



# REQUEST FOR PROPOSAL

SUBJECT: FIVE-YEAR CONTRACT FOR WHEELCHAIR LIFT AND  
ELEVATOR MAINTENANCE

DATE: SEPTEMBER 16, 2022

PROPOSAL NO.: 23-01

PROPOSAL DUE: OCTOBER 17, 2022 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,  
*Ashley Best*

Ashley Best  
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)
  - 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
  - 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- Incomplete or outdated information on client references and/or sufficient number of references provided.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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- ADDENDA ACKNOWLEDGEMENT FORM
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- CERTIFICATION OF LOWER-TIER PARTICIPANTS (subcontractors) DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION
- CERTIFICATION OF RESTRICTIONS ON LOBBYING (FOR Contracts of \$1000,000 or greater)
- CERTIFICATION OF UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES
- LETTER OF INTENT TO PERFORM AS A DBE CONTRACTOR OR SUBCONTRACTOR
- SCHEDULE OF DBE PARTICIPATION
- NO RESPONSE
- QUOTE FORM

**SECTION D UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES**

**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, 1330 Levee Road, Memphis, TN, 38108, **until 11:00 a.m. local time, on Monday, October 17, 2022** for furnishing the following:

**FIVE-YEAR CONTRACT FOR WHEELCHAIR LIFT AND ELEVATOR MAINTENANCE**

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

A walkthrough of the site will be held on Friday, September 23, 2022 at 10:00 a.m. at 547 North Main Street, Memphis, TN 38105 and other various locations. Though attendance at the walkthrough is not required, MATA highly recommends any proposed contractors to attend it as it will be the only one for this project.

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, Contract Administrator at (901) 722-7182 or via email: [abest@matatransit.com](mailto:abest@matatransit.com) or Shelia Maclin, Manager of Purchasing, (901) 722-7102 or via email: [smaclin@matatransit.com](mailto:smaclin@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.

September 16, 2022 & October 13-14, 2022

Gary Rosenfeld  
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 **A walkthrough of the site will be held on Friday, September 23, 2022 at 10:00 a.m. at 547 North Main Street, Memphis, TN 38105 and other various locations. Though attendance at the walkthrough is not required, MATA highly recommends any proposed contractors to attend it as it will be the only one for this project.**
- 1.3 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.
- 1.4 This Request For Proposals (RFP) does not commit MATA to award a contract or pay any costs incurred in 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.
- 1.5 Proposals will be received by MATA at its Purchasing offices located at 1330 Levee Road, Memphis, TN 38108, **until 11:00 AM, local time on Monday, October 17, 2022.**

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](mailto:abest@matatransit.com).

Proposer must submit and up to date W-9 form with proposal.

1.6 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.

1.7 **Neither a Performance Bond nor a Proposal Bond is required for this project.**

## **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 The Proposer shall provide signed copies of required forms and certifications. Required forms and certifications are included in Section C.

2.4 One original and one electronic copy (flash drive) of the Proposals and all related documents shall be submitted on forms furnished, or copies thereof, and shall be manually signed. If erasures or other changes appear on the forms, the person signing the Proposals shall initial such erasures and changes. Facsimile Proposals will not be considered

2.5 Modifications of Proposals already submitted will be considered if received at the office designated in Proposals by the time set for receipt of Proposals.

2.6 Proposals shall be valid for a minimum period of ninety (90) days subsequent to the closing date. Proposals offering less than ninety (90) days for acceptance by MATA from the closing date will be considered non-responsive.

## **3.0 PROPOSAL FORMAT**

3.1 All Proposers must provide the following information:

1. Qualifications and Experience

Specialized and technical experience and competence of the firm / team must be presented. Provide a list of recent projects completed by the firm. For at least four projects, include a description of the services provided and include client contact name, telephone number, fax number and e-mail address.

Resumes must be provided for personnel who are expected to be utilized, based on the technical requirements described in Section B. A brief summary of the relevant experience and proposed role shall be provided for key personnel.

