



REQUEST FOR PROPOSAL

SUBJECT: ADVANCED TRAFFIC MANAGEMENT SYSTEM (ATMS)
SOFTWARE

DATE: MARCH 22, 2024

PROPOSAL NO.: 24-07

PROPOSAL DUE: APRIL 30, 2024 **TIME:** 11:00 a.m. C.S.T.

The Memphis Area Transit Authority invites proposals for supplies and/or services set forth above in accordance with the specifications enclosed herewith.

Proposals **MUST** be received at MATA by the date and time set forth above.

Sincerely,

A handwritten signature in black ink that reads "Ashley Best".

Ashley Best
Sr. Contract Administrator

COMMON PROBLEMS WITH RFP SUBMITTAL

- Missing or unsigned copies of certain forms and certifications. The following must be included in the RFP:
 - Addenda Acknowledgement Form
 - Affidavit of Non-Collusion (Exhibit I)
 - Buy America (Exhibit II)
 - Federal Tax Liability and Recent Felony Conviction
 - Certification of Primary Participation Regarding Debarment, Suspension, and Other Responsibility Matters (Exhibit III)
 - Certification of Lower-Tier Participants (Subcontractors), Debarment, Suspension, Ineligibility and Voluntary Exclusion (Exhibit III)
 - Certification of Restrictions on Lobbying (Exhibit IV)
 - Certification of Utilization of Disadvantaged Business Enterprises
 - National Defense Authorization Act Telecommunications
 - Letter of Intent to Perform as a DBE Contractor or Subcontractor
 - Schedule of DBE Participation
 - Explanation of "No Response"

- Incomplete or outdated information on client references and/or sufficient number of references provided.

- Failure to include adequate documentation about the role of subcontractors in the project.

- Submittal of too few copies. The RFP specifies the number of originals and number of copies of the RFP to be provided.

- Failure to properly label the RFP package with RFP label.

- RFP received late. All RFPs must be in MATA's possession by the deadline shown in the RFP. All RFPs received after the deadline will be returned unopened.

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BUY AMERICA CERTIFICATE

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CERTIFICATION OF RESTRICTIONS ON LOBBYING

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ATTACHMENT 1 GENERAL CONTRACT PROVISIONS

MEMPHIS AREA TRANSIT AUTHORITY

LEGAL NOTICE TO PROPOSERS

Proposals will be received by the Memphis Area Transit Authority (MATA) at its Purchasing offices, 40 S. Main Street, Suite 1200, Memphis, TN 38103, **until 11:00 a.m. local time, on Tuesday, April 30, 2024**, for furnishing the following:

ADVANCED TRAFFIC MANAGEMENT SYSTEM (ATMS) SOFTWARE

A pre-proposal meeting will take place on Thursday, March 28, 2024, 11:00 a.m. – 12:30 p.m. at 40 S. Main Street, Suite 1200, Memphis, TN 38103 and via Microsoft Teams. The Meeting ID: 227 831 970 003 Passcode: 63CYCN or you can call in: +1 901-614-1074, 988721305# Phone Conference ID: 988 721 305#. While this pre-proposal meeting is not mandatory it is strongly urged that you attend.

Proposers must submit their proposal with the enclosed label attached to the envelope.

MATA hereby notifies all proposers that in regard to any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit proposals in response to this advertisement and will not be discriminated against on the grounds of race, color, sex, religion, political affiliation or national origin in consideration of an award.

Any name appearing on the Comptroller General's list of ineligible contractors is not an eligible proposer. The contractor will be required to comply with all applicable Equal Employment Laws and Regulations.

Further information and proposal requirements may be obtained by contacting Ashley Best, Sr Contract Administrator at (901) 722-7182 or via email: abest@matatransit.com.

Award of the contract will be made on the basis of the Lowest Responsive and Responsible proposer as selected by the Authority, provided it is in their best interest to do so.

MATA reserves the right to reject any and all proposals, and to waive any informality in proposing.

March 22, 2024 & April 20-21, 2024

Bacarra Mauldin
Interim Chief Executive Officer

SECTION A

INSTRUCTION TO PROPOSERS

**SECTION A
INSTRUCTIONS TO PROPOSERS**

1.0 GENERAL

- 1.1 The Memphis Area Transit Authority (hereinafter referred to as MATA) seeks Proposals for professional services from qualified vendors capable of providing the scope of services described in Section B. These instructions provide detailed legal and technical requirements for the acquisition of this product. This Request for Proposals (RFP) will become part of the contract.

MATA will enter into a contract with the successful proposer for professional services relative to the Project. This Project is more particularly described in Section B – Scope of Services. General Contract Provisions are included in Attachment 1. Where there are conflicts between the General Contract Provisions and Section A, the provisions of Section A shall apply.

MATA is a public agency responsible for providing public transportation services within the city of Memphis and surrounding communities.

- 1.2 Purchaser” or “Grantee” or “Authority” means MATA. The words “request for proposal”, “RFP”, and “solicitation” are synonymous. The words “proposal”, “bid” and “offer” are also synonymous and it is understood that once MATA accepts same, the document will constitute a portion of the contract contemplated by these instructions. The words “proposer”, “bidder” and “offerer” are also synonymous.
- 1.3 This Request For Proposals (RFP) does not commit MATA to award a contract or pay any costs incurred in the preparation of Proposals in response to the RFP or to procure or contract for services. Proposers shall be responsible for all costs incurred as part of their participation in the pre-award process.
- 1.4 Proposals will be received by MATA at its Purchasing offices located at 40 S. Main Street, Suite 1200, Memphis, TN 38103, **until 11:00 AM, local time on Tuesday, April 30, 2024.**

All Proposals shall be deemed received at the above address. Proposers are solely responsible for ensuring that his/her Proposal is timely delivered. Proposers who rely on overnight delivery services, the United States mail, private mail services, local couriers or delivery services remain solely responsible for timely delivery of the RFP and assume all risk of late delivery, miss-delivery and non-delivery.

All Proposals will be date/time stamped, logged and deposited by MATA Staff.

Proposers are reminded that all RFPs must be securely sealed, have the enclosed label attached and be clearly marked “Proposal”.

MATA's normal business hours are 8:00 a.m. to 4:30 p.m. Monday through Friday. After normal business hours, Proposals will be accepted at the MATA dispatcher's office, 1370 Levee Road, Memphis, TN 38108; however, Proposers are reminded of their sole responsibility for ensuring that their RFP is deposited in the Purchasing Department.

Proposers may verify receipt of RFPs by contacting Ashley Best at (901) 722-7182 or email: abest@matatransit.com.

Proposers must submit an up-to-date W-9 form with the proposal.

A pre-proposal meeting will take place on Thursday, March 28, 2024, 11:00 a.m. – 12:30 p.m. at 40 S. Main Street, Suite 1200, Memphis, TN 38103 via Microsoft Teams. The Meeting ID: 227 831 970 003 Passcode: 63CYCN or you can call in: +1 901-614-1074, 988721305# Phone

Conference ID: 988 721 305#. While this pre-proposal meeting is not mandatory is it strongly urged that you attend.

- 1.5 All Proposals and related documents shall be based on the conditions of a financial assistance contract between MATA, the State of Tennessee and the United States Department of Transportation, under the Federal Transit Act, as amended. Terms and conditions established under the Act and the regulations implementing the Act will apply.

2.0 PROPOSAL REQUIREMENTS

- 2.1 Proposals must concisely set forth full, accurate, and complete information required by this proposal including any attachments.
- 2.2 The Proposer shall provide all the work described in Section B - Scope of Work.
- 2.3 Proposals shall be valid for a minimum period of one hundred twenty (120) days subsequent to the closing date. Proposals offering less than one hundred twenty (120) days for acceptance by MATA from the closing date will be considered non-responsive.

3.0 PROPOSAL FORMAT

- 3.1 Proposers are required to submit Proposals in the following format:

RESPONSES TO TECHNICAL SPECIFICATIONS ARE LIMITED TO 120 PAGES, RESUMES, SAMPLE DOCUMENTS AND REQUIRED FORMS ARE EXCLUDED FROM THIS LIMIT.

A. Proposal Forms and Attachments (One (1) original, and one (1) flash drive)

- 1) Addenda Acknowledgement Form
- 2) Buy America
- 3) Cost Proposal Form (see General Provisions, Section 11)
- 4) Affidavit of Non-Collusion Exhibit I (See General Provisions, Section 1)
- 5) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower-Tier Covered Transaction Exhibit III (See General Provisions, Section 30)
- 6) Certification of Primary Participation Regarding Debarment, Suspension and Other Responsibility Matters Exhibit III (See General Provisions, Section 30)
- 7) Certification of Restrictions on Lobbying Exhibit IV (See Section 43)
- 8) References According to General Provisions (See General Provisions, Section 26)
- 9) Certification of Utilization of Disadvantaged Business Enterprises
- 10) National Defense Authorization Act Telecommunications
- 11) Letter of Intent to Perform as a DBE Contractor or Subcontractor
- 12) Schedule of DBE Participation

Additionally, Proposers must provide References According to General Contract Provisions, Section 26.

Blank Forms are provided in Section C of this procurement.

4.0 PROPOSAL PROCEDURES

- 4.1 MATA reserves the right to postpone the Proposal due date for its own convenience and to waive any minor informalities in Proposal submission, which do not go to the heart of the Proposal or prejudice other Proposers, or to reject, for good and compelling reasons, any and all Proposals submitted.

- 4.2 Any changes to the Proposals will be made in written addendum by MATA and will be forwarded to all persons and firms to who documents have been transmitted.
- 4.3 Requests for Clarification or approved equal must be submitted in writing to Ashley Best, MATA, 40 s. Main Street, Suite 1200, Memphis, TN 38103 and must be received no later than 11:00 a.m. local time, Thursday, April 4, 2024, in accordance with the Approved Equals procedures described in the General Contract Provisions. Any unapproved deviations, exceptions, substitutes, alternates, or conditional qualifications contained in a PROPOSALS may be cause for its rejection. **VERBAL QUESTIONS WILL NOT BE ANSWERED, THUS PREVENTING AN UNFAIR ADVANTAGE TO ANY PROPOSER.** Questions may be emailed: abest@matatransit.com.
- 4.4 One original and one (1) electronic copy (i.e., flash drive) of the Proposals and all related documents shall be submitted on forms furnished, or copies thereof, and shall be manually signed. Proposals shall be securely sealed to prevent access prior to the Proposal closing date. Proposals shall be clearly marked with the enclosed label attached.

5.0 PROPOSAL EVALUATION

- 5.1 MATA will appoint an evaluation committee to evaluate Proposals and recommend the top ranked proposer. The committee will apply those evaluation criteria set forth in the Proposals or in addenda that maybe be issued. An evaluation criterion is deemed to include any unstated "sub criterion" that logically might be included within the scope of the stated criterion.
- 5.2 The evaluation committee will likely request interviews with the short-listed firms.
- 5.3 MATA reserves the right to enter into negotiations with the top ranked proposer without requesting interviews.
- 5.4 Proposals will be evaluated on the basis of the following factors in the following order of priority:
- 1. Technical Ability and Related Experience**
 - 2. Technical Qualifications to Perform Required Work (Functional Requirements).**
 - 3. Task Management (Scope and Solution / Implementation)**
 - 4. Recurring Maintenance Costs**
 - 5. System Implementation Costs**
- 5.5 Price will be considered during the evaluation. A price proposal shall be included with each submission. The price proposal shall clearly identify the required capital cost for initial deployment of the system and separately identity any recurring maintenance cost. All standard options and features presented for the system in the submission shall be included in the price proposal. Additional features or options shall be clearly identified as elements requiring additional costs and shall be shown separately from the core system.
- 5.6 MATA reserves the right to request documentation supporting the proposed contract price including overhead rates for the firm and subcontractors. Such information can include, but not be limited to:
- a. An overview of the accounting system and its capability to track project costs.
 - b. Charts of accounts including a definition of what is included in each account.
 - c. A statement indicating the basis of the overhead rate and whether it is historical information of projections. (The proposer will certify that the overhead burden rate separates direct and indirect charges and that indirect charges do not include any unauthorized charges for Federal Acquisition Regulations, Part 31.)

6.0 AWARD OF CONTRACT

- 6.1 The contract will be awarded to the responsible proposer whose Proposals is most advantageous to MATA as determined by ranking on the evaluation criteria and results of negotiation.
- 6.2 MATA reserves the right to reject any and all Proposals or waive informalities and irregularities in offers received. MATA reserves the right to award multiple contracts.
- 6.3 A written notice of award or Acceptance of Offer, mailed or otherwise furnished the Successful Proposer within the time specified in the PROPOSALS, shall be deemed to result in a binding contract.

7.0 PROTESTS

- 7.1 MATA will consider all protests filed in a timely manner regarding the award of a contract, whether submitted before or after award. All protests are to be submitted in writing, in accordance with the protest procedures described in the General Contract Provisions.

