

TERMS AND CONDITIONS, ISSUE 6
Contract Delivery Service (CDS) Routes Only

Effective: April 1, 2011

PREFACE

This document presents the Highway Contract Route (HCR) terms and conditions that will apply to all Contract Delivery Service (CDS) solicitations and contracts.

Section A is the agreement form(s).

Section B is the Statement of Work. The schedules for the specific trips are also a part of the Statement of Work.

Section C sets forth the general clauses included in the solicitations and contracts.

Section D pertains to solicitations and contains the text of provisions that are intended (1) to inform suppliers fully of the Postal Service's needs for the particular purchase, (2) to explain how proposals will be evaluated, and (3) to identify the particular aspects of value deemed important to the success of the purchase.

Section E is a list of the exhibits and attachments mentioned in the solicitation or contract.

TABLE OF CONTENTS

	Page
SECTION B. STATEMENT OF WORK	5
SECTION C. CLAUSES	6
C.1. Payment (Highway) (Clause B-74) (March 2006) (Modified)	6
C.1.1 Annual Rate Payments.....	6
C.1.2. Other Than Annual Rate Payments	7
C.1.3 Payment Due Date	7
C.1.4 Interest (Clause B-22) (March 2006).....	8
C.1.5 Payment Process	8
C.2. Special Clauses.....	8
C.2.1 Definitions (Clause B-1) (February 2009) (Modified)	8
C.2.2 Review By Next Higher Level Contracting Authority	9
C.2.3 Subcontracting (Highway or Domestic Inland Water Contracts).....	9
C.2.4 Clause 1-7 Organizational Conflicts of Interest (March 2006) (Modified)	10
C.2.5 Clause 1-11 Prohibition Against Contracting With Former Postal Service Officers or PCES Executives (March 2006)	12
C.2.6 Clause 1-12 Use of Former Postal Service Employees (March 2006)	12
C.2.7 Fuel Cost Management Clause.....	12
C.2.8 DPS/Reclassification/DPP/FSS	12
C.2.9 Supplier Tax Identification Number or Social Security Number	13
C.2.10 Usage of Postal Facilities	13
C.2.11 Contract Rates	13
C.2.12 Electronic Communication and Interactivity	13
C.3. General Clauses.....	13
C.3.1 Clause 4-1 General Terms and Conditions (March 2006) (Modified)	13

C.3.2 Changes (Transportation) (Clause B-67) (February 2011) (Modified) 15

C.3.3 Termination of Contracts 18

C.3.3a For Contract Delivery Service and Combination Routes Only 18

C.3.3b Clause B-72 Termination on Notice - Emergency Contracts (February 2009) (Modified) 18

C.3.4 Clause B-9 Claims and Disputes (March 2006) 18

C.3.5 Clause B-19 Excusable Delays (March 2006) 19

C.3.6 Clause B-30 Permits and Responsibilities (March 2006)..... 20

C.3.7 Clause B-64 Accountability of Supplier (March 2006) 20

C.3.8 Clause B-69 Events of Default (February 2009) (Modified) 21

C.3.9 Clause B-70 Release of Supplier (March 2006)..... 22

C.3.10 Clause B-77 Protection of the Mail (March 2006) 22

C.3.11 Clause B-78 Renewal Clause (March 2006) 22

C.3.12 Clause B-79 Forfeiture of Compensation (March 2006) 22

C.3.13 Clause B-80 Laws and Regulations Applicable (March 2006)..... 22

C.3.14 Clause 4-2 Contract Terms and Conditions Required to Implement Policies, Statutes or Executive Orders (December 2009) 22

SECTION D. PROVISIONS..... 26

D.1 Instructions to Offerors 26

D.1.1 Provision 4-1 Standard Solicitation Provisions (March 2006) (Modified) 26

D.1.2 Evaluation Information - Addendum to Provision 4-1 29

D.1.3 Provision 4-2 Evaluation (December 2009) (Modified) 30

D.1.4 Provision 4-3 Representations and Certifications (March 2006) (Modified) 31

SECTION E. ATTACHMENTS 35

SECTION B. STATEMENT OF WORK

Section B includes the Statement of Work (which is the section in the front of the contract).

SECTION C. CLAUSES

C.1. Payment (Highway) (Clause B-74) (March 2006) (Modified)

General. This is a fixed price contract for highway transportation service to be provided according to the Statement of Work and Specifications indicated in the solicitation, schedule, and special notes. The basis for payment (e.g., annual rate or rate per mile) established for this contract is stated in the solicitation. No adjustments will be made in contract price except as provided below or under other clauses of this contract.

C.1.1 Annual Rate Payments

Annual rate payments for services rendered under this contract will be made as follows:

- a. The Accounting Service Center (ASC) will pay the supplier automatically at the conclusion of each month for which payment is due.
- b. Since the fixed price should be expressed as an annual rate, payment will be computed by dividing the annual rate stated in this contract by 365 (or 366 for a leap year), and multiplying that result by the number of days in that month. If this contract ends before the end of a month, payment will be based on the number of days within that period during which the contract was in force. The leap year calculation begins on July 1 of the year before the leap year.
- c. The contracting officer may authorize (1) adjustments in compensation pursuant to the clause *Adjustments to Compensation*, or (2) changes in service requirements or extra trips pursuant to the *Changes* clause. The Postal Service will file the appropriate documentation with the ASC and the supplier need not submit a separate invoice.
- d. The contracting officer may require the supplier to provide additional evidence of performance in a form and content satisfactory to the Postal Service prior to authorizing any payment.
- e. The supplier must invoice for all payments not covered by paragraphs a and b above.
 1. Hourly payments for driver/s waiting time over and above that which is called for in the contract. (Supplier may be required to submit payroll records in support of such claims).
 2. Hourly rate payments for operations conducted to stop points other than on the regular schedule.
 3. Requests for payment for detours must be filed as provided under the detours provision of the *Changes* clause.
 4. All other requests for payments must be submitted in accordance with the *Payment – Fixed Price* clause.
- f. Deductions may be made from payments otherwise due the supplier under this contract or any other contracts held by the supplier, for any amounts for which the supplier is liable as damages or otherwise.

C.1.2. Other Than Annual Rate Payments

1. Payments other than annual rate payments will be made as follows:
 - a. Payment will be made by the Administrative Official's issuance of a Form 5429 "Certification of Exceptional Contract Service Performed", directly to the Accounting Service Center (ASC). The contracting officer will generally rely on verification data provided through the Administrative Official. Compensation will be based upon the unit rate, multiplied by the actual number of units performed.
 - b. The contracting officer may require the supplier to provide additional evidence of performance in a form and content satisfactory to the Postal Service prior to authorizing any payment.
 - c. Payment for items not included in the above must be accompanied by properly completed invoices. Such invoices are subject to verification or audit by the Postal Service. The following is a listing of services that will be paid hereunder:
2. Hourly payments for driver(s) waiting time over and above that which is called for in the contract must be submitted within 90 days of the occurrence. (Supplier may be required to submit payroll records in support of such claims).
3. Claims for hourly rate payments for operations conducted to stop points other than on the regular schedule.
 - a. The contracting officer may authorize (i) adjustments in compensation pursuant to the *Adjustments to Compensation* clause, or (ii) changes in service requirements or extra trips pursuant to the *Changes* clause. The Postal Service will file the appropriate documentation with the ASC for such adjustments or changes and the supplier need not separately invoice for them.
 - b. The supplier must invoice for all payments to include:
4. Claims for damage to trailers must be filed and documented in accordance with Management Instruction PO-530-2001-2, *Processing Trailer Damage Claims*, as amended, revised, or reissued.
5. Requests for payment for detours must be filed as provided under the detours provision of the *Changes* clause.
6. Deductions may be made from payments otherwise due the supplier under this contract or any other contracts held by the supplier, for any amounts for which the supplier is liable as damages or otherwise.