2. Proposed Services

A technical proposal must be provided to explain in detail the scope of services that is being proposed. The technical proposal shall elaborate on the general scope of services presented in Section B. A schedule shall be included by task.

3. Cost Proposal

A cost proposal must be provided to explain in detail the proposed cost to complete the scope of services. Proposer shall identify hourly rates for personnel working on each task and provide a not-to-exceed amount for the total project.

5. Required Forms and Certifications

The Forms and Certifications included in Section C must be completed and submitted with the Proposal.

- Exhibit I - Affidavit of Non-Collusion
- Exhibit II - Buy America Certificate
- Exhibit III - Certification of Primary Participant/Certification of Lower-Tier Participant Regarding Debarment, Suspension, and Other Responsibility Matters.
- Exhibit IV - Certification of Restrictions on Lobbying
- Addenda Acknowledgment
- Letter of Intent to Perform as a DBE Contractor or Subcontractor
- Certification of Utilization of Disadvantaged Business Enterprises
- Schedule of DBE Participation
- Explanation of "No Response"

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

Blank Forms are provided in Sections C of this PROPOSAL.

**4.0 CHANGES TO THE SPECIFICATIONS**

4.1 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.

4.2 Requests for Clarification or approved equal must be submitted in writing to Ashley Best, MATA, 1330 Levee Road, Memphis, TN 38108 and must be received no later than **11:00 a.m. local time, Monday, September 26, 2022**, in accordance with the Approved Equals procedures described in the General Contract Provisions. Any unapproved deviations, exceptions, substitutes, alternates or conditional qualifications contained in an **PROPOSALS may be cause for its rejection. VERBAL QUESTIONS WILL NOT BE ANSWERED, THUS PREVENTING AN UNFAIR ADVANTAGE TO ANY PROPOSER.** Questions may be faxed to (901) 278-9108 OR email: [abest@matatransit.com](mailto:abest@matatransit.com).

**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. Qualifications and experience of the firms/team.
  2. Conformance to the scope of work.
  3. Past record of performance on contracts including such factors as cost control, quality of work, ability to meet schedules, and responsiveness to the client.
- 5.5 Price shall not be considered during the technical evaluation. A price proposal will be requested from the top ranked proposal and MATA will enter price negotiations with that proposer. If a fair and reasonable price cannot be agreed upon, then negotiations with the top ranked proposer shall be terminated. A price proposal for the second ranked proposer is then requested and the process is repeated until a mutually agreeable contract is negotiated.
- 5.6 Negotiations will be in conformance with applicable federal, state, local laws, regulations and procedures. The objective of the negotiations will be to reach agreement on all provisions of the proposed contract, including contract price. MATA reserves the right to request documentation supporting the proposed contract price including overhead rates for the firm and subcontractors.

## **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/](http://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 WORK**

**SCOPE OF WORK**  
**ELEVATOR MAINTENANCE, REPAIR AND INSPECTIONS**

**1.0 GENERAL**

- 1.1 This Scope of Services covers the requirements for the Contractor to service, inspect, repair, and perform maintenance on elevators and wheelchair lifts for the Memphis Area Transit Authority (MATA) of Memphis, Tennessee. The contract shall be for a Five-year period, beginning December 1, 2022 and ending on November 30, 2027.
- 1.2 The Contractor shall provide all the necessary personnel, equipment, supplies, tools, materials, components, load weighing devices, parts and any other item(s) needed to perform the work specified herein. The Contractor shall assume full responsibility to have parts available to maintain the equipment in operating order within the time frames set forth herein.

**2.0 MATERIALS**

- 2.1 The Contractor shall provide all maintenance, including replacement parts and components, and shall keep all elevators in operating condition with Original Equipment Manufacturer (OEM) parts.