8.0 DISADVANTAGED BUSINESS ENTERPRISE (DBE)

8.1 GENERAL DBE INFORMATION

- A. Memphis Area Transit Authority (MATA), a recipient of Federal financial assistance from the Federal Transit Administration, is committed to and has adopted a Disadvantaged Business Enterprise Policy in accordance with Federal Regulations (49 C.F.R. Part 26, as amended) issued by the U.S. Department of Transportation. It is the policy of MATA to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to its activities.

To this end, MATA has developed procedures to remove barriers to DBE participation in the proposing and award process and to assist DBE firms to develop and compete successfully outside of the DBE program. In connection with the performance of this contract, the Prime Contractor will cooperate with MATA in meeting these commitments and objectives.

Accordingly, the Prime Contractor and any subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Prime Contractors and subcontractors shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Prime Contractor and any subcontractors 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 MATA deems appropriate.

Only certified Disadvantaged Business Enterprises can be counted toward the goal. Participation by certified "Minority Business Enterprises" (MBE) or certified "Woman Owned Business Enterprises" (WBE) cannot be counted toward the goal. While participation by MBEs and WBEs is encouraged, MATA is governed by the U.S. Department of Transportation program which only recognizes the designation of DBE.

DBEs must be certified in Tennessee.

MATA is a member of the Tennessee Unified Certification Program (TN UCP) and accepts Tennessee DBE certifications from the following entities:

Memphis Area Transit Authority

Tennessee Department of Transportation Unified Certification Program

Uniform Certification Agency (managed by the Mid-South Minority Business Council)

A list of firms currently certified in Tennessee can be found at:
www.tdot.state.tn.us/dbedirectinternet/

Certification in the State of Tennessee must be achieved by the time the proposals are due otherwise the participation of a proposed DBE firm cannot be counted toward the goal. If a proposed DBE firm is not certified at the time the proposals are due and, as a result, the goal is not met, then the proposal will be considered “non-responsive” and rejected unless the good faith efforts have been accepted as satisfactory.

It is highly recommended that a copy of a current certification of Disadvantaged Business Enterprise issued by the Tennessee Department of Transportation or the Uniform Certification Agency be included with the offer for each DBE firm being proposed.

8.2 DBE GOAL

A. Annual Overall Goal for DBE Participation

An annual overall goal for DBE participation in Owner U.S. DOT-assisted contracts is established by MATA's DBE Officer and approved by MATA's Board of Commissioners on a fiscal year basis. These goals reflect the availability of ready, willing and able DBEs that would be expected to participate in Owner contracts absent effects of discrimination. The goals are calculated as a percentage of the total amount of U.S. DOT funds that the Owner expects to expend on contracting opportunities during the fiscal year.

B. DBE Goal Applicable to This Contract

MATA has established a specific DBE goal of 0 % for this contract. However, DBE participation is encouraged either the capacity of the prime contractor or subcontractor. Proposers are required to document their activities in the solicitation and selection of subcontractors to ensure that this process is carried out in a nondiscriminatory manner.

8.3 DBE ELIGIBILITY AND PARTICIPATION

A. Evaluation of DBE Certification Status

MATA shall require that any DBEs listed by proposers for participation in the contract be certified, as eligible DBEs at the time of proposal submittal. The DBE Officer shall review the Proposer's DBE Participation Form to confirm each DBE firm's certification status.

B. Determination of Amount of DBE Participation

Only the work actually performed by a DBE with its own forces will be counted as DBE participation. A DBE may participate as a prime contractor, subcontractor, joint venture partner, or vendor or supplier of materials or services required by the contract.

A DBE's participation can only be counted if it performs a commercially useful function on the contract. A DBE performs a commercially useful function when it actually performs, manages and supervises a portion of the work involved. There is a rebuttable presumption that if the DBE is not responsible for at least 30% of the work with its own forces or subcontracts a greater portion of the work than the normal industry standard, it is not performing a commercially useful function. A DBE trucking company performs a commercially useful function if it is responsible for the overall management and supervision of the transportation services involved and uses at least one truck that it owns, insures and operates with its own employees on the contract.

The Contractor shall count DBE participation according to the following guidelines and in

accordance with 49 CFR § 26.55:

- i. DBE Prime Contractor – Count the entire dollar amount of the work performed or services provided by the DBE's own forces, including the cost of materials and supplies obtained for the work and the reasonable fees and commissions charged for the services. Do not count any work subcontracted to another firm as DBE participation by the DBE Prime Contractor.
- ii. DBE Subcontractor – Count the entire amount of the work performed or services provided by the DBE's own forces, including the cost of materials and supplies obtained for the work, except for materials and supplies purchased or leased from the Prime Contractor, and reasonable fees and commissions charged for the services. Do not count any work subcontracted by the DBE Subcontractor to another firm as DBE Participation by said DBE subcontractor. If the work has been subcontracted to another DBE, it will be counted as DBE participation for that other DBE.
- iii. DBE Joint Venture Partner – Count the portion of the work that is performed solely by the DBE's forces or, if the work is not clearly delineated between the DBE and the joint venture partner, count the portion of the work equal to the DBE's percentage ownership interest in the joint venture.
- iv. DBE Manufacturer – Count 100% of the costs of materials and supplies obtained from a DBE manufacturer that operates or maintains a factory that produces the materials and supplies on the premises. This applies whether the DBE is a prime contractor or subcontractor.
- v. DBE Regular Dealer – Count 60% of the costs of materials and supplies obtained from a DBE regular dealer that owns, operates or maintains a store or warehouse in which the materials and supplies are regularly bought, kept in stock and sold or leased to the public in the usual course of business, except regular dealers of bulk items such as petroleum, cement and gravel who own and operate distribution equipment in lieu of maintaining a place of business. This applies whether a DBE is a prime contractor or subcontractor.
- vi. Other DBEs – Count the entire amount of fees or commissions charged for assistance in procuring or delivering materials and supplies when purchased from a DBE that is not a manufacturer or regular dealer. Do not count the cost of materials and supplies.
- vii. DBE Trucking Company – Count the entire amount of the transportation services provided by a DBE trucking company that performs the work using trucks it owns, insures and operates with its own employees on the contract.

Count the entire amount of the transportation service provided by a DBE trucking company that performs the work using trucks it leases from another DBE, including an owner-operator, provided that it is responsible for the overall management and supervision of the service and that it uses at least one truck that it owns, insures and operates with its own employees on the contract.

Count the entire amount of fees and commissions charged for providing the management and supervision of transportation services using trucks it leases from a non-DBE trucking company, including owner-operator, provided that it is responsible for the overall management and supervision of the service and that it uses at least one truck that it owns, insures and operates with its own employees on the contract.

SECTION B

SCOPE OF SERVICES

SECTION B SCOPE OF SERVICES

Purpose of the Request for Proposal (RFP)

MATA and the City of Memphis (City) are seeking next generation Advanced Traffic Management System (ATMS) software to integrate the City's intelligent transportation system (ITS) devices through a single interface.

Project Background

The City of Memphis operates a system of more than 1000 traffic control devices plus ITS devices in an area of approximately 330 square miles. Currently, approximately 450 of the signalized intersections are interconnected. However, the City continues to expand the communications system with the goal of eventually being connected to all of the traffic control devices. The City desires to utilize a single application to provide the ability to confirm, monitor, and control devices in real-time to manage the City's roadways and intersections. Information would be collected and disseminated to motorists about traffic conditions to support incident management, special events, and weather events.

It is expected the ATMS software would allow for the management and operations of all ITS devices, including roadside infrastructure and signals along the corridor. The City continues to explore emerging solutions to support real-time management of arterial congestion.

Under FTA guidance, all ITS projects must conform to the National ITS Architecture and those standards in accordance with the requirements contained in the regulations surrounding the Federal Transit Administration National ITS Architecture Policy on Transit Projects section 5206(e) of the Transportation Equity Action for the 21st Century, Public Law 105-178, 112 Stat. 547, pertaining to conformance with the National Intelligent Transportation Systems Architecture and Standards. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture, or upgrade through expansion of an ITS in existence, to support the integration and the subsequent adherence of all ITS projects to the City's current ITS architecture/infrastructure. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).¹

City of Memphis has identified applicable portions of its current operating system and has determined that upgrades to the current operating system is necessary to move its traffic needs in a more effective and efficient way. Based on the FTA requirements and recommendations, the City has identified a participating agency with MATA. Through this partnership both agencies have agreed to the roles and responsibilities under which each agency will adhere. FTA guidelines requires that each agency understands the scope of the ITS project; the operational concept that identifies the roles and responsibilities of each agency in the operation and implementation of the ITS project; the functional requirements of the ITS project; any interface requirements and information exchanges between the ITS project and other planned and existing systems and subsystems; and the identification of applicable ITS standards and testing procedures.

City of Memphis Current ITS Environment

The City of Memphis currently operates three generations of NEMA-based traffic controllers: Siemens ITS m34, m52, and m60 series. The m34 and m52 controllers are legacy controllers, no longer manufactured by Siemens but still operational on many Memphis corridors. The m60 controller is the new standard for the City. This includes new versions of the SEPAC firmware. The firmware runs on the Linux Operating System (OS) and is being tested now for TSP functionality.

¹ https://ops.fhwa.dot.gov/its_arch_imp/policy_2.htm

The City currently uses Siemens ITS TACTICS central system software. The servers and central switches are located at the City Hall, Traffic Management Center (TMC) and managed by the City's Information Services Division and the Traffic Engineering Department. An additional TMC is located off site at the Traffic Signal Maintenance Department. There are approximately 450 signal controllers currently connected to and monitored by the TACTICS central software.

The City's traffic signal communication network consists of fiber optic cable backbone and distribution networks. The backbone network has hub cabinets placed at strategic locations that are interconnected with the TMC through Layer 3 gigabit Ethernet switches using single mode fiber optic cables. The distribution network branches from the hub cabinets and connects with field devices using single mode fiber, multi-mode fiber, or wireless broadband radios. Only the legacy downtown signal system, approximately 140 signals, still uses multi-mode fiber. The downtown signal system is interconnected via serial communication using proprietary fiber modems in the m34 and m52 controllers.

The City has approximately 30 CCTV cameras at strategic locations for traffic monitoring. The City has 77 BlueToad™ Bluetooth roadside devices for passive continuous travel time and speed data collection. There are also approximately 150 radar detection units for traffic counts and spot speed data collection.

Currently the City utilizes video cameras as their standard for vehicle detection at signalized intersections. However, many locations still use in-pavement loop detectors. For railroad and emergency vehicle preemption, Global Traffic Technologies, LLC (GTT) Opticom infrared sensors are used. Some intersections have been upgraded to include models that are GPS enabled.

Contractor Input

MATA and the City are looking to procure software that most closely meets the needs of the City for daily operations. The City understands the ATMS software may need some configuration changes to integrate with the local TMC and field devices. The selected contractor would be responsible for all required software integration work.

Demonstrations

At its discretion, the City may issue invitations for short listed contractors to provide demonstrations of the software described within the response.

Demonstrations will be limited to two hours in length, including a question-and-answer time. The proposed schedule for demonstrations will be provided at a later date. It is anticipated at this time that demonstrations will be conducted remotely. Contractors will be contacted directly by the City to schedule demonstrations.

SCOPE AND SOLUTION/IMPLEMENTATION

- Contractor is responsible for developing and submitting a scope of work that meets the goals and objectives of this project. To meet the City's objectives, the following minimum requirements must be met:
 - Contractor must provide a high-level implementation plan that clearly describes how functionality will be transitioned from the City's existing systems to the Contractor's software.
 - Contractor must provide a QA/QC plan indicating how quality is built into their overall processes.
 - Contractor must provide a detailed training plan to bring City staff up to speed on the use of the contractor's software. The contractor must provide administration and end-user training for implementation, go-live support, and transition to customer self-sufficiency.

- Contractor must provide details on, and examples of, clearly written instructions and documentation to enable end-users to successfully operate the Solution without needing to bring in additional contractor support.
- Contractor must provide initial training, during the first 6 months of the contract, which shall consist of one 4-to-8-hour virtual training class for up to 10 users. The training should cover all aspects and functions of the system.
- The contractor must provide a new software build training course, to be conducted within 30 calendar days of each major software enhancement and/or build, which includes at least one 4-to 8-hour virtual training class of new software/major software enhancement training for up to 10 users. The training must cover all aspects and functions of the software system enhancement and/or build.
- Contractor must identify any unique software requirements to fulfill the terms of the Contract.
- Contractor must describe any City system access requirements that are necessary for the Contractor to perform its obligations on a timely basis, including but not limited to, physical or remote access to City networks, servers, or individual workstations.
- Contractor must describe any custom software required to support internal systems.
- Contractor must describe the licensing structure (Perpetual vs Subscription) for any software title purchased.
- Contractor must identify any third-party components, including open-source components included with or used in connection with the proposed Solution.
- Contractor must provide a list of all mobile devices that are compatible with the Solution.
- Contractor must provide list of features that can be performed via a mobile device.
- Contractor must explain how it will be able to support the current and future growth of the Solution's data.
- Contractor must explain how the proposed Solution's environment can scale up or down without affecting performance.