C.1.3 Payment Due Date

Payment due for a month will be made by the Accounting Service Center within 30 days following the end of that month, or, if a separate invoice is required, within 30 days after the submission of a proper invoice. Interest will be paid for late payment commencing on the 31st day.

C.1.4 Interest (Clause B-22) (March 2006)

The Postal Service will pay interest on late payments and unearned prompt payment discounts in accordance with the Prompt Payment Act, 31 U.S.C. 3901 *et seq.*, as amended by the Prompt Payment Act Amendments of 1988, P.L. 100-496.

C.1.5 Payment Process

1. Payment will be made for items accepted by the Postal Service that have been delivered to the delivery destinations set forth in this contract. The Postal Service will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and 5 CFR 1315. All payments under this contract will be made by the Postal Service by electronic funds transfer. Suppliers who are unable to receive payment through EFT, due to causes within its control, may be terminated for default.
2. In conjunction with any discount offered for early payment, time will be computed from the date of the invoice. For purposes of computing the discount earned, payment will be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

C.2. Special Clauses

C.2.1 Definitions (Clause B-1) (February 2009) (Modified)

As used in this document, the following terms have the following meanings:

Administrative Official: Any Postal Service official designated by a contracting officer to supervise and administer a contract awarded under this solicitation.

Contracting Officer: The person executing this contract on behalf of the Postal Service and any other officer or employee who is a properly designated contracting officer, except as otherwise provided in the contract; the authorized representative of a contracting officer acting within the limits of the authority conferred upon that person.

Contracting Officer's Representative: A contracting officer's representative who acts within the limits of authority delegated by the contracting officer.

Mail: U.S. and foreign mail, and equipment and supplies of the Postal Service.

Postal Service: The United States Postal Service.

Route: The route or routes as described in this contract, as the same may be extended, curtailed, or otherwise altered in accordance with the terms of this contract.

Supplier: The person or persons, partnership, or corporation that will be providing the service advertised in this solicitation.

USPS: United States Postal Service.

C.2.2 Review By Next Higher Level Contracting Authority

A contracting officer's determination of settlement costs payable under a termination for convenience under Section 2.3.3b or a contracting officer's nonrenewal decision may be reviewed by the next higher level contracting authority. This review is allowed to ensure the action taken was in the best interests of the Postal Service. Higher level review is not a contract right enforceable in any way as a dispute under the *Claims and Disputes* clause or otherwise. The supplier recognizes that higher level review is not a required due process right and is not intended to afford any level of due process consideration. It does not affect the legal rights of either party. This clause does not apply to contracts terminated under Clause B-67-e.

Higher level contracting authority review will be provided if the supplier requests review in writing within five (5) business days after receipt of a notice of termination or non-renewal. Any such request should include, as applicable: a copy of the contracting officer's notice of termination for convenience or nonrenewal; the contract; any related correspondence; and .an explanation of basis for appealing the determination of settlement costs under a termination for convenience or the contracting officer's nonrenewal decision. The supplier should also explain why the supplier believes the contracting officer's decision was not in the best interests of the Postal Service. The next higher level contracting authority will promptly review the supplier's submission and provide a written response as soon as practicable.

C.2.3 Subcontracting (Highway or Domestic Inland Water Contracts)

1. For the purpose of this section, a subcontract is any agreement, other than an employer/employee agreement or a temporary agreement for labor by and owner-operator as described below, between a party that has contracted with the Postal Service to transport mail and a third party, in which the third party agrees to provide all or part of the contract service or goods or services that support the performance of the prime contract. An employer-employee agreement is one under which the employee is subject to the continuing authority of the mail transportation supplier to supervise and direct the manner of work performance of the employee. Such an employer-employee agreement is also characterized by, expressly or implied, the employer's responsibility to pay compensation directly to the employee and to withhold taxes and amounts for social security benefits from the employees' compensation for the work performed under the agreement. If an owner-operator, because of illness or temporary equipment failure, is required to obtain labor from another in order to continue performance of the service as required by the contract, that transaction is not a subcontract within the meaning of this section.
2. The Postal Service's policy on Subcontracting with Small, Minority, and Women-owned Businesses, is applicable to subcontracts under this section.
3. All subcontracts that require the subcontractor to handle, deliver, or otherwise to have access to the mail must be approved by the contracting officer, except that a supplier may, without approval of the contracting officer, subcontract the whole or part of the contract for irregular mail movements such as plant loads with one or more owner-operators who provide and drive their own vehicles. Execution by a supplier of a subcontract for the performance of contract service and its approval by the Postal Service do not release the supplier from its contractual obligations, nor from liability for damages.
4. Whenever the Postal Service determines that a supplier has breached the contract by subcontracting the whole or part of the contract contrary to the requirements of this contract, the contracting officer may terminate the contract for default.
5. Subcontractors performing contract service must meet the same capability and qualification requirements as the prime supplier.

6. If a whole contract is subcontracted, the subcontract must be for the full remainder of the contract term. Contract payments will be paid directly to the subcontractor and the subcontractor's initial rate of pay will be the same as the supplier's unless there is a change in operational costs resulting from a service change or from the enactment of a statute or ordinance or the adoption of lawful regulations by any federal, state, or local agency.
7. When a subcontract is terminated, the prime supplier may be required to take charge of the route. A subcontract to provide contract service may be terminated at the subcontractor's request only with the prior approval of the contracting officer, which will be given only for good cause. Subcontracts for contract service are automatically terminated by death of the subcontractor or abandonment of the service by the subcontractor.
8. When a subcontractor performing contract service fails to comply with the terms of a contract, the contracting officer notifies the prime supplier of the subcontractor's irregularities. The contracting officer may require removal of the subcontractor for failure to perform and that the prime supplier resumes route operations, or exercise any other remedies provided by the contracts with the prime supplier.
9. This contract may be renewed directly with the subcontractor by mutual agreement of the subcontractor and the Postal Service.

**C.2.4 Clause 1-7 Organizational Conflicts of Interest (March 2006)
(Modified)**

1. *Warranty Against Existing Conflicts of Interest.* The supplier warrants and represents that, to the best of its knowledge and belief, it does not presently have organizational conflicts of interest that would diminish its capacity to provide impartial, technically sound, objective research assistance or advice, or would result in a biased work product, or might result in an unfair competitive advantage, except for advantages flowing from the normal benefits of performing this agreement.
2. *Restrictions on Contracting.* The supplier agrees that during the term of this agreement, any extensions thereto, and for a period of 2 years thereafter, neither the supplier nor its affiliates will perform any of the following:
 - (a) Compete for any Postal Service contract for production of any product for which the supplier prepared any work statement or specifications or conducted any studies or performed any task under this agreement.
 - (b) Contract (as the provider of a component or the provider of research or consulting services) with any offeror competing for any Postal Service contract for production of any product for which the supplier prepared any work statements or specifications or conducted any studies or performed any task under this agreement.
 - (c) Contract (as the provider of a component or the provider of research or consulting services) with the offeror which wins award of a Postal Service contract for production of any product for which the supplier prepared any work statement or specifications or conducted any studies or performed any task under this agreement.
3. *Possible Future Conflicts of Interest.* The supplier agrees that, if after award of this agreement, it discovers any organizational conflict of interest that would diminish its capacity to provide impartial, technically sound, objective research assistance or advice, or would result in a

biased work product, or might result in an unfair competitive advantage, except advantages flowing from the normal benefits of performing this agreement, the supplier will make an immediate and full disclosure in writing to the contracting officer, including a description of the action the supplier has taken or proposes to take to avoid, eliminate, or neutralize this conflict of interest.