**3.0 PERSONNEL**

- 3.1 The Contractor shall provide experienced and trained personnel to perform the required services specified in this scope of service, and in accordance with The Elevator Code (ANSI A17.1). The Contractor shall provide MATA a listing of personnel performing work under this contract and shall notify MATA of any changes in personnel assigned to perform work under this contract.
- 3.2 The Contractor shall also provide a Qualified Elevator Inspector (QEI). The QEI shall be a City of Memphis approved elevator inspection agency or authorized company.
- This certified inspector shall provide annual conveyance inspection report(s) to the City of Memphis, if required, and a copy to MATA's Project Manager(s) and the Contract Administrator. Such report(s) shall be provided within thirty (30) days of the anniversary date of this Contract.
  - The QEI shall accompany the Contractor and MATA's Project Manager(s) or designee at all annual inspections. (Refer to paragraphs 6.1.2 and 6.2.2)
  - The Contractor shall contact MATA's Project Manager(s) and MATA's Director of Buildings and Grounds (elevators) and Manager of Trolley Maintenance and Infrastructure (ADA wheelchair lifts). prior to the removal and disposal of any elevator system fluids or materials. (Example: hydraulic system parts, oily water, elevator pit accumulations, etc.) The removal and disposal of such fluids and materials shall be in accordance with the Environmental Protection Agency (EPA). MATA's Environmental Compliance Coordinator must be present during the removal and manifesting of such fluids and materials.
- 3.3 Experience requirements is that the bidder must demonstrate all of the following experience and requirements at the time of the bid submission in order to be considered responsive:
- The Contractor must have at least three (3) years in the past five (5) years of relevant experience providing preventative maintenance, modernizations, and repair of elevators and wheelchair lifts for a commercial, industrial, public, or private sector customer. Individual experience as an employee, principal, director, or officer of an organization may not be used to satisfy this requirement. The use of an affiliated company, organization,

predecessor company, or subcontractor's experience cannot be used to satisfy this requirement.

- The Contractor must have successfully completed at least five (5) relevant projects within the past five (5) years providing preventative maintenance, modernizations, and/or repair of elevators and/or wheelchair lifts for commercial, industrial, public, or private sector customers.
- The Contractor and their employees must have and maintain all state required licenses, credentials, and certifications. The Contractor must maintain the following personnel on staff:
  - o One (1) individual holding a valid Elevator Inspection License or similarly required license with less than ten (10) years but over five (5) years of experience.
  - o Three (3) individuals holding a valid Elevator Technician License or similarly required license with over five (5) years of experience but less than ten (10) years.
  - o One (1) individual holding a valid Elevator Technician Licenses or similarly required license with less than five years of experience but more than three (3).

#### **4.0 APPLICABLE DOCUMENT**

- 4.1 The Contractor shall maintain the elevators, equipment, appurtenances, and accessories in accordance with the latest edition of ASME A17.3, Safety Code for Existing Elevators and Escalators.
- 4.2 The Contractor shall provide original Material Safety Data Sheet (MSDS) to MATA's Project Manager(s) on each product that is used to perform this scope of service.

#### **5.0 ELEVATOR LOCATIONS**

- 5.1 MATA requires elevator maintenance and repair service for one elevator and 32 lift stations. All routine services shall be performed during MATA's regular business hours, from 8:00 a.m. to 5:00 p.m.; Monday through Friday, excluding MATA designated holidays. Routine servicing not completed during regular business hours may be completed on Saturday or Sunday or after hours on weekdays on a non-overtime basis with prior approval by MATA.
- 5.2 The Contractor shall provide maintenance (parts and labor) and keep the elevators in operating condition consistent with OEM practices and standards at the following MATA's facilities:

##### **MATA Facility**

##### **Description of Elevators**

1370 Levee Road Operating Facility  
Memphis, Tennessee 38108

1 Dover Oil Draulics  
Hydraulic Passenger Elevator

Main Street Mall  
Memphis, Tennessee 38103

22 Dover Oil Draulics Hydraulic  
Wheelchair Lifts  
Four Inclinator two at Clark Tower  
& two at Court Square

Madison Avenue Rail Line  
Memphis, Tennessee 38103

12 Stewart & Stevenson

## 6.0 INSPECTIONS AND TESTING REQUIREMENTS:

The Contractor shall conduct tests as necessary to ensure that all contract requirements are fulfilled. All tests and inspections shall be made and completed at the designated time and applicable interval in accordance with ANSI/ASME A17.3 Safety Code for Existing Elevators and Escalators. Maintenance reports are to be sent to the Contract Administrator and Project Manager(s) no later than 48 hours after all test, inspections, and maintenance.