DATA STORAGE, BACKUP, RESTORATION AND DISASTER RECOVERY

- Contractor must maintain or cause to be maintained backup redundancy and disaster avoidance and recovery procedures designed to safeguard City Data and the City's other Confidential Information, Contractor's Processing capability and the availability of the IT Environment Services and Software, in each case throughout the Term and at all times in connection with its actual or required performance of the Services hereunder. All backed up City Data shall be located in the continental United States. The force majeure provisions of this Contract do not limit Contractor's obligations under this section.
- **Data Storage:** Contractor will provide sufficient storage capacity to meet the needs of the City at no additional cost.
- **Data Backup:** Contractor will conduct, or cause to be conducted, daily back-ups of City Data and perform, or cause to be performed, other periodic offline back-ups of City Data on at least a weekly basis and store and retain such back-ups. Contractor must, within five (5) Business Days of the City's request, provide the City, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of State Data in the format specified by the State.
- **Data Restoration:** If the data restoration is required due to the actions or inactions of the Contractor or its subcontractors, Contractor will promptly notify the City and complete actions required to restore service to normal production operation. If requested, Contractor will restore data from a backup upon written notice from the City. Contractor will restore the data within one

(1) Business Day of the City's request. Contractor will provide data restorations at its sole cost and expense.

- **Disaster Recovery:** Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will maintain and operate a backup and disaster recovery plan to achieve a Recovery Point Objective (RPO) of 4 hours (with database redundancy), and a Recovery Time Objective (RTO) of 4 hours (the "DR Plan"), and implement such DR Plan in the event of any unplanned interruption of the Hosted Services.

SYSTEM COSTS

1. Please provide the typical initial cost for software procurement and integration.
2. Please provide the typical cost for ongoing maintenance support.
3. Contractor must explain if and how the City will receive updates of the Solution. Contractor must clarify if these updates would result in additional costs to the City.

CONTRACTOR QUALIFICATIONS AND EXPERIENCE

- Contractor must provide a list of all ATMS implementations that it has been awarded in the last five (5) years and the ATMS deployments that are currently in use, the operational starting date for each city, the number of continuous years the system has been operational, and the approximate size of each system deployment.
- Contractor must provide an explanation for any contract that was terminated or for which service was no longer provided during the period prior to the end date of the contract.
- Contractor must document its experience in providing large scale ATMS deployments and full-service support of the ATMS software for cities of similar size to the City of Memphis.
- Contractor must provide at least three references to be considered for this RFP.
- Contractor must list the name, address, and telephone number of all subcontractors and vendors proposed for this project. Include a brief qualifications summary discussing the responsibilities and experience of each firm or individual and the percentage of services to be provided by each firm or individual.
- Contractor must disclose any owners, officers, directors, associates, partners, limited partners, consultants, affiliates agents, or employees that are related in any manner to any MATA or City employees, elected officials, or appointed officials. The Contractor shall identify an actual or potential conflicts of interest which exist or may arise if the Contractor is recommended for award and propose how such conflicts might be resolved.
- Contractor must certify that all information provided to the MATA and the City are true and correct and can be relied upon in awarding the contract contemplated hereunder. Any false or misleading information shall be grounds for the MATA and the City to disqualify the Contractor's response to this proposal from consideration.

FUNCTIONAL REQUIREMENTS

1. Traffic Monitoring and Travel Times
 - *ATMS must integrate traditional and emerging methods for monitoring traffic flow such as fixed traffic detectors, Bluetooth devices, GPS, CCTV cameras and third-party data.*
 - *ATMS must be able to utilize collected data to generate travel time estimates and reports.*

2. Signal System

- *ATMS must provide centralized signal system software compatible with Siemens traffic signal controllers.*
- *ATMS system must allow direct monitoring of signal status in real-time for all connected intersections.*
- *ATMS system must allow remote data entry for adjustments to traffic signal timing and associated parameters.*
- *ATMS must interact with the signal system to extend or provide early green for transit vehicles (Transit Signal Priority) or other specifically identified vehicles.*

3. GIS and Mapping

- *ATMS must provide a mapping platform to spatially locate signalized intersections and ITS devices. Mapping system must be updated periodically to address any changes to the roadway network.*

4. Inventory and System Integration

- *ATMS must be able to seamlessly integrate, add and remove devices as needed.*
- *ATMS must keep a record of changes to device network over time.*
- *The ATMS must provide the ability to communicate with field devices using the National Transportation Communications for Intelligent Transportation System (ITS) Protocols (NTCIP), provided those field devices are capable of communicating using NTCIP.*
- *The ATMS must provide a web-based user interface through which users can access system functionality in addition to any traditionally installed software.*

5. Interoperability and Implementation

- *ATMS must have the ability to work through various communication platforms (i.e. fiber optic, radio, etc.) with limited latency.*
- *ATMS must provide the ability to share, import / export data from the system.*
- *Contractor must provide a high-level implementation plan that clearly describes how functionality will be transitioned from the City's existing systems to the Contractor's software.*
- *Contractor must provide a QA/QC plan indicating how quality is built into their overall processes.*

6. Performance, maintenance, reporting, data mining, and decision support

- *ATMS must collect and analyze automated traffic signal performance metrics (ATSPM).*
- *ATMS must be able to implement automated / pre-programmed event plans as needed.*
- *ATMS must provide the ability to run various reports on system status, travel time, traffic signal alarm reports, traffic signal performance metrics, system detector speed and volume data, etc.*
- *ATMS must provide 24/7 operational availability.*
- *ATMS must provide a solution for identifying device outages and other issues on the network.*

- *ATMS must be able to provide notifications in the event of network or device outages. Notification must be able to be sent to internal staff via e-mail and text message.*
 - *ATMS contractor must provide maintenance support and resolve any issues within 48 hours in the event of a technological issue with the ATMS.*
 - *The ATMS must support the ability to communicate with field devices via IP Networking.*
7. For each device type below, list the device manufacturers integrated with the ATMS software and the functionality offered within the software.
- a) Closed Circuit Television (CCTV) cameras
 - b) Dynamic Message Signs
 - c) Vehicle Detection
 - d) CV2X Technology
 - e) Traffic Signal Controllers
 - f) Bluetooth travel time detectors
8. Video Management System
- *ATMS must provide a video management system that allows remote configuration of all connected CCTV cameras.*
 - *ATMS video management system must provide the ability to configure multiple video wall and workstation layouts that allow viewing of multiple video feeds simultaneously.*
 - *ATMS video management system must allow full Pan, Tilt, Zoom control for each CCTV camera and allow the configuration of various camera preset views and a home setting.*
 - *ATMS video management system must provide the ability to record video footage and store archived video as needed.*

EVALUATION CRITERIA

QUALIFYING PROPOSALS

MATA and the City will review each submitted Proposal to determine whether it is a Qualifying Proposal. A Qualifying Proposal is one that meets all of the criteria set forth in the RFP. All Proposals that ARE NOT a Qualifying Proposal will be disqualified from this RFP process. A Qualifying Proposal is a Proposal that:

- Was submitted (in the form and format required) by the due date as specified.
- Conforms to the requirements of the RFP (e.g. includes the requisite number of copies, customer references, etc.).

EVALUATION OF QUALIFYING PROPOSALS

MATA and the City will evaluate each Qualifying Proposal based on the degree to which it complies with the requirements, as articulated in this RFP. The primary categories to be evaluated are:

- Scope and Solution/Implementation: whether Contractor accepted the scope of services presented in this RFP, meets the solution/implementation requirements and constraints, proposes an appropriate deployment plan.

- Qualifications and Experience: whether Contractor demonstrates the qualifications and experience that meet the requirements of this RFP.
- Functional Requirements: whether the software meets or exceeds the functional requirements.
- DBE: The use DBE (Disadvantaged Business Enterprise) firms under 49 CFR Part 26 establishes contract goals for minority groups to qualify for awards. MATA encourages the use of DBE goals and can only be credited as DBE participation if the work was performed by the DBE themselves. Only certified DBEs are considered valid if they are certified before the close of bid.

Information on how MATA and the City will weigh these categories is set forth below:

Evaluation Category	Evaluation
Technical Ability and Related Experience	25%
Technical Qualifications to Perform Required Work (Functional Requirements)	25%
Task Management (Scope and Solution/ Implementation)	25%
Recurring Maintenance Cost	15%
Initial Deployment Cost	10%
TOTAL	100%

The evaluation criteria above will be used in the initial round of scoring. If demonstrations are required, the demonstrations will be scored separately. The final cumulative score will include both the initial round scoring and the demonstration scoring. FTA’s Evaluation Criteria for Transit Research is scored using the point system agreed upon and assigned by MATA and the City of Memphis.

FTA Evaluation Criteria for Transit Research and Technology Experts

1. **Technical Ability and Related Experience (*Qualifications and Experience* – 30%)**
 - A. **Specific Experience of Personnel**
The offeror shall provide the degree to which personnel proposed for the work effort are qualified (e.g., education, and experience). This includes the requirement for licensed firms and/or engineers for performance under this project.
 - B. **Specific Project Experience**
The offeror shall provide the degree to which the firm has provided expert technical services by addressing the seven items below and all of the items in the **CONTRACTOR QUALIFICATIONS AND EXPERIENCE** section above:
 - i. engineering analysis
 - ii. research and development project management
 - iii. technology assessment
 - iv. project management oversight

- v. evaluation of technical issues
 - vi. research and development project performance
 - vii. assessment of results of development and deployment of innovative technologies
- This includes the requirement for licensed firms and/or engineers for performance under this project.

C. General Experience

- i. The offeror must demonstrate the degree to which it has successfully provided expert technical services such as:
 - a. engineering analysis
 - b. research and development project management
 - c. technology assessment
 - d. project management oversight
 - e. evaluation of technical issues and research and development project performance
 - f. assessment of results of development
 - g. deployment of innovative technologies.
- ii. The offeror's successful experience shall be demonstrated with a minimum of three examples of significant projects within the past five years. Evidence of successful performance shall be provided with data relative to:
 - a. project technical issues addressed:
 - b. quality of advice furnished: and
 - c. timeliness and cost of completing technical tasks assigned.
- iii. The offeror shall provide the degree to which it has provided the full range of technical services, from design through system operation. The factors that will be considered are the firm's experience in design, design management, implementation, implementation management, financial management, system start-up, system operations, maintenance and resolution of significant unforeseen technical problems.

2. **Technical Qualifications to Perform Required Work (Functional Requirements – 35%)**

A. Qualifications of the Company

- i. Contractors responding to this requirement shall demonstrate expert knowledge of design, construction and safe operation of transit systems, including at least one of the following (see detailed list of examples at b. below):
 - a. Bus technologies and systems
 - b. Bus rapid transit systems
 - c. Rail and other fixed-guideway systems and technologies
 - d. Transit Intelligent Transportation Systems (ITS), including how ITS designs relate to the National ITS architecture
 - e. Transit Safety and Security
- ii. The mix of professional skills should include:
 - a. Civil Engineering
 - b. Computer Systems Design and Engineering
 - c. Electrical Engineering
 - d. Human Factors Engineering, especially as applied to operation and use of public transportation systems
 - e. Intelligent Transportation Systems
 - f. Safety Engineering
 - g. Systems Engineering

B. Functional Requirements of the ATMS

The Contractor must demonstrate that the product proposed will address each of the eight

elements identified in the **FUNCTIONAL REQUIREMENTS** section (page 5) above.

C. **Supportive Knowledge and Qualifications**

The criterion evaluates the extent to which the offeror demonstrates an understanding of the problems, key technical issues that must be addressed, and the nature and scope of the technical work that must be done, and the likelihood that the technical approach described would be completed successfully.

The offeror must clearly demonstrate an understanding of the project requirements and the technical issues involved in the project and the technical work needed to implement the project and deploy results in everyday transit service.

The offeror must clearly demonstrate mastery of the topics involved in FTA research and technology programs, use correct terms, intersperse narrative discussions with facts or phrases that convey thorough and precise understanding of specific topics, display insights into problems and issues that must be addressed or overcome, and demonstrate understanding of all technical work needed to complete or implement FTA Research and Technology programs.

3. **Task Management (Scope and Solution/ Implementation – 35%)**

The offeror must provide a concise description of the proposed approach to meeting requirements of managing individual tasks and coordinating overall activities under this procurement. The offeror must provide a thorough summary of its past experience in delivering quality products on time and keeping costs within available project budgets. The offeror must explain how past practices would be applied to meeting the requirements of this procurement. The offeror must address each of the elements contained in the **SCOPE AND SOLUTION/ IMPLEMENTATION** section above, including:

- **DATA STORAGE, BACKUP, RESTORATION AND DISASTER RECOVERY**, and
- **SYSTEM COSTS**

4. **System Costs (System Implementation and Recurring Maintenance Cost – 25%)**

Pricing evaluation will be split between initial deployment cost and recurring maintenance cost. 15% of the total 25% total will be attributed to recurring maintenance cost and 10% of the 25% total will be attributed to initial implementation cost. The price proposal shall clearly identify the required capital cost for initial deployment of the system and separately identify any recurring maintenance cost. All standard options and features presented for the system in the submission shall be included in the price proposal. Additional features or options shall be clearly identified as elements requiring additional costs and shall be shown separately from the core system.