4. *Nondisclosure of Confidential Material.*

- (a) The supplier recognizes that, in performing this agreement, it may receive confidential information. To the extent that and for as long as the information is confidential, the supplier agrees to take the steps necessary to prevent its disclosure to any third party without the prior written consent of the contracting officer.
- (b) The supplier agrees to indoctrinate its personnel who will have access to confidential information as to the confidential nature of the information, and the relationship under which the supplier has possession of this information.
- (c) The supplier agrees to limit access to the confidential information obtained, generated, or derived, and to limit participation in the performance of orders under this agreement to those employees whose services are necessary for performing them.

5. *Non-Disclosure of Address Information.*

- (a) *General:* This contract requires the supplier to have access to address information (i.e., addresses and return addresses) that appears on pieces of mail. To ensure the confidentiality of this address information, except as permitted by this clause, no supplier or subcontractor, and no employee or former employee of any supplier or subcontractor may, at any time, during or after the completion of this contract, disclose to any third party any address information obtained in the performance of this contract. This contract does not give the supplier proprietary interest in address information, and the supplier's right to have, use, and disclose address information is restricted by the terms of this clause.
- (b) *Restriction of Access.* The supplier agrees to control and restrict access to address information to persons who need it to perform work under this contract, and to prohibit the reproduction of this information.
- (c) *Confidentiality and Non-Disclosure Agreement.* The supplier must require an employee (including any employee of a subcontractor) to hold in confidence any and all address information (i.e., addresses and return addresses) disclosed by the Postal Service or otherwise obtained or developed in the course of performance under this contract.
- (d) *Legal Demands for Information.* If a legal demand is made for address information (such as by subpoena), the supplier will immediately notify the contracting officer and the nearest office of the postal inspectors. After notification, the Postal Service will then determine whether and to what extent, to resist the legal demand. Should the Postal Service give in to or unsuccessfully resist a legal demand, the supplier may, with the written permission of the contracting officer, release that address information specifically requested by the legal demand.

- (e) *Indemnification.* The supplier will indemnify the Postal Service, its employees and agents, against all liability (including costs and fees) for damages arising out of the intentional or negligent disclosure of address information other than as permitted by this clause.
 - (f) *Subcontracts.* The supplier must include this clause, modified as necessary, in any subcontract.
6. *Postal Service Remedy.* If the supplier breaches or violates any of the warranties, covenants, restrictions, disclosures or nondisclosures set forth under this clause, the Postal Service may terminate this agreement, in addition to any other remedy it may have for damages or injunctive relief.

C.2.5 Clause 1-11 Prohibition Against Contracting With Former Postal Service Officers or PCES Executives (March 2006)

During the performance of this contract, former Postal officers or Postal Career Executive Service (PCES) executives are prohibited from employment by the supplier as key personnel, experts or consultants, if such individuals, within one (1) year after their retirement from the Postal Service, would be performing substantially the same duties as they performed during their career with the Postal Service.

C.2.6 Clause 1-12 Use of Former Postal Service Employees (March 2006)

During the term of this contract, the supplier must identify any former Postal Service employees it proposes to be engaged, directly or indirectly, in contract performance. Such individuals may not commence performance without the contracting officer's prior approval. If the contracting officer does not provide such approval, the supplier must replace the proposed individual former employee with another individual equally qualified to provide the services called for in the contract.

C.2.7 Fuel Cost Management Clause

The Fuel Management Program Guidelines document in effect at renewal or award is incorporated in this contract, and is subject to the following:

1. The Annual Contract Allowance for this contract is the maximum payable number of fuel gallons per year that is identified as the Annual Contract allowance within the contract's effective Form HC-131. The effective Form HC-131 is the most recently completed Form HC-131 that has been approved by the supplier and the contracting officer for inclusion in this contract.
2. Any reference in the Fuel Management Plan to an amount of fuel that is "*agreed, allowed, annual, allotted or authorized,*" or that is "*in the contract,*" means the Annual Contract Allowance amount within the effective Form HC-131 as further described in subpart 1 above.

C.2.8 DPS/Reclassification/DPP/FSS

If the service is curtailed or terminated due to implementation of Delivery Point Sequence (DPS), Delivery Point Packaging (DPP), Flat Sequencing System (FSS), or reclassification of mail processing centers, the supplier agrees to accept as liquidated damages a sum equal to one-twelfth of the dollar amount of the contract rate reduction.

C.2.9 Supplier Tax Identification Number or Social Security Number

Internal Revenue Service (IRS) mandates that the suppliers name or business name correctly matches the Employer Identification Number (EIN) or Social Security Number (SSN), provided to the contracting officer. IRS considers a name and EIN/SSN combination as incorrect if either the name or EIN/SSN combination shown on your Highway Contract does not match the name and EIN/SSN combination in their files or Social Security Administration (SSA) files. IRS rules require the USPS to withhold 29 percent of payments (backup withholding) made to a supplier if corrective action is not taken once you have been notified of an error. In addition to the backup withholding, the supplier may be subject to additional penalties issued by IRS. Therefore, all suppliers are required to provide the contracting officer with a copy of their EIN as issued by IRS or a copy of their SSN as issued by SSA.

C.2.10 Usage of Postal Facilities

Parking for contract vehicles and trailers at postal facilities and other uses of Postal facilities (unless otherwise specified within this contract) may or may not be allowed at the discretion of each facility manager. The supplier is responsible for all associated costs and to have the vehicle properly secured at all times. The supplier must have adequate contingency plans in place should the use of postal facilities be terminated or limited. In no event shall the Postal Service be held liable for, or incur any additional cost associated with, such use or the termination of such use during the contract term.

C.2.11 Contract Rates

Adjustments for compensation, when annualized miles by which the route, as adjusted, exceeds the length of the route as estimated in the solicitation, will be made by the contracting officer.

C.2.12 Electronic Communication and Interactivity

The Postal Service will be utilizing web-based systems that will require supplier interactivity. Suppliers will be required to maintain and check their electronic mail (email) accounts regularly and to respond to email messages from the Postal Service. Additionally, suppliers must have access to the World Wide Web.

C.3. General Clauses

C.3.1 Clause 4-1 General Terms and Conditions (March 2006) (Modified)

1. *Inspection and Acceptance.* The supplier will only tender for acceptance those items that conform to the requirements of this contract. The Postal Service reserves the right to inspect or test supplies or services that have been tendered for acceptance. The Postal Service may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. The Postal Service must exercise its post acceptance rights (1) within a reasonable period of time after the defect was discovered or should have been discovered and (2) before any substantial change occurs in the condition of the items, unless the change is due to the defect in the item.
2. *Assignment.* If this contract provides for payments aggregating \$10,000 or more, claims for monies due or to become due from the Postal Service under it may be assigned to a bank, trust company, or other financing institution, including any federal lending agency, and may

thereafter be further assigned and reassigned to any such institution. Any assignment or reassignment must cover all amounts payable and must not be made to more than one party, except that assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in financing this contract. No assignment or reassignment will be recognized as valid and binding upon the Postal Service unless a written notice of the assignment or reassignment, together with a true copy of the instrument of assignment, is filed with:

- (a) The contracting officer;
 - (b) The surety or sureties upon any bond; and
 - (c) The office, if any, designated to make payment, and the contracting officer has acknowledged the assignment in writing.
 - (d) Assignment of this contract or any interest in this contract other than in accordance with the provisions of this clause will be grounds for termination of the contract for default at the option of the Postal Service.
3. *Risk of Loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract will remain with the supplier until, and will pass to the Postal Service upon
- (a) Delivery of the supplies to a carrier, if transportation is f.o.b. origin, or;
 - (b) Delivery of the supplies to the Postal Service at the destination specified in the contract, if transportation is f.o.b. destination.
4. *Taxes.* The contract price includes all applicable federal, state, and local taxes and duties.
5. *Termination for the Postal Service's Convenience.* See Section C.3.3.
6. *Termination for Default.* The Postal Service may terminate this contract, or any part hereof, for default by the supplier, or if the supplier fails to provide the Postal Service, upon request, with adequate assurances of future performance. In the event of termination for default, the Postal Service will not be liable to the supplier for any amount for supplies or services not accepted, and the supplier will be liable to the Postal Service for any and all rights and remedies provided by law. The debarment, suspension, or ineligibility of the supplier, its partners, officers, or principal owners under the Postal Service's procedures may constitute an act of default under this contract, and such act will not be subject to notice and cure pursuant to any termination of default provision of this contract. If it is determined that the Postal Service improperly terminated this contract for default, such termination will be deemed a termination for convenience.
7. *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract will pass to the Postal Service upon acceptance, regardless of when or where the Postal Service takes physical possession.
8. *Limitation of Liability.* Except as otherwise provided by an express or implied warranty, the supplier will not be liable to the Postal Service for consequential damages resulting from any defect or deficiencies in accepted items.
9. *Other Compliance Requirements.* The supplier will comply with all applicable Federal, State, and local laws, executive orders, rules and regulations applicable to its performance under this

contract. If there are any changes to a federal, state or local law, statute or regulation, executive order or other rule applicable to contract performance during the term of this contract that result in additional contract costs, these costs will be borne by the supplier.

10. *Order of Precedence*. Any inconsistencies in the provisions of a solicitation, a contract awarded under a solicitation, or a contract awarded without the issuance of a written solicitation will be resolved by giving precedence in the following order:

- (a) The Statement of Work and Specifications
- (b) The solicitation provisions and instructions
- (c) Special clauses and general clauses
- (d) Provisions contained in attachments or incorporated by reference.

11. *Incorporation by Reference*. Wherever in this solicitation or contract a standard provision or clause is incorporated by reference, the incorporated term is identified by its title, the provision or clause number assigned to it. The following clauses are incorporated in this contract by reference:

- (a) B-15, *Notice of Delay* (March 2006)
- (b) B-16, *Suspensions and Delays* (March 2006)
- (c) B-65, *Adjustments to Compensation* (March 2006) (Modified) Contract compensation may be adjusted by mutual agreement of the supplier and the contracting officer.
 - i. In connection with an adjustment, the contracting officer may examine such records and books of account maintained by the supplier as the contracting officer may deem necessary.
 - ii. Adjustments in compensation pursuant to this clause shall be memorialized by formal amendment to the contract.
 - iii. Should the Postal Service introduce procedures which affect the supplier's obligations with respect to the costs of fuel or taxes, the contract price will be adjusted with respect to those costs, pro rata, without entitlement to other compensation for those adjustments, subject to the resolution of any dispute about the adjustments under the *Claims and Disputes* clause.

Any adjustments shall be made in accordance with the United States Postal Service Management Instruction governing adjustments in effect at the time of contract award/renewal.

C.3.2 Changes (Transportation) (Clause B-67) (February 2011) (Modified)

1. Service Changes

The supplier shall proceed diligently in accordance with service changes and extra trips ordered unilaterally by the contracting officer. Disputes concerning such orders shall be resolved pursuant to the *Claims and Disputes* clause.

(a) Minor Service Changes:

- (i) The contracting officer may, at any time, without consulting the supplier, issue orders directing an extension, curtailment, change in line of travel, revisions of route, or increase in frequency of service or number of trips and fixing an adjustment in the supplier's compensation which increases or decreases the supplier's rate of pay by no more than \$2,500 of a single contract. The supplier may request a rate adjustment for the service change – within 30 days of the service change order – if the supplier does not agree with the Postal Service's contract rate adjustment.
- (ii) A service change as a result of the Postal Service's decision to deliver mail fewer than six days per week is considered a Minor Service Change. The Postal Service will have the right to unilaterally make such changes. Disputes concerning such changes shall be resolved under the *Claims and Disputes* clause.

(b) Other Service Changes:

- (i) Service changes other than minor service changes, including increases or decreases in compensation, may be made by the contracting officer.
- (ii) If any such change affects the cost of performance or the delivery schedule, the contract will be modified to effect an equitable adjustment.
- (iii) A supplier's claim for equitable adjustment must be asserted within 30 days of receiving a written change order. A later claim may be acted upon – but not after final payment under this contract – if the contracting officer decides that the facts justify such action.
- (iv) Failure to agree to any adjustment constitutes a dispute under the *Claims and Disputes* clause.
- (v) With respect to any service change ordered under this section, the supplier must proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the contracting officer.

2. Extra Trips

An extra trip is an additional trip of service operated on an infrequent time basis over the same route or part as normally provided under the terms of the contract. Extra trips shall be negotiated in advance of the performance by the contracting officer. However, the contracting officer may order the supplier to perform such extra service at below pro rata pay. If no rate of pay for extra trips has been negotiated in advance, the supplier shall nonetheless perform such extra trips as are ordered by the contracting officer and may, on an after-the-fact basis, obtain a lump sum reimbursement for the difference between costs incurred as a direct result of performing such extra trips and pro-rata payment for such trips, provided that such claims costs are adequately supported by documentary evidence furnished to the contracting officer. Claims for compensation above pro rata pay for extra trips must be filed in writing with the contracting officer, accompanied by full supporting documentation of costs, no later than 90 days after the performance of such extra trips. When the contracting officer has ordered several extra trips under a single

order, the 90-day period begins on the date of performance of the last trip performed under such order. Failure to agree to such compensation above pro rata pay shall be resolved under the *Claims and Disputes* clause.

3. Detours

When the regular line of travel of a contract route is impassable and the supplier performs full service over another and longer line of travel, the supplier's compensation shall be equitably increased for such service, provided, however, that such increase:

- (a) Comprises at least \$1.00 (one dollar) in any month, and
- (b) Does not exceed an amount determined by multiplying the additional miles actually traveled by the rate per mile that applies to the trip on which the detour was made, determined by dividing the regular compensation for the trip by the regular number of miles.

Note: No payments will be made with respect to any detour not reported to the contracting officer or the contracting officer's designee within 90 days after the detoured service is performed. Supplier will use reasonable efforts to minimize additional costs or delays resulting from detours.

4. Liquidated Damages:

- (a) If this contract is terminated for convenience due to the implementation of Delivery Point Sequence, reclassification of mail processing centers, Integrated Mail Handling Systems, or Flat Sequencing System (FSS) without fault on the part of the supplier, liquidated damages for the termination will be established as one-twelfth of the annual rate in effect at the time of the termination. In the event of a partial termination for convenience or other service curtailment for these causes, liquidated damages shall be established in the same proportion as the dollar amount of the contract rate reduction bears to the amount established above.
- (b) In all other cases, if this contract is terminated for convenience without fault on the part of the supplier, liquidated damages for the termination will be established as:
 - (i) One third of the annual rate in effect at the time of the termination (if during the first two years), or
 - (ii) One-sixth of the annual rate in effect at the time of the termination (if during the third year), or
 - (iii) One-twelfth of the annual rate in effect at the time of the termination (if during the fourth year or later).

In the event of a partial termination for convenience or other service curtailment liquidated damages shall be established in the same proportion as the dollar amount of the contract rate reduction bears to (i), (ii), or (iii) above (as applicable).

C.3.3 Termination of Contracts

The Postal Service reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the supplier must immediately stop all work and must immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the supplier will be paid a percentage of the work performed prior to the notice of termination. The supplier will not be paid for any work performed or costs incurred which reasonably could have been avoided.