### 6.1 Wheelchair Lifts

- It is essential that the lift controls be wired per the manufacturer's wiring diagrams if they are to be left operable.
- No circuits will be jumped out by anyone working on the lifts except for use in troubleshooting and all jumpers must be removed prior to putting the lift back in operations.
- No circuits will be re-wired to bypass a malfunctioning component so that the lift can be returned to service.
- Any changes to wiring must be reviewed and approved in writing by the manufacturer or another manufacturer of like equipment, prior to the change being made and the lift returned to operation.

Repairs must be completed and return all functions of the lift to service prior to returning the lift to operation. All safety circuits, locks, electrical interlock, limits, and lift controls must be operational, as designed, prior to putting the lift in service.

For the safety of those using the lifts, these requirements must be the same for any agency working on the lifts.

#### 6.1.1 Monthly inspections and test shall include the following:

- Inspection of hoistway and car doors or gates and their operating, locking, and contact devices
- Inspections made from inside the car
- Inspections made outside of hoistway
- Inspections made from top of car
- Inspections made in overhead machinery space and in machine room
- Inspections made in pit
- Any other applicable requirements that the equipment is required to conform to.

#### 6.1.2 One (1) year inspections and test requirements. In addition to the monthly inspections and tests, the inspections and tests specified below shall be performed annually.

Contractor must provide a report to Contract Administrator and Project Manager(s) no later than 48 hours after completion of any and all inspections, test, and maintenance.

- Oil buffers. Car and counterweight buffers shall be tested to determine conformance with the applicable plunger return requirements.
- Safety. Tests shall be performed with no load in the car.
- Governors shall be inspected and operated manually to determine that all parts, including those which impart the governor pull through tension to the governor rope, operate freely.
- Slack-rope devices on winding drum machines shall be operated manually and inspected to determine conformance with the applicable requirements.
- Normal and final terminal stopping devices shall be inspected and tested to determine conformance with the applicable requirements.
- Firefighters' service shall be inspected and tested to determine conformance with the applicable requirements.



- Standby (emergency) power operation shall be inspected and tested to determine conformance with the applicable requirements. Tests shall be performed with no load in the car.
- Power operation of door system. The closing forces of power operated hoistway door systems shall be inspected and tested to determine conformance with the applicable requirements.

## **7.0 Hydraulic Elevators**

7.1 Monthly inspections and test shall include those items listed in paragraph 6.1.1 and the following:

Contractor must provide a report to Contract Administrator and Project Manager(s) no later than 48 hours after completion of any and all inspections, test, and maintenance.

- Anti-creep leveling devices
- Pumps
- Drives
- Relief and check valves
- Flexible hydraulic hose and fitting assemblies
- Storage and discharge tanks
- Drip pans
- Pipe lines
- Pressure tanks
- Control valves
- Sheaves and cylinders of rope-hydraulic elevators
- Cylinders, plungers and plunger fastenings
- Operating valves
- Mechanically controlled hydraulic elevators
- Additional inspections
- Piping
- Drifting of cars

7.2 One (1) year inspection and test requirements:

- Relief Valve setting shall be tested to determine conformance with the applicable requirements. It shall be resealed if the relief valve setting is altered or if seal is broken.
- Cylinders, which are exposed, shall be visually inspected. Cylinders, which are not exposed, shall be tested.
- Normal and final terminal stopping devices.
- Governors, safeties, and oil buffers. Operation of elevators under fire or other emergency conditions
- Standby (emergency) power operation.
- Power operations of door system.
- Emergency terminal speed limiting device.
- Flexible hose and fitting assemblies. Any signs of leakage, slippage of hose fittings, damage to the outer hose covering sufficient to expose reinforcement or bulging or distortion of the hose body is cause for replacement. A metal tag indicating the date of the test and the name of the person/firm who performed the test shall be attached to the hose assembly in a permanent manner.

