 North LaSalle, Suite 300, Chicago, IL 60602
Phone: (312) 744-5206 Contact Person: John Szyszko
Email: john.szyszko@cityofchicago.org
Scope of work performed: Cummins engine parts and repair services

3. Name: METRO Transit
Address: 515 North Cleveland Avenue, St.Paul, MN 55114
Phone: (612) 349-5005 Contact Person: Rick White
Email: richard.white@metrotransit.org
Scope of work performed: Cummins engine parts and repair services