C.3.3a For Contract Delivery Service and Combination Routes Only

The contracting officer may terminate this contract or the right to perform under it, in whole or in part. Liquidated damages will apply to contract delivery service and combination routes. The supplier shall be paid as liquidated damages the sum provided for in Section C.3.2.4. The liquidated damages permitted by this contract, if any, constitute the supplier's full remedy for a whole or partial termination under this clause. For any other type of surface transportation contract, the Postal Service shall not be liable for any damages for a termination effected under this clause.

C.3.3b Clause B-72 Termination on Notice - Emergency Contracts (February 2009) (Modified)

This contract may be terminated by the Postal Service upon notice of not less than 24 hours, or by the supplier upon notice of not less than 15 days without cost.

C.3.4 Clause B-9 Claims and Disputes (March 2006)

- a. This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) ("the Act" or "CDA").
- b. Except as provided in the Act, all disputes arising under or relating to this contract must be resolved under this clause.
- c. "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the supplier seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph d.2 below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount is not acted upon in a reasonable time.
- d.
 1. A claim by the supplier must be made in writing and submitted to the contracting officer for a written decision. A claim by the Postal Service against the supplier is subject to a written decision by the contracting officer.
 2. For supplier claims exceeding \$100,000, the supplier must submit with the claim the following certification:

"I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, that the amount requested

accurately reflects the contract adjustment for which the supplier believes the Postal Service is liable, and that I am duly authorized to certify the claim on behalf of the supplier.”

3. The certification may be executed by any person duly authorized to bind the supplier with respect to the claim.
- e. For supplier claims of \$100,000 or less, the contracting officer must, if requested in writing by the supplier, render a decision within 60 days of the request. For supplier-certified claims over \$100,000, the contracting officer must, within 60 days, decide the claim or notify the supplier of the date by which the decision will be made.
- f. The contracting officer’s decision is final unless the supplier appeals or files a suit as provided in the Act.
- g. When a CDA claim is submitted by or against a supplier, the parties by mutual consent may agree to use an alternative dispute resolution (ADR) process to assist in resolving the claim. A certification as described in d(2) of this clause must be provided for any claim, regardless of dollar amount, before ADR is used.
- h. The Postal Service will pay interest in the amount found due and unpaid from:
 1. The date the contracting officer receives the claim (properly certified, if required); or
 2. The date payment otherwise would be due, if that date is later, until the date of payment.
- i. Simple interest on claims will be paid at a rate determined in accordance with the *Interest* clause.
- j. The supplier must proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the contracting officer.

C.3.5 Clause B-19 Excusable Delays (March 2006)

- a. Except with respect to defaults of subcontractors, the supplier will not be in default by reason of any failure in performing this contract in accordance with its terms (including any failure by the supplier to make progress in the prosecution of the work that endangers performance) if the failure arises out of causes beyond the control and without the fault or negligence of the supplier. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the government in its sovereign capacity or of the Postal Service in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the supplier.
- b. If failure to perform is caused by the failure of a subcontractor to perform or make progress and arises out of causes beyond the control of both the supplier and subcontractor, and without the fault or negligence of either of them, the supplier will not be deemed to be in default, unless:
 1. The supplies or services to be furnished by the subcontractor are obtainable from other sources;
 2. The contracting officer orders the supplier in writing to procure the supplies or services from other sources; and

3. The supplier fails to comply reasonably with the order.
- c. Upon request of the supplier, the contracting officer shall ascertain the facts and extent of failure, and if the contracting officer determines that any failure to perform was occasioned by any of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Postal Service under any termination clause included in this contract.

As used in this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

C.3.6 Clause B-30 Permits and Responsibilities (March 2006)

The supplier is responsible, without additional expense to the Postal Service, for obtaining any necessary licenses and permits, and for complying with any applicable federal, state, and municipal laws, codes, and regulations in connection with the performance of the contract. The supplier is responsible for all damage to persons or property, including environmental damage that occurs as a result of its omission(s) or negligence. The supplier must take proper safety and health precautions to protect the work, the workers, the public, the environment, and the property of others.

C.3.7 Clause B-64 Accountability of Supplier (March 2006)

- a. The supplier shall supervise its operations and the operations of its subcontractors which provide services under this contract personally or through representatives. The supplier or its supervising representatives must be easily accessible in the event of emergencies or interruptions in service.
- b. In all cases, the supplier shall be strictly liable to the Postal Service for the Postal Service's actual damages if mail is subject to loss, rifling, damage, wrong delivery, depredation, and other mistreatment while in the custody and control of the supplier or its subcontractors.

The supplier shall also be accountable and answerable in damages for the faithful performance of all other obligations assumed under this contract, whether or not it has entrusted part or all of its performance to another, except

1. The supplier is not liable for its failure to perform if the failure arises out of circumstances beyond its control, and without its fault or negligence, and
 2. The supplier is not liable for a failure of its subcontractors to perform if the subcontractor's failure arises out of circumstances beyond the supplier or the subcontractor's control, and without the fault or negligence of either.
- c. The supplier shall faithfully account for and deliver to the Postal Service all:
 1. Mail,
 2. Moneys, and
 3. Other property of any kind belonging to or entrusted to the care of the Postal Service, that come into its possession during the term of this contract.
 - d. The supplier shall, promptly upon discovery, refund (i) any overpayment made by the Postal Service for service performed, or (ii) any payment for service not rendered.

C.3.8 Clause B-69 Events of Default (February 2009) (Modified)

The supplier's right to perform this contract is subject to termination under the clause entitled Termination for Default. The following constitute events of default, and this contract may be terminated pursuant to that Clause.

- a. The supplier's failure to perform service according to the terms of the contract;
- b. If the supplier has been administratively determined to have violated Postal laws and regulations and other laws related to the performance of the service;
- c. Failure to follow the instructions of the contracting officer;
- d. If the supplier transfers or assigns his contract, except as authorized herein, or sublets the whole or a portion of this contract contrary to the applicable provisions of the U.S. Postal Service or without any required approval of the contracting officer;
- e. If the supplier combines to prevent others from proposing for the performance of Postal Service contracts;
- f. The supplier's failure properly to account, deliver and pay over moneys, mail and other property pursuant to this contract;
- g. If the supplier or a partner, if the supplier is a partnership, or a principal owner or corporate officer, if the supplier is a corporation, (a) has been or is, during the term of the contract, convicted of a crime of moral turpitude affecting his or her reliability or trustworthiness as a mail transportation supplier, such as any form of theft, fraud, embezzlement or assault, or (b) associates with known criminals, or (c) otherwise is not reliable, trustworthy or of good character.
- h. Any breach by the supplier or subcontractor of any warranty contained in PS Form 7465, Transportation Services Subcontract;
- i. If the supplier allows any employed individual to operate a vehicle in connection with this contract who has a record indicating that it would be hazardous for that individual to do so;
- j. If the supplier's transportation equipment is insufficient, inadequate, or otherwise inappropriate for the service;
- k. If the supplier employs any individual in connection with the contract contrary to the instructions of the contracting officer;
- l. If at any time the supplier, its principal owners, corporate officers or personnel are disqualified by law or regulation from performing services under this contract, and upon notice thereof, the supplier fails to remove any such disqualification;
- m. If the supplier fails to establish and maintain continuously in effect insurance as required by this contract, or fails to provide proof of insurance prior to commencement of service and thereafter as required by the contracting officer;
- n. If the supplier fails to provide any notification of a change in principal owners or corporate officers which this contract may require;
- o. If the supplier materially breaches any other requirement or clause of this contract.

C.3.9 Clause B-70 Release of Supplier (March 2006)

- a. The contracting officer may release an individual sole-proprietor supplier from the contract for reasons of physical disability which prohibit the supplier from adequately operating the route, or which endanger the supplier's life if operation of the route continues, if:
 1. The supplier applies to the contracting officer for a release;
 2. The contracting officer determines that a release will be in the interest of the Postal Service; and,
 3. The Postal Service secures a new contract.