7.3 Repairs, replacements and maintenance:

- Test and operate all elevators during the scheduled inspections. Ensure all electrical and mechanical parts are Original Equipment Manufacturer (OEM), or manufacturers approved equivalents.

- The Contractor shall not repair or replace any equipment or parts without the prior approval of MATA's Project Manager(s) or designee.
- The Contractor shall prepare written justification with cost estimates, for all repairs not covered under this Scope of Service. (See Section 11.0, EXCLUSIONS). Justifications shall be submitted to MATA's Project Manager(s) or designee, for approval prior to the performance of any additional work.
- Ensure, on a monthly basis, all emergency telephones installed in the elevators are operable. If not, notify MATA's Project Manager(s) within four (4) hours after determining the emergency telephone is defective.
- Report any unsafe conditions, acts of vandalism, careless use of equipment, signs of tampering, etc. to MATA's Project Manager(s) immediately.
- Provide load weighing devices when load testing an elevator. The load testing devices shall be used if a discrepancy exists concerning the carrying load of the elevator, or when found necessary by a City of Memphis Inspector.
- Correct and repair equipment for which violations that have been reported, and if required, have it re-inspected by the City of Memphis inspector.

**MATA requires the following as mandatory:** After the original call for service from MATA the Contractor shall respond within one hour. This is required during and after normal business hours. The repairs shall be completed within four (4) hours after MATA's original call unless it is necessary to have a major component rebuilt or replaced. The Contractor notifying the public of the outage must place signage on any non-working units.

The Contractor shall have an after-hours answering service or after-hours voice mail so that they may meet the four-hour response time requirement after hours. In your proposal you must explain how you intend to meet this requirement.

- 7.4 The Contractor shall submit to MATA's Project Manager(s), a written schedule indicating the specific dates of the monthly scheduled Preventative Maintenance and Inspections, for each lift and elevator listed in paragraph 5.2. The written schedule is due to MATA's Project Manager(s) within ten (10) days after receipt of the Notice to Proceed (NTP).
- 7.5 All tests shall be documented and kept on file at the Contractor's facility for a minimum of three (3) years. A copy of each test record shall be submitted to MATA's Project Manager(s) within five (5) working days after a test is run.
- 7.6 The Contractor shall correct all deficiencies within twenty-four (24) hours of the inspection, unless stated otherwise by MATA's Project Manager(s). Items that are identified as "emergency" shall immediately be brought to the attention of MATA's Project Manager(s). The Contractor shall notify MATA's Project Manager(s), in writing, when deficiencies have been corrected and re-inspection can be made.

## **8.0 QUALITY CONTROL**

- 8.1 The Contractor shall establish a complete Quality Control Program (QCP) to assure all requirements of the contract are provided as specified. The Contractor shall submit the QCP to MATA's Project Manager(s) for approval within ten (10) calendar days prior to the contract start date. Upon approval, the QCP will be incorporated into the contract. The program shall include as a minimum, but not limited to the following:

- 8.1.1 Inspection system covering all the services specified in this scope of service for maintenance and repair of elevator systems and all related equipment.