SECTION C

REQUIRED FORMS AND CERTIFICATIONS

MEMPHIS AREA TRANSIT AUTHORITY
ADDENDA ACKNOWLEDGEMENT FORM

Addenda received (if none received, write "none received")

Addendum No: _____	Date Received: _____
Addendum No: _____	Date Received: _____
Addendum No: _____	Date Received: _____
Addendum No: _____	Date Received: _____
Addendum No: _____	Date Received: _____
Addendum No: _____	Date Received: _____
Addendum No: _____	Date Received: _____
Addendum No: _____	Date Received: _____

Name of individual, partner or corporation: _____

Street Address: _____

City, State and Zip Code: _____

Telephone Number: _____ Fax Number: _____

Printed Name: _____

Authorized Signature: _____

Title: _____

**EXHIBIT I
MEMPHIS AREA TRANSIT AUTHORITY
AFFIDAVIT OF NON-COLLUSION**

Affidavit of Non-Collusion:

I hereby swear (or affirm) under the penalty of perjury:

- (1) That I am the proposer (if the proposer is an individual), a partner of the proposer (if the proposer is a partnership), or an officer or employee of the proposing corporation with authority to sign on its behalf (if the proposer is a corporation);
- (2) That the attached proposal or proposals have been arrived at by the proposer independently, and have been submitted without collusion with, and without any agreement, understanding, or planned common course of action with any other vendor of materials, supplies, equipment, or services described in the request for proposal, designed to limit independent proposing or competition.
- (3) That the contents of the proposal or proposals have not been communicated by the proposer or its employees or agents to any person not an employee or agent of the proposer or its surety on any bond furnished with the proposal or bids; and
- (4) That I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Signed: _____

Firm Name: _____

Subscribed and sworn to before me this _____ day of _____

Notary Public

My Commission expires _____

Proposer's E.I. Number: _____
(Number used on Employer's Quarterly Federal tax return)

EXHIBIT II

MEMPHIS AREA TRANSIT AUTHORITY

BUY AMERICA CERTIFICATE
(For Contracts of \$100,000 or greater)

The proposer hereby certifies that it will comply with the requirements of Section 165a of the Surface Transportation Assistance Act of 1982 and the regulations in 49 CFR 661.

Date _____

Signature _____

Title _____

or

The proposer hereby certifies that it cannot comply with the requirements of Section 165a of Surface Transportation Assistance Act of 1982, but it may qualify for an exception to the requirement pursuant to Section 165b of the Surface Transportation Assistance Act and regulations in 49 CFR 661.7.

Date _____

Signature _____

Title _____

FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTION

The contractor hereby certifies the following:

Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

The contractor agrees to require all subcontractors to provide this certification and to flow this requirement down to participants at all lower tiers, without regard to the value of any subcontract.

Date _____

Signature _____

Title _____

EXHIBIT III

MEMPHIS AREA TRANSIT AUTHORITY

CERTIFICATION OF PRIMARY PARTICIPANT (prime contractor)
REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The Primary Participant (potential contractor for a major third-party contract), _____ certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal 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) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission or any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposer had one or more public transactions (Federal, State, or local) terminated for cause or default.

(If the primary participant (potential third-party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

THE PRIMARY PARTICIPANT (POTENTIAL CONTRACTOR FOR A MAJOR THIRD-PARTY CONTRACT), _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTION 3801 ET. SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

EXHIBIT III
MEMPHIS AREA TRANSIT AUTHORITY

CERTIFICATION OF LOWER-TIER PARTICIPANTS (subcontractors)
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

The Lower Tier Participant (potential third-party contractor, or potential subcontractor under a major third-party contract), _____, certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(If the Lower Tier Participant, (potential third-party contractor or potential subcontractor under a major third-party contract) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal).

The LOWER-TIER PARTICIPANT, POTENTIAL THIRD-PARTY CONTRACTOR, OR POTENTIAL SUBCONTRACTOR UNDER A MAJOR THIRD PARTY CONTRACT, _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET. SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

EXHIBIT IV

MEMPHIS AREA TRANSIT AUTHORITY

CERTIFICATION OF RESTRICTIONS ON LOBBYING

(For Contracts of \$100,000 or greater)

I, _____, hereby certify on behalf of _____
Name of Official Name of Contractor

that:

- (1) No Federal appropriated funds have been paid or will be paid 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 appropriate 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 CONTRACTOR shall complete and submit Office of Management and Budget Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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 such failure.

Executed this _____ day of _____, _____.

By: _____
Signature of Authorized Official

Title of Authorized Official

**Certification of Utilization of
Disadvantaged Business Enterprises**

The undersigned, as authorized representative of the Proposer, agrees to accept the terms and conditions of Section D and commits to carrying out the DBE contracting arrangements specified in the Schedule of DBE Participation.

Signature _____

Title _____

Date _____

NATIONAL DEFENSE AUTHORIZATION ACT TELECOMMUNICATIONS

VENDOR hereby acknowledges that the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115232, § 889 (Aug. 13, 2018) (the Act) prohibits the Agency from procuring certain “covered telecommunications equipment or services,” as defined in the Act, in federally assisted procurements and that the instant procurement is a federally assisted procurement subject to that prohibition. VENDOR represents and warrants that it has performed a due diligence review of its supply chain and that no such “covered telecommunications equipment or services” shall be provided to the Agency that would cause the Agency to be in violation of the prohibition contained in the Act.

By

Signature of Authorized Official

Title of Authorized Official

Letter of Intent to Perform as a DBE Contractor or Subcontractor

To:
Name of Prime/General Proposer

24-07
MATA RFP Number

Address of Prime/General Proposer

City/State/Zip

The undersigned DBE intends to perform work in connection with the above project as (check one):

[] An Individual; [] A Corporation; [] Partnership; [] A Joint Venture

The undersigned DBE is prepared to perform the following described work in connection with the above project (specify in detail the particular work, items or parts thereof to be performed):

at the following price \$_____. This price equals _____% of the total proposal price or contract to be awarded to the prime proposer.

Work or Items by Subcontractor	Projected Commencement Date	Projected Completion Date
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____ DBE Business Name

_____ Signature of Authorized DBE Representative

_____ Certification # / State of Certification

_____ Expiration Date of Certification

_____ Address

_____ Date

_____ City/State/Zip

_____ Phone Number Fax Number

No agreement has been entered into between the above-named Prime Proposer and the DBE subcontractor wherein the above-named DBE subcontractor has promised not to provide subcontracting quotations to other proposers.

_____ Date

_____ Name of Prime or General Proposer

_____ Signature of Authorized Representative

SCHEDULE OF DBE PARTICIPATION

NAME OF DBE FIRM	ROLE IN PROJECT (P, JV, S)	SERVICES TO BE PERFORMED	% OF TOTAL PROJECT COST
TOTAL			

P = Prime Contractor
 JV = Joint Venture
 S = Subcontractor

NO RESPONSE

* PLEASE EITHER PRINT OR TYPE INFORMATION ON THIS FORM *

TO: Memphis Area Transit Authority (MATA)

Our company is submitting a "NO RESPONSE" on RFP# 24-07 purchase Advanced Traffic Management System (ATMS) Software for the reason indicated below.

- Product or service is not available.
 - Cannot provide required bonds.
 - Other obligations - cannot make deadline.
 - Other (please explain below)
-
-

FROM:

Name of Company: _____

Representative: _____

Address: _____

Phone Number: _____

Signature: _____

- Please keep our name on the Proposer's list for this item.
- Please remove our name from the Proposer's list for this item.

**FAILURE TO RETURN EITHER A PROPOSAL OR THIS FORM
MAY RESULT IN REMOVAL FROM THE PROPOSER'S LIST.**

SECTION D

UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES

Utilization of Disadvantaged Business Enterprises

1. Policy and Terms

a. It is the policy of the Memphis Area Transit Authority (MATA) that Disadvantaged Business Enterprises (DBE) as defined in the United States Department of Transportation (USDOT) Regulation 49 C.F.R. Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds.

b. Refer to Section A, 8.0 for DBE requirements.

c. The DBE participation goal shall be expressed as a percentage of the total Contract price. The Proposer may also meet the goal by showing good faith efforts to meet the goal as described in 49 C.F.R. Part 26 and as set forth in Section D. Any evidence of good faith efforts must be submitted with the sealed proposal or the proposal will be rejected in its entirety.

d. The DBE participation goal shall apply to the total dollar value of this contract, inclusive of all amendments, modifications, and change orders. The Proposer agrees to make its best efforts to include DBE participation in any contract modification work.

e. The goal may be met, as further explained in Section D hereof, by the Proposer's status as a DBE, by a joint venture with one or more DBEs, by subcontracting a portion of the work to one or more DBEs, by the purchase of materials used in the performance of the contract from one or more DBEs or by any combination of the above or through a showing of good faith efforts as defined in Section D hereof.

f. A Proposer who fails to meet the DBE goal and fails to demonstrate sufficient good faith efforts shall not be eligible to be awarded the contract. All documentation of good faith efforts by a Proposer must be included in the envelope or package containing the proposal.

g. MATA prohibits agreements between a Proposer and a DBE in which the DBE promise not to provide subcontracting quotations to other Proposers.

2. Definitions

a. Disadvantaged Business Enterprise (DBE) means a small business concern (a) which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

b. "Good Faith Efforts" means efforts to achieve a DBE contract goal as specified in 49 C.F.R., Part 26 and Section D hereof.

c. "Joint Venture" means an association of two or more businesses to carry out a single business enterprise for profit, and for which purpose they combine their expertise, property, capital, efforts, skill and knowledge. Proposers may develop joint venture agreements as an instrument to provide participation by DBEs in contract work. A joint venture seeking to be credit for DBE participation may be formed among DBE firms or between a DBE firm and non-DBE firm.

d. "Small Business Concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, including Title 13 C.F.R., Part 121, except that a small business concern shall not include any concern or group of concerns controlled by the small socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$16.6 million over the previous three (3) fiscal years, as such figure may thereafter be adjusted by the Secretary of the DOT.

e. "Socially and Economically Disadvantaged Individuals" means any individual who is a citizen of the United States (or lawfully admitted permanent residents) and who is in the following groups, the members of which are rebuttably presumed to be socially and economically disadvantaged:

1. "Black Americans" (which includes persons having origins in any of the black racial groups of Africa);
2. "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);
3. "Native Americans" (which includes persons who are American Indians, Eskimos, Aleuts, or native Hawaiians);
4. "Asian-Pacific Americans" (which includes persons whose origins are from Japan, China, Taiwan, Korea, Laos, Cambodia (Kampuchea), the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific (Republic of Palau), and the Commonwealth or the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia or Hong Kong; and
5. "Subcontinent Asian-Indian Americans" which includes persons whose origins are from India, Pakistan, and Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.
6. Women.
7. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA) at such time as the SBE designation becomes effective.

f. "USDOT" or "DOT" refers to the U.S. Department of Transportation.

3. Counting DBE Participation Toward the Contract Goal

The inclusion of any DBE by the Proposer in its proposal documents shall not conclusively establish the Proposer's eligibility for full DBE credit for the firms' participation in the contract. The Compliance Officer, DBE Program, will determine the amount of DBE participation credit based upon an analysis of the specific duties, which will be performed by the DBE.

The Proposer may count toward its DBE goal only expenditures to firms which are currently certified by the Uniform Certification Agency or the Tennessee Department of Transportation and which perform a commercially useful function. A firm is considered to perform a commercially useful function when it is responsible for the performance of a distinct element of the work and carries out its responsibilities by actually performing, managing, and supervising the work involved.

To evaluate whether the firm is performing a commercially useful function, the Compliance Officer, DBE Program will evaluate the amount of work subcontracted, industry practices, and other relevant factors. The Compliance Officer, DBE Program reserves the right to deny or limit DBE credit to the Proposer where any DBE is found to be engaged in substantial pass-through activities with others.

DBE participation shall be counted toward the DBE goal in the contract as follows:

- a. Once a DBE is determined to be eligible in accordance with these rules, the total dollar value of the contract awarded to the DBE may be counted toward the DBE goal except as follows:
- b. A Proposer may count toward its DBE goal that portion of the total dollar value of a contract with an eligible joint venture equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces.
- c. Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE prime contractor subcontracts more than thirty percent (30%) or a significantly greater portion of the work of the contract that would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. Evidence may be presented by the Proposer involved to rebut this presumption.
- d. When a DBE subcontracts a part of the work under the contract to another firm, the value of the subcontracted work may only be counted towards the DBE goal if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE goal.
- e. The Proposer may count one hundred percent (100%) of its expenditures for materials and supplies required under the contract and which are obtained from a DBE manufacturer toward the DBE goal. The Proposer may count sixty percent (60%) of its expenditures for materials and supplies under the contract obtained from a DBE regular dealer towards its DBE goal. The terms "manufacturer" and "regular dealer" are defined in 49 C.F.R. Part 26.55(e)(1)(ii) and (2)(iii).
- f. The Proposer may count towards its DBE goal expenditures to DBEs which are not manufacturers or regular dealers, such as fees or commissions charged for services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies and transportation charges as set forth in 49 C.F.R. Part 26. However, the Compliance Officer, DBE Program must determine the fee or charge to be reasonable and not excessive as compared with fees or charges customarily allowed for similar services.
- g. Proposer must use good business judgment when negotiating with subcontractors and take a DBE's price and capabilities into consideration. The fact that there may be some additional costs involved in finding and using DBE firms is not sufficient reason to fail to meet the DBE goal set forth in the contract, as long as such costs are reasonable.