A release under this clause is not a termination for convenience, and the supplier expressly waives any claim for liquidated damages for such release.

C.3.10 Clause B-77 Protection of the Mail (March 2006)

The supplier must protect and safeguard the mail from loss, theft, or damage while it is in the supplier's custody or control and prevent unauthorized persons from having access to the mail.

C.3.11 Clause B-78 Renewal Clause (March 2006)

This contract may be renewed by mutual agreement of the parties.

C.3.12 Clause B-79 Forfeiture of Compensation (March 2006)

If the supplier fails to perform a trip for any reason, the supplier shall forfeit the compensation otherwise due for that trip. If the supplier fails to perform a trip, and such failure is due to the fault or negligence of the supplier or of its subcontractors, the supplier shall be liable for all damages actually suffered by the Postal Service by reason of such failure.

C.3.13 Clause B-80 Laws and Regulations Applicable (March 2006)

This contract and the services performed under it are subject to all applicable federal, state and local laws and regulations. The supplier shall faithfully discharge all duties and obligations imposed by such laws and regulations, and shall obtain and pay for all permits, licenses, and other authorities required to perform this contract.

C.3.14 Clause 4-2 Contract Terms and Conditions Required to Implement Policies, Statutes or Executive Orders (December 2009)

1. Incorporation by Reference
 - (a) Wherever in this solicitation or contract a standard provision or clause is incorporated by reference, the incorporated term is identified by its title, the provision or clause number assigned to it in the Postal Service *Supplying Practices*. The text of incorporated terms may be found at <http://www.usps.com/cpim/ftp/manuals/spp/spp.pdf>. The following clauses are incorporated in this contract by reference.
2. Clause 1-5, *Gratuities or Gifts* (March 2006)
3. Clause 2-8, *Warranty* (March 2006)

4. Clause 8-4, *Patent Indemnity* (March 2006)
5. Clause 9-1, *Convict Labor* (March 2006)
6. Clause 9-5, *Contract Work Hours and Safety Standards Act - Safety Standards* (March 2006)
7. Clause B-25, *Advertising of Contract Awards* (March 2006)
8. Clause B-68, *Changes in Corporate Ownership or Officers* (March 2006)
9. Clause B-70, *Release of Supplier* (March 2006)
10. Clause B-77, *Protection of the Mail* (March 2006)
11. Clause B-78, *Renewal Clause* (March 2006)
12. Clause B-79, *Forfeiture of Compensation* (March 2006)
13. Clause B-80, *Laws and Regulations Applicable* (March 2006)
14. Clause B-81, *Information or Access by Third Parties* (March 2006)
15. Clause B-82, *Access by Officials* (March 2006)

If checked, the following additional clauses are also incorporated in this contract by reference (contracting officer will check as appropriate):

- (a) Clause 1-1, *Privacy Protection* (July 2007)
- (b) Clause 1-6, *Contingent Fees* (March 2006)
- (c) Clause 1-9, *Preference for Domestic Supplies* (March 2006)
- (d) Clause 1-10, *Preference for Domestic Construction Materials* (March 2006)
- (e) Clause 3-1, *Small, Minority, and Woman-owned Business Subcontracting Requirements* (March 2006) (see Subcontract Policy attachment)
- (f) Clause 3-2, *Participation of Small, Minority, and Woman-owned Businesses* (March 2006) (see Subcontract Policy attachment)
- (g) Clause 9-2, *Contract Work Hours and Safety Standards Act – Overtime Compensation* (March 2006)
- (h) Clause 9-3, *Davis-Bacon Act* (March 2006)
- (i) Clause 9-6, *Walsh-Healey Public Contracts Act* (March 2006)
- (j) Clause 9-7, *Equal Opportunity* (March 2006)
- (k) Clause 9-10, *Service Contract Act* (March 2006)
- (l) Clause 9-11, *Service Contract Act - Short Form* (March 2006)

- (m) Clause 9-12, Fair Labor Standards Acts and Services Contract Act – Price Adjustments (February 2010) ____
- (n) Clause 9-13, Affirmative Action for Handicapped Workers (March 2006) X
- (o) Clause 9-14, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (February 2010) X

Examination of Records.

- (a) *Records.* "Records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) *Examination of Costs.* If this is a cost-type contract, the supplier must maintain, and the Postal Service will have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination includes inspection at all reasonable times of the supplier's plants, or parts of them, engaged in the performance of this contract.
- (c) *Cost or Pricing Data.* If the supplier is required to submit cost or pricing data in connection with any pricing action relating to this contract, the Postal Service, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, will have the right to examine and audit all of the supplier's records, including computations and projections, related to:
 - (i) The proposal for the contract, subcontract, or modification;
 - (ii) The discussions conducted on the proposal(s), including those related to negotiating;
 - (iii) Pricing of the contract, subcontract, or modification; or
 - (iv) Performance of the contract, subcontract or modification.
- (d) *Reports.* If the supplier is required to furnish cost, funding or performance reports, the contracting officer or any authorized representative of the Postal Service will have the right to examine and audit the supporting records and materials, for the purposes of evaluating:
 - (i) The effectiveness of the supplier's policies and procedures to produce data compatible with the objectives of these reports; and
 - (ii) The data reported.
- (e) *Availability.* The supplier must maintain and make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a) through (d) of this clause, for examination, audit, or reproduction, until three years after final payment under this contract or any longer period required by statute or other clauses in this contract. In addition:

- (i) If this contract is completely or partially terminated, the supplier must make available the records related to the work terminated until three years after any resulting final termination settlement; and
- (ii) The supplier must make available records relating to appeals under the claims and disputes clause or to litigation or the settlement of claims arising under or related to this contract. Such records must be made available until such appeals, litigation or claims are finally resolved.
- (iii) *Payment Offsets.* As required by 31 U.S.C. 3716, the Postal Service participates in the Treasury Offset Program of the Department of Treasury's Financial Management Service. Payments under this contract are subject to offset in whole or in part to for the supplier's delinquent tax and non-tax debts owed to the United States and the states and for delinquent child support payments. Suppliers with questions concerning a payment offset should contact the Treasury Offset Program call center at: 1/800-304-3107.

SECTION D. PROVISIONS

D.1 Instructions to Offerors

D.1.1 Provision 4-1 Standard Solicitation Provisions (March 2006) (Modified)

1. *Submission of Offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified on this solicitation. Offers may be submitted on Form 7405, *Order/Solicitation/Offer/Award*, letterhead stationary, or as otherwise specified in the solicitation. As a minimum offers must show:
 - (a) Solicitation number;
 - (b) The name, address and telephone number of the offeror;
 - (c) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
 - (d) Terms of any expressed warranty;
 - (e) Price and any discount terms;
 - (f) "Remit to" address, if different than mailing address;
 - (g) A completed copy of the representations and certifications;
 - (h) Acknowledgment of Solicitation Amendments by signing and returning the amendment, identifying the amendment number and date in the space provided for this purpose on the solicitation form; or by letter or telegram. Acknowledgments of amendments are subject to the *Late Submissions and Modifications of Proposals* provision of the solicitation. Proposals lacking acknowledgment of an amendment affecting price, quantity, quality, or delivery may be disregarded.
 - (i) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items, and other references (including contract numbers, point of contact, with telephone numbers, and other relevant information); and
 - (k) If the offer is not submitted on Form 7405, include a statement specifying the extent of agreement with all terms and conditions and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration
2. *Business Disagreements.* Business disagreements may be lodged with the Supplier Disagreement Resolution Official (SDR Official) if the supplier and the contracting officer have failed to resolve the disagreement as described in 39 CFR Part 601 (available for review at www.gpoaccess.gov/ecfr). The SDR Official will consider the disagreement only if it is lodged in accordance with the time limits and procedures

described in 39 CFR Part 601. The SDR Official's decisions are available for review at www.usps.com.