- 8.1.2 A checklist shall be used by the Contractor in inspecting contract performance during regular scheduled inspections and the name(s) of the individual(s) performing the inspection. The checklist shall include:
- Every area of operation, maintenance and repair of the mechanical and electrical system(s) and equipment.
  - Show the frequency of inspections and procedures to be performed including adjustments, lubrication, cleaning, and testing.
  - Checklist charts shall be prepared for a 12-month period, posted at each elevator machine room and kept current at all times. The entries on each chart shall be made by the Contractor's personnel to indicate the status of all maintenance and shall be initiated by the Contractor's supervisor for validation that the scheduled maintenance has been completed. The checklist chart shall include recorded oil additions and levels at the time of inspection
- 8.1.3 A system for identifying and correcting deficiencies before the level of performance becomes unacceptable.
- 8.1.4 The Contractor shall provide lubricants and parts as specified by the original manufacturer or approved by the manufacturer.
- 8.1.5 The Contractor shall maintain a file containing all inspections conducted and the actions taken to correct the deficiencies. This file shall be made available to MATA's Project Manager(s) upon request.

## **9.0 EMERGENCY SERVICES**

- 9.1 The Contractor shall provide twenty-four (24) hour emergency service, including after hours, weekends, and holidays. The Contractor's personnel shall be on-site within one (1) hour of an emergency notification from MATA.

The Contractor shall provide MATA with a list of names and telephone numbers that will ensure a personal response to an emergency call twenty-four (24) hours per day, seven (7) days per week. The Contractor's emergency procedures must be approved by MATA. The following constitute an emergency situation:

- Person(s) confined in an inoperable elevator car
- An elevator is stuck in the open position and no car is present at the door
- An inoperative wheelchair lift

## **10.0 OVERTIME**

- 10.1 Overtime may be authorized by MATA's Project Manager(s) for emergency service. Overtime may also be authorized for acceptance inspections on which major alterations have been performed to determine safety as well as compliance with the requirements of ANSI A17.1. Prior to performing any overtime work, the Contractor shall obtain approval from MATA's Project Manager(s). If overtime is required in an emergency situation and attempts to obtain approval fail, the Contractor shall document the attempts to obtain approval. Documentation shall include the day, time and number of attempts to contact MATA's Project Manager(s) as well as the amount and reasons for the overtime cost(s). This documentation shall be submitted to MATA's Project Manager(s) on the next working day after overtime has occurred. MATA's Project Manager(s) will approve the request for payment.

## 10.2 TRANSITION JOINT INSPECTIONS FOR SUBSEQUENT CONTRACT

10.2.1 Prior to the subsequent Contract start date, the outgoing Contractor in conjunction with the incoming Contractor and MATA's Project Manager(s), jointly, shall make a complete and systematic inspection of all elevator systems. Should the inspection reveal deficiencies that present a safety hazard, the hazard shall be immediately brought to the attention of MATA's Project Manager(s), and written notification shall be provided to MATA's Project Manager(s) within three days of the inspection.

10.3 The Contractor shall prepare and submit to MATA's Project Manager(s) a deficiency report listing all deficiencies with justifications noted during the said inspection for approval by MATA's Project Manager(s). Prior to the expiration of the current Contract, the incumbent Contractor shall be responsible, with approval by MATA's Project Manager(s), for correcting any deficiencies and bringing the elevators up to code prior to the start of the new Contract.

## 11.0 EXCLUSIONS

11.1 The Contractor shall not repair or replace the following elevator equipment, unless requested by MATA's Project Manager(s):

- Refinishing, repairing, or replacement of car enclosure (including removable panels, car gates, suspended ceilings, light diffusers, handrails and mirrors), car doors, hoistway enclosures, hoistway door panels, frames and sills, car flooring and floor covering, light fixtures, main line power switches, breakers and feeders to controller, rail alignment and fasteners, smoke and heat sensing devices, underground and buried piping, and jack casing.
- Repairs or replacements necessitated by ordinary wear and tear only, shall apply to the contract, and the Contractor shall not be required to make adjustments, repairs or replacements necessitated by reason of negligence on the part of others misuse of the equipment, or by reason of any other cause beyond the Contractor's control.
- Any upgrades that are required by new codes and regulations adopted after execution date of the Contract.
- MATA does not pay for cartage, freight cost or mileage.

