

CITY OF DURHAM

RFP 23-0113: TRANSIT OPERATIONS AND MAINTENANCE SERVICES

Question & Answer Round #3 - February 21, 2023

#	Document	Section	Page #	Question/Comment	City Response
1	RFP	8.3 (D)	45	Regarding the explanation for variances +/- 5%, will the performance of the investments suffice for the explanation?	Yes.
2		8.3	45	For Pension Liability and Indemnification, will the City consider similar language to the language from the GoTriangle contract with First Transit (RFP # 18-089)? 1. Contractor shall not receive, handle or disburse any pension funds for DCTC employees. Contractor shall not be liable for any claim, liability, loss or expense arising from or out of the pension plan for DTC employees past, present, and future pension liability, including without limitation liability for vested but unfunded or underfunded benefits. The City will indemnify, defend and hold harmless Contractor from and against any loss, liability, loss or expense related to the DCTC pension fund. 2. Contractor agrees to indemnify, defend, and hold harmless GoTriangle from and against any claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind ("claims"), liability, loss or expense in connection with or arising from criminal acts, fraud, intentional acts or negligence in the management, oversight, operation or training responsibilities of the Contractor under the Contract. 3. Other than as set forth above, GoTriangle agrees to indemnify, defend, and hold harmless Contractor, its parents, subsidiaries, affiliates, officers, directors, shareholders, agents, servants, employees, and assigns from and against any Claims, liability, loss or expense arising from the Contractor's operation of the bus transit system.	The City does not believe it is appropriate to provide, in this contract, the level of pension liability and indemnification you reference in the GoTriangle contract with First Transit. We believe the pension liability indemnity coverage in the RFP is reasonable given the responsibilities (though limited) of the Contractor over the pension Plan. The RFP [Sec. 8.3 (H) & (I)] does provide the Contractor with indemnification of pension liabilities, but only after termination or expiration of the contract when the City has had an opportunity to assess whether the Contractor has performed its legal obligations with respect to the Plan under the contract, excluding indemnification of any obligations and liabilities arising from a breach of the contract or any fiduciary duty of the Contractor or its affiliates.
3		8.3(D)	45	Would the City consider removing the 5% greater window and the equitable lump sum payment and making the Pension Contributions a pass thru? (There are factors that effect this and an actuary numbers would change over the seven years).	The City does not control the Contractor's wage or staffing levels which are the primary driver of pension costs. Therefore, we have created a narrow window for which the Contractor would be responsible for cost variation relative to its budgeted amount. The City takes on any risk of variation greater than 5% which the City believes to be reasonable.
4		8.3(D)	45	Would the City consider making the PBGC Premium a pass thru allowance and remove the Variation window and the equitable lump sum payment?	The City does not control the Contractor's wage or staffing levels which are the primary driver of pension costs. Therefore, we have created a narrow window for which the Contractor would be responsible for cost variation relative to its budgeted amount. The City takes on any risk of variation greater than 5% which the City believes to be reasonable.