4. DBE Substitutions

a. Arbitrary changes by the Contractor of the commitments previously indicated in the Schedule of DBE participation are prohibited. No changes may be made to the DBE firms listed on this schedule after the opening of proposals but prior to contract award. Further, after entering into each approved DBE subcontract, the Contractor shall neither terminate the subcontract, nor reduce the scope of the work to be performed by the DBE, nor decrease the price to the DBE, without receiving prior written approval of the Compliance Officer, DBE Program. Such approval is required even if the DBE agrees with the change to the DBE's contract desired by the Contractor.

b. It may become necessary, at times, to substitute a new subcontractor in order to complete the contract work. The substitution procedure to be followed is:

1. The Contractor must immediately notify the Compliance Officer, DBE Program, in writing, of the proposed substitution of subcontractor. The Contractor's notification must include the specific reasons it intends to reduce the scope of or terminate a DBE subcontract; adequate documentation to support the Contractor's proposed

action; and a proposed substitute firm to complete the DBE's portion of work.

2. The following is a non-exclusive list of the types of reasons, which justify substitution: the DBE was found not to be able to perform, or not to be able to perform on time; the DBE's work product was not acceptable; the DBE demands an unreasonable escalation of its price.
3. The following is a non-exclusive list of the types of reason which do not justify substitution: a replacement firm has been recruited by the Contractor to perform the same work under more advantageous terms; performance issues by the DBE were disputed and every reasonable effort to have the dispute resolved or mediated has not been taken; the DBE has requested a reasonable price escalation which may be justified due to unforeseen circumstances (e.g. a change in scope of DBE's work).
4. If the subcontractor to be substituted for the DBE is not a DBE, the Contractor must show adequate good faith efforts as set forth in Section D hereof.
5. The Contractor's request for approval of a substitution must include the name, address, and principal official of the proposed substitute subcontractor and the dollar value and scope of work of the proposed subcontract. If the new subcontractor is a DBE, all DBE affidavits and documents required by the contract shall be attached.
6. MATA will evaluate the submitted documentation and respond within ten (10) business days to the request for approval of a substitution. MATA's response may approve the request, seek more information; request an interview to clarify the problem or reject the proposed DBE substitution, with the reasons for the rejection stated in MATA's response. In the case of an expressed emergency need to receive the necessary decision for the sake of job progress, MATA will respond as soon as practicable.
7. Actual substitution by the Contractor may not be made prior to MATA approval. Once notified of MATA approval, the substitute subcontract must be executed within five (5) business days, and a copy submitted to the Compliance Officer, DBE Program.

5. Good Faith Efforts

In order to be responsive, a Proposer must make good faith efforts to meet the DBE participation goal set forth in the contract. The Proposer must document the good faith efforts it made in that regard. Thus, the Proposal submitted to MATA must be accompanied by written documentation prepared by the Proposer evidencing all of its reasonable good faith efforts toward fulfilling the goal. These efforts must be active steps, ones that could reasonably be expected to lead to sufficient DBE participation to meet the contract DBE participation goal. Mere pro forma efforts are not acceptable and will be rejected by the Compliance Officer, DBE Program.

Good Faith Efforts require that the Proposer consider all qualified DBEs, who express an interest in performing work under the contract. This means that the Proposer cannot reject a DBE as unqualified unless the Proposer has sound reasons based on a thorough investigation of the DBE's capabilities. Further, the DBE's standing within its industry, membership in specific groups, organizations or associations and political or social affiliation; (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of proposals in the Contractor's efforts to meet the contract DBE participation goal.

The following are illustrative of factors, which will be considered in judging whether or not the Proposer has made adequate good faith efforts:

- a. Attendance at any pre-proposal meetings that were scheduled by MATA to inform DBEs of participation opportunities.
- b. Advertisement in general circulation, trade association, or minority and female-focused media concerning participation opportunities. Adequate time for advertisement and sufficient DBE response will be considered.
- c. Written notification to a reasonable number of specific DBEs that their participation in the contract is solicited in sufficient time to allow them to participate effectively.
- d. Follow-up of initial solicitations of interest by contacting DBEs to determine with certainty if they were interested.
- e. Documentation of efforts to negotiate with DBEs for specific sub-contracts including at a minimum:
 - i. The names, addresses, and telephone numbers of DBEs that were contacted and the date(s) of contract.
 - ii. A description of the information provided to the DBEs regarding the plans and specifications for portions of the work to be performed.
 - iii. A statement explaining why additional agreements with DBEs were not reached.
- f. For each DBE the Proposer contacted but rejected as unqualified, the reason for the Proposer's conclusion. This may include documentation of price comparisons. Receipt of a lower quotation from a non-DBE will not in itself excuse a Proposer's failure to meet the contract goal.
- g. Documentation of efforts made to assist the DBEs contacted that needed assistance in obtaining bonding or insurance required by the Proposer or MATA.
- h. Documentation of efforts to utilize the service of available minority community organizations or other organizations that provides assistance in the recruitment and placement of qualified DBEs.
- i. Documentation that the Proposer selected portions of the work likely to attract DBE participation (including dividing contracts into economically feasible units to facilitate participation).
- j. Evidence that adequate information was provided to interested DBEs about the plans, specifications and requirements of the contract, and that such information was communicated in a timely manner.

Any Proposer which MATA determines to have failed to fulfill the obligations of this section will be deemed non-responsible and will not be eligible for contract award.

MATA will not award a contract to any Proposer who does not meet the contract DBE participation goal or show good faith efforts to meet the goal. Thus, it is essential that all Proposers submit ALL relevant documentation concerning the DBE goal and/or good faith efforts in the envelope or package containing their sealed proposal.

6. Procedure to Determine Proposer Compliance

The Proposer must complete and sign the Letter of Intent to Perform as a DBE. The Letter of Intent must also be signed by any DBEs (prime or subcontractor). A separate Letter of Intent must be included for each DBE included in the proposal. It MUST be submitted with the sealed proposal. In addition, any documentation evidencing the Proposer's good faith efforts to meet the contract DBE goal must be submitted with the proposal. Any proposals submitted without a completed and executed Letter of Intent and/or evidence of good faith efforts, if applicable, will be deemed non-responsive and will be rejected by MATA.

a. Letters of Certification

1. A copy of each proposed DBE firm's current Certificate of Certification from the Uniform Certification Agency or the Tennessee Department of Transportation (TDOT) should be attached to the Letter of Intent to Perform as a DBE.
2. All DBEs are certified to perform work in a specific specialty or specialties. The DBE firm's scope of work set forth on the Letter of Intent and Schedule of DBE Participation must conform to its stated area of specialization.

b. Joint Ventures

1. Where the Proposer proposes to include in its proposal a DBE, which is a joint venturer, the Proposer must submit a fully executed copy of the joint venture agreement with its proposal. The joint venture agreement must show that the DBE firm will be responsible for a clearly defined portion of the work to be performed, and that the DBE firm's capital contribution, control, management, risks and profits are commensurate with its ownership interest.

Further, the proposed joint venture agreement shall include specific details related to: 1) contributions of capital and equipment; 2) work items to be performed by the DBEs own forces; 3) work items to be performed under the supervision of the DBE; 4) the DBE management, supervisory and operating personnel to be dedicated to the performance of the project; and 5) the authority of each joint venturer to contractually obligate the joint venture and to expend funds.

Failure to submit a copy of the joint venture agreement will cause the firm to be considered by MATA to be non-responsible.

7. Reporting Requirements During the Term of the Contract

a. The Proposer shall, within five (5) business days of contract award, or prior to any work being performed, execute formal subcontracts or purchase orders with the DBE firms included in the proposal. These written agreements shall be made available to the Compliance Officer upon request. All contracts between the Proposer and its subcontractors must contain a prompt payment clause as set forth in Section 8 herein.

b. During the term of the contract, the Proposer shall submit regular "DBE Subcontractor Payment Status Reports" in a form acceptable to MATA. The frequency with which these reports are to be submitted will be determined by the Compliance Officer but in no event will reports be required less frequently than quarterly. In the absence of written notice from the Compliance Officer, the Proposer's first "DBE Subcontractor Payment Status Report" will be due sixty (60) days after the date of contract award, with additional reports due monthly thereafter.

c. The address for the Compliance Officer, DBE Program, is: MATA, Attn: Compliance

Officer/DBE Program, 40 S. Main Street, Suite 1200, Memphis, TN 38103.

8. Prompt Payment to Subcontractors

a. Prime Contractors are required to pay all subcontractors, both DBE and non-DBE, for all work which the subcontractor has satisfactorily completed, no later than ten (10) business days after the prime Contractor received payment from MATA.

b. In addition, all retainage amounts must be returned by the prime Contractor to the subcontractor no later than fourteen (14) business days after the subcontractor has satisfactorily completed its portion of the contract work.

c. A delay or postponement of payment to the subcontractor requires good cause and prior written approval of the Compliance Officer and the Project Manager.

d. All prime Contractors are required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.

e. MATA will not reimburse Contractors for work performed unless and until the prime Contractor ensures that the subcontractors are promptly paid for the work they have performed to date as evidenced by the submittal of the "DBE Subcontractor Payment Status Report" with canceled checks/wire transfers as supporting documentation.

f. MATA will consider failure to comply with these prompt payment requirements a contract violation, which may lead to any remedies permitted under law, including but not limited to, contract debarment.

9. Enforcement

a. All Proposers are hereby advised that failure to carry out the requirements set forth above shall constitute a material breach of the contract, and after notification by MATA may result in rejection of the proposal or proposal; termination of the contract; a deduction from the contract funds due or to become due the contractor; or other such remedy as the MATA deems appropriate. Failure to comply with the DBE requirements shall include but not be limited to failure to meet the established goal, failure to submit documentation of good faith efforts; failure to exert a good faith effort (as determined by MATA) to meet any established DBE participation goal; failure to adhere to DBE substitution requirements; and failure to realize the DBE participation.

b. If awarded the contract, the Proposer acknowledges and agrees that if MATA determines that the Proposer, a DBE or any other firm retained by the Proposer has failed to comply with the DBE Program requirements or federal or state DBE Program regulations, MATA, through its Contracting Officer, shall have the sole authority and discretion to determine the extent of the monetary value to which the DBE contract goals have not been met, and to assess against and withhold monetary damages from the contractor in the full amount of that breach. MATA may impose any other remedies available at law or provided in the contract in the event of a contract breach. The Proposer further understands and agrees that this clause authorizes MATA, through MATA's Contracting Officer, to determine and fix the extent of the damages caused by a breach of any contractual or regulatory DBE Program requirement and that the damage assessment will be enforced in addition to, and not in lieu of, any other damages or remedy provisions in the contract. By entering into a contract, the Proposer irrevocably agrees to such an assessment of damages for DBE Program purposes and authorizes MATA to make such an assessment of damages against the Proposer and to collect that assessment from any sums due the Proposer under the contract, or any other contract, or by other legal process. The

Proposer makes this certification, agreement and authorization on behalf of itself, its subcontractors and suppliers, and the proposal bond and contract bond sureties.