## 12.0 ACCEPTANCE

12.1 MATA's Project Manager(s) or designee must be able to approve and accept the services performed under the requirements of this scope of service.

## 13.0 REPEAT SERVICE CALLS

13.1 Repeat calls for maintenance (per defect, per unit) shall not exceed 10%. If repeat calls exceed 10% in any quarter, MATA shall provide notice of unsatisfactory performance to the Contractor. The Contractor shall be required to submit a plan of action to correct such performances within 10 days of such notice. If repeat calls continue to exceed 10% following such notice, the contract may be terminated for cause. OEM defects or maintenance required by reasons other than normal wear and tear will not be included in the 10%.

## 14.0 ADDITIONAL WORK

The MATA Contract Administrator shall authorize additional work only after approval of the Contractor's Fixed Price proposal for such work. Such proposals are subject to negotiation and cost/price analysis by MATA. MATA may, at its discretion, procure any materials or equipment necessary to complete such work separately.

**15.0 COMMUNICATIONS (Reports, Logs, Etc.)**

- 15.1 Contract Administrator – Ashley Best shall represent MATA as the Contract Administrator for this contract.
- 15.2 The Contracting Officer shall be responsible for authorizing changes to the contract, entering into any new agreements (additional work) during the performance to the contract and settling disputes that may arise during contract performance.
- 15.3 Project Manager(s) – The Project Manager shall represent MATA as Project Manager(s) and shall provide technical oversight of the work.
- 15.4 The Contractor shall have in his employment a qualified person who will be designated as the Contractor's Project Manager(s) who will meet with the MATA Project Manager(s) at least quarterly and make recommendations that ensure proper operation of all assigned equipment.
- 15.5 The Contractor shall contact the Project Manager(s) with the times the lift tech will arrive on MATA's property. The Lift Tech shall contact the Project Manager(s) once they have arrived to perform any inspection, test, or maintenance.
- 15.6 The Contractor shall establish and maintain a record system on all equipment and shall supply MATA with monthly reports. This record system shall comply with MATA's system. Each lift and elevator should have the proper name (to be provided by MATA) noted on the report(s). A report shall be made out for each instance of inspection, test, and maintenance or call-out service. The report shall show the nature of call; (i.e., repairs made, tests, inspections, material(s) used and labor hours). Each report must be signed-off by MATA's Project Manager(s) or his designee.

# **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 \_\_\_\_\_

**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 \_\_\_\_\_

**Letter of Intent to Perform as a DBE Contractor or Subcontractor**

To: \_\_\_\_\_  
Name of Prime/General Proposer

23-01  
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**

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

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# 23-01 Five-Year Contract for Wheelchair Lift and Elevator Maintenance 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, 1370 Levee Road, Memphis, TN 38108.

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.
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 has 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 MONDAY, SEPTEMBER 26, 2022 AT 11:00 a.m. LOCAL TIME, 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 faxed to (901) 278-9108 or (901) 274-5866. They may also be e-mailed to [abest@matatransit.com](mailto:abest@matatransit.com) or [smaclin@matatransit.com](mailto:smaclin@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, 1370 Levee Road, Memphis, TN 38108, 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 Chief Executive 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 Price Form - If MATA includes a Proposal Price Form in the IFB, 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.
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, 1370 Levee Road, Memphis, TN 38108. 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 procedure. 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.23-01. Communication with MATA should be mailed directly to Ashley Best, Contract Administrator, MATA, 1370 Levee Road, Memphis, TN 38108, or sent by fax to (901) 278-9108 or (901) 274-5866, or sent by e-mail at [abest@matatransit.com](mailto: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 proposing 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 his Proposal at least five references for projects similar to that described in this Invitation 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 \$100,000) - 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, First Transit, Inc., 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, First Transit, Inc. 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 is 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 current FTA Master Agreement, 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 Recover 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,"28 C.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) Architecture and 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.