3. *Equipment Specifications.* When the supplier submits a proposal to this solicitation, it is certifying that it will provide the equipment as specified in the statement of work and schedule provided in the solicitation.
4. *Alternative Offers.* Offerors may submit alternative terms and conditions or commercial items for satisfying the requirements in the solicitation. Comments or notes must be submitted directly to the contracting officer prior to the solicitation closing date.
5. *Late Offers.* Offers or modifications of offers received at the address specified for the receipt of offers after the exact time specified for receipt of offers will not be considered unless determined to be in the best interests of the Postal Service.
6. *Type of Contract.* In most cases, the Postal Service will award a single highway transportation contract to provide the highway transportation services described in the solicitation. However, under certain circumstances, multiple awards may be made to satisfy the total requirement.

The contract will be of the fixed-price type. All proposals must be submitted on a fixed-price basis. Prices may be adjusted in accordance with Section 2.1, Payment. Proposals based on other contract types will not be considered.

7. *Contract Award.* The Postal Service may evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. Discussions may be conducted if the Postal Service determines they are necessary. The Postal Service may reject any or all offers if such action is in the best interest of the Postal Service, accept other than the lowest offer, and waive informalities and minor irregularities in offers received.
8. *Multiple Awards.* The Postal Service may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Postal Service reserves the right to make an award on any items for quantity less than the quantities offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.
9. All requests for clarification must be submitted in writing (to include letter, email, or fax) to the contracting officer prior to the expiration date and time of the event.
10. *Incorporation by Reference.* Wherever in this solicitation or contract a standard provision or clause is incorporated by reference, the incorporated term is identified by its title, the provision or clause number assigned to it, and its date. The text of incorporated terms may be found at <http://www.usps.com/cpim/ftp/manuals/pm/spp.pdf>. If checked, the following provision is incorporated in this solicitation by reference:

Provision 3-1, *Notice of Small, Minority, and Woman-owned Business
Subcontracting Requirements* (March 2006) x.

11. Special Notices:

- (a) The distance stated in this solicitation is believed to be substantially correct. The amounts payable under this contract will neither be increased or decreased if the actual distance is greater or less than stated, so long as the points to be served are correctly stated. No claim for additional money will be honored if such claim is based on alleged mistakes as to the length of a correctly identified route.
- (b) The Fair Labor Standards Act applies to employees of a mail transportation supplier who engage or assist in the contract performance. The minimum wage, maximum work hours and provisions are interpreted and enforced by the United States Department of Labor (DOL). Further information on the requirements and application of this statute may be obtained from the Regional Administrator, Wage and Hour Division, United States Department of Labor, with jurisdiction over your area, or from the DOL at the address indicated below:

Department of Labor
Division of Wage and Hour, Room S3028
Washington DC 20210-0001

Service employees employed under this contract are subject to the Service Contract Act. See Section C.3.4, Service Contract Act (Clause 9-10) (March 2006).

- (c) Before submitting your proposal review carefully all requirements set out in statement of work, the schedule, and special notes attached to the schedule.
- (d) The estimated per trip miles shown on the schedule or special notes are given only as information. Prior to submitting a proposal for a route, the offeror should determine the actual miles that must be covered. The pay will neither be increased nor decreased if the actual distance is greater or less than advertised, if the points to be supplied are correctly stated. No claim for additional pay can be allowed which is based on alleged mistakes or misapprehensions as to the length of route.
- (e) The hours shown on the schedule, or special notes are the Postal Service's estimates of the minimum hours necessary to operate the required trips and are believed to be substantially correct; they do not include wash-up time, vehicle inspections, etc.
- (f) *Eligibility of Offerors:*
 - (i) Persons ineligible to become suppliers include: (1) Employees of the U.S. Postal Service or members of their immediate families. "Immediate family" means spouse, minor child or children, and other individuals related to the employee by blood who are residents of the employee's household. (2) Business organizations substantially owned or controlled by Postal Service employees or their immediate families.
 - (ii) Persons eligible to become suppliers. Subject to the foregoing exceptions, the following are eligible to hold mail transportation contracts: (1) An individual (if at least 21 years of age); (2) A partnership, if any partner meets the foregoing age qualification of an individual; (3) A corporation.

12. General Requirements

- (a) No proposal for a contract shall be considered unless the offeror submitting it can assure either personal or representative supervision over the operation of the route and can be easily contacted in the event of emergencies, to give personal or representative attention to the problem at hand.
- (b) No contract shall be made with any offeror who has entered into or proposed any combination to prevent the making of any proposal for carrying mail or who has agreed, or given or promised any consideration, to induce another potential offeror not to submit an offer for such a contract. The U.S. Postal Service may terminate the contract of any supplier so offending and may disqualify such supplier from contracting for transporting mail under future contract.

D.1.2 Evaluation Information - Addendum to Provision 4-1

NOTE: The offered price must include all elements of cost the offeror expects to incur in performing service.

1. Price Specific

Proposals must include completion of the appropriate transportation services proposal form (Form 7405). Each proposal must be submitted on **Form 7405**. The following instructions should be closely adhered to in completing this form:

- a. Item 1. Fill in the solicitation number, date of the solicitation, and the terminal points of the route exactly as they appear on the solicitation.
- b. Item 2. In the first space, write out the exact amount of your offered price. In the second space, insert the numerical amount. Make certain that the amounts set forth in both spaces are exactly the same.
- c. Item 3. In blocks a, b, and c, enter the complete name, address and phone number of the offeror. Enter the offeror's DOT number in block d. Enter the Employer Identification Number (Social Security Number if the offeror is an individual) in block e. Complete blocks f and g only if proposals are being submitted for contract delivery routes. In this case, an offeror must meet the special requirements in the Statement of Work and Specifications.
- d. Complete the remainder of the form, including the appropriate certificate and other items on the reverse, and sign the form as offeror.
- e. If the rate proposed is \$2,500 or more per year, complete the Equal Opportunity Representation that appears on the reverse of the form. If the rate proposed is more than \$10,000 per year, you must provide the information required under "Parent Company and Taxpayer Identification Number."

A completed **Form 7468-A** (Highway Transportation Contract - Proposal or Renewal Worksheet).

- a. Complete Form PS 7468-A, Offerors are cautioned that the sum of all items entered on this worksheet must agree with the rate proposed on the Form 7405. If a final price is negotiated which is different from your initial offer, you must submit a revised Form 7468-A with your revised offer.
- b. The information provided on your Form 7468-A will not be used to evaluate the price you have proposed. This is a competitive, negotiated procurement, and award will be made

based on price and other factors (if any) set out in Section C.1.3 of this document. However, the information provided on the Form 7468-A will establish the base from which the rate of compensation may be adjusted during the term of any contract. Failure to submit a satisfactorily completed Form 7468-A may prevent such adjustments.

- c. Preparing Form 7468-A will assist you in determining your price for the service being solicited. You should keep a record of the information furnished for future reference.
- d. If you receive an award, Form 7468-A furnished by you will not be distributed to individuals other than the supplier.

Submit a completed **Fuel Purchase Plan** (see attachments under Section E).

2. Proposal Specific

By submitting an offer to this solicitation, the supplier is acknowledging an understanding of the vehicle requirements as stated in the statement of work, the attached schedule, and special notes, and certifies that such equipment will be provided for this service if the supplier is awarded the contract.