- c. The decision of the Contracting Officer shall be final and conclusive unless, within ten (10) days from the receipt, in writing, of such decision, the Proposer mails or otherwise furnishes to the Contracting Officer an appeal, in writing, addressed to the Chief Executive Officer of MATA. The Chief Executive Officer shall review the dispute, related documents and the Contracting Officer's decision. The Chief Executive Officer may consult with MATA's project manager, the Contracting Officer or any other person deemed necessary by the Chief Executive Officer. The decision of the Chief Executive Officer shall be final and conclusive unless, within 10 days from the date of the receipt of such decision, in writing, the Proposer mails or otherwise furnishes to the Contracting Officer an appeal, in writing, addressed to the Board of the Memphis Area Transit Authority. The decision of the Board or its duly authorized representative for the determination of such appeal shall be final and conclusive unless in proceedings initiated by either party for review of such decision in a court of competent jurisdiction, the Court determines the decision to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this section, the Proposer shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Proposer shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

ATTACHMENT 1

GENERAL CONTRACT PROVISIONS

**MEMPHIS AREA TRANSIT AUTHORITY (MATA)
GENERAL CONTRACT PROVISIONS**

1. Non-Collusion - The Proposer guarantees that the Proposal submitted is not a product of collusion with any other Proposer and no effort has been made to fix the Proposal price of any Proposer or to fix any overhead, profit, or cost element of any Proposal price. An Affidavit of Non-Collusion, as per attached format, must be signed and submitted with Proposal. (Exhibit I)
2. Proposal Acceptance - Each Proposal will be submitted with the understanding that the acceptance, in writing by purchaser of the offer to furnish any or all of the items described herein, shall constitute a Contract between the Proposer and the purchaser, which shall bind the Proposer on his part to furnish and deliver at his Proposal price and in accordance with said accepted Proposal and specifications.
3. Pricing - The price to be quoted in any Proposal submitted shall include all labor, materials, tools, equipment, and other costs necessary to fully complete the project in accordance with the specifications. Anything omitted from such specifications which are clearly necessary for the completion of the item and its appurtenances shall be considered a portion of such Proposal item although not directly specified or called for in these specifications. All material shall be new and in no case will used, reconditioned, or obsolete material be accepted unless otherwise specified. Proposer should note discounts, if any. Freight charges must be included in Proposal price.
4. Terms of Payment - Payment for the specified items shall be net thirty (30) days after acceptance. Proposer should note any discounts for payment before thirty (30) days.
5. Acceptance of Material - If the item is not acceptable; MATA will furnish a letter of non-acceptance detailing the deficiencies within thirty (30) days after delivery. Acceptance of delivery of an item shall not release the CONTRACTOR from liability for faulty workmanship or materials appearing even after final payment have been made.
6. Approved Equal -
 - a. In all cases, materials must be furnished as specified. Where brand names or specific items are used in the specifications, consider the term "or approved equal" to follow.
 - b. Any unapproved deviations, exceptions, substitutions, alternates, or conditional qualifications contained in a Proposal may be cause for its rejection.
 - c. If a potential Proposer feels that his product is an equal to the product specified, he must submit a written request to MATA.
 - d. Requests for approved equals, clarification of specifications, and protest of specifications must be received by MATA, **IN WRITING, NO LATER THAN 11:00 a.m. CST, THURSDAY, APRIL 4, 2024, TO ALLOW ANALYSIS OF THE REQUEST.** Any request for an approved equal or protest of the specifications must be fully supported with catalog information, specifications, and illustrations or other pertinent information as evidence that the substitute offer is equal to or better than the specifications' requirement. Where an approved equal is requested, the CONTRACTOR must demonstrate the quality of his product to the Authority and must furnish sufficient information to enable the Authority to determine whether the CONTRACTOR's product is or is not equal to that specified. Such requests may be e-mailed to Ashley Best, Sr. Contract Administrator, at abest@matatransit.com.
 - e. MATA's replies to requests under paragraph (d) above will be post-marked at least fourteen (14) days before the date scheduled for Proposal opening.

- f. A notice of approved equals shall be furnished to all parties receiving specifications so that all Proposers may prepare their Proposal accordingly.
 - g. Appeal from the decisions of MATA to approve or disapprove approved equal status shall be submitted in writing to the Contracting Officer, MATA, 40 S. Main Street, Suite 1200, Memphis, TN 38103, not later than five (5) days from the date of MATA's decision. The appeal shall, at a minimum, identify the decision in question, specify all reasons why the appealing party disagrees with the decision, and shall include all facts and justification, including technical information, in support of its position. The Contracting Officer may request additional information from the appealing party, and information or a response from the Proposers which shall likewise be submitted in writing to the Contracting Officer not later than ten (10) days from the date of MATA's request. So far as practicable, appeals will be decided upon the basis of the written appeal, information and written response submitted by the appealing party and other Proposers; all parties are urged to make written submissions as complete as possible. Failure of any party to timely respond to a request for information may be deemed by MATA that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response; and, in such event, the appeal will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent investigation deemed appropriate by MATA, the Contracting Officer shall either (a) render a decision which shall be final and advise all interested parties of same in writing, or (b) at the sole election of the Contracting Officer, conduct an informal hearing at which the interested participating parties will be afforded an opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedure. Following the informal hearing, the Contracting Officer shall render a decision, which shall be final and advise all interested parties thereof in writing.
 - h. Changes in the specifications will be made by written addendum by MATA and will be forwarded to all persons and firms to whom Proposal documents have been furnished.
7. Proposal Withdrawal -
- a. Each and every Proposer who submits his Proposal specifically waives any right to withdraw it except as hereinafter provided. Proposers will be given permission to withdraw any Proposal after it has been deposited with MATA, provided any Proposer makes its request by telephone, telegraph, or in writing, twenty-four (24) hours before the time Proposals are due. Requests pertaining to withdrawals by telephone or telegraph must be confirmed in writing by the Proposer and must reach the Office of the Contracting Officer of MATA not later than one (1) hour prior to the time fixed for submission of Proposals.
 - b. No Proposer may withdraw his Proposal within ninety (90) days after the date Proposals are due.
8. Proposal Rejection - MATA reserves the right to waive any minor Proposal informalities or irregularities received which do not go to the heart of the Proposal or prejudice other Proposers, or to reject, for good and compelling reasons, any and all Proposals submitted. Conditional Proposals, or those, which take exception to the specifications, may be considered non-responsive and may be rejected.
9. Tax Exemption - MATA is exempt from payment of all Federal, State, and local taxes in connection with the project. Said taxes must not be included in Proposal prices. MATA will provide necessary tax exemption certificate to manufacturer, if requested.

10. Proposal Evaluation -

- a. Consideration will be given to Proposer's previous experience, price, financial responsibility of Proposer, responsiveness to these specifications, including level of participation of DBEs.
- b. Proposers may be required to submit duplicate sworn statements of their financial responsibility, technical qualifications, and performance record before a Contract can be awarded to them.
- c. MATA reserves the right to award Proposals singularly or collectively on any of the Proposal items.
- d. The Contract shall be awarded according to Section 5.0 of Section A.

11. Proposal Cost Form - If MATA includes a Proposal Cost Form in the RFP, Proposals must be submitted on the form provided. Each item should be listed separately on the form. Proposals submitted in any other form may be considered non-responsive and may be rejected. Proposals may be submitted on any or all items in this Proposal request. Proposal Cost Form should be submitted in a separate package, one (1) original and one (1) flash drive.

12. Protest Procedures - Protests may be made by prospective Proposers whose direct economic interest would be affected by the award of a Contract, or by failure to award a Contract. MATA will consider all protests requested in a timely manner regarding the award of a Contract, whether submitted before or after an award. All protests are to be submitted in writing to the Contracting Officer, Memphis Area Transit Authority, 40 S. Main Street, Suite 1200, Memphis, TN 38103. Protest submissions should be concise, logically arranged, and clearly state the grounds for the protest. Protests must include at least the following information:

1. Name, address, and telephone number of protestor.
2. Identification of the solicitation or Contract Number.
3. A detailed statement of the legal and factual grounds of protest, including copies of relevant documents.
4. A statement as to what relief is requested.

Protests must be submitted to MATA in accordance with these procedures and time requirements. Protests must be complete and contain all issues that the protestor believes relevant.

- a. Proposal protests alleging restrictive specifications or improprieties which are apparent prior to Proposal closing time or receipt of Proposals must be submitted in writing to the Contracting Officer and must be received seven (7) days prior to Proposal closing time or receipt of Proposals. If the written protest is not received by the time specified, Proposals may be received, and award may be made, in the normal manner unless the Contracting Officer determines that remedial action is required. Oral protests not followed up by a written protest will be disregarded. The Contracting Officer may request additional information from the appealing party and information or a response from other Proposers, which shall likewise be submitted in writing to the Contracting Officer not later than ten (10) days from the date of MATA's request. So far as practicable, appeals will be decided upon the basis of the written appeal, information, and written response submitted by the appealing party and other Proposers; all parties are urged to make written submissions as complete as possible. Failure of any party to timely respond to a request for information may be deemed by MATA that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response; and, in such event, the protest will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent investigation deemed appropriate

by MATA, the Contracting Officer shall either (a) render a decision, or (b) at the sole election of the Contracting Officer, conduct an informal hearing at which the interested participating parties will be afforded an opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following the informal hearing, the Contracting Officer shall render a decision, which shall be final and advise all interested parties thereof in writing but no later than ten (10) days from the date of the informal hearing.

- b. Proposal protest against the making of an award by the MATA Board must be submitted in writing to the Contracting Officer and received by the Contracting Officer within seven (7) days of the award by the MATA Board. The process for resolving protests listed above in Section (a) will be followed for any protest received under this section.

Notice of the protest and the basis therefore will be given to all prospective Proposers. In addition, when a protest against the making of an award by the MATA Board is received and it is determined to withhold the award pending disposition of the protest, the Proposers whose Proposals might become eligible for award shall be requested before expiration of the time for acceptance, to extend or withdraw the Proposal.

Where a written protest against the making of an award is received in the time specified, award will not be made prior to seven (7) days after resolution of the protest unless MATA determines that:

1. The item(s) to be procured or service to be performed is urgently required.
2. Delivery or performance will be unduly delayed by failure to make award promptly; or,
3. Failure to make award will otherwise cause undue harm to MATA or the Federal Government.

- c. Protests made after contract award shall be received no later than seven (7) calendar days afterwards. Protests received after award will be reviewed by the Contracting Officer and MATA's General Counsel.

In instances where the award has been made, the CONTRACTOR shall be furnished with the notice of the protest and the basis therefore. If the CONTRACTOR has not executed the Contract as of the date the protest is received by MATA, the execution of the Contract will not be made prior to seven (7) days after resolution of the protest unless MATA determines that:

1. The item(s) to be procured or service to be performed is urgently required;
2. Delivery or performance will be unduly delayed by failure to make award promptly; or,
3. Failure to make award will otherwise cause undue harm to MATA or the Federal Government.

The process for resolving protests listed above in Section (a) will be followed for any protest received under this section.

- d. Appeals and requests for reconsideration of the determination of the Contracting Officer of protests under (a), (b) and (c) must be submitted to the Chief Executive Officer and received within seven (7) days after the date of the written determination by the Contracting Officer. The Chief Executive Officer may request additional information from the appealing party and information or a response from other Proposers, which shall likewise be

submitted in writing to the Chief Executive Officer not later than ten (10) days from the date of MATA's request. So far as practicable, appeals will be decided upon the basis of the written appeal, information, and written response submitted by the appealing party and other Proposers; all parties are urged to make written submissions as complete as possible. Failure of any party to timely respond to a request for information may be deemed by MATA that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response; and, in such event, the appeal will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent investigation deemed appropriate by MATA, the Chief Executive Officer shall either (a) render a decision, or (b) at the sole election of the Chief Executive Officer, conduct an informal hearing at which the interested participating parties will be afforded an opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following the informal hearing, the Chief Executive Officer shall render a decision, which shall be final and advise all interested parties thereof in writing but no later than ten (10) days from the date of the informal hearing.

- e. Under certain limited circumstances, an interested party may protest to the Federal Transit Administration (FTA) the award of a Contract pursuant to an FTA grant. FTA's review of any protest will be limited to:
 - 1. Alleged failure of MATA to have written protest procedures or alleged failure to follow such procedures.
 - 2. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure which shall be submitted and processed in accordance with that Federal regulation.
 - f. Protestors shall file a protest with FTA not later than five (5) working days after a final decision of MATA's Chief Executive Officer is rendered under the MATA protest procedure. In instances where the protestor alleges that MATA failed to make a final determination on the protest, the protestor shall file a complaint with FTA not later than five (5) Federal working days after the protestor knew or should have known of MATA's failure to render a final determination on the protest.
 - g. Submission of Protest to FTA
 - 1. Protests shall be filed with the appropriate FTA Regional Office with a concurrent copy to MATA.
 - 2. The protest filed with FTA shall:
 - (i) Include the name and address of the protestor.
 - (ii) Identify MATA project number and the number of the Contract Solicitation.
 - (iii) Contain a statement of the grounds for the protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible.
 - (iv) Include a copy of the local protest filed with MATA and a copy of the MATA decision, if any.
13. Correspondence - The Proposer is required to show on all correspondence with MATA and FTA, the following: RFP No. **24-07** Communication with MATA should be mailed directly to Ashley Best, Sr. Contract Administrator, MATA, 40 S. Main Street, Suite 1200, Memphis, TN 38103, or sent by e-mail to abest@matatransit.com.

14. Contract Subletting - No Contract may be assigned, sublet, or transferred without the written consent of MATA.

15. Miscellaneous -

- a. CONTRACTOR warrants that it has not been paid any bonus or commission for the purpose of obtaining this Contract.
- b. Except as otherwise set forth herein, this Contract shall be governed and construed in accordance with the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation, and enforcement of this Contract shall be instituted and litigated in the courts of the State of Tennessee located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee, located in Shelby County, Tennessee.
- c. The failure of MATA at any time to insist upon a strict performance of any terms, conditions, and covenants herein shall not be deemed a waiver of any subsequent breach or default of the terms, conditions, and covenants herein contained.
- d. CONTRACTOR shall not assign any interest or obligation in this Contract, and CONTRACTOR shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of MATA.
- e. Any proposed change or modification of this Contract shall be submitted in writing to MATA for its prior approval. All changes shall be by written agreement of MATA and CONTRACTOR.
- f. The CONTRACTOR acknowledges that MATA is managed and operated by Mid-South Transportation Management, Inc. (MTM). The CONTRACTOR shall cooperate with and abide by the instructions of MATA and MTM personnel.

16. Extent of Agreement -

- a. The Proposal submitted by the CONTRACTOR is incorporated herein by reference as fully set forth verbatim herein. In the event of conflict between this Contract and Proposal, the provisions of this Contract shall control.
- b. This Contract, except as set forth in the preceding paragraph, represents the entire and integrated Agreement between MATA and the CONTRACTOR, and supersedes all prior negotiations, statements, instructions, and representations or agreements, whether written or oral. This Contract may not be modified, amended, or assigned except by written agreement duly signed by both parties.
- c. At the election of MATA, the invalidity or illegality of any provisions of this Contract, other than arising from the fiscal inability of MATA to pay the compensation due to the CONTRACTOR as same becomes due, as determined by a court of last resort of competent jurisdiction, shall not affect the validity of the remainder of this Contract, and this Contract shall remain in full force and effect as if such illegal or invalid provisions were not contained herein.

17. Compliance with Applicable Law -

- a. In the performance of its obligations pursuant to this Contract, the CONTRACTOR shall comply with all applicable provisions of Federal, State, and local law in any manner affecting the conduct of the work and all prohibitive orders and instructions issued by the

State and Federal Government regarding fortifications, military, and naval establishments and other areas.

- b. To accommodate changing Federal requirements, the CONTRACTOR agrees that Federal requirements may change, and the changed requirements will apply to the project as required, unless the Federal Government determines otherwise. All standards or limits within FTA's Master Agreement are minimum requirements, unless modified by FTA.
- c. The CONTRACTOR agrees to comply with FTA Circular 4220.1F, "Third Party Contracting Requirements", any revisions or replacement thereof, and applicable Federal regulations or requirements, including FTA third party contracting regulations when promulgated.

18. Audit and Inspection -

- a. The CONTRACTOR shall permit MATA, the Secretary, and Comptroller General of the United States or any of their duly authorized representatives' access to all CONTRACTOR records as they request for audits and inspections related to any Contract not awarded on the basis of competitive bidding for a capital or improvement project, as needed for compliance with 49 U.S.C. § 5325(a). The CONTRACTOR shall permit said persons to inspect all work materials, payrolls, and other data with regard to the project, and to audit the books, records, and accounts pertaining to such Contracts with regard to the project. The CONTRACTOR shall provide sufficient access to contract records as needed for compliance with federal regulations or to assure proper project management as determined by FTA.
- b. The CONTRACTOR shall maintain documentation for all charges against MATA under this Contract. The books, records, and documents of the CONTRACTOR, insofar as they relate to work performed or money received under the Contract, shall be maintained in conformity with generally accepted accounting principles for a period three full years from the date of final payment, and shall be subject to audit, at any reasonable time upon reasonable notice, by MATA, the State of Tennessee or the Comptroller of the Treasury or their duly appointed representatives, or a licensed independent public accountant. Further, the records shall be maintained for a period not less than that recommended in the Uniform Manual for Development Districts of Tennessee, published by the Comptroller of the Treasury, State of Tennessee, but not less than three years from the date of final payment.
- c. In the event any Federal or State agency audits MATA, the CONTRACTOR shall provide whatever records, information, and assistance as MATA may reasonably require.
- d. The CONTRACTOR shall provide information and assistance requested by MATA for progress reports required of MATA by Federal or State Government, or agencies.

19. Equal Employment Opportunity - In the performance of its duties hereunder, the CONTRACTOR shall not discriminate against any employee or applicant for employment because of disability, race, color, age, creed, sex, religion or national origin. The CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their disability, race, color, religion, sex, age, or national origin. 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. The CONTRACTOR shall insert the foregoing provisions (modified only to show the particular contractual relationship) in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

20. Interests of Federal and State Governmental Officials -

- a. 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.
- b. No part of the proceeds hereof shall be paid directly or indirectly to any officer or employee of the State of Tennessee as wages, compensation or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to MATA in connection with any work contemplated or performed relative to this Contract.

21. Environmental Requirements -

- a. Environmental Protection. The CONTRACTOR agrees to comply with all applicable requirements and implementing regulations of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S.C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622, and other applicable Federal environmental protection regulations that may be promulgated at a later date. The CONTRACTOR agrees to comply with the applicable provisions of 23 U.S.C. § 139 pertaining to environmental procedures, and, as applicable, 23 U.S.C. § 326, pertaining to State responsibility for categorical exclusions, in accordance with the provisions of joint FHWA/FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 *Fed. Reg.* 66576 et seq., November 15, 2006, and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.
- b. Air Quality (Applicable to Contracts Exceeding \$100,000) – Except to the extent the Federal Government determines otherwise in writing, the CONTRACTOR agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. Specifically:
 - 1. The CONTRACTOR agrees to comply with the applicable requirements of subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c); with U.S. EPA regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, Subpart A; and with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Project, the CONTRACTOR agrees to implement each air quality mitigation or control measure incorporated in the applicable documents accompanying the approval of the Project. The CONTRACTOR further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.
 - 2. U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, to the extent they apply to the Project, the CONTRACTOR agrees to comply with U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; U.S. EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600, and any revisions thereto.
 - 3. The CONTRACTOR agrees to comply with the notice of violating facilities provisions of

section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

- c. Clean Water Requirements (Applicable to Contracts Exceeding \$100,000) - Except to the extent the Federal Government determines otherwise in writing, the CONTRACTOR agrees to comply with all Federal laws and regulations and follow applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:
 1. The CONTRACTOR agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.
 2. The CONTRACTOR agrees to comply with the notice of violating facilities provisions of Section 508 of the Clean Water Act, as amended, 33 U.S.C. §§ 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.
- d. Use of Certain Public Lands. The CONTRACTOR agrees that in implementing its Project, it will not use any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, unless the Federal Government makes the findings required by 49 U.S.C. § 303. The CONTRACTOR also agrees to comply with joint FHWA/FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 774, and referenced in 49 C.F.R. Part 622.
- e. Wild and Scenic Rivers. The CONTRACTOR agrees to comply with applicable provisions of the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 through 1287, relating to protecting components of the national wild and scenic rivers system, with applicable implementing U.S. Forest Service regulations, "Wild and Scenic Rivers," 36 C.F.R. Part 297, and with applicable implementing U.S. Bureau of Land Management regulations, "Management Areas," 43 C.F.R. Part 8350.
- f. Coastal Zone Management. The CONTRACTOR agrees to assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 through 1465.
- g. Wetlands. The CONTRACTOR agrees to comply with the protections for wetlands addressed in Executive Order No. 11990, as amended, "Protection of Wetlands," 42 U.S.C. § 4321 note.
- h. Floodplains. The CONTRACTOR agrees to facilitate compliance with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, "Floodplain Management" 42 U.S.C. § 4321 note.
- i. Endangered Species and Fisheries Conservation. The CONTRACTOR agrees to comply with applicable protections for endangered species of the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 through 1544, and the Magnuson Stevens Fisheries Conservation Act, as amended, 16 U.S.C. §§ 1801 *et seq.*
- j. Historic Preservation. The CONTRACTOR agrees as follows:
 1. The CONTRACTOR agrees that in implementing its Project, it will not use any land

from a historic site that is on or eligible for inclusion on the National Register of Historic Places, unless the Federal Government makes the findings required by 49 U.S.C. § 303.

2. The CONTRACTOR agrees to encourage compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note; and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a through 469c as follows:

- (a) In accordance with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, the CONTRACTOR agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project and agrees to notify FTA of affected properties.
- (b) The CONTRACTOR agrees to comply with all applicable Federal regulations and directives to avoid or mitigate adverse effects on those historic properties, except to the extent the Federal Government determines otherwise in writing.

k. Indian Sacred Sites. The CONTRACTOR agrees to facilitate compliance with the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, pursuant to the American Indian Religious Freedom Act, 42 U.S.C. § 1996, in accordance with Executive Order No. 13007, "Indian Sacred Sites," 42 U.S.C. § 1996 note, except to the extent that the Federal Government determines otherwise in writing.

l. Mitigation of Adverse Environmental Effects. Should the Project cause or result in adverse environmental effects, the CONTRACTOR agrees to take all reasonable steps to minimize the impact of those adverse effects, as required by 49 U.S.C. § 5324(b), and other applicable Federal laws and regulations, including 23 C.F.R. Part 771, 23 C.F.R. Part 774, and 49 C.F.R. Part 622. The CONTRACTOR agrees to implement all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreement, and other documents required by 49 U.S.C. § 303). The CONTRACTOR also agrees to comply with any conditions the Federal Government might impose in a finding of no significant impact or a record of decision. The CONTRACTOR agrees that those mitigation measures are incorporated by reference and made part of the Contract. The CONTRACTOR agrees that any deferred mitigation measures will be incorporated by reference and made part of the Contract as soon as agreement with the Federal Government is reached. The CONTRACTOR agrees that any mitigation measures agreed on may not be modified or withdrawn without the express written approval of the Federal Government.

22. Energy Conservation - The CONTRACTOR agrees to comply with applicable mandatory energy efficiency standards and policies under the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 *et seq.*, except to the extent that the Federal Government determines otherwise in writing. As applicable, the CONTRACTOR agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, in compliance with FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

23. Patent Rights – (Applicable to Contracts For Planning, Research, Development and/or

Demonstration Projects Only)

a. General. If any invention, improvement, or discovery of the CONTRACTOR or of any subcontractor, lessee, third party contractor, or other participant at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.

b. Federal Rights. The CONTRACTOR agrees that its rights and responsibilities, and those of each subcontractor, lessee, or other participant at any tier of the Project, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws and regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Recipient agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that subcontract, lease, or arrangement, as specified in 35 U.S.C. §§ 200 *et seq.*, and U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401, irrespective of the status of the CONTRACTOR, subcontractor, lessee, third party contractor or other participant in the Project (*i.e.*, a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual).

c. License Fees and Royalties. FTA considers income earned from license fees and royalties for patents, patent applications, and inventions produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the CONTRACTOR has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.

24. **Rights in Data – (Applicable to Contracts For Planning, Research, Development and/or Demonstration Projects Only)**

a. Definition. The term "subject data," as used in this Section 18 of the FTA Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data" do not include financial reports, cost analyses, or other similar information used for Project administration.

b. General. The following restrictions apply to all subject data first produced in the performance of the Contract for the Project:

(1) Except for its own internal use, the CONTRACTOR may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the CONTRACTOR authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

(2) The restrictions on publication of Paragraph 18(b)(1) of the FTA Master Agreement, however, do not apply to a Contract with an institution of higher learning.

c. Federal Rights in Data and Copyrights. The CONTRACTOR agrees to provide to the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish,

or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection 18.c of the FTA Master Agreement. As used herein, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government's license to:

(1) Any subject data developed under the Contract for the Project, or under a subcontract, lease, third party contract or other arrangement at any tier of the Project, supported with Federal assistance derived from the Contract for the Project, whether or not a copyright has been obtained; and

(2) Any rights of copyright to which a CONTRACTOR, subcontractor, lessee, third party contractor, or other participant at any tier of the Project purchases ownership using Federal assistance.

d. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA's purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, when the Project is completed, the CONTRACTOR agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, the CONTRACTOR agrees to provide other reports pertaining to the Project that FTA may request. The CONTRACTOR agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA. In addition, except to the extent that FTA determines otherwise in writing, the CONTRACTOR to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of the FTA Master Agreement, FTA may make available to any FTA CONTRACTOR, subcontractor, or other participant at any tier of the Project, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of the FTA Master Agreement and shall be delivered as the Federal Government may direct. This Subsection 18.d, however, does not apply to adaptations of automatic data processing equipment or programs for the CONTRACTOR's use when the costs thereof are financed with Federal assistance through an FTA capital program.

e. License Fees and Royalties. FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the CONTRACTOR has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.

f. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the CONTRACTOR agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the CONTRACTOR of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The CONTRACTOR shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

g. Restrictions on Access to Patent Rights. Nothing in Section 18 of the FTA Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

h. Data Developed Without Federal Funding or Support. In connection with the Project, the CONTRACTOR may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of the FTA Master Agreement do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with the Project. Nevertheless, the CONTRACTOR understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

i. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or other applicable Federal laws or Federal regulations, the CONTRACTOR understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the Freedom of Information Act (or another Federal law or Federal regulation providing access to such records).

25. Vendor Responsibility - It is the intent of these specifications to provide for goods of first quality and the workmanship must be the best obtainable in the various trades. The design of the goods, which the manufacturer proposes to furnish, must be of substantial and durable construction in all respects. No advantage shall be taken by the Proposer or manufacturer in the omission of any part or detail, which goes to make the product complete and ready for installation and use.

The vendor shall assume responsibility for all materials used in the Proposal item whether the vendor manufactures the same or purchased ready-made from a source outside the vendor's company.

26. References - Proposer shall provide with its proposal at least three references for projects similar to that described in this Request for Proposal. The following must be provided: company name, address and telephone number, fax number, a contact person, and the dates of the contract. The references given should be on contracts within a 12-month period prior to the Proposal due date.

27. Delivery - Proposals shall provide for delivery of all equipment or supplies to MATA, 1370 Levee Road, Memphis, TN 38108, unless stated otherwise in Sections A or B.

28. Delivery Schedule - Hours of delivery shall be any weekday between 8:30 a.m. and 4:00 p.m., unless stated otherwise in Sections A or B.