3. Supplier Specific

Upon request from the contracting officer, the supplier may be required to provide additional financial data or other information sufficient to establish the capability of the offeror. Failure to provide such information upon request may be cause for rejection of the offer. Any financial data submitted hereunder or any representation concerning facilities or financing will not form a part of any resulting contract.

4. Past Performance

Past performance may be measured as demonstrated by performance on other transportation service contracts.

D.1.3 Provision 4-2 Evaluation (February 2011) (Modified)

1. *General.* The Postal Service will award a contract to the offeror whose offer is deemed to offer the Postal Service the best value, price, and other factors as specified. The following performance evaluation factors will be used and weighed equally in the evaluation of offers:
 - A. *Adherence to and ability to perform schedule*
 - B. *Equipment*
 - C. *Supplier Capability*
 - D. *Past Performance*

Price will have equal weight as performance factors.

2. *The following must be in the supplier's offer:*

Proposed annual rate, trip rate, round-trip rate, cost per hour, or rate per mile, as specified in the solicitation.

- 3. *Notice of Award.* The Postal Service may accept an offer (or part of an offer), whether or not there are discussions after its receipt, before an offer's specified expiration time, unless a written notice of withdrawal is received before award. A written notice of award or acceptance of an offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, will result in a binding contract without further action by either party.

D.1.4 Provision 4-3 Representations and Certifications (March 2006) (Modified)

- 1. *Type of Business Organization.* For type of business organization representations and certifications, please complete Form 7319c in accordance with the instructions below.
 - a. *Parent Company and Taxpayer Identification Number* - A parent company is one that owns or controls the basic business policies of an offeror. To own means to own more than 50 percent of the voting rights in the offeror. To control means to be able to formulate, determine, or veto basic business policy decisions of the offeror. A parent company need not own the offeror to control it; it may exercise control through the use of dominant minority voting rights, proxy voting, contractual arrangements, or otherwise.
 - b. Enter the offeror's Taxpayer Identification Number (TIN) in the space provided. The TIN is the offeror's Social Security number or other Employee Identification Number used on the offeror's Quarterly Federal Tax Return, U.S. Treasury Form 941.
 - c. Offeror's TIN: _____
 - d. Check this block if the offeror is owned or controlled by a parent company: _____
 - e. If the block above is checked, provide the following information about the parent company:
 - Parent Company's Name: _____
 - Parent Company's Main Office: _____
 - Address: _____
 - No. and Street: _____
 - City: _____ State: _____ ZIP Code: _____
 - Parent Company's TIN: _____
 - f. If the offeror is a member of an affiliated group that files its federal income tax return on a consolidated basis (whether or not the offeror is owned or controlled by a parent company, as provided above) provide the name and TIN of the common parent of the affiliated group:
 - Name of Common Parent: _____
 - Common Parent's TIN: _____
- 2. *Certificate of Independent Price Determination* - by submitting this proposal, the offeror certifies, and in the case of a joint proposal each party to it certifies as to its own organization, that in connection with this solicitation:

- a. The prices proposed will be arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to the prices with any other offeror or with any competitor;
 - b. Unless otherwise required by law, the prices proposed have not been and will not be knowingly disclosed by the offeror before award of a contract, directly or indirectly to any other offeror or to any competitor; and
 - c. No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.
3. Each person signing the proposal certifies that:
- a. He or she is the person in the offeror's organization responsible for the decision as to the prices being offered herein and that he or she has not participated, and will not participate, in any action contrary to paragraph a above; or
 - b. He or she is not the person in the offeror's organization responsible for the decision as to the prices being offered but that he or she has been authorized in writing to act as agent for the persons responsible in certifying that they have not participated, and will not participate, in any action contrary to paragraph a above, and as their agent does hereby so certify; and he or she has not participated, and will not participate, in any action contrary to paragraph a above.
 - c. Modification or deletion of any provision in this certificate may result in the disregarding of the proposal as unacceptable. Any modification or deletion should be accompanied by a signed statement explaining the reasons and describing in detail any disclosure or communication.
4. *Certification of Nonsegregated Facilities*
- a. By submitting this proposal, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract.
 - b. As used in this certification, segregated facilities means any waiting rooms, work areas, rest rooms or wash rooms, restaurants or other eating areas, time clocks, locker rooms or other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment area, transportation, or housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.
 - c. The offeror further agrees that (unless it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors before awarding subcontracts exceeding \$10,000 that are not exempt from the provisions of the Equal Opportunity clause; that it will retain these certifications in its files; and that it will forward the following notice to these proposed subcontractors (except when they have submitted identical certifications for specific time periods):

Notice: A certification of nonsegregated facilities must be submitted before the award of a subcontract exceeding \$10,000 that is not exempt from the Equal Opportunity clause. The

certification may be submitted either for each subcontract or for all subcontracts during a period (quarterly, semiannually, or annually).

5. *Certification Regarding Debarment, Proposed Debarment, and Other Matters – A* Certification Regarding Debarment, Proposed Debarment, and Other Matters (continuation of Form 7319c) is attached. This certification must be completed with respect to any offer with a value of \$100,000 or more in accordance with the following information:
- a. The offeror certifies, to the best of its knowledge and belief, that it or any of its principals:
 - (i) Are ___ are not ___ presently debarred or proposed for debarment, or declared ineligible for the award of contracts by any Federal, state, or local agency;
 - (ii) Have ___ have not ___, within the three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;
 - (iii) Are ___ are not ___ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subparagraph (b) above;
 - (iv) Have ___ have not ___ within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in conjunction with obtaining, attempting to obtain, or performing a public (Federal, state or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion or receiving stolen property; and
 - (v) Are ___ are not ___ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subparagraph (iv) above.
 - b. The offeror has ___ has not ___, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal, state, or local agency.
 - c. "Principals," for the purposes of this certification, means officers, directors, owners, partners, and other persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).
 - d. The offeror must provide immediate written notice to the Contracting officer if, at any time prior to contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
 - e. A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered as part of the evaluation of the offeror's capability. The offeror's failure to furnish a certification or provide additional information requested by the contracting officer will affect the capability evaluation.

- f. Nothing contained in the foregoing may be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - g. This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under section 1001, Title 18, United States Code.
 - h. The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Postal Service, the contracting officer may terminate the contract resulting from this solicitation for default.
6. *Incorporation by Reference.* Wherever in this solicitation or contract a standard provision or clause is incorporated by reference, the incorporated term is identified by its title, the provision or clause number assigned to it, and its date. The text of incorporated terms may be found at <http://www.usps.com/cpim/ftp/manuals/pm/spp.pdf>. If checked, the following provisions are incorporated in this solicitation by reference:
- a. Provision A-1, *Restriction on Disclosure and Use of Data (March 2006)*
 - b. Provision 1-4, *Prohibition Against Contracting with Former Officers or PCES Executives (March 2006)*
 - c. Provision 1-5, *Proposed Use of Former Postal Service Employees (March 2006)*
 - d. Provision 9-1, *Equal Opportunity Affirmative Action Program (March 2006)*
 - e. Provision 9-2, *Preaward Equal Opportunity Compliance Review (March 2006)*
 - f. Provision 9-3, *Notice of Requirements for Equal Opportunity Affirmative Action (March 2006)*

SECTION E. ATTACHMENTS

1. Applicable Wage Determinations
2. Standard Operating Procedures for Vehicle Inspections by Law Enforcement Officials, Logistics Order, LO200806
3. Form 7319-C, Representations and Certifications
4. Fuel Management Program
5. Form 7405
6. Form 7468a
7. *(Available Upon Request)* Management Instruction PO-530-2009-4 (Screening Highway Transportation Contractor Personnel)
8. *(Available Upon Request)* Management Instruction PM-4.4.1-2005-1 (Economic Pay Adjustments for Highway and Inland Domestic Water Contracts)