29. Preference for United States Products and Services. To the extent applicable, the CONTRACTOR agrees to comply with the following U.S. preference requirements:

- a. Buy America (Applicable to Contracts Exceeding \$150,000) - The CONTRACTOR agrees to comply with 49 U.S.C. § 5323(j), FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and implementing guidance FTA may issue. A Buy America certificate (Exhibit II), as per attached format, must be completed and submitted with the Proposal or the Proposal will be considered non-responsive.

A waiver from the Buy America provision may be sought by MATA if grounds for the waiver exist. Section 165a of the Surface Transportation Assistance Act of 1982 permits FTA's participation in this Contract only if iron, steel and manufactured products used in the Contract are produced in the United States.

- b. Cargo Preference—Use of United States-Flag Vessels. The CONTRACTOR agrees to comply with U.S. Maritime Administration regulations, "Cargo Preference—U.S.-Flag Vessels," 46 C.F.R. Part 381, to the extent those regulations apply to the Project. Specifically,

the CONTRACTOR agrees:

1. 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 liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates to United States-Flag Commercial vessels.
 2. To furnish within thirty (30) days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment 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 paragraph one above to MATA (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, DC 20590, marked with appropriate identification of the project.
- c. Fly America. The CONTRACTOR understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, consistent with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301.131 through 301.143.
30. Debarment, Suspension, and Other Responsibility Matters (Applicable to Contracts Exceeding \$25,000) - Unless otherwise permitted by law, any person that is debarred, suspended, or voluntarily excluded may not take part in a federally covered transaction, either as participant or a principal, during the period of debarment, suspension, or voluntary exclusion. Accordingly, neither FTA nor MATA may enter into any transaction with such debarred, suspended or voluntarily excluded persons during such period.
- A certification process has been established by 49 CFR, Part 29 as a means to ensure that debarred, suspended, or voluntarily excluded persons do not participate in a federally assisted project. Each CONTRACTOR and subcontractor must provide to MATA a signed certification in compliance with 49 CFR, Part 29 as part of this Contract. (Exhibit III)
31. Prohibited Interests - No member, officer, or employee of MATA, MTM, RATP Dev, or the City of Memphis during his or her tenure or one year thereafter shall have interests, direct, or indirect in this Contract or the proceeds thereof, or if a conflict, real or apparent, as defined in MATA's Code of Ethics, would be involved.
32. Copeland "Anti-Kickback" Act, as amended (Applicable to Construction Contracts) - The CONTRACTOR shall comply with the Copeland "Anti-Kickback" Act, 18 U.S.C. 874 and 40 U.S.C. 276c, and U.S. Department of Labor (DOL) regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States", 29 C.F.R. Part 3. In addition to other requirements that may apply:
- a. The CONTRACTOR will not induce, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which that employee is otherwise entitled.
 - b. MATA agrees to report every suspected or reported violation of the Copeland "Anti-Kickback" Act or its Federal implementing regulations to FTA.

33. Termination of Contract -

- a. MATA may terminate this Contract without cause by giving fifteen (15) days written notice to the CONTRACTOR thereof and specifying the effective date of termination.

If the Contract is terminated by MATA as provided herein, the CONTRACTOR will be paid for its satisfactory services completed through the date of termination specified by MATA.

- b. If, through any cause, the CONTRACTOR shall fail to fulfill in timely and proper manner its obligations under this Contract, or shall violate any of the covenants, agreements, or stipulations of this Contract, MATA shall thereupon have the right to terminate this Contract by giving written notice to the CONTRACTOR for such termination and specifying the effective date of such termination. In the event of termination, the CONTRACTOR shall be entitled to just and equitable compensation for any satisfactory work through the date of termination specified by the MATA.
- c. In the event of default by the CONTRACTOR, MATA shall be entitled to all of its reasonable expenses, and its costs to include, but not limited to its reasonable attorney's fees incurred by reason of such default.
- d. In addition to the foregoing, MATA reserves the right to cancel any services or portion of services to be provided hereunder upon written notice to the CONTRACTOR specifying the canceled services and the effective date of such cancellation. In the event of such cancellation, the CONTRACTOR shall be compensated for satisfactory work completed and, further, the compensation due to the CONTRACTOR hereunder shall be reduced accordingly effective said cancellation date.

34. Employment of Contractor - MATA hereby agrees to engage the CONTRACTOR, and the CONTRACTOR hereby agrees to perform the services hereafter set forth in connection with the project.

35. Interest of the Contractor - The CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The CONTRACTOR further covenants that in the performance of this Contract no person having any such interest shall be employed.

36. Independent Contractor - The CONTRACTOR is at all times an independent contractor and in no wise shall be deemed to be in joint venture, partnership, or other relationship with MATA.

37. Indemnification - The CONTRACTOR shall indemnify, save, defend, and hold MATA, the City of Memphis, TN, RATP Dev, and MTM, their officers, agents and employees free from all losses, damages, claims, and expenses in any wise arising or resulting from the actions and omissions of the CONTRACTOR, its employees, agents, or contractors in the performance of its services hereunder.

38. Cost Analysis - MATA reserves the right to conduct a cost or price analysis for any purchase. MATA may be required to perform a cost analysis when competition is lacking for any purchase. Sole source procurements or procurements which result in a single Proposal being received will be subject to a cost analysis which will include the appropriate verification of cost data, the evaluation of specific elements of costs and the projection of the data to determine the effect on Proposal prices. MATA may require a pre-award audit, and potential contractors shall be prepared to submit data relevant to the proposed work which will allow MATA to sufficiently determine that the proposed price is fair, reasonable, and in accordance with Federal, State, and local regulations. Procurements resulting in a single Proposal will be treated as a negotiated procurement and MATA

reserves the right to negotiate with the single Proposer to achieve a fair and reasonable price. If both parties cannot agree upon a negotiated price, MATA reserves the right to reject the single Proposal.

Contract change orders or modifications will be subject to a cost analysis.

39. False or Fraudulent Statements or Claims - The CONTRACTOR acknowledges and agrees that:
- a. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. Department of Transportation (DOT) regulations "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with the Project. Accordingly, by executing the Contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make in connection with the Project covered by the Contract. In addition to other penalties that may apply, the CONTRACTOR also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the CONTRACTOR the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.
 - b. If the CONTRACTOR makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the CONTRACTOR the penalties of 49 U.S.C. § 5323(1), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.
40. No Contingency Fees - The CONTRACTOR shall warrant that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the CONTRACTOR for the purpose of securing business, for the breach or violation of which warranty MATA shall have the right to annul said Contract without liability or, in its discretion, to deduct from the Contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.
41. Excluded Facilities - The CONTRACTOR shall comply with the provisions of 40 CFR Part 15 which prohibit the use of facilities included on the Environmental Protection Agency list of violating facilities.
42. Federal Changes - 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 dated October 1, 2012, 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.
43. Lobbying Requirements (Applicable to Contracts Exceeding \$100,000) - Federal regulations require MATA to include certifications from contractors. Accordingly, the CONTRACTOR must sign the attached certification. (Exhibit IV)

By executing this Contract, the CONTRACTOR certifies to the best of its knowledge and belief that:

- a. No Federal appropriated funds have been paid or will be paid 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.

- b. If any funds other than Federal appropriate 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 CONTRACTOR shall complete and submit Office of Management and Budget Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The CONTRACTOR shall insert the language of this certification in all subcontracts and require that all subcontractors at any tier 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 such failure.

- 44. Recycled Products - 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.
- 45. No Government Obligation
 - a. MATA 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 MATA, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
 - b. The CONTRACTOR agrees to include the above clause in each subcontract. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- 46. Incorporation of Federal Transit Administration (FTA) Terms - 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 Master Agreement (17), dated October 1, 2010, 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 MATA requests, which would cause MATA to be in violation of the FTA terms and conditions.
- 47. Access Requirements for Persons with Disabilities - The CONTRACTOR agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The CONTRACTOR also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires the provision of accessible

facilities and services, and with the following Federal regulations, including any amendments thereto:

- a. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA),"49 C.F.R. Part 37;
- b. U.S. DOT regulations "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,"49 C.F.R. Part 27;
- c. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,"36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- d. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services,"28 C.F.R. Part 35;
- e. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,"28C.F.R. Part 36;
- f. U.S. General Services Administration (GSA) regulations, "Accommodations for the Physically Handicapped,"41 C.F.R. Subpart 101-19;
- g. 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;
- h. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,"47 C.F.R. Part 64, Subpart F; and
- i. FTA regulations, "Transportation for Elderly and Handicapped Persons,"49 C.F.R. Part 609; and
- j. Any implementing requirements FTA may issue.

48. Disputes, Breaches, Defaults or Other Litigation (Applicable to Contracts Exceeding \$100,000)

- a. Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the CONTRACTOR. The Contracting Officer may consult with the Construction Manager if one has been appointed for this project. The decision of the Contracting Officer shall be final and conclusive unless, within ten (10) days from the receipt of such copy, the CONTRACTOR mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Chief Executive Officer of MATA. The Chief Executive Officer shall review the dispute, related documents and the Contracting Officer's Final Decision. The Chief Executive Officer may consult with the Construction Manager and the Contracting Officer. The decision of the Chief Executive Officer shall be final and conclusive unless, within 10 days from the date of the receipt of such copy, the CONTRACTOR mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Board of the Memphis Area Transit Authority. The decision of the Board or its duly authorized representative for the determination of such appeals shall be final and conclusive unless in proceedings initiated by either party for review of such decision in a court of competent jurisdiction, the Court determines the decision to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this Article, the CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the CONTRACTOR shall proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's decision.
- b. This Section 48 does not preclude consideration of questions of law in connection with

decisions provided for in Paragraph a. above. Nothing in this Contract, however, shall be construed as making final the decisions of the Board or its representative on a question of law.

49. Nondiscrimination - Title VI of the Civil Rights Act - The CONTRACTOR will comply and will assure the compliance by subcontractors under this project with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000d *et seq.*, and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21 and the assurances by MATA pursuant thereto.
50. Disadvantaged Business Enterprises - To the extent authorized by Federal law, the CONTRACTOR agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subcontractor, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:
 - a. The CONTRACTOR agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.
 - b. The CONTRACTOR agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subcontract, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its Contract and shall comply with the requirements of 49 C.F.R. Part 26. The CONTRACTOR agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subcontracts, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT.
51. Prompt Payment - The CONTRACTOR agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from receipt of each payment the prime contractor receives from MATA. The CONTRACTOR agrees further to return retainage payments to each subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of MATA. This clause applies to both DBE and non-DBE subcontractors. If the CONTRACTOR determines the work to be unsatisfactory, it must notify MATA's Contracting Officer, Project Manager and DBE Liaison Officer immediately, in writing, and state the reasons. Failure to comply with this requirement will be construed to be a breach of contract and subject to contract termination.
52. Nondiscrimination in Federal Public Transportation Programs - The CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
53. Contract Work Hours and Safety Standards Act - The CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, and other participant at any tier of the Project, with the employee protection requirements for non-construction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

54. National Intelligent Transportation Systems Architecture and Standards - To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation Systems (ITS) debrand Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.
55. Seismic Safety (Applicable to Design and/or Construction Contracts Only) - The CONTRACTOR agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and with U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41, (specifically, 49 C.F.R. § 41.117), and any implementing guidance FTA may issue.
56. Environmental Justice. The CONTRACTOR agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; and DOT Order 5620.3, "Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377 *et seq.*, April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.
57. 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.
59. ACCESS TO RECORDS AND REPORTS
1. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records. (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
 2. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
 3. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract in accordance with 2 CFR § 200.337.
 4. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

60. CHANGES TO FEDERAL REQUIREMENTS

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and

Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier

61. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

(1) The contractor certifies that it:

(a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

(2) Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

62. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The Recipient and 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 Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

63. NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE,

ABUSE, OR OTHER LEGAL MATTERS

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a

legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

64. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

a. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - iii. Telecommunications or video surveillance equipment or services procured or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

b. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

c. See Public Law 115-232, section 889 for additional information.

d. See also § 200.471

65. RESTRICTIONS ON LOBBYING

Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay 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 any of the following covered Federal actions: 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.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt 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 that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt 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 that loan insurance or guarantee.

Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

- (1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000, Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

- (1) A subcontract exceeding \$100,000 at any tier under a Federal contract;
- (2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
- (3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
- (4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement, Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or

commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

66. SAFE OPERATION OF MOTOR VEHICLES

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

67. SEVERABILITY

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

68. SIMPLIFIED ACQUISITION THRESHOLD

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).

69. SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
- (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
- (3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents:

- (1) applications for federal assistance,
- (2) requests for proposals or solicitations,
- (3) forms,
- (4) notifications,
- (5) press releases,
- (6) other publications

70. TRAFFICKING IN PERSONS

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or sub-agreements thereunder

71. VIOLATION AND BREACH OF CONTRACT

Disputes:

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the agencies authorized representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the agencies authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance during Dispute:

Unless otherwise directed by the agencies authorized representative, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages:

Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies:

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the agencies authorized representative and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Agency is located.

Rights and Remedies:

